

Guidelines for Filing Business Merger Applications¹

Agency Providing the Service: Office of the Trade Competition Commission (the “OTCC”)

Criteria, Procedures, and Conditions (if any) in Applying for and Considering Approval

1. Criteria and Conditions in Submitting an Application: The applicant must be a business operator conducting a business merger in which the merger has one of the following characteristics:

- 1.1 possibly causing a monopoly, meaning that the merger would transform the applicant into the only business operator in a particular market with the power to independently determine the price and quantity of goods or services with sales revenue of THB 1,000 million or more
- 1.2 possibly causing the applicant to become a business operator with a dominant position of market power, meaning that the merger would transform the applicant into
 - (1) a business operator in a particular market of goods or services with a market share in the previous year at 50 percent or more and receiving sales revenue in the previous year of THB 1,000 million or more; or
 - (2) one of the three largest business operators in a particular market of goods or services, with their combined market shares in the previous year at 75 percent or more and receiving sales revenue in the previous year of THB 1,000 million or more.

2. Business Merger Application and Supporting Documents

- 2.1 Business merger application
 - (1) can be downloaded from the website <https://otcc.or.th> (an English version is not yet available)
 - (2) is to be filled in completely
 - (3) is to be printed, and the accuracy of the information contained in the business merger application is to be certified by the signature of a person authorized to bind the juristic person, together with the company seal (if any) (applies to both merging and merged business operators) and the signature of their attorney-in-fact (if any).
- 2.2 All relevant documents must be signed on every page by the authorized signatory with the company seal affixed (if any), or by their attorney-in-fact (if any).

¹ This is an unofficial translation prepared by Weerawong C & P from the Thai version published by the OTCC as of May 2020. For inquiries please contact wcpantitrust@weerawongcp.com.

2.3 All relevant documents must be prepared in Thai. If they are in a language other than Thai, the documents must be translated into Thai and the translation must be certified by a person or agency pursuant to the ministerial regulations issued under the Administrative Procedure Act B.E. 2539.

3. Submitting the Business Merger Application: The applicant must submit the application together with the required documents, at the OTCC, by themselves, or authorize another person to act on their behalf.

4. Assessment of the Business Merger Application and Supporting Documents: The OTCC accepts business merger applications and supporting documents in order to evaluate their completeness before sending them off to the Trade Competition Commission (the “**Commission**”) for their consideration.

4.1 In the case that the submitted application and documents are accurate and complete, an officer will notify the applicant to pay the application fee at the specified rate and officially record the business merger application into the OTCC system with a specific application number, which helps the applicant track the progress of the application at the OTCC.

4.2 In the case that the submitted application or documents are inaccurate or incomplete

- An officer will notify the applicant to fix or supplement their application.
- If the applicant is unable to fix or supplement their application at the time, the officer will record the defects of the application and a list of the supporting documents that have to be fixed or supplemented, as well as stipulate the timeline for the applicant to fix or supplement those defects, and the applicant will jointly sign to acknowledge as such with the officer.
- The OTCC will not consider the application and the consideration period will not commence until the applicant completely fixes the defects in their application or supplements their supporting documents in accordance with the record of the defects.
- If the applicant does not fix the defects or supplement the documents to their full accuracy and completeness within the timeline specified, the OTCC will determine that the applicant does not wish to undertake the application process and return the application and supporting documents to them.

5 Conditions

5.1 The OTCC will present the business merger application to the Commission for their consideration within seven days, commencing from the date on which the OTCC has obtained the complete and accurate business merger application and supporting documents, as well as the application fee.

5.2 During the consideration period, the Commission may request additional information from the applicant. The request may be in the form of a letter requesting additional

information or an invitation to the applicant to provide an explanation. There may also be letters inviting relevant persons to provide their opinions and information for the consideration of the Commission.

6. Consideration of Approval

The Commission will consider the following factors in their consideration for approval of the business merger:

- 6.1 Business necessity and benefits for the promotion of business
- 6.2 Impact and potential serious damage to the economy
- 6.3 Impact with respect to significant benefit that should be received by the general consumer.

7. Notification of the Result of the Commission's Consideration

The OTCC will notify the applicant of the result of consideration by registered mail, at the address provided by the applicant to the OTCC, within 7 days from the date of the order of the Commission.

Additional Information

- 1) The Trade Competition Act of 2017
- 2) The Notification of the Trade Competition Commission Re: Criteria, procedures, and conditions for requesting permission and granting permission for business mergers, 2018
- 3) The Notification of the Trade Competition Commission Re: Criteria for considering whether assets or shares acquisitions are for the purpose of obtaining control over policy, business administration, direction, or management, 2018
- 4) The Notification of the Trade Competition Commission Re: Criteria for considering whether business operators possess dominant position in a market, 2018
- 5) The Notification of the Trade Competition Commission Re: Guidelines for considering market definition and market share, 2018
- 6) The Notification of the Trade Competition Commission Re: Criteria for considering business operators who are related to each other due to policy or directive power, 2018

Remarks

- 1) For the applicant's convenience, the applicant can contact the OTCC (Business Merger Department) for advice, without any expenses, regarding the format and details of their application, as well as the results of the studies and analyses necessary, before submitting their application to the OTCC.

- 2) In the case that the applicant authorizes another person to submit the application, if it appears that the relevant supporting documents are incomplete, the authorized person must have a power of attorney from the applicant, otherwise, the OTCC will return the application form and all supporting documents to the applicant.
- 3) In the case of approval, the Commission may specify any timeline or conditions to be complied with by the approved business operator. The business operator must perform according to the conditions and timeline specified by the Commission.
- 4) Applicants who do not agree with the decisions of the Commission have the right to file cases with the Administrative Court within 60 days from the date of receiving the order of the Commission.

