

SCG Anti-Trust Guidelines

History of Thai Competition Laws

In the past, the main legislation governing anti-trust issue in Thailand was Price Control and Anti-Monopoly Act of 1979 (B.E. 2522) (the “**1979 Act**”), having provisions governing over both price control and anti-monopoly practices. However, due to inefficiency in the enforcement of anti-monopoly provisions, the 1979 Act was repealed in 1999 and replaced by two distinctive legislations; namely, the Act on Prices of Goods and Services 1999 (B.E. 2542) and the Competition Act 1999 (B.E. 2542).

SCG Guidelines on Anti-trust

1. The purpose of these Guidelines is to communicate primary understandings on the principles of the Competition Act 1999 (B.E. 2542) (“**Competition Laws**”) in accordance with the guidelines established and announced by the Office of Trade Competition Commission, Ministry of Commerce, which is the authorized enforcing body of the Competition Act.
2. These Guidelines comprise two parts:
 - (i) Principle of the Competition Laws (Attachment 1); and
 - (ii) Suggestions on practices which may be prohibited under Section 25 (Abuse of Dominant Position – Attachment 2) and Section 27 (Agreements and Collusive Practices that Adversely Affects Competition – Attachment 3).
3. SCG’s executives and employees are encouraged to study and understand these Guidelines and shall control and inform involved parties, including SCG’s partners to understand and comply with the Competition Laws in all respects. In case of any inquiry, please consult SCG Legal Counsel Limited through the designated channels.

Principle of the Competition Act 1999 (B.E. 2542)

Competition Act 1999 (B.E. 2542) (hereinafter the “**Act**”) came into effect on 1 May 1999 (B.E. 2542). The Act contains the following principle:

1. The purpose of the Act is to prohibit anti-competitive practices or practices that reduce or restrict competition. The Act addresses the following conducts:
 - 1.1 A business undertaking having market dominant position must not abuse its dominant position by (i) unreasonably fixing purchasing or selling prices; (ii) unreasonably imposing compulsory conditions on its customers to restrict purchase or selling of goods; (iii) restricting the quantity of the goods to be lower than the market’s demand; and (iv) intervening the operation of business of other person (Section 25);
 - 1.2 A business undertaking must not carry out business merger and acquisition which may result in monopoly or unfair competition without approval from the Competition Commission (Section 26);
 - 1.3 A business undertakings must not enter into agreement with another business undertaking or to jointly undertake any collusive practices which result in monopoly, reduce or restrict competition in the market of any goods or service (“Collusion”). Examples of Collusion are price-fixing, geographic allocation, and appointing a same person as the sole distributor (Section 27);
 - 1.4 A business undertaking must not carry out any unfair trade practice that would destroy, impair, obstruct, impede, or restrict business operation of other business undertaking; prevent other business undertaking from carrying out business; or cause other business undertaking to cease their business (Section 29).
2. The Act establishes the Competition Commission, comprising the Minister of Commerce, Permanent Secretary for the Ministry of Commerce, Permanent Secretary for the Ministry of Finance, and qualified persons from both public and private sectors. The Competition Commission has the power to establish rules, consider applications for approval, and ensure enforcement of the Act.

3. The Act provides for Office of Trade Competition Commission, the Department of Internal Trade, to serve as secretary office for the Competition Commission. The main missions of the Office of Trade Competition Commission are to support the operation of the Competition Commission, to monitor conducts of business undertakings, and to handle complaints from any person alleging violation of this Act.
 4. Consequences of violation of the Act
 - 4.1 Civil penalty. Any injured party has the right to sue the violator for damages. The Consumer Protection Commission or association under the law on consumer protection also has the power to sue the violator for damages on behalf of the consumer or the member of its association, as the case may be (Section 40).
 - 4.2 Criminal penalty. The injured party cannot directly sue the violator of this Act on the basis of criminal law by itself but must file a complaint to the Competition Commission to commence a criminal suit against the violator (Section 14, 16 and 55).
 - 4.3 Administrative penalty. The Competition Commission has the power to issue an order requiring the violator to cease, stop, or rectify the act that violates this Act (Section 30 – 33).
 5. Criminal penalties under the Act are mostly imprisonment of not exceeding three years or fine of not exceeding six million Baht or the combination of both. In certain cases, there is a daily fine of fifty thousand Baht. Repeat offenders are subject to double punishment.
 6. If the violator of the Act is a juristic person, managing director or a person responsible for the operation of the juristic person will also be punished unless such individual person is able to prove that the violation occurred without his knowledge or consent, or that he had taken reasonable action to prevent the violation.
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Abuse of Dominant Position (Section 25)

1. A dominant position means a business undertaking in any goods or service having, during the past year, (i) 50% or more of the market share of such goods or services and, (ii) one billion Bath or more of sales volume **or** the first three leading business undertakings in any goods or service having (i) 75% or more (on aggregate basis) of the market share in of such goods or services and, (ii) one billion Baht or more of the sales volume .
2. Holding a dominant position is not illegal by itself. The Act only prohibits a business undertaking having a dominant position from abusing its dominant position by engaging conducts prescribed in Section 25 (1) – (4) of the Act¹.
3. A business undertaking with a dominant position should exercise extra precautions against the following conducts:

3.1 **Pricing Behaviors.** For example:

- **Imposing Unfair Prices:** For example, setting purchasing prices of raw materials at the price higher than the market price in order to obstruct competitors or raising selling prices of its products for any reasons other than the increase of costs.
- **Predatory Pricing:** For example, selling its products at loss for a certain period of time with the intention of driving competitors out of market or to create barrier to entry to the potential new comers.
- **Price Discrimination:** With justifiable reasons, charging different selling prices of its products to different customers who purchase the same goods or service at same quality and quantity.

