

PANORAMIC

MERGER CONTROL

Thailand



LEXOLOGY

Merger Control

Contributing Editor

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QUICK REFERENCE TABLE

The table below is for quick reference only.

Voluntary or mandatory system?

Mandatory system. The only exceptions to mandatory filing are mergers for the purposes of internal restructuring and reorganisation between business operators that are part of a single economic unit or mergers that do not fall within the scope of application of the Trade Competition Act BE 2560 (2017) (the Act).

Notification trigger/filing deadline

Pre-merger approval is required for any merger that results in the creation of either:

- a monopoly – that is, a situation where there is only one business operator in any given market:
 - possessing absolute power over the determination of the price and supply of its products or services; and
 - having a sales turnover of at least 1 billion baht; or
- a business operator having dominant market power by:
 - any single business operator having a market share in the previous year of 50 per cent or more and a sales turnover of at least 1 billion baht; or
 - any of the top three business operators together having a market share in the previous year of 75 per cent or more and a sales turnover of at least 1 billion baht each (excluding any business operator that, in the previous year, had a market share of less than 10 per cent).

Pre-merger approvals are required to be filed prior to closing.

Post-merger notification is required for any merger in which the sales turnover of any one business operator, or the aggregate turnover of all business operators conducting a merger, amounts to 1 billion baht or more and that does not cause a monopoly or result in a business operator having dominant market power.

Post-merger notifications are required to be filed within seven days of closing.

Clearance deadlines (Phase I/Phase II)

For pre-merger approvals, the Trade Competition Commission (the Commission) must complete the consideration of a pre-merger approval within 90 days of submission. When a decision cannot reasonably be made within 90 days, the Commission may extend the period of consideration by up to 15 additional days. There is no provision in the Act that allows the pre-merger approval process to be expedited. In practice, the Commission generally takes a significant portion of the 90 days and tends to issue decisions relatively close to the end of this statutory period.

For post-merger notifications, there is no statutory timetable for the Commission to verify the notification. In practice, the Commission may take anywhere from three to eight months from receipt of the notification to provide an acknowledgement.

Substantive test for clearance

The Commission must consider whether the merger:

- is reasonably necessary for the business of the relevant parties;
- assists the promotion of the business of the relevant parties;
- poses no serious harm to the Thai economy; and
- has no material effect on the due interest of consumers in general.

Penalties	<p>For pre-merger approvals, an administrative sanction not exceeding 0.5 per cent of the total value of the merger transaction. In addition, the Commission may order a business operator to suspend, cease or modify the merger if it has sufficient evidence to believe that the business operator is in violation of the pre-merger approval requirement.</p> <p>For post-merger notifications, an administrative sanction not exceeding 200,000 baht and a daily fine not exceeding 10,000 baht throughout the period of the violation.</p> <p>If a company is subject to an administrative fine, a director, manager or any person responsible for ensuring that the company complies with merger control legislation will be subject to the same sanction.</p>
Remarks	Not applicable.

Law stated - 10 June 2024

LEGISLATION AND JURISDICTION

Relevant legislation and regulators

What is the relevant legislation and who enforces it?

Merger control in Thailand is generally governed by the Trade Competition Act BE 2560 (2017) (the Act), together with regulations issued under the Act.

The Trade Competition Commission (the Commission) is in charge of issuing regulations on merger control, reviewing and making decisions on pre-merger approvals and post-merger notifications, and imposing fines and sanctions (including the suspension, cessation or modification of mergers).

The Office of the Commission (the TCCT) is in charge of the Commission's administrative functions, such as monitoring business operators for violations of the Act, receiving complaints in respect of alleged violations of the Act and making recommendations to the Commission.

Disputes relating to alleged offences under the Act, and civil claims for damages or appeals against administrative orders issued by the Commission, are subject to the jurisdiction of the Intellectual Property and International Trade Court and the Administrative Court.

The application of the Act also covers state-owned enterprises and public organisations, although exemptions exist for duties specified by law or cabinet resolutions for the enhancement of national security, public benefit or the provision of utilities. The Act does not

apply to certain industries where merger control is already regulated by specific legislation for that industry. Although this is subject to changes in law (such as the introduction of competition law-specific merger control regimes in particular industries), the current position of the TCCT is that these currently include the telecommunications, broadcasting and television and energy sectors.

Law stated - 10 June 2024

Scope of legislation

What kinds of mergers are caught?

