

# ORGANISATION MONDIALE DU COMMERCE

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Groupe de travail de l'interaction du commerce  
et de la politique de la concurrence

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## COMMUNICATION DE LA THAÏLANDE

La Mission permanente de la Thaïlande a fait parvenir au Secrétariat la communication ci-après, datée du 11 septembre 2000, en lui demandant de la distribuer aux Membres.

### Législation sur la concurrence de la Thaïlande

#### Évolution de la législation sur la concurrence de la Thaïlande

1. La législation sur la concurrence de la Thaïlande a débuté par la promulgation de la **Loi de 1947 contre les bénéfices excessifs**. Cette loi n'avait pas pour objet d'interdire les comportements monopolistiques et anticoncurrentiels, mais essentiellement de protéger les consommateurs des prix trop élevés. Ultérieurement, avec l'essor considérable de l'économie thaïlandaise, le gouvernement s'est toutefois rendu compte que la Loi de 1947 n'était pas suffisante pour assurer la protection des consommateurs contre les pratiques commerciales déloyales et les fortes hausses des prix. C'est la raison pour laquelle elle a été remplacée par la **Loi de 1979 sur la fixation des prix et la lutte contre les monopoles**.
2. La Loi de 1979 est composée de deux parties: la première traite de la fixation des prix et la seconde de la lutte contre les monopoles. La partie de la Loi de 1979 qui traite de la fixation des prix a pour objet de protéger les consommateurs contre les prix excessifs. Elle habilite un "Comité central de fixation des prix et de lutte contre les monopoles", composé de représentants du secteur public et du secteur privé, à surveiller les fluctuations des prix des biens et des services et à imposer des réglementations sur les prix maximaux à la vente de certains produits.
3. Les produits figurant sur l'annonce ayant trait à la réglementation des prix au titre de la Loi de 1979 étaient essentiellement des biens de consommation et des produits soumis à des fluctuations de prix irrégulières, tels que la viande de porc, le sucre raffiné, le gaz de cuisine et le café soluble. Pour augmenter les prix de ces produits réglementés, les fabricants devaient demander l'approbation correspondante au Comité central, en fournissant un estimatif des coûts.
4. La partie de la Loi de 1979 qui traite de la lutte contre les monopoles a pour objet de promouvoir la concurrence loyale. Elle habilite le Comité central à surveiller les comportements commerciaux afin d'empêcher les entrepreneurs de vendre des produits à des cours supérieurs aux prix réglementés, de créer des monopoles et de se livrer à des pratiques commerciales restrictives. En cas de violation, le Comité central a tout pouvoir pour engager une action pénale. Toutefois, les dispositions relatives aux pratiques commerciales restrictives et monopolistiques ont été rarement invoquées et la Loi a été employée principalement pour lutter contre la fixation de prix déloyaux pour les produits de consommation.

5. En 1997, un amendement de la Constitution thaïlandaise a permis de renforcer considérablement la législation sur la concurrence. L'article 87 de la Constitution disposait que "le gouvernement doit appuyer un système économique fondé sur le marché, garantir une concurrence loyale, assurer la protection du consommateur et lutter contre les pratiques monopolistiques ...". Selon la Constitution modifiée, l'ancienne "Loi de 1979 sur la fixation des prix et la lutte contre les monopoles" n'offre pas une protection adéquate des consommateurs et des petites entreprises contre les pratiques commerciales déloyales et monopolistiques, spécialement si l'on tient compte du processus de privatisation actuellement en cours. C'est pourquoi elle a été remplacée par deux lois distinctes, la **Loi sur les prix des biens et des services**, qui est entrée en vigueur le 1<sup>er</sup> avril 1999, et la **Loi sur la concurrence**, qui est entrée en vigueur le 30 avril 1999.

6. La **Loi sur les prix des biens et des services (B.E. 2542, 1999)** interdit la manipulation des prix des biens et des services. Elle institue un "Comité central des prix des biens et des services" chargé de superviser toutes les transactions et autres mesures concernant des biens et services contrôlés. Sous réserve de l'approbation du Conseil des ministres, ce comité central peut instituer des prix minimaux à l'achat, des prix maximaux à la vente ou d'autres mesures visant à prévenir la manipulation des prix ou d'autres pratiques commerciales déloyales.

### **La Loi de 1999 sur la concurrence**

Objectif de la Loi

7. La **Loi sur la concurrence (B.E. 2542, 1999)**<sup>1</sup> est entrée en vigueur le 30 avril 1999. Partant du principe que les marchés concurrentiels constituent la meilleure façon de promouvoir l'efficacité économique et la distribution efficace des ressources, de favoriser l'entrée de nouveaux acteurs sur le marché, notamment de petites et moyennes entreprises, ainsi que de porter la prospérité économique et sociale à son maximum, elle a pour objectif d'encourager et de favoriser des pratiques commerciales libres et loyales. Elle permettra aux consommateurs de bénéficier ainsi de prix raisonnables et performants, d'un choix plus étendu et d'une meilleure qualité des biens et des services.

### **Comportements anticoncurrentiels aux termes de la Loi**

8. Les comportements anticoncurrentiels ont été divisés en trois catégories principales en vertu de la Loi: l'abus de position dominante, la fusion et les autres comportements anticoncurrentiels.

#### *i) L'abus de position dominante*

9. La partie de la Loi traitant de l'abus de position dominante a été adoptée dans le but de protéger les concurrents, fournisseurs, acheteurs et consommateurs contre les entreprises commerciales qui occupent une position de force sur le marché et l'utilisent pour fausser le jeu de la concurrence et prendre l'avantage ou exercer une influence sur d'autres entreprises commerciales. Elle vise principalement le comportement des grandes entreprises ayant une position dominante sur le marché, plutôt que celui des PME.

