

Update on Trade Competition Commission Rulings

The Office of the Trade Competition Commission recently published two decisions, one concerning merger control and the other concerning anti-competitive behavior.

▪ *Imposition of Slotting Fees*

The Trade Competition Commission (the “**TCC**”) decided that the imposition of a slotting fee does not constitute unfairly demanding economic benefits from a manufacturer under the Trade Competition Act B.E. 2560 (2017) (the “**TCA**”). In the relevant case, a retailer collected a slotting fee in exchange for shelf space for a new product. The manufacturer complained that the fee was unfair and had been collected without proper advance notice to the manufacturer. The TCC found the collection of the slotting fee to be justifiable, as the retailer bears the costs of displaying the new product, e.g., rearranging products on store shelves and changing price labels. Moreover, the retailer bears the risk associated with overstocking old products, in cases where the retailer has to reduce shelf space for old products in order to display new products. Furthermore, in this instance, the TCC found that the slotting fee per new item had already been specified in the agreement between the parties. Although the retailer had not informed the manufacturer of the total amount due for each billing cycle, in practice, the manufacturer and retailer would periodically discuss updates to the store plan, meaning that the manufacturer should have been able to estimate the slotting fee to be incurred. In the same case, the TCC also held that the collection of clearance markdown fees or the guarantee of gross profit by retailers, which are customary in the retail industry, are not unfair.

▪ *Approval of Merger between Logistics Companies*

The TCC published a decision approving the acquisition of shares in one foreign logistics company by another foreign logistics company, resulting in the latter becoming the controller of one of the biggest players in Thailand’s domestic small package delivery market, subject to the post-merger condition that the acquirer reports the result of its business operations to the TCC for two years. In its decision, the TCC distinguishes the domestic small package delivery market from other logistics markets, such as letter delivery, international small package delivery, and contract logistics. The geographic market is defined to be Thailand. While the TCC noted that the target ranked second in the market, in which the combined market share of the top three players is as high as 83%, it decided not to impose strong conditions because the acquirer did not have a substantial market share in Thailand before the transaction, and, therefore, the transaction would not result in a significant increase in market concentration. Nevertheless, the TCC noted that it will monitor the market in question in consideration of the high level of market concentration and its role as a bridge between SMEs (which the TCC has emphasized many times that it wants to protect) and consumers.

Imposition of VAT on Electronic Service Providers

The Revenue Code Amendment Act (No. 53) B.E. 2564 (2021) (the “**Act**”) will come into effect on 1 September 2021. Under the Act, e-service providers providing services from abroad to customers in Thailand and having income exceeding THB 1.8 million will be subject to Value Added Tax (the “**VAT**”) in Thailand. Examples of e-service providers subject to the Act are (i) online streaming platforms, such as YouTube, Netflix, and Spotify; (ii) e-commerce businesses, such as Amazon, Shopee, and Lazada; (iii) gaming businesses, such as Steam; and (iv) advertising platforms such as Facebook Ads, Instagram Ads, and Line Ads. These e-service providers must apply for VAT registration and are responsible for payment of the VAT. VAT registration can be made electronically via the Simplified VAT System for E-Service (SVE) on the Revenue Department’s website (<http://www.rd.go.th>). It remains to be seen how this law will impact the competitive landscape between e-platform service providers operating in Thailand.



To read more about Thailand’s merger control, please visit our website at www.weerawongcp.com.



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