Mergers subject to the jurisdiction of the Act include:

- amalgamations;
- acquisitions of shares, including:
 - the acquisition of shares, warrants or other convertibles of 25 per cent or more of the total voting rights of a public company listed on the Stock Exchange of Thailand at the end of any day; or
 - the acquisition of more than 50 per cent of the total voting rights of a private company, an unlisted public company or a public company listed on a stock exchange other than the Stock Exchange of Thailand at the end of any day, including that:
 - shares acquired by the spouse of a natural person are included in the number of shares being acquired; or
 - shares acquired by a natural or juristic person that holds more than 30 per cent of the voting rights of a juristic person and by a business operator belonging to the single economic unit (definition provided below) are included in the number of shares being acquired; and
- the acquisition of more than 50 per cent of the total value of tangible assets or intangible assets (for example, leasehold rights or intellectual property rights) of another business operator relating or connected to the ordinary business operations of that other business operator in the preceding financial year.

Exemptions

Mergers for the purpose of internal restructuring or reorganisation between business operators in the same business group that are recognised as a single economic unit are exempt from merger control provisions (ie, pre-merger approvals and post-merger notifications).

The term 'single economic unit' refers to a case where business operators have a relationship in policy or directive power.

'Relationship in policy' is defined as a relationship between two or more business operators whose guidelines, policies or procedures on management, administration or business operations are under the directive power of the same business operator.

'Directive power' is defined as the power to control by any of the following means:

1. holding shares with voting rights in a business operator of more than 50 per cent of the total voting rights in the business operator;
2. having the power to control the majority of votes in a meeting of shareholders of a business operator, either directly or indirectly;
3. having the power to control the appointment or removal of at least half of all directors of a business operator, either directly or indirectly; or
4. having the directive power under points (1) or (2) at every hierarchical level, starting from the directive power under points (1) or (2) up to the business operator that is at the ultimate level of command.

Law stated - 10 June 2024

Scope of legislation

What types of joint ventures are caught?

The formation of a joint venture company is not currently regulated by the merger control provisions of the Act; however, the creation of a joint venture by acquiring an existing business may be deemed an indirect acquisition of shares or assets of the target company and are potentially caught by the Act (assuming that the change of control thresholds are met).

Notwithstanding the above, the TCCT is currently undergoing a review and revision of the merger control regime, with the revised scheme anticipated to potentially include joint ventures.

Law stated - 10 June 2024

Scope of legislation

Is there a definition of 'control' and are minority and other interests less than control caught?

The definition of 'control' is tied to the following quantitative thresholds:

- acquisitions of shares, including:
 - the acquisition of shares, warrants or other convertibles of 25 per cent or more of the total voting rights of a public company listed on the Stock Exchange of Thailand at the end of any day; or
 - the acquisition of more than 50 per cent of the total voting rights of a private company, an unlisted public company or a public company listed on a stock

exchange other than the Stock Exchange of Thailand at the end of any day, including that:

- shares acquired by the spouse of a natural person are included in the number of shares being acquired; or
- shares acquired by a natural or juristic person that holds more than 30 per cent of the voting rights of a juristic person and by a business operator belonging to the single economic unit (definition provided below) are included in the number of shares being acquired; and
- the acquisition of more than 50 per cent of the total value of tangible assets or intangible assets (for example, leasehold rights or intellectual property rights) of another business operator relating or connected to the ordinary business operations of that other business operator in the preceding financial year.

Acquisitions of minority interests, even with veto rights, do not meet these thresholds and are not regulated by the Act.

Law stated - 10 June 2024

Thresholds, triggers and approvals

What are the jurisdictional thresholds for notification and are there circumstances in which transactions falling below these thresholds may be investigated?

Thresholds for pre-merger approval

Pre-merger approvals are required for any merger that results in the creation of either:

- a monopoly, namely a situation where there is only one business operator in any given market:
 - possessing absolute power over the determination of the price and supply of its products or services; and
 - having a sales turnover of at least 1 billion baht; or
- a business operator having dominant market power by:
 - any single business operator having a market share in the previous year of 50 per cent or more and a sales turnover of at least 1 billion baht; or
 - any of the top three business operators together having a market share in the previous year of 75 per cent or more and a sales turnover of at least 1 billion baht each (excluding any business operator that, in the previous year, had a market share of less than 10 per cent).