10. Selon l'**article 2** de la Loi, on entend par *entreprise commerciale*<sup>2</sup> *détenant une position dominante* une ou plusieurs entreprises commerciales opérant sur le marché de tout bien ou service et

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<sup>1</sup> Jointe uniquement en anglais.

<sup>2</sup> On entend par "entreprise commerciale" un distributeur, producteur aux fins de distribution, acheteur ou importateur aux fins de distribution, ou acheteur en vue de la production ou de la redistribution des marchandises, ou un fournisseur de services commerciaux.

dont la part de marché et le volume des ventes dépassent le niveau fixé par la Commission de la concurrence.

11. L'**article 25** interdit aux *entreprises commerciales détenant une position dominante* de prendre les mesures ci-après:

- 1) la fixation ou le maintien abusif du prix d'achat ou de vente de biens ou des honoraires de services;
- 2) l'imposition abusive de conditions obligatoires par lesquelles elles exigeraient à leurs clients de restreindre la prestation de services, la production, l'achat, la distribution de biens, ou de limiter les possibilités d'acheter ou de vendre des biens, de fournir des services ou d'obtenir des crédits d'autres entreprises commerciales;
- 3) la suspension, la réduction ou la restriction de la prestation de services ou de la production, de l'achat, de la distribution, de la livraison ou de l'importation de biens sans raison justifiée, ou la destruction ou détérioration de biens en vue d'en réduire la quantité de manière à ce que celle-ci soit inférieure à la demande du marché;
- 4) l'intervention dans les opérations commerciales d'autres personnes sans raison justifiée.

12. L'**article 30** de la Loi habilite la Commission de la concurrence à rendre une ordonnance écrite exigeant de toute entreprise commerciale qui détiendrait une position dominante et dont la part de marché dépasserait 75 pour cent, qu'elle suspende, interrompe ou modifie cette part de marché.

*ii) La fusion*

13. La partie de la Loi traitant des fusions a été adoptée dans le but d'interdire les fusions susceptibles d'aboutir à un monopole ou à une situation de concurrence déloyale. La Loi n'interdit pas les fusions en soi, mais subordonne toutes celles qui risquent de réduire la concurrence à une autorisation préalable de la Commission de la concurrence.

14. Aux termes de l'**article 26**, les entreprises commerciales ne doivent pas réaliser de fusions<sup>3</sup> conduisant à la formation d'une entreprise dont la part de marché, le volume de ventes, le capital, les stocks ou les avoirs dépasseraient ceux qui ont été définis dans le Journal officiel par la Commission de la concurrence, dans la mesure où cette situation risquerait d'entraîner la création d'un monopole ou de générer une concurrence déloyale. La fusion peut toutefois avoir lieu si elle est autorisée par la Commission de la concurrence.

*iii) Les autres comportements anticoncurrentiels*

15. La partie de la Loi relative aux comportements anticoncurrentiels a été adoptée pour interdire toute entente frauduleuse, collusion ou collaboration entre plusieurs entreprises commerciales pouvant entraîner la création d'un monopole ou la diminution de la concurrence.

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<sup>3</sup> La Loi définit les fusions d'entreprises de la manière suivante:

- 1) fusion entre un producteur et un autre producteur, un distributeur et un autre distributeur, un producteur et un distributeur, un fournisseur de services et un autre fournisseur de services, ayant pour effet de conserver le statut d'une entreprise et de mettre fin à celui de l'autre entreprise, ou de créer une nouvelle entreprise;
- 2) achat de l'ensemble ou d'une partie des actifs d'une autre entreprise avec l'intention de prendre le contrôle de la direction générale, de l'administration et de la gestion de l'entreprise;
- 3) achat de l'ensemble ou d'une partie des actions d'une autre entreprise avec l'intention de prendre le contrôle de la direction générale, de l'administration et de la gestion de l'entreprise.

16. Aux termes de l'**article 27**, il est interdit à une entreprise commerciale de conclure une entente avec une autre entreprise commerciale en vue de prendre des décisions qui aboutiraient à la création d'un monopole, à la diminution ou à la restriction de la concurrence sur le marché d'un bien ou d'un service, par l'une des méthodes indiquées ci-dessous:

- 1) la fixation d'un seul prix de vente de biens ou de services, ou la restriction du volume des ventes de biens ou de services;
- 2) la fixation d'un seul prix d'achat de biens ou de services, ou la restriction du volume des achats de biens ou de services;
- 3) la conclusion d'un accord visant à s'approprier du marché ou à le contrôler;
- 4) la conclusion d'un arrangement collusoire ou la définition de conditions ayant pour objet de permettre à une partie de gagner une soumission ou une adjudication de biens ou de services, ou d'empêcher une partie de participer à une soumission ou à une adjudication de biens ou de services;
- 5) la définition de zones géographiques dans lesquelles chaque entreprise commerciale est autorisée à distribuer des biens ou des services, ou à restreindre la distribution de ces biens et services, ou la définition des clients auxquels chaque entreprise commerciale est loisible de vendre des biens ou de fournir des services de manière à interdire la concurrence d'autres entreprises commerciales dans la distribution de ces biens et de ces services;
- 6) la définition d'une zone géographique dans laquelle chaque entreprise commerciale peut acheter des biens et des services, ou la définition des personnes auprès desquelles les entreprises commerciales peuvent acquérir ces biens et ces services;
- 7) la fixation de la quantité des biens ou des services que chaque entreprise commerciale peut produire, acheter, distribuer ou fournir, en vue de maintenir cette quantité à un niveau inférieur à celui de la demande du marché;
- 8) la diminution de la qualité des biens et des services produits, distribués ou offerts, alors que la distribution s'effectue au même prix ou à un prix plus élevé;
- 9) la désignation d'une personne comme distributeur ou fournisseur exclusif de biens ou de services;
- 10) la fixation de conditions ou de pratiques relatives à l'achat ou à la distribution de biens ou à la fourniture de services dans le but d'obtenir une pratique uniforme ou convenue.

