

# Newsletter

## ANTI-TRUST REGULATION IN THAILAND UPDATE

The Office of the Trade Competition Commission (OTCC) recently released redacted and anonymized details of four cases which were recently concluded. These have provided some insight into the development of anti-trust regulation in Thailand.

### Cartel

The OTCC has released case details of a merger review, whereby a publicly listed media and advertisement agency acquired new shares in another publicly listed media and advertisement agency, thereby increasing the aggregate ownership by the former in the latter to 18.60% (the names have been redacted for confidentiality purposes). The merger part of this case does not contain any surprises. However, the paper does reveal specific facts of this case which are interesting. Two competitors who did not fall under the same control had undertaken a business collaboration, including certain kinds of joint sourcing. This action was not noted by the OTCC to be unlawful, prosecutable, or even questionable. This, in effect, provides a vague precedent regarding anti-competitive behavior, as joint sourcing is expressly prohibited under Sections 54 and 55 as being cartel action. This case raises the possibility of an exemption existing for joint sourcing under certain circumstances.

### Abuse of position/ general unfair conduct

The OTCC has released details of the following three cases:

1. A case involving the sale of mobile phones at highly discounted prices, whereby a provincial store had been alleged to sell mobile phones and phone accessories online and offline at prices below the recommended prices issued by the brand owners and much lower than the prices posted by the complainant. The OTCC ruled in the accused's favor as the subsequent investigation revealed that although the profit margin was low, the prices were still above cost. This case simply affirms a general understanding that a company can lawfully sell products with minimal margin due to its competitive advantage and at prices lower than recommended prices, even though other competitors may not be able to sell at such low price.
2. A case involving refusal to trade, whereby two parties were subject to an action by a complainant for refusing to sell asphalt emulsion to the complainant (who had won a highway construction project bid), resulting in the complainant losing the project bid and incurring damages. The OTCC ruled in favor of the two accused parties due to the weight of the supporting reasons given by the two parties for refusal to supply the emulsion. This case simply affirms a general understanding that refusal to trade is theoretically acceptable, even for dominant players, if and when there are supporting reasons, for example, as indicated by the facts, upkeep of reputation of the seller, credit review, and ability to utilize products to be purchased.
3. A case involving the setting up of a parallel distributor, whereby a Singapore-based brand owner of industrial-grade measuring equipment and tools had set up its own distributor, which naturally competed with a then-existing third-party distributor in Thailand (which the brand owner had previously appointed as a distributor). The OTCC concluded that this conduct was not unlawful for two main reasons: 1) there was little economic impact as the product prices projected to the market between the distributors were comparable and the sales volume of the brand owner's distributor was not substantial and 2) the setting up of the parallel business was not expressly prohibited by the controlling agreement between the third-party distributor and the brand owner. The outcome of this case coupled with other ancillary facts of the case, highlights the importance of what is stated in the contract. This is because something that is not prohibited, but which may from the outset look like an unfair commercial action on the part of the brand owner, can still be undertaken. From another perspective, this means that the interpretation of what could be categorized as unfair may have been narrowed.

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The release of these case details is welcomed as a positive sign that the OTCC is attempting to make known its position and line of thinking on different areas of law. This will enable operators to pinpoint, or at least narrow down, high-risk areas, and such will ultimately enable domestic operators to better understand what they can do due to clearer regulatory framework.

If you have any questions in relation to the issues raised in this briefing please contact the authors listed in the right-hand column.

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This publication is intended to highlight an overview of key issues for ease of understanding, and not for the provision of legal advice. If you have any questions about this publication, please contact your regular contact persons at Mori Hamada & Matsumoto or Chandler MHM Limited. If you should have any inquiries about the publications, or would like more information about Chandler MHM Limited, please contact [bd@mhm-global.com](mailto:bd@mhm-global.com).