Thresholds for post-merger notification

Post-merger notification is required for any merger in which the sales turnover of any one business operator, or the aggregate turnover of all business operators conducting a merger, amounts to 1 billion baht or more and that does not cause a monopoly or result in a business operator having dominant market power.

There are no circumstances where pre-merger approval or post-merger notification, as applicable, is required if the relevant thresholds are not met.

Law stated - 10 June 2024

Thresholds, triggers and approvals

Is the filing mandatory or voluntary? If mandatory, do any exceptions exist?

Pre-merger approval and post-merger notification are mandatory. The only exceptions to mandatory filing are mergers for the purposes of internal restructuring and reorganisation between business operators that are part of a single economic unit or mergers that do not fall within the scope of application of the Act.

The term 'single economic unit' refers to a case where business operators have a relationship in policy or directive power.

'Relationship in policy' is defined as a relationship between two or more business operators whose guidelines, policies or procedures on management, administration or business operations are under the directive power of the same business operator.

'Directive power' is defined as the power to control by any of the following means:

1. holding shares with voting rights in a business operator of more than 50 per cent of the total voting rights in the business operator;
2. having the power to control the majority of votes in a meeting of shareholders of a business operator, either directly or indirectly;
3. having the power to control the appointment or removal of at least half of all directors of a business operator, either directly or indirectly; or
4. having the directive power under points (1) or (2) at every hierarchical level, starting from the directive power under points (1) or (2) up to the business operator that is at the ultimate level of command.

Law stated - 10 June 2024

Thresholds, triggers and approvals

Do foreign-to-foreign mergers have to be notified and is there a local effects or nexus test?

Foreign-to-foreign mergers have to be notified only where the parties to the merger satisfy the domestic presence test, which requires both the acquirer and the target (and each of

their respective single economic units) to have a presence in Thailand through a branch or subsidiary.

Law stated - 10 June 2024

Thresholds, triggers and approvals

Are there also rules on foreign investment, special sectors or other relevant approvals?

The [Foreign Business Act BE 2542 \(1999\)](#) (FBA) is the principal piece of legislation that regulates foreign investment in Thailand and specifies that foreigners may not engage in certain types of business without the relevant approval from the competent Thai authority; therefore, foreign investors will need to comply with the provisions of the FBA as well as those of the Act.

Special sectors – such as telecommunications, broadcasting and television, and energy – have specific legislation governing mergers. The Act does not apply to mergers in special sectors, provided that the specific legislation governing mergers in the relevant sector addresses competition concerns.

Law stated - 10 June 2024

NOTIFICATION AND CLEARANCE TIMETABLE

Filing formalities

What are the deadlines for filing? Are there sanctions for not filing and are they applied in practice?

Pre-merger approvals

If a pre-merger approval is required, the business operator must receive approval from the Trade Competition Commission (the Commission) before the completion of the merger. If the business operator fails to do so, the business operator will be subject to:

- an administrative sanction comprising a fine not exceeding 0.5 per cent of the total value of the merger transaction; and
- a civil claim, through which any person who suffers damage from a violation of pre-merger approval regulations by a business operator may claim for damages.

If a company is subject to an administrative sanction, a director, manager or any person responsible for ensuring that the company complies with Thai merger control legislation will be subject to the same sanction.

In addition, the Commission may order a business operator to suspend, cease or modify the merger if it has sufficient evidence to believe that the business operator is in violation of the pre-merger approval requirement.

Post-merger notifications

The merging parties must notify the Commission within seven days of the completion of the merger.

If a business operator fails to do so, the business operator will be subject to an administrative sanction, which is a fine not exceeding 200,000 baht and a daily fine not exceeding 10,000 baht throughout the period of the violation.

If a company is subject to an administrative sanction, a director, manager or any person responsible for ensuring that the company complies with merger control legislation will be subject to the same sanction.

Precedent cases

There are currently no precedent cases where the Commission has held business operators to be in violation of the pre-merger approval obligations. There have been eight cases between 2019 and May 2023 in which the Commission has held that business operators failed to comply with the post-merger notification requirements. The business operators, as well as their management, were fined.

Law stated - 10 June 2024

Filing formalities

Which parties are responsible for filing and are filing fees required?