Au cas où il s'avérerait nécessaire d'un point de vue commercial de prendre l'une quelconque des mesures dont il est fait mention aux paragraphes 5 à 10 de l'article 27, l'entreprise commerciale devra en demander l'approbation préalable à la Commission de la concurrence.

17. Il s'ensuit que pour agir en violation de l'article 27, trois conditions doivent être remplies: a) deux entreprises commerciales, ou un nombre supérieur, doivent conclure un accord; b) cet accord doit se traduire par une décision revenant à exercer un monopole, à diminuer la concurrence ou à lui faire obstacle; c) la décision dont il est question doit figurer dans les paragraphes 1 à 10.

18. La Loi traite en outre des accords d'exclusivité entre les entreprises commerciales nationales et étrangères. L'**article 28** interdit à une entreprise commerciale qui entretient une relation de type

contractuel, politique, de partenariat ou de tout autre genre avec une entreprise commerciale étrangère, d'exercer une activité susceptible de limiter la liberté que possède une personne résidant en Thaïlande d'acheter directement des biens ou des services à des entreprises commerciales étrangères pour son usage personnel. Cette partie de la Loi a également été adoptée pour protéger le droit du consommateur de s'approvisionner directement auprès des fabricants ou des distributeurs situés en dehors de la Thaïlande, à condition que l'achat soit destiné à la consommation personnelle.

19. Afin d'empêcher tout autre comportement anticoncurrentiel qui n'aurait pas été couvert par les dispositions ci-dessus, l'**article 29** interdit aux entreprises commerciales de prendre toute mesure qui ne serait pas compatible avec la concurrence libre et loyale et risquerait de détruire, d'endommager, d'entraver ou de faire échec aux opérations commerciales d'autres entreprises, ou d'empêcher d'autres personnes d'exploiter leur entreprise, ou de les obliger à la dissoudre.

#### Exemption

20. La Loi de 1999 ne concerne pas: l'administration centrale, provinciale et locale; les entreprises d'État; les groupes d'agriculteurs, les coopératives ou les sociétés coopératives reconnus par la loi et exerçant leurs activités pour le compte des agriculteurs; les entreprises figurant dans la réglementation ministérielle.

21. En outre, si les comportements anticoncurrentiels figurant à l'article 25, aux paragraphes 1 à 4 de l'article 27, à l'article 28 et à l'article 29 sont strictement interdits, certaines pratiques décrites à l'article 26 et aux paragraphes 5 à 10 de l'article 27 peuvent être mises en œuvre avec l'accord préalable de la Commission de la concurrence. Dans ce cas, la Commission doit rendre sa décision par écrit dans les 90 jours.

#### Sanctions

22. Si la Commission de la concurrence estime qu'une entreprise commerciale agit en violation des articles 25, 26, 27, 28 ou 29, elle est habilitée à rendre une ordonnance par écrit exigeant à l'entreprise qu'elle suspende, interrompe, rectifie ou modifie l'action contrevenante. Il est toutefois donné à l'entreprise commerciale qui reçoit l'ordonnance et se trouve en désaccord avec les termes de cette dernière la possibilité de faire appel de ces décisions auprès du "Comité des recours".<sup>4</sup>

23. Toute personne contrevenant aux dispositions des articles 25, 26, 27, 28 ou 29, ou ne faisant pas droit à l'ordonnance de la Commission de la concurrence ou à la décision du Comité des recours est passible d'un emprisonnement pouvant aller jusqu'à trois ans et/ou d'une amende maximum de six millions de baht. Ces sanctions peuvent être infligées non seulement à l'entreprise mais également au président-directeur général de celle-ci, à l'associé gérant ou à la personne responsable de son fonctionnement, à moins qu'il ne soit prouvé que l'infraction a été commise à son insu ou sans son consentement, ou qu'il a déjà pris des mesures raisonnables pour empêcher l'infraction.

24. De plus, la Loi autorise toute personne ayant subi un préjudice par suite d'une violation des articles 25, 26, 27, 28 ou 29 à engager un procès en dommages-intérêts contre le contrevenant.

#### Organisme ordonnateur

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<sup>4</sup> Le "Comité des recours" est composé d'un nombre maximum de sept membres qualifiés, nommés par le Conseil des ministres, et possédant des connaissances et de l'expérience dans les domaines juridique, économique, de la gestion des entreprises et de l'administration publique. Ces membres ne doivent pas être des responsables politiques, ni occuper de postes politiques, ni être membres du bureau ou titulaires d'un poste de responsabilité dans l'administration d'un parti politique. Ils exercent leur mandat pendant une période de quatre ans.

25. La "Commission de la concurrence", composée du Ministre du commerce, Président, du Secrétaire permanent du Ministre du commerce, Vice-Président, du Directeur général du Département du commerce intérieur, membre et secrétaire, du Secrétaire permanent du Ministre des finances, ainsi que d'un maximum de 12 autres membres qualifiés, est chargée de veiller à l'application de la Loi.

