

Five Notifications of Trade Competition Commission Become Effective

On 4th October 2018, the Trade Competition Commission (“TCC”) issued 5 notifications to implement the Trade Competition Act B.E. 2560 (A.D. 2017) (“TCA”). They were published in the Government Gazette on 1st November 2018 and have come into force since 2nd November 2018. They cover implementation rules on market definition, market share, prohibited acts of market dominants, unfair acts of related business operators, hardcore cartel and non-hardcore cartel and their unfair acts that may cause damages to other business operators. The major principles of these 5 notifications are as follows:-

1. The “market definition” is an analysis of facts related to alternative goods or services based on the relevant market (the demand and supply in the relevant product market) and the relevant geographical market.
2. The prohibited acts of the market dominant operators include unfair determining or maintaining the purchase or sale price of goods or services (predatory pricing, price below cost, price discrimination, margin squeeze, excessive pricing) determining unfair terms and conditions on trading parties (discount schemes, exclusive dealing, quantity forcing, tied product, resale price maintenance, refusal to supply), ceasing or reducing or limiting the manufacture or purchase or distribution or delivery or import of goods or services without a good reason or destroying or causing damage to goods to reduce their supply below the market demand, interference with business of the other party without a good reason.
3. The business operators with policy relationship are determined as at least 2 operators having a policy relationship because their guidelines, policies, management or business operation procedures are under the commanding power of the same person. The commanding power over a business operator means the control power arising from holding more than 50% shares with voting rights in the business operator, having controlling power over the majority of the voting rights in the business operator or for the appointment or removal of at least a half of directors of the business operator.
4. Elements of price fixing, quantity limitation, bid rigging and market allocation by the hardcore cartel have been specified.

Elements of price fixing, quantity limitation and market allocation by non-competitive operators in the same market have been specified. Elements of quality reduction of goods or services, appointment or assignment of sole distributor/dealer for the same goods or services and conditions or practices on sale or purchase of goods or services by the non-hardcore cartel have also been specified.

5. A business operator having a market share of 10% or more is presumed to have a market power. Whether or not a business operator is an operator with higher bargaining power is considered from the value of its business with the other business operator if such value is at least 30% or lower than 30% but the other business operator has no choice of doing business with any other operator.

The elements of the acts of unfair prevention of business operation by other business operators, unfair using of market power or higher bargaining power and unfair business terms and conditions which limit or block others from their business operation are provided in detail.



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