Although not set out explicitly in law, the following has been taken from informal consultation with the Office of the Commission (TCCT), together with precedent cases:

- in amalgamations, the merging entities are jointly responsible for any pre-merger approvals and the new entity resulting from the merger is responsible for any post-merger notifications;
- in asset acquisitions, the acquirer of the assets is responsible for both pre-merger approvals and post-merger notifications; and
- in share acquisitions, the acquirer of the shares is responsible for both pre-merger approvals and post-merger notifications.

There is a filing fee of 250,000 baht for pre-merger approvals. There is no filing fee for post-merger notifications.

Law stated - 10 June 2024

Filing formalities

What are the waiting periods and does implementation of the transaction have to be suspended prior to clearance?

For pre-merger approvals, the Commission must consider an application for clearance of the merger within 90 days of submission of the complete application. If a decision cannot reasonably be made within 90 days, the Commission may extend the period by up to 15 days. A transaction cannot be closed until clearance has been obtained.

From experience, the Commission typically takes the entire 90 days to provide its decision.

Law stated - 10 June 2024

Pre-clearance closing

What are the possible sanctions involved in closing or integrating the activities of the merging businesses before clearance and are they applied in practice?

If a business operator is required to obtain permission from the Commission before conducting a merger but fails to do so, the business operator will be subject to:

- an administrative sanction comprising a fine not exceeding 0.5 per cent of the total value of the merger transaction; and
- a civil claim, through which any person who suffers damage from a violation of pre-merger approval regulations by a business operator may claim for damages.

If a company is subject to an administrative sanction, a director, manager or any person responsible for ensuring that the company complies with the merger control legislation will be subject to the same sanction.

In addition, the Commission may order a business operator to suspend, cease or modify the merger if it has sufficient evidence to believe that the business operator is in violation of the pre-merger approval requirement.

There are no precedent cases.

Law stated - 10 June 2024

Pre-clearance closing

Are sanctions applied in cases involving closing before clearance in foreign-to-foreign mergers?

Sanctions apply to foreign-to-foreign mergers that fall within the jurisdiction of Trade Competition Act BE 2560 (2017) (the Act), including the domestic presence test (which requires both the acquirer and the target (and each of their respective single economic units) to have a presence in Thailand through a branch or subsidiary).

There are no precedents for the imposition of sanctions on foreign-to-foreign transactions, although the TCCT does monitor these.

Pre-clearance closing

What solutions might be acceptable to permit closing before clearance in a foreign-to-foreign merger?

Although the Thai authorities have not provided an official statement in support of solutions that might be acceptable to permit closing before clearance in foreign-to-foreign mergers, we believe that it is possible to put in place hold-separate or ring-fencing arrangements, or both, to allow merging parties to close a transaction outside Thailand if this can be done without implementing the merger in Thailand. The TCCT should be consulted in advance.

Law stated - 10 June 2024

Public takeovers

Are there any special merger control rules applicable to public takeover bids?

There are no special merger control rules applicable to public takeover bids. Where public takeovers fall within the definition of a 'merger' under the Act, the parties have to comply with the merger control provisions; the parties can, however, provide that merger control clearance is a condition precedent to the public takeover bid.

Law stated - 10 June 2024

Documentation

What is the level of detail required in the preparation of a filing, and are there sanctions for supplying wrong or missing information?

Pre-merger approvals

The documents to be submitted are:

- the application form;
- the merger plan and implementation timeline;
- details of the merging parties and the target company, which must at a minimum include the shareholding structure, voting rights, and sales turnover and market shares of the parties and the target company;
- studies and analyses in respect of the merger transaction, which must comprise:
 - analysis of the shareholding structure and controlling power of the merging parties for the purpose of ascertaining the relationship in policy or directive power before and after the merger;
 -

analysis of the markets for the products or services relevant to the merging parties for the purpose of ascertaining the effects arising from the merger, which must at a minimum include:

- market structure before and after the merger transaction;
- market scope;
- market share of each of the merging parties before and after the merger transaction;
- the sales turnover of each of the merging parties before and after the merger transaction;
- the effect of the merger transaction in respect of:
 - market concentration, market entry and expansion (taking into consideration relevant factors, such as governmental laws and regulations, logistical costs, access to patent rights of existing technologies, or access to raw materials or other resources necessary for production);
 - non-coordinated effects (ie, effects as a result of each of the merged entities gaining profit by increasing prices or a reducing the quality of the product as a result of a reduction in competition); and
 - coordinated effects (ie, effects as a result of business operators' tendency to jointly increase prices after a merger transaction);
- effect on the economy or consumers as a whole and other effects on competition in the market (if any); and
- efficiencies in the market after the merger transaction; and
- studies and analyses relating to business-related necessity and benefit in the promotion of business, damage to the economy and consumer benefits as a whole.