26. Il faut souligner en outre que les personnes qualifiées qui sont nommées en tant que membres, ne doivent pas être des responsables politiques, ni occuper de postes politiques, ni appartenir au bureau d'un parti politique, ni être titulaires d'un poste de responsabilité dans l'administration de ce parti. Le terme de leur mandat est de deux ans et il ne peuvent être nommés que pour deux mandats successifs.

### Conclusion

27. Il faut espérer que la Loi sur la concurrence de 1999 permettra de protéger aussi bien les consommateurs que les producteurs contre les pratiques restrictives et de nature à fausser le jeu du marché, et à créer au sein de l'économie thaïlandaise un climat plus sain et plus libéral, propice au commerce et à l'investissement. En outre, cette loi, de même que les réformes du marché et le plan de restructuration, devrait améliorer la transparence et la prévisibilité des transactions réalisées avec la Thaïlande.

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Tentative Translation\*\*\*

**COMPETITION ACT**  
**B.E. 2542 (1999)**

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Bhumibol Adulyadej, Rex.,  
Given on the 22<sup>nd</sup> Day of March B.E. 2542;  
Being the 54<sup>th</sup> Year of the Present Reign.

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:

Whereas it is expedient to have a law on competition by revising the rules relating to anti-monopoly provided in the law on price fixing and anti-monopoly:

Whereas it is aware that this Act contains certain provisions in relation to the restriction of rights and liberties of persons, in respect of which section 29, in conjunction with section 31, section 35, section 36, section 45, section 48 and section 50 of the Constitution of the kingdom of Thailand so permit by virtue of the provisions law;

Be it, therefore, enacted by the King, by and with the advice and consent of the National Assembly, as follows:

**Section 1.** The Act is called the "Competition Act, B.E. 2542 (1999)".

**Section 2.** This Act shall come into force after thirty days as from the date of its publication in the Government Gazette. \*\*

**Section 3.** In this Act:

"business "means an undertaking in agriculture, industry, commerce, finance, insurance, and services and shall include other undertakings prescribed by Ministerial Regulations;

"finance "means commercial banking under the law on commercial banking, finance and credit foncier businesses under the law on operation of finance, securities and credit foncier businesses, and securities business under the law on securities and securities exchange;

"business operator "means a distributor, producer for distribution, orderer or importer into the Kingdom for distribution or purchaser for production or redistribution of goods or a service provider in the course of business;

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\*\* Published in Government Gazette, Vol. 116. Part 22b, dated 31<sup>st</sup> March 1999.

"goods "means an article capable of utilisation or consumption, including a document of title to an article;

"service "means the procurement of work by way of commission, the granting of any right or the giving of permission to use or to have benefits in any property or any undertaking in return for monetary remuneration or other benefit but shall not include the hire or service;

"price "means a price of goods and shall also include remuneration for the performance of a service;

"business operator with market domination "means one or more business operators in the market of any goods or service who have the market share and sales volume above that prescribed by the Commission with the approval of the Council of Ministers and published in the Government Gazette, having regard to the market competition;

"Commission" means the Competition Commission;

"member" means a member of the Competition Commission;

"Secretary-General" means the Secretary-General of the Competition Commission;

"competent official" means a Government official appointed by the Minister to perform activities under this Act;

"Minister" means the Minister having charge and control of the execution of this Act.

**Section 4.** This Act shall not apply to the act of:

- (1) Central administration, provincial administration or local administration;
- (2) State enterprises under the law on budgetary procedure;
- (3) Farmers' groups, co-operatives or co-operative societies recognised by law and having as their object the operation of businesses for the benefit of the occupation of farmers;
- (4) Businesses prescribed by the Ministerial Regulation, which may provide for exemption from the application of this Act in whole or only in respect of any particular provision thereof.

**Section 5.** The Minister of Commerce shall have charge and control of the execution of this Act, provided that in respect of financial undertakings, the Minister of Commerce and the Minister of Finance shall jointly have charge and control, and shall have the power to appoint competent officials, issue Ministerial Regulations for the execution of this Act and issue Notifications hereunder.

Such Ministerial Regulations and Notifications shall come into force upon their publication in the Government Gazette.



## CHAPTER I

### Competition Commission

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**Section 6.** There shall be the Competition Commission consisting of the Minister of Commerce as Chairman, Permanent-Secretary for the Minister of Commerce as Vice-Chairman, Permanent-Secretary for the Ministry of Finance and not less than eight, but not more than twelve, qualified persons with knowledge and experience in law, economics, commerce, business administration or public administration appointed by the Council of Ministers, provided that at least one-half of whom must be appointed from qualified members in the private sector, as members and the Secretary-General shall be a member and secretary.

The appointment of the qualified persons under paragraph one shall be in accordance with the rules and procedure prescribed in the Ministerial Regulation.

**Section 7.** A qualified person appointed as member must not be a political official, holder of a political position, executive member or holder of a position with the responsibility in the administration of a political party.

**Section 8.** The Commission shall have the powers and duties as follows:

(1) to make recommendations to the Minister with regard to the issuance of Ministerial Regulations under this Act;

(2) to issue Notifications prescribing market share and sales volume of any business by reference to which a business operator is deemed to have market domination;

(3) to consider complaints under section 18 (5);

(4) to prescribe rules concerning the collection and the taking of goods as samples for the purposes of examination or analysis under section 19 (3);

(5) to issue Notifications prescribing the market share, sales volume, amount of capital, number of shares, or amount of assets under section 26 paragraph two;

(6) to give orders under section 30 and section 31 for the suspension, cessation, correction or variation of activities by business operators;

(7) to issue Notifications prescribing the form rules, procedure and conditions for the application for permission to merge businesses or initiate the joint reduction or restriction of competition under section 35;

(8) to consider an application for permission to merge businesses or initiate the joint reduction or restriction of competition submitted under section 35;

(9) to invite any particular person to give facts, explanations, advice or opinions;

(10) to monitor and accelerate an inquiry sub-committee's conduct of an inquiry of offences under this Act;

(11) to prescribe rules for the performance of work of the competent officials for the purpose of the execution of this Act;

(12) to perform other acts provided by the law to be the powers and duties of the Commission;

(13) to consider taking criminal proceedings as requested in the complaint lodged by the injured person under section 55.