Contact information

<i>Service Location</i>	<i>Service Period</i>
<p>Office of the Trade Competition Commission</p> <p>5-story parking building (BC), 5th floor, Chaloem Phrakiat 80th Anniversary Government Center, No. 120, Chaeng Watthana Road, Thung Song Hong Sub-district, Lak Si District, Bangkok 10210</p> <p>call 02-199-5400, fax 02-143-7715</p>	<p>Open for business Monday through Friday</p> <p>(except public holidays as specified by the government)</p> <p>from 08.30 - 12.00 hrs. and from 13.00 - 16:30 hrs.</p>

List of Supporting Documents

No.	Document Names and Additional Details	Number of Copies	Notes
1)	Business merger application in accordance with the Notification of the Trade Competition Commission Re: Criteria, procedures, and conditions for requesting permission and granting permission for business mergers, 2018	1	Signed by a person authorized to act on behalf of the juristic person and stamped (if applicable)
2)	Business merger plan and timeline	1	-
3)	<p>Details of both the business operator that wishes to conduct the business merger and the business operator with which to be merged</p> <p>This must at least consist of the shareholder structure, voting rights, sales revenue, and market share</p>	1	Shareholder structure: In the case that any shareholder is a juristic person, the applicant must also list the names of the persons who hold shares in that juristic person
4)	<p>The results of the study and analysis of the business merger, which must consist of at least the following documents:</p> <ol style="list-style-type: none"> 1. Analysis of the shareholding structure and the controlling power of the business operator that wishes to conduct the business merger, to consider the relationship between the merging business operator and merged business operator in regard to their policies and directive power before and after the business merger 2. Analysis of the market structure of products or services related to those who wish to conduct the business merger, to assess the potential impact after the business merger. The analysis must at least consist of the following: <ol style="list-style-type: none"> 2.1 Analysis of the market structure before and after the business merger 2.2 Market definition 2.3 The market shares of those who wish to conduct the business merger, from before and after the business merger 	1	The applicant must show reasoning, together with details and references from reliable sources.

	<p>2.4 The sales revenues of those who wish to conduct the business merger, from before and after the business merger</p> <p>2.5 Analysis of the impact on competitiveness after the merger occurs, on the following topics:</p> <ul style="list-style-type: none"> - Market concentration - Market entry with respect to new business operators and expansion of market competitors (entry and expansion), by considering various factors, such as law, governmental regulations, transportation costs, accessibility of patented technology, and accessibility of raw materials or other production necessities, etc. - The impact of <i>Non-Coordinated Effects</i> from the merger, where the merged entity can increase profitability by increasing prices or reducing product quality due to reduced competition. - The impact of <i>Coordinated Effects</i> from the merger, where the probability of business operators coordinating to increase the pricing of products after the merger is increased. - The impact on the economy and consumer benefits overall - The impact on other factors that may affect market competition (if any) <p>2.6 Analysis of market performance after the business merger</p>		
5)	<p>The results of the study and analysis of the factors under Section 52, Paragraph 2, as follows:</p> <ol style="list-style-type: none"> 1. Business necessity and benefits for the promotion of business 2. Impact and potential serious damage to the economy 3. Impact with respect to significant benefit that should be received by the general consumer 	1	-
6)	<p>Power of attorney of the <u>business operator that wishes to conduct the business merger</u>, together with copies of the national ID cards or passports</p>	1	-

	of the grantor and the grantee of the power of attorney (in the case that the authorized person decides not to act on their own)		
7)	Power of attorney of the <u>business operator with which to be merged</u> , together with copies of the national ID cards or passports of the grantor and the grantee of the power of attorney (in the case that the authorized person decides not to act on their own)	1	-
8)	Copy of the affidavit of the <u>business operator that wishes to conduct the business merger</u> , issued by the Ministry of Commerce no more than 6 months prior to the date of submitting the business merger application (if any)	1	-
9)	Copy of the affidavit of the <u>business operator with which to be merged</u> , issued by the Ministry of Commerce no more than 6 months prior to the date of submitting the business merger application (if any)	1	-
10)	The latest list of shareholders of the <u>business operator that wishes to conduct the business merger</u> , certified by the Ministry of Commerce no more than 3 months prior to the date of submitting the business merger application (if any)	1	The applicant can submit the original, certified by the Ministry of Commerce, or a copy that has been certified by an authorized party and stamped with the company seal (if any)
11)	The latest list of shareholders of <u>the business operator with which to be merged</u> , certified by the Ministry of Commerce no more than 3 months prior to the date of submitting the business merger application (if any)	1	The applicant can submit the original, certified by the Ministry of Commerce, or a copy that has been certified by an authorized party and stamped with the company seal (if any)
12)	Copies of the documents submitted to the Office of the Securities and Exchange Commission, in the case of a share purchase pursuant to a tender offer (if any)	1	-

13)	Copies of the documents related to the purchase of shares or assets, such as sales contracts, appraisal documents, etc. (if any)	1	-
14)	Copies of all minutes of the board of directors meetings or shareholders meetings approving the business merger, for each business operator involved in the business merger, or evidentiary documents showing the business operators' intentions to merge (if any)	1	-
15)	Copies of the annual reports for the past three years from the business operator that wishes to conduct the business merger (if any)	1	-
16)	Copies of the annual reports for the past three years from the business operator with which to be merged (if any)	1	-
17)	Copies of the annual audited financial statements for the past three years from the business operator that wishes to conduct the business merger (if any)	1	-
18)	Copies of the annual audited financial statements for the past three years from the business operator with which to be merged (if any)	1	-
19)	Other documents necessary for the Commission's consideration (if any)	1	-