¹ (1) fixing unfair prices for goods or services

(2) fixing compulsory unfair conditions, whether directly or indirectly, for other business undertakings which are its customers to restrict the services, production, purchase or distribution of goods or to restrict opportunities in purchasing or selling goods, providing or obtaining services or obtaining credits from other business undertakings;

(3) suspending, reducing, or restricting services, production, purchase, sale, delivery, importation without any reasonable reason, destroy or damages goods in order to reduce its quantity to be lower than market's demand;

(4) intervening in the operation of others without any justifiable reason.

- **Resale Price Maintenance:** –Forcing its distributors to sell goods or service at certain prices (such as ceiling price or floor price). However, suggested prices or recommended price is not prohibited.

3.2 Non-Pricing Behaviors.

The following conducts may be categorized as anti-competitive practices and deemed illegal. However, it is recognized that in case of authorized dealers and franchise arrangement, certain restrictions or arrangement are justifiable but should be reviewed on the case-by-case basis.

- **Exclusive Dealing** – for example, prohibiting business partners from selling goods of competitors.
 - **Exclusive Territories** – for example, prohibiting business partners from trading outside the designated geographic area.
 - **Tying** – Forcing business partners who wish to buy one good to buy other goods as a package, except where there is a justifiable reason for such tying arrangement such as it is necessary to maintain the goods' quality.
 - Forcing business partners to not selling the goods or not engaging into any business with competitors without any ordinary commercial reason.
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Agreements and Collusive Practices among Business Undertakings (Section 27)

1. Section 27 prohibits business undertakings from jointly engaging into any collusive practice that is anti-competitive, reduce or restrict competition in the market for any goods or services (collusion). Section 27 prescribes the prohibited collusion in its 10 sub-sections².

2. **Strictly prohibited practices.**

In the business operation, SCG must not agree, negotiate, or make any arrangement with competitors on the followings practices:

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- ² (1) Fixing selling prices for goods or services as a single price or as agreed with the competitors; or restricting the sale volume of the goods or services;
- (2) Fixing buying prices for goods or services as a single price or as agreed; or restricting the purchase volume of the goods or services;
- (3) Entering into an agreement to dominate or control the market;
- (4) Fixing agreement or condition in a collusive manner in order to enable one party to win a bid or a tender for goods or services or to prevent one party from participating in bid or tender for goods or services;
- (5) Fixing geographic areas where each business undertaking will sell or reduce the sale of goods or services or determining customers to whom each business undertaking will sell goods or provide services without other business undertakings selling goods or providing services in competition;
- (6) Fixing geographic area where each business undertaking will buy goods or obtain services or determining persons from whom the business undertakings will buy goods or obtain services;
- (7) Fixing quantity of goods or services that each business undertaking will manufacture, sell, purchase, or provide service in order to limit the quantity to be lower than the market demand;
- (8) Lowering the quality of goods or services than those previously manufactured, sold, or provision while selling at the same or higher price;
- (9) Appointing or entrusting any person to be the sole distributor for the same goods or the same services; or for the same kind of goods or services; and
- (10) Fixing condition or practice in the purchase or sale of goods or services to be in uniformity or as agreed.

- 2.1 **Price Fixing** – for example, fixing the same selling prices, fixing the same rate for increasing or reducing selling price, fixing the same reductions or discounts.
- 2.2 **Limit the Quantity of Goods or Services** – for example, fixing the quantity of the goods with the competitors.
- 2.3 **Agreement to Share the Market or to Control the Market** – for example, prepare or plan marketing strategy with the competitors.
- 2.4 **Bid Rigging** – for example, having agreement not to compete in the bidding process or offer excessive price in order to fix the winner in the bidding process.

3. **Practices that may be allowed upon approval from the Commission Committee**

Although the following practices may not be strictly prohibited, there is a risk that they may be considered anti-competitive. SCG should therefore avoid engaging in such practices with competitors and may seek further advice from SCG Legal Counsel Limited.

- 3.1 Allocate customers by geographic area, or agree not to enter into the market at the same time.
- 3.2 Agree to restrict the manufacturing, purchasing, or selling of goods or services in order to limit the amount of goods or services to be lower than market's demands.
- 3.3 Lower the quality or standards of goods or services. For example, selling goods at the same selling price but reduce quantity of the goods.
- 3.4 Appoint the same person to be the distributor of goods or services.
- 3.5 Set commercial terms and conditions, directly or indirectly, which result in restricting or reducing competition.