**Section 9.** The qualified member under section 6 shall hold office for a term of two years.

At the expiration of the term under paragraph one, if a new qualified member is not yet appointed, the qualified member who vacates office at the expiration of the term shall continue to hold office for the purpose of the performance of work until a newly appointed qualified member takes office.

The qualified member who vacates office at the expiration of the term may be re-appointed but may not serve for more than two consecutive terms.

**Section 10.** The provisions of section 75, section 76, section 77, section 78, section 79, section 80, section 81, section 82 and 83 of the Administrative Procedure Act, B.E. 2539 (1996) shall apply to the appointment of a qualified member, the vacation of office of a qualified member and a meeting of qualified members *mutatis mutandis*, and a qualified member shall also vacate office upon being under the prohibitions under section 7.

**Section 11.** The Commission may appoint a sub-committee to consider and make recommendations on any matter or perform any act as entrusted and prepare a report thereon for submission to the Commission.

**Section 12.** The Commission shall appoint one or more specialised sub-committees consisting of, for each sub-committee, not less than four and not more than six persons qualified in the matter concerned and having knowledge and experience in various fields such as law, science, engineering, pharmacology, agriculture, economics, commerce, accountancy, or business administration as members, with the representative of the Department of Internal Trade as a member and secretary.

The specialised sub-committee shall elect one member as Chairman.

**Section 13.** The specialised sub-committee has the duty to consider and give opinions to the Commission on the following matters, as entrusted by the Commission:

(1) the matter concerning the conduct indicative of market domination, a merger of businesses, the reduction or restriction of competition under section 25, section 26, section 27, section 28 and section 29;

(2) the consideration of an application for permission to merge businesses or initiate the reduction or restriction of competition under section 37;

(3) other matters to be considered at the request of the Commission and other acts to be performed as entrusted by the Commission.

For the purpose of this Act, a specialised sub-committee may submit opinions or recommendations to the Commission with regard to the execution of this Act.

In carrying out the acts under paragraph one, the specialized sub-committee shall have the power to issue a written summons requiring the persons concerned to give statements or furnish documents or any other evidence for supplementing its consideration.

**Section 14.** The Commission shall appoint one or more inquiry sub-committees consisting of, for each sub-committee, one person possessing knowledge and experience in criminal cases who is appointed for police officials, public prosecutors and, in addition, not more than four persons possessing knowledge and experience in economics, law, commerce, agriculture, or accountancy, as members, with the representative of the Department of Internal Trade as a member and secretary.

The inquiry sub-committee shall have the power and duty to conduct an investigation and inquiry in connection with the commission of offences under this Act and, upon completion thereof, submit opinions to the Commission for further consideration.

The inquiry sub-committee shall elect one member as Chairman.

**Section 15.** In the performance of the duties under this Act, a member of the Commission and a member of an inquiry sub-committee under section 14 shall have the same powers and duties as an inquiry official under the Criminal Procedure Code.

**Section 16.** In the case where the Commission submits to the public prosecutor the opinion for prosecution, an objection to the public prosecutor's non-prosecution order under the Criminal Procedure Code shall be the power to be exercised by the Chairman of the Commission in place of the Commissioner-General of the Royal Thai Police Force or the *Changwad* Governor as the case may be.

**Section 17.** The provisions of section 9 and section 10 shall apply *mutatis mutandis* to the sub-committee, specialised sub-committee and inquiry sub-committee.

## **CHAPTER II**

### **Office of the Competition Commission**

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**Section 18.** There shall be established the Office of the Competition Commission in the Department of Internal Trade, Ministry of Commerce, with the Director-General of the Department of Internal Trade as the Secretary-General, who shall be the superior official responsible for the official affairs of the Office, with the powers and duties as follows:

- (1) to carry out administrative tasks of the Commission, the Appellate Committee and sub-committees appointed by the Commission;
- (2) to prescribe regulations for the purpose of the work performance of the Office of the Competition Commission;
- (3) to monitor the movement and oversee the conduct of business operators and report the same to the Commission;
- (4) to conduct studies, analyses and research in relation to goods, services, and business conduct and make recommendations and give opinions to the Commission on the prevention of market domination, merger of businesses and reduction and restriction of competition in the operation of businesses;
- (5) to receive complaints by which it is alleged by any person that violation of this Act has occurred and to carry out its preliminary consideration for submission to the Commission, in accordance with the regulations prescribed and published in the Government Gazette by the Commission;

(6) to co-ordinate with Government agencies or agencies concerned, for the purpose of the performance of duties under this Act;

(7) to perform the acts in the implementation of Notifications, regulations and resolutions of the Commission and perform such acts as entrusted by the Commission, the Appellate Committee or be sub-committee appointed by the Commission.

