

# CHANDLER MHM

## Newsletter

### **OFFICE OF TRADE COMPETITION COMMISSION APPROVES CP-TESCO DEAL WITH CONDITIONS**

The Office of Trade Competition Commission (OTCC) has been in the headlines having issued a verdict approving the merger application between C.P. Retail Development (CP) and Tesco Stores (Thailand) (Tesco). The decision on the merger between CP and Tesco has been eagerly anticipated by the public and legal practitioners, as this is arguably one of the most publicized cases the OTCC has had to deal with.

#### **Merger approval**

The OTCC, by a majority vote, approved the merger with seven commercial conditions. The majority explained that the merger will provide the merging parties, who already are dominant players in the retail and wholesale modern trade market for consumer products, with additional market power. However, the merger will not result in a monopoly and is supported by a justifiable business rationale. The prospective merger will result in a material reduction of competition but will not create severe damage to the economy or the interests of consumers.

#### Commercial conditions for the merger

The commercial conditions, issued by the OTCC in approving the merger are as follows:

- the merging parties must promote products of and improve trade terms with mid-size and small suppliers;
- a temporary moratorium on future mergers by the merging parties;
- stagnation of contractual provisions with trade partners;
- prohibitions on exchange of certain trade data between the two merging sides;
- establishment of codes of conduct by the merging parties' and
- temporary reporting to the OTCC.

An appeal against these terms and requests for clarification of the commercial conditions are options available to CP and Tesco, but neither appeals nor requests for clarification have been filed with the OTCC.

#### **Dissenting opinion**

The announcement of the approval of the merger of CP and Tesco was nevertheless expeditiously and unexpectedly followed by a press conference by the three dissenting commissioners, who voiced their concerns that the merger may lead to a monopoly or undue influence on the economy. The dissenting commissioners stated that the merging parties deal with multiple industries from upstream to downstream, often with large market shares in these markets. They argued that the merger may have a substantial impact on competitors, suppliers, and consumers, ultimately leading to some competitors leaving the market and the suppliers having less power, and subsequently there being less choices for the consumers.

#### **Key takeaway**

The most notable takeaway is that the majority has, with this approval, created a precedent that even large operators with dominant player status and upstream-to-downstream business operations can undertake a merger as long as they can prove that their merger will not result in a monopoly or that the merger will cause severe damage to the economy or consumers, and the merger has a justifiable business rationale.

#### **Key Contacts**



Jutharat Anuktanakul  
TEL + 66-2-009-5000 Ext. 3324  
[jutharat.a@mhm-global.com](mailto:jutharat.a@mhm-global.com)



Pranat Laohapairoj  
TEL + 66-2-009-5000 Ext. 3324  
[pranat.l@mhm-global.com](mailto:pranat.l@mhm-global.com)

#### **CHANDLER MHM**

Chandler MHM Limited  
36th Floor, Sathorn Square Office  
Tower  
98 North Sathorn Road  
Silom, Bangrak, Bangkok 10500  
Thailand  
[www.chandlermhm.com](http://www.chandlermhm.com)

If you have any questions in relation to the issues raised above or related issues please contact the authors listed in the column on the right.



---

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).