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THAILAND

Newsletter

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Thailand: Update on Cartel Regulation and Leniency Program

On 19 June 2023, the Office of Trade Competition Commission hosted an online information session on their internal undertakings. The session was centered around cartel enforcement and a prospective leniency program. The authority, in line with authorities in other nations, stressed their utter disapproval of commercial arrangements between different competitors, as cartel arrangements have a direct impact on the level of competition in the market, and their prolonged existence will definitely result in a negative impact on prices, and scope and quality of products and services. The authority also provided hints that they may be working with authorities in other jurisdictions and will exchange information in order to investigate cartels that transcend jurisdictional boundaries.

Most notably, the authority outlined the current internal discussion regarding establishment of a leniency program similar to those existing in other more developed jurisdictions, with similar characteristics, such as protection to be afforded to the first whistle-blower and descending leniency for the cooperative followers. This is in line with the recent development, whereby the Trade Competition Commission of Thailand and the Office of Trade Competition Commission have worked closely with academics and think-tanks, as well as representatives from the private sectors (operators and law firms) to gauge ideas regarding improvement of the Trade Competition Act, with a particular focus on establishment of a leniency program. The most interesting fact outlined during the session was the current use of a leniency program from a practical perspective. Even though the leniency program itself is in its discussion and drafting stage, and will surely take some time to be officially promulgated as a supplementary legislation, the characteristics of a common leniency program have already been present in past cartel cases in Thailand. Whereby the first and most cooperative alleged wrongdoer received lenient treatment and a large reduction in a fine imposed by the Commission, and other alleged wrongdoers who followed suit with cooperation received descending leniency in terms of a reduction in fine, as long as they fully cooperated. This is a functional leniency program, but one without any reference to a clear-cut legislative outline. Interestingly, the authority also expressly mentioned that they are in discussion with other anti-trust and trade competition authorities in the ASEAN region, and if such discussion comes to fruition, the authorities may together establish a framework for a cross-jurisdictional admission filing, whereby one can obtain protection or leniency in multiple jurisdictions by filing with one authority.

This session ultimately serves to remind all operators in Thailand that the Trade Competition Commission of Thailand and the Office of Trade Competition Commission are taking an increasingly more serious stance against cartels and other types of misconduct, as shown by their unofficial undertakings and discussions for new legislation, as well as official prosecution of historical cartel cases. More notably, besides functioning as a reminder, the session serves as a stern threat to all operators that they must at least cease their cartel conduct and remove such tendencies from their organization. Moreover, operators who, whether inadvertently or intentionally, have committed themselves to a cartel may wish to reevaluate the situation based on the pros and cons of filing an admission with the authority, as doing so will provide the first and most cooperative whistle-blower with a reasonable protection and leniency, while remaining quiet about such involvement can be financially harmful if any other party within the cartel chooses to come forward. Overall, it is best to be the first to make contact.

Operators are also reminded that a commission of a cartel arrangement under the Trade Competition Act of Thailand may also carry an imprisonment for up to two years for all those who have taken any active part in it, as well as a potentially very large fine of up to 10% of the annual sales figure of the wrongdoer. Besides these two categories of liabilities, private parties who have been damaged by such cartel action may also bring their own private suits based on the provisions and results of the Trade Competition Act. The authority should keep the matter strictly confidential when it is properly filed and disclosed to the authority, meaning an admission of guilt will likely be less financially damaging than being discovered or exposed by another wrongdoer in the cartel ring. Conclusively, it is best to cease such wrongdoing and consider being the first to come forward and file an admission to clean one's slate.

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

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