**Section 19.** In the execution of this Act, the competent official shall have the following powers;

(1) to issue a written summons requiring any person to give statements, facts or written explanations or furnish accounts, records, documents or any evidence for examination or supplementing his consideration;

(2) to enter the place of business, place of production, place of distribution, place of purchase, warehouse or place of service of the business operator or of any person or other place reasonably suspected to have therein a violation of the provisions of this Act, for the purpose of examining the conformity with this Act or for searching and seizing evidence or property which may be confiscated under this Act or arresting the offender under this Act without a warrant of search in the following cases:

(a) where a flagrant offence is evidently being committed in the place;

(b) where a person having committed a flagrant offence has, while being pursued, taken refuge, or there are serious grounds for suspecting that such person is concealing, in the place;

(c) where there are reasonable grounds for suspecting that the evidence or property which may be confiscated under this Act is found in the place and there are reasonable grounds to believe that by reason of delay in obtaining a warrant of search the evidence or property is likely to be removed, concealed, destroyed or transformed from its original state;

(d) where the person to be arrested is the owner of the place and there is a warrant for such arrest or such arrest may be made without a warrant;

Provided that, for these purposes, the competent official has the power to inquire into facts or summon accounts, records, documents or other evidence from the business operator or from the person concerned or order such persons who are in such a place to perform necessary acts;

(3) to collect or take goods, in a reasonable quantity, as samples for an examination or analysis without payment of the prices of such goods, in accordance with the rules prescribed by the Commission in the Government Gazette;

(4) to attach documents, accounts, records or evidence for the purpose of examination and taking legal proceedings under this Act.

**Section 20.** In the performance of duties of the competent official, a person concerned shall render reasonable assistance.

**Section 21.** In the performance of duties, the competent official shall produce an identification card to the persons concerned.

The identification card shall be in accordance with the form prescribed by the Minister in the Government Gazette.

**Section 22.** The competent official shall procure service of the written summons under section 13 paragraph 3, section 19(1) or section 44(3) by directing it at the domicile or the place of business of the person named in the summons between sunrise and sunset or during working hours of such person or may send it by registered post requiring acknowledgement of receipt thereof.

In the case where the competent official serves the summons under paragraph one but the person named in the summons refuses to accept it without reasonable cause, the competent official shall request the administrative or police official to accompany the competent official for the purpose of leaving the summon on the spot. If the competent official does not meet the person named in the summons at his or her domicile or place of business, the summons may be served on any *sui juris* person who is living or working in that dwelling-place or place of business. If nobody is met or nobody agrees to accept the summons on behalf of the person named therein, such summons shall be posted in a conspicuous place at the domicile or the place of business in the presence of the administrative or police official who accompanies as witness.

When the competent official has carried out the act under paragraph one or paragraph two, it shall be deemed that the person named in the summons has received it. In the case of the posting of the summons, it shall be deemed that such summons is received upon the lapse of five days as from the date of its posting. If the service is made by a registered post requiring acknowledgement of its receipt, it shall be deemed that the summons is received upon the lapse of five days as from the date of its receipt.

**Section 23.** In the execution of this Act, members, members of the Appellate Committee or of the sub-committee, Secretary-General, and competent officials shall be the officials under the Penal Code.

**Section 24.** For the purpose of arresting offenders under this Act, the competent official shall have the same powers as the administrative or police officer under the Criminal Procedure Code.

An arrest of the offender may be made without a warrant of arrest when a flagrant offence is evidently being committed or when there is any other circumstance under which the Criminal Procedure Code permits the administrative or police official to make an arrest without a warrant of arrest.

### **CHAPTER III**

#### **Anti-Monopoly**

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**Section 25.** A business operator having market domination shall not act in any of the following manners:

- (1) unreasonably fixing or maintaining purchasing or selling prices of goods or fees for services;
- (2) unreasonably fixing compulsory conditions, directly or indirectly, requiring other business operators who are his or her customers to restrict services, production, purchase or distribution of goods, or restrict opportunities in purchasing or selling goods, receiving or providing services or obtaining credits from other business operators;
- (3) suspending, reducing or restricting services, production, purchase, distribution, deliveries or importation without justifiable reasons, or destroying or causing damage to goods in order to reduce the quantity to be lower than the market demand;

- (4) intervening in the operation of business of other persons without justifiable reasons.

**Section 26.** A business operator shall not carry out a business merger which may result in monopoly or unfair competition as prescribed and published in the Government Gazette by the Commission unless the Commission's permission is obtained.

The publication by the Commission under paragraph one shall specify the minimum amount or number of market share, sale volume, capital, shares or assets in respect of which the merger of business is governed thereby.

The merger of business under paragraph one shall include:

- (1) a merger made by a producer with another producer, by a distributor with another distributor, by a producer with a distributor, or by a service provider with another service provider, which has the effect of maintaining the status of one business and terminating the status of the other business or creating a new business;

- (2) a purchase of the whole or part of assets of another business with a view to controlling business administration policies, administration and management;

- (3) a purchase of the whole or part of shares of another business with a view to controlling business administration policies, administration and management.

The application by a business operator for the permission under paragraph one shall be submitted to the Commission under section 35.

**Section 27.** Any business operator shall not enter into an agreement with another business operator to do any act amounting to monopoly, reduction of competition or restriction of competition in the market of any particular goods or any particular service in any of the following manners:

- (1) fixing selling prices of goods or services as a single price or as agreed or restricting the sale volume of goods or services;

- (2) fixing buying prices of goods or services as a single price or as agreed or restricting the purchase volume of goods or services;

- (3) entering into an agreement with a view to having market domination or market control;

- (4) fixing an agreement or condition in a collusive manner in order to enable one party to win a bid or a tender for the goods or services or in order to prevent one party from participating in a bid or a tender for the goods or services;

- (5) fixing geographical areas in which each business operator may distribute or restrict the distribution of goods or services, or fixing customers to whom each business operator may sell goods or provide services to the exclusion of other business operators from competing in the distribution of such goods or services;

- (6) fixing geographical areas in which each business operator may purchase goods or services or fixing persons from whom business operators may purchase goods or services;

- (7) fixing the quantity of goods or services in which each business operator may produce, purchase, distribute, or provide with a view to restricting the quantity to be lower than the market demand;

(8) reducing the quality of goods or services to a level lower than that in the previous production, distribution or provision, whether the distribution is made at the same or at a higher price;

(9) appointing or entrusting any person as a sole distributor or provider of the same goods or services or the same kind of goods or services;

(10) fixing conditions or practice with regard to the purchase or distribution of goods or the provision of services in order to achieve the uniform or agreed practice.