Post-merger notifications

The documents to be submitted are:

- the notification form;
- a copy of:
 - the documents submitted to the Ministry of Commerce, in the case of an amalgamation;
 - the documents submitted to the Securities and Exchange Commission, in the case of a share acquisition by tender offer;
 - the definitive documents relating to the share or asset acquisition (eg, share purchase agreement and appraisal report);

- the minutes of the executive committee meeting or shareholders' meeting at which the merger transaction is approved from each of the merging parties or documents evidencing the parties' intention to enter into the merger transaction;
- other particulars in respect of the merger transaction;
- annual meeting reports and audited financial statements for the previous three years from each of the merging parties;
- a copy of the list of shareholders of each of the merging parties before and after the merger transaction; and
- power of attorney (if any) authorising agents (eg, lawyers) to handle the filing.

The post-merger notification form also requires detailed information to be included in the form itself. Parties are required to include market definition analyses, the market share figures of the transaction parties (and their competitors in the relevant market), and detailed revenue breakdowns of provided goods and services along with more extensive information relating to entities within the same single economic unit as the acquirer and target.

All information and documents submitted to the TCCT must be in hard copy in the Thai language (or translated into the Thai language).

Business operators that intentionally provide false or misleading information to the TCCT may be subject to criminal penalties under the Criminal Code for the submission of false information to government officials.

In addition, approval of a pre-merger approval can be revoked by the TCCT if it becomes aware of such false or misleading information. Furthermore, any person whose rights or interests are adversely affected by the approval of the TCCT may file a case with the Administrative Court for revocation of the approval.

Law stated - 10 June 2024

Investigation phases and timetable

What are the typical steps and different phases of the investigation?

For pre-merger approvals, the process starts when the relevant business operators submit an application to the TCCT. The TCCT will verify the completeness of the application and forward the completed application to the TCC within seven days of the date of receipt of the application. The TCCT may require additional information from business operators conducting a merger by issuing a letter requesting information or inviting the applicant to offer clarification, and may also serve notices of invitation on relevant business operators or third parties to offer opinions and information to assist the consideration of the transaction.

For post-merger notifications, there is no description of how the Commission and the TCCT investigate a post-merger notification; however, they have the authority to request additional information and clarification. They may also serve notices of invitation on relevant business operators or third parties to offer opinions and information to assist the consideration of the transaction.

Pre-consultation is not required before submission of an application for a pre-merger approval or post-merger notification; however, the TCCT recommends that the parties carry out pre-consultation with officers for a pre-merger approval. There is no formal process for pre-consultation.

Law stated - 10 June 2024

Investigation phases and timetable

What is the statutory timetable for clearance? Can it be speeded up?

For pre-merger approvals, the Commission must complete the consideration of a pre-merger approval within 90 days of submission. When a decision cannot reasonably be made within 90 days, the Commission may extend the period of consideration by up to 15 additional days. There is no provision in the Act that allows the pre-merger approval process to be expedited. In practice, the Commission generally takes a significant portion of the 90 days and tends to issue decisions relatively close to the end of this statutory period.

For post-merger notifications, there is no statutory timetable for the Commission to verify the notification. In practice, the Commission may take anywhere from three to eight months from receipt of the notification to provide an acknowledgement.

Law stated - 10 June 2024

SUBSTANTIVE ASSESSMENT

Substantive test

What is the substantive test for clearance?

Section 52 of the Act requires that the Trade Competition Commission (the Commission) consider whether the merger:

- is reasonably necessary for the business of the relevant parties;
- assists the promotion of the business of the relevant parties;
- poses no serious harm to the Thai economy; and
- has no material effect on the due interest of consumers in general.

Further, the Commission will also review the impact to competition arising from the merger (such as market entry, coordinated effects, non-coordinated effects).

Law stated - 10 June 2024

Substantive test

Is there a special substantive test for joint ventures?

The formation of a joint venture company is not currently regulated by the merger control provisions of the Trade Competition Act BE 2560 (2017) (the Act); however, the creation of

a joint venture by acquiring an existing business may be deemed an indirect acquisition of shares or assets of the target company, and therefore potentially caught by the Act (assuming that the change of control thresholds are met).

