

Legal Update

ABANDONMENT OF COMPETITION LAW CHANGE ON 'MARKET DOMINANCE'

The concerned authorities have abandoned an attempt to apply a new definition of 'Market Dominance' under the Trade Competition Act B.E. 2542 (A.D. 1999) ("TCA") because of concern about the impact on small and medium-sized businesses.

Under the current TCA, the Market Dominance is defined as a market share in the previous year of at least 50% and annual sales of at least Baht one Billion. According to the earlier proposed revision of the Trade Competition Committee, Ministry of Commerce ("Committee"), it was suggested a minimum sales value of Baht 500 Million and market share based on three levels: at least 50% by one entity; 30% with other factors to be taken into account; or a combined 75% controlled by three entities within one sector.

Dr. Duanden Nikomborirak of Thailand Development Research Institute proposed reducing the sales value to be lower than the current prescribed value of Baht one Billion and the figure should specify whether it referred to certain products or total sales of a company. In any case, revising the regulation was less important than law enforcement, since the law had proved totally toothless from the start.

Mr. Payungsak Chartsutthipol, Chairman of the Federation of Thai Industries, said he believed reducing the sales value as earlier proposed by the Committee would restrict the growth of small and medium-sized businesses in the country.

After consideration, the Committee then recommended further study of sales values and market shares because the structure of global trade has changed, so a revision may result in damage to domestic entrepreneurs. The Committee also noted that foreign companies might be market-dominant in a more liberalized environment based not on size but behavior.

TCA has been in effect for 12 years but there has never been a single successful prosecution. Eighty complaints have been filed since 1999 but only one made it to the prosecution stage, a 2001 complaint against A.P. Honda Co., Ltd., which its sales value of motorcycles is nearly 70% of total sales value in Thailand. Until present, the case remains unresolved.

The Committee has currently agreed to consider a complaint by Big C Supercenter against Tesco Lotus in a recent coupon war, in which each 80-Baht coupon from Big C was worth Baht 160 at Tesco Lotus. Big C said 60% of the coupons were used at its stores while another 23% were used at those of its rival, causing the company damage.

The Committee also found no evidence of damage in two complaints about distributors selling beer at low prices.

NEW EVALUATIONS WILL DRIVE UP TRANSFER FEES

Because of the rising market prices of land, the Treasury Department of the Finance Ministry has to re-evaluate land nationwide. The new land evaluations will be announced in the last quarter of this year will be effective from 1 January 2012 until the end of 2015.

This will affect transfer costs because the Land Department will use the revised evaluations as the new benchmark for transfer fees. According to a source at the Treasury Department, it will raise land evaluations nationwide by 15% - 25% next year. Meanwhile, land closes to a mass transit system, either sky train or the MRT subway, will increase by up to 50 per cent from the current evaluation.

The Treasury Department also will re-evaluate 4,600 condominium projects nationwide. These evaluations will increase by an average of 15% - 20%. However, new condominium projects launched since last year are priced higher than existing projects.

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REPORT OF FINANCIAL TRANSACTIONS

The Anti-Money Laundering Office (**AMLO**) has issued certain ministerial regulations under the Anti-Money Laundering Act B.E. 2542 (A.D. 1999) ("**Act**") stating that the commercial banks providing e-banking service or cash transfer via electronic system in the amount from Baht 100,000 upwards shall be required to provide AMLO with the monthly report of such financial transactions for purpose of preventing criminals from laundering money via the financial institutions.

Furthermore, under the Act and relevant ministerial regulations thereof, in addition to the financial institutions, the following professional operators shall also be required to regularly report AMLO for the financial transactions having the amount of transaction as prescribed in relevant ministerial regulations as follows:

- i. Operator conducting business relating to the operation or providing advice or being consultant for the investment transaction or the capital or fund transfer under the laws governing the securities and exchange.
- ii. Diamonds, jewelry or gold trader which is a juristic person.
- iii. Car trader or car hire purchasing operator which is a juristic person.
- iv. Real estate broker or agent which is a juristic person.
- v. Antiques trader which is a juristic person.
- vi. Operator conducting business relating to credit card.
- vii. Operator conducting business relating to personal loan / credit.
- viii. Operator conducting business relating to electronic cash card.
- ix. Operator conducting business relating to electronic cash payment.

The amount of each financial transaction that the operators in i. to vi. above shall be required to report AMLO is Baht 2 million or more. The amount of Baht 500,000 or more for the operator in vii., and Baht 100,000 for the operators in viii. and ix, respectively. In case of suspicious financial transaction, the report must be made to AMLO regardless of whether the amount of transaction.

In addition, the financial institutions as well as the professional operators as stated above shall also required their customers to show their identification prior to conduct any transaction on behalf of the customers, according to the conditions and procedures as prescribed in relevant ministerial regulations, unless such customers have previously indentified.

Any financial institution or professional operator who fails to comply with such shall be punished with a fine of not exceeding Baht 500,000 plus a further fine of not exceeding Baht 5,000 per day throughout the time of violation.

COURT OPENS ENVIRONMENT DIVISION

The Civil Court has opened a new division for environment cases to cope with growing disputes over various kinds of pollution affecting people in communities.

The new division was needed because there were now more cases brought by people being affected by air, noise, water, chemical, radiation and odor pollution caused by the industrial sector. The new division will accepts for consideration all environment cases filed with the Civil Court from throughout the country.

Since the people affected in many of these cases are poor and cannot afford high court fees, the law allows the court, at the court's discretion, to exempt them from paying.

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