In the case where it is commercially necessary that the acts under (5), (6), (7), (8), (9) or (10) be undertaken within a particular period of time, the business operator shall submit an application for permission to the Commission under section 35.

**Section 28.** A business operator who has business relation with business operators outside the Kingdom, whether it is on a contractual basis or through policies, partnership, shareholding or any other similar form, shall not carry out any act in order that a person residing in the Kingdom and intending to purchase goods or services for personal consumption will have restricted opportunities to purchase goods or services directly from business operators outside the Kingdom.

**Section 29.** A business operator shall not carry out any act which is not free and fair competition and has the effect of destroying, impairing, obstructing, impeding or restricting business operation of other business operators or preventing other persons from carrying out business or causing their cessation of business.

**Section 30.** The Commission shall have the power to issue a written order requiring a business operator who has market domination, with the market share of more than seventy five percent, to suspend, cease or vary the market share. For this purpose, the Commission may prescribe rules, procedure, conditions and time-limit for compliance therewith.

**Section 31.** In the case where the Commission considers that a business operator violates section 25, section 26, section 27, section 28 or section 29, the Commission shall have the power to issue a written order requiring the business operator to suspend, cease, rectify or vary such act. For this purpose, the Commission may prescribe rules, procedure, conditions and time limit for compliance therewith.

The business operator who receives the order under paragraph one and disagrees therewith shall have the right to appeal under section 46.

The business operator may not claim compensation from the Commission by reason that the Commission has issued the order under paragraph one.

**Section 32.** In the consideration of the case under section 31, the Commission must afford the business operator, members of the specialized sub-committee, members of the inquiry sub-committee or competent officials concerned reasonable opportunities to give explanations and present supporting evidence.

In issuing an order under section 31, the Commission must specify reasons for such order both in questions of fact and in questions of law, and signatures of the members considering the case shall be entered.

The notification of the order under paragraph two shall be carried out within seven days as from the date of the Commission's order, and section 22 shall apply *mutatis mutandis*.

**Section 33.** The person receiving the order under section 31 must comply with such order unless the Court or the Appellate Committee passes a judgement or issues an order suspending the execution thereof or revoking the order of the Commission.

**Section 34.** In the case where the Court passes a judgement that any business operator is guilty of an offence under section 25, section 26, section 27, section 28 or section 29, the Court shall issue an order requiring the business operator to suspend, cease, rectify or vary such act.

#### **CHAPTER IV**

##### **Application for Permission and Consideration of the Application**

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**Section 35.** Any business operator wishing to apply for permission to carry out the act under section 26 or section 27(5), (6), (7), (8), (9) or (10) shall submit an application in accordance with the form, rules, procedure and conditions prescribed and published in the Government Gazette by the Commission.

The application must at least:

- (1) contain adequate reasons and specify necessity for the act;
- (2) specify the intended procedures therefor;
- (3) specify the duration therefor.

**Section 36.** The Commission shall complete the consideration of the application under section 35 within ninety days as from the date of its receipt; provided that the business operator, members of the specialised sub-committee or competent officials concerned must be afforded reasonable opportunities to give explanations and present supporting evidence.

In the case where the consideration cannot be completed within the time specified in paragraph one by reason of necessity, the Commission may grant an extension of time for not more than fifteen days, but the reasons and necessity for the extension shall also be recorded in the consideration and decision proceedings.

**Section 37.** When the Commission has made an inquiry and is of the opinion that the application under section 35 submitted by the business operator is reasonably necessary in the business, beneficial to business promotion, has no serious harm to the economy and has no effect on material and due interests of general consumers, the Commission shall issue a written order granting permission in favour of such business operator. But if the Commission issues an order rejecting permission, the order shall be notified in writing to the business operator without delay.

In granting permission under paragraph one, the Commission may fix the time or any condition for compliance by the business operator to whom permission is granted, and, if it is of the opinion that economic situations, facts or conduct relied on by the Commission in its consideration have changed, the Commission may amend, make addition to, or revoke such time or conditions at any time.

The business operator who receives the order of the Commission and disagrees with such order shall have the right to appeal under section 46.



**Section 38.** The Commission must specify reasons for the order granting or rejecting permission under section 37 both in questions of fact and in questions of law and the order shall contain signatures of the members considering the application, and the provisions of section 32 paragraph three shall apply *mutatis mutandis*.

**Section 39.** The business operator to whom permission is granted under section 37 must carry out the business within the scope, duration and conditions permitted by the Commission.

In the case here there is a violation of or failure to comply with paragraph one, the Commission shall have power to revoke the permission order under section 37 in whole or in part and may also fix the time within which compliance is required.

## **CHAPTER V**

### **Initiation of an Action for Compensation**

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**Section 40.** The person suffering an injury in consequence of the violation of section 25, section 26, section 27, section 28 or section 29 may initiate an action for claiming compensation from the violator.

In initiating an action for claiming compensation under paragraph one, the Consumer Protection Commission or an association under the law on consumer protection has the power to initiate an action for claiming compensation on behalf of consumers or members of the association, as the case may be.

