

2020 – an unprecedented year for Thai competition law

2020 has been one of the most eventful and unprecedented years for competition law in Thailand. This year, four public hearings have taken place, three industry-specific regulations on unfair practices were issued, the dominance thresholds were amended, the authority has published a detailed merger control manual, and two pre-closing merger approvals were issued – with **one landmark case** leading to remedies.

A surge of interest in merger control enforcement

The long-awaited **Thai merger control regulations** came into force on 29 December 2018. Since then, there have been three pre-closing approvals in the automotive and modern retail industries (A&O having advised on all three cases) and post-closing notifications in at least 11 industries (including banking, food & beverage, energy, airlines and properties).

The sale of Tesco Lotus' business in Thailand and Malaysia to CP Group was one of the most publicised deals, igniting a surge of public interest in merger control enforcement. Although it is not the first case in Thailand where remedies were imposed (the Energy Regulatory Commission (**ERC**) imposed remedies on **Engie's EUR2.6bn divestment of its 69.1% interest in Glow Energy to Global Power Synergy**, where A&O represented Engie), it is the first time that the Trade Competition Commission (the **Commission**) has imposed such remedies. All remedies imposed are of a "behavioural nature", pursuant to which CP and Tesco must adopt certain conducts for a period of time post-closing and must keep the Commission informed of their compliance with these remedies.

Under the Thai merger control regime, a notifiable M&A transaction cannot close without prior approval from the Commission if the transaction will result in a monopoly, dominance or the strengthening of dominance in a relevant market. Other transactions that do not fall within the category of requiring a pre-closing approval may still require a post-closing notification within seven calendar days of closing if any of the purchaser group or the target (independently or in aggregate) had at least THB1bn turnover in any market in Thailand in the previous year.

M&A transactions subject to specific merger control rules by industry-specific regulators, such as the ERC and the National Broadcasting and Telecommunications Commission (**NBTC**), are not subject to the Commission's approval.

Continued focus on industry-specific unfair practice

The Commission has been actively raising awareness on competition law (the Trade Competition Act B.E. 2560 (2017), the **Act**) that entered into force on 5 October 2017. It is modernising itself into an independent and transparent regulatory body up to date with the fast-paced and advancing business landscape.

By way of example, in light of the Covid-19 pandemic and lockdowns, the consumption behaviour of the Thai population has quickly shifted from dine-in restaurants to online food deliveries. Multiple complaints from restaurant operators led the Commission to order investigations into online food delivery operators for any breach of the Act during May 2020. Subsequently, a public hearing was held in September 2020 on the draft *guidelines on unfair trade practices between digital platform operators for food delivery and restaurant operators* (the **Online Food Delivery Guidelines**), which have now been published and will come into force on 23 December 2020. The Online Food Delivery Guidelines are based on section 57 of the Act, which provides that trade practices must be free and fair without coercion, discrimination and obstruction, and must be engaged with clear standards agreed in writing and justifiable. The guidelines also provide detailed examples of unfair practices, including the collection of unfair benefits and fees (such as advertising fees and promotions), the imposition of unfair conditions (such as exclusive dealing and rate parity clauses) and unfair termination of the agreement if the restaurant operator fails to comply with the conditions.

Similar sector-specific unfair practices guidelines have also been issued in the past two years relating to: (i) franchise businesses; (ii) retail/wholesale operators with their suppliers/producers; and (iii) fruit purchasing businesses.

Looking forward to 2021

As is the case in most other jurisdictions, the Commission appears to focus on consumers' rights and the importance of their rights, including in the virtual commerce sector. Its legislative initiative is now focused on e-commerce, digital platform providers and telecom.

On 22 September 2020, the OTCC entered into an MOU with the NBTC to ink their cooperation to prepare and adopt guidelines on unfair trade practices in relation to the telecom, broadcasting and digital services sectors. These would

include guidelines that relate to the e-commerce sector, presumably inspired by other guidelines and rulings adopted throughout the world (including in Asia, such as in Korea, Japan, China, Singapore and Australia) in that sector.

Further, we also anticipate a surge in merger control filings and of antitrust enforcement as business operators become more aware of the legal requirements and the possibilities of protecting their business interests with competition law.

Key contacts



Suparek Auychai
Partner – Bangkok
Tel +66 2263 7604
suparek.auychai@allenoverly.com



François Renard
Partner – Hong Kong
Tel +852 2974 7110
francois.renard@allenoverly.com



Nonnabhat Paiboon
Senior Associate – Bangkok
Tel +66 2263 7629
nonnabhat.paiboon@allenoverly.com