Notwithstanding the above, the Commission is currently undergoing a review and revision of the merger control regime, with the revised scheme anticipated to potentially include joint ventures.

Law stated - 10 June 2024

Theories of harm

What are the 'theories of harm' that the authorities will investigate?

The Commission will consider factors such as market concentration, potential for coordinated effects and non-coordinated effects, and barriers to market entry for newcomers.

Law stated - 10 June 2024

Non-competition issues

To what extent are non-competition issues relevant in the review process?

The Commission must consider whether the merger:

- is reasonably necessary for the business of the relevant parties;
- assists the promotion of the business of the relevant parties;
- poses no serious harm to the Thai economy; and
- has no material effect on the due interest of consumers in general.

Law stated - 10 June 2024

Economic efficiencies

To what extent does the authority take into account economic efficiencies in the review process?

Only a few cases of merger control have been considered by the Commission. In those cases, economic efficiency was considered along with other factors in determining whether to allow each merger.

Law stated - 10 June 2024

REMEDIES AND ANCILLARY RESTRAINTS

Regulatory powers

What powers do the authorities have to prohibit or otherwise interfere with a transaction?

If a business operator fails to comply with Thai merger control requirements, the Trade Competition Commission (the Commission) is empowered to impose fines. In cases where pre-merger approval is required, the Commission may, in addition, suspend, cease, rectify or modify the merger.

The Commission is also empowered to set any conditions for approval of the merger.

Law stated - 10 June 2024

Remedies and conditions

Is it possible to remedy competition issues, for example by giving divestment undertakings or behavioural remedies?

It is possible to remedy competition issues and, in granting approval for a merger, the Commission is empowered to specify the time period and any conditions for compliance, including divestment and behavioural remedies.

Law stated - 10 June 2024

Remedies and conditions

What are the basic conditions and timing issues applicable to a divestment or other remedy?

There are no specific provisions, notifications, guidelines or sufficient precedent on this matter.

Law stated - 10 June 2024

Remedies and conditions

What is the track record of the authority in requiring remedies in foreign-to-foreign mergers?

There is currently no precedent where the Commission has required remedies in a foreign-to-foreign merger.

Law stated - 10 June 2024

Ancillary restrictions

In what circumstances will the clearance decision cover related arrangements (ancillary restrictions)?

There are currently no specific provisions, notifications, guidelines or sufficient precedent on this matter.

INVOLVEMENT OF OTHER PARTIES OR AUTHORITIES

Third-party involvement and rights

Are customers and competitors involved in the review process and what rights do complainants have?

In considering a pre-merger approval, the Trade Competition Commission (the Commission) requests the applicant to provide information about its customers and competitors. The Commission is further empowered to invite any person to provide facts, explanations, advice or opinions; therefore, customers and competitors may be invited to provide information.

In addition, any person suffering damage due to a violation of the Trade Competition Act BE 2560 (2017) (the Act) can initiate an action for compensation from the offender; therefore, any persons (including customers and competitors) who suffer damage as a result of the violation are entitled to file complaints. Furthermore, the Act specifically allows the Consumer Protection Board, or organisations or foundations recognised by the Consumer Protection Board, to initiate actions for compensation on behalf of consumers or members of those organisations or foundations, as applicable.

Law stated - 10 June 2024

Publicity and confidentiality

What publicity is given to the process and how do you protect commercial information, including business secrets, from disclosure?

The Act does not require any public disclosure of the process. The Commission publishes its decisions on pre-merger approvals (and has increasingly begun to publish decisions relating to post-merger notifications), but the names of parties and any pieces of sensitive commercial information are redacted.

Confidential information is protected under the Act. Any person who reveals restricted or confidential information concerning a business or operations of a business operator may be subject to a term of imprisonment of not exceeding one year or a fine not exceeding 100,000 baht, or both, if the information was acquired or known as a result of non-compliance with the Act.

Information may, however, be disclosed in the course of performance of a government service, or for the purpose of an inquiry or a trial. In addition, if the disclosed information is regarded as a trade secret under the [Trade Secrets Act BE 2544 \(2001\)](#), the offender may be subject to a penalty, and be required to pay compensation for its misconduct and the injury suffered by the injured party.