**Section 41.** If the action for claiming compensation under section 40 is not submitted to the Court within one year as from the date the person suffering the injury has or ought to have had the knowledge of the ground thereof, the right to submit the action to the Court shall lapse.

## **CHAPTER VI**

### **The Appeal**

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**Section 42.** There shall be an Appellate Committee consisting of not more than seven qualified persons with knowledge and experience in law, economics, business administration or public administration appointed by the Council of Ministers as members.

The members of the Appellate Committee shall elect one member among themselves as Chairman.

The Director-General of the Department of Internal Trade shall appoint Government officials of the Department of Internal Trade to act as secretary and assistant secretaries.

**Section 43.** The person appointed as member of the Appellate Committee must not be under the prohibitions under section 7 and shall not be a member of the Commission.

**Section 44.** The Appellate Committee shall have the following powers and duties:

- (1) to prescribe the rules and procedure for the appeal under section 47 paragraph one;

(2) to consider and decide on the appeal against an order of the Commission under section 31 and section 37;

(3) to issue a written summons requiring the persons concerned to give statements or furnish documents or evidence for the purpose of the consideration of the appeal;

(4) to issue an order suspending the execution of the order of the Commission under section 31 or section 37.

**Section 45.** A member of the Appellate Committee shall hold office for a term of four years.

In the initial period, at the expiration of two years, three members of the Appellate Committee shall vacate office by drawing lots and such vacation of office by drawing lots shall be deemed to be the vacation of office at the expiration of the term.

The provisions of section 9 paragraph three and section 10 shall apply to the Appellate Committee *mutatis mutandis*.

**Section 46.** The appeal against the order of the Commission under section 31 and section 37 shall be submitted to the Appellate Committee by the person receiving the order within thirty days as from the date of the knowledge of the Commission's order.

**Section 47.** The rules and procedure for the appeal shall be as prescribed and published in the Government Gazette by the Appellate Committee.

The Appellate Committee shall consider and decide on the appeal within ninety days as from the date of the receipt thereof and notify the decision in writing to the appellant, and the provisions of section 36 and section 38 shall apply *mutatis mutandis*.

The decision of the Appellate Committee shall be final.

When the Appellate Committee has decided upon the appeal, the Commission and business operators shall comply with such decision.

## CHAPTER VII Penalties

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**Section 48.** Any person who fails to comply with the written summons issued by the specialised sub-committee, competent official or the Appellate Committee under section 13 paragraph three, section 19 (1) or section 44 (3), as the may be, shall be liable to imprisonment for a term not exceeding three months or to a fine not exceeding five thousand Baht or to both.

**Section 49.** Any person who obstructs the performance of duties by the competent official under section 19(2), (3) or (4) or section 22 shall be liable to imprisonment for a term not exceeding one year or to a fine not exceeding twenty thousand Baht or to both.

**Section 50.** Any person who fails to render assistance to the competent official under section 20 shall be liable to imprisonment for a term not exceeding one month or to a fine not exceeding two thousand Baht or to both.

**Section 51.** Any person who violates section 25, section 26, section 27, section 28 and section 29 or fails to comply with section 39 shall be liable to imprisonment for a term not exceeding three years or to a fine not exceeding six million Baht or to both, and, in case of the repeated commission of the offence, shall be liable to the double penalty.

**Section 52.** Any person who fails to comply with the order of the Commission under section 30 or section 31 or with the decision of the Appellate Committee under section 47 shall be liable to imprisonment for a term of one to three years or to a fine of two to six million Baht, and to a daily fine not exceeding fifty thousand Baht throughout the occurrence of such violation.

**Section 53.** Any person who discloses information concerning the business or the operation of a business operator which, according to the ordinary course of dealing of the business operator, is the restrictive and confidential information and which such person has acquired or knew on account of the performance under this Act shall be liable to imprisonment for a term not exceeding one year, or to a fine not exceeding one hundred thousand Baht or to both, unless it is the disclosure in the performance of Government service or for the purpose of an inquiry or trial.

Any person who acquires or has the knowledge of any fact from the person under paragraph one and discloses such information in the manner likely to cause an injury to any person shall be liable to the same penalty.

**Section 54.** In the case where the person who commits an offence punishable under this Act is a juristic person, then, the managing director, the managing partner or the person responsible for the operation of the business of the juristic person in such matter shall also be liable to the penalty provided by the law for such offence unless it is proved that such act has been committed without his or her knowledge or consent or he or she has already taken reasonable action for preventing the commission of such offence from occurring.

**Section 55.** The injured person in the offences under section 51 and section 54 may not institute a criminal action on his or her own motion but has the right to lodge a complaint with the Commission for consideration under this Act.

**Section 56.** All offences under this Act which are punishable by fine or imprisonment for a term not exceeding one year shall be under the power of the Commission to settle the cases. In

exercising such power, the Commission may entrust a sub-committee, the Secretary-General or a competent official to act on its behalf.

When the offender has paid the fine in the fixed amount within the specified time, the case shall be deemed settled in accordance with the provisions of the Criminal Procedure Code.

## **17**

### **Transitory Provision**

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**Section 57.** In the case where a business operator is under necessity and has carried out the acts specified in section 27(5), (6), (7), (8), (9) or (10) on the day this Act comes into force, such person shall submit an application within ninety days as from the date of the entry into force of this Act, and when the application has been submitted, such business operator may continue to carry out the acts under section 27(5), (6), (7), (8), (9) or (10) until the notification of the result of the consideration of the application is received.

Countersigned by:

Chuan Leekpai  
Prime Minister

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