Law stated - 10 June 2024

Cross-border regulatory cooperation

Do the authorities cooperate with antitrust authorities in other jurisdictions?

Thailand has signed economic partnership agreements with certain countries that establish collaboration on antitrust issues. Thailand is also a member of the International Competition Network (ICN) for mergers and other competition issues; however, the ICN does not facilitate cooperation in enforcement, only in establishing best practices for the enforcement of competition rules.

Law stated - 10 June 2024

JUDICIAL REVIEW

Available avenues

What are the opportunities for appeal or judicial review?

Orders of the Trade Competition Commission (the Commission) to suspend, cease, rectify or modify a merger that has not obtained approval and orders to grant (with conditions) or deny approval of a merger are subject to judicial review. A business operator may file an appeal with the Administrative Court. Any appeal of a decision of the Administrative Court may be submitted to the Supreme Administrative Court and the determination of the Supreme Administrative Court will be final. The administrative courts can only overturn a Commission decision on the basis of illegality, undue process or abuse of discretion.

There is currently only one example of this occurring. Following TCC approval of the Charoen Pokphand Group's acquisition of Tesco in 2020, 37 consumer advocacy groups filed a case with the Administrative Court to seek revocation of the approval or, alternatively, the imposition of conditions on Charoen Pokphand and the issue of an injunction, until the Court rendered its judgment or ordered otherwise. The Court refused to issue an injunction, ruling that the merger had been approved in accordance with the rules and procedures of the Trade Competition Act BE 2560 (2017).

Law stated - 10 June 2024

Time frame

What is the usual time frame for appeal or judicial review?

Business operators to whom orders to suspend, cease, rectify or modify a merger, or grant or deny approval of a merger, are directed must file an appeal with the Administrative Court within 60 days of receipt of the Commission's decision.

Law stated - 10 June 2024

ENFORCEMENT PRACTICE AND FUTURE DEVELOPMENTS

Enforcement record

What is the recent enforcement record and what are the current enforcement concerns of the authorities?

The Trade Competition Commission (the Commission) provided clearance for two pre-merger approvals in 2023 and imposed notification obligations pursuant to the mergers (eg, providing updates to the Commission of the effects of the merger). Of the 10 pre-merger approvals submitted to the Commission, only the Charoen Pokphand acquisition of Tesco (2020) and the Bangchak acquisition of Esso (2023) have required remedial measures.

A key enforcement concern of the Commission is centred on digital platforms and marketplaces, including mergers in this space and a particular focus on the protection of small and medium-sized enterprises.

Law stated - 10 June 2024

Reform proposals

Are there current proposals to change the legislation?

The Office of the Commission (the TCCT) is currently reviewing the Trade Competition Act BE 2560 (2017) (the Act) as part of its duty to review the Act on a five-year basis. The review process began in 2022 and is currently ongoing, and we understand from informal discussions with officers at the TCCT that the review and revisions will be finalised in 2025.

This review constitutes the first wholesale analysis of the Act and its enforcement, and the TCCT has arranged for input through a variety of means, including focus group research. Although the changes will primarily focus on aspects of the Act unrelated to merger control, there may be amendments relating to extraterritorial enforcement or joint ventures.

Law stated - 10 June 2024

UPDATE AND TRENDS

Key developments of the past year

What were the key cases, decisions, judgments and policy and legislative developments of the past year?

The key case of the past year was the completed merger between Bangchak and Esso, which was the second case in which the Trade Competition Commission (the Commission) imposed conditions on merging parties. These conditions included: (i) Bangchak cannot increase its shareholdings in government entities for a period of five years after closing; or (ii) Bangchak to retain its contracts and agreements with customers in the petroleum industry entered into with Esso, until the end of their terms.

Another notable case from 2022 was the completed merger between True and DTAC – Thailand's second- and third-largest mobile operators, respectively – into True Corporation. The merger was under the jurisdiction of the National Broadcasting and Telecommunication Commission (NBTC), rather than the Commission, as section 4 of the Trade Competition Act BE 2560 (2017) (the Act) provides a specific carve-out for the application of the Act (including to mergers) conducted in industries with specific legislation governing competition law.

The NBTC allowed the merger on certain conditions, including conditions relating to price ceilings, the forced separation of the True and DTAC brands for a period of four years, and the maintenance of service contracts that had already been provided to consumers.

Law stated - 10 June 2024