

**TRADE COMPETITION ACT,
B.E. 2560 (2017)**

HIS MAJESTY KING MAHA VAJIRALONGKORN BODINDRADEBAYAVARANGKUN;

Given on the 2nd Day of July B.E. 2560;

Being the 2nd Year of the Present Reign.

His Majesty King Maha Vajiralongkorn Bodindradebayavarangkun is graciously pleased to proclaim that:

Whereas it is expedient to revise the law on trade competition;

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

Section 1. This Act is called the “Trade Competition Act, B.E. 2560 (2017)”.

Section 2.¹ This Act shall come into force after ninety days as from the date of its publication in the Government Gazette.

Section 3. The Trade Competition Act, B.E. 2542 (1999) shall be repealed.

Section 4. This Act shall not apply to acts of:

(1) the central administration, provincial administration and local administration;

* Translated by Associate Professor Dr. Pinai Nanakorn under contract for the Office of the Council of State of Thailand's Law for ASEAN project. – Tentative Version – subject to final authorisation by the Office of the Council of State.

¹ Published in Government Gazette, Vol. 134, Part 70a, dated 7th July 2017.

(2) a State enterprise, a public organisation or any other agency of the State, only insofar as they are performed in accordance with the law or resolutions of the Council of Ministers necessary for the maintenance of State security, public interests, public benefits or the provision of public utilities;

(3) a farmers' group, a co-operative or a co-operative federation which is recognised by law and of which the object lies in the operation of business in the interest of farmers' occupational pursuit;

(4) a business regulated by specific law in respect of trade competition.

Section 5. In this Act:

“business” means an undertaking performed for the purpose of trade in agriculture, industry, commerce, finance, insurance and services and shall include any other undertaking as prescribed in the Ministerial Regulation;

“business operator” means a distributor, a producer for distribution, a person who orders or imports into the Kingdom for distribution, a person who purchases the goods for production or redistribution or a provider of services in the course business;

“goods” means things for use or consumption, including documents indicating titles therein;

“service” means an act of agreeing to perform work; an act of granting any right, an act of allowing the use of or giving benefits in property or any undertaking, in return for remuneration in the form of money or any other benefit but shall not include employment;

“price” means a price of the goods and shall also include remuneration for the provision of services;

“market” means a market which involves the same kind of goods or services or which is substitutable, taking into consideration the aspects concerning characteristics, prices or purposes for which the goods or services are to be used and the aspect concerning areas of the distribution of goods or the provision of services;

“business operator with a dominant position in a market” means one or more business operators, in any particular market, having a market share and sales volume proceeds

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in excess of those prescribed in the Notification of the Commission, taking into consideration one or more competitive factors of the market, as the case may be, and in this connection the Commission shall consider and review market shares and sales volume proceeds at least once within a period of three years as from the date of issuance of the Notification;

provided that a market share and sales volume proceeds of a business operator with a dominant position in a market shall be computed by including, in the computation, market shares and sales volume proceeds in any particular market of all business operators that have relationship through policies or managerial powers in accordance with the rules prescribed in the Notification of the Commission as well and it shall be deemed that all business operators that have such market share and sales volume proceeds are business operators with a dominant position in a market;

“competitive factors” means the number of business operators in the market, the amount of investment money, the access to key factors of production, distribution channels, business operation networks, essential infrastructure for business operation, State regulation and other factors as prescribed in the Notification of the Commission;

“Commission” means the Trade Competition Commission;

“member” means a member of the Trade Competition Commission;

“Office” means the Office of the Trade Competition Commission;

“Secretary-General” means the Secretary-General of the Trade Competition Commission;

“competent officials” means the Secretary-General and officials of the Office holding a position not lower than Practitioner-Level Ordinary Government Official appointed by the Commission for performing activities under this Act;

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

Section 6. The Minister of Commerce shall have charge and control of the execution of this Act and shall have the power to issue Ministerial Regulations prescribing fees not exceeding the rates annexed hereto, reducing or exempting fees and prescribing other activities for the execution of this Act.

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

CHAPTER I

TRADE COMPETITION COMMISSION

Section 7. There shall be a commission called the “Trade Competition Commission” consisting of Chairperson, one Vice Chairperson and five other members appointed by the Prime Minister from persons successfully selected with the approval of the Council of Ministers.

The Secretary-General shall be the secretary of the Commission.

Section 8. A member shall be a person who has such work, or has performed such work, as to reveal the member’s possession of knowledge and expertise or experience for a period of not less than ten years in the area of law, economics, finance, accountancy, industry, business administration, consumer protection or any other area beneficial to the regulation of trade competition, provided that the computation of the aforesaid time may be made on an inclusive basis;

Section 9. A member shall have the qualifications and shall not be under prohibitions as follows:

- (1) being of Thai nationality;
- (2) being not lower than forty years of age but not more than seventy years of age;
- (3) not being a holder of a political position;
- (4) not being a person holding any position in a political party;
- (5) not being a person of unsound mind or mental infirmity;
- (6) not being drug addicted;
- (7) not being a bankrupt or not having previously been a dishonest bankrupt;

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(8) not being an incompetent person or a *quasi*-incompetent person;

(9) not being a person sentenced by a judgment to imprisonment and detained by a warrant of the Court;

(10) not being a person previously imprisoned by a judgment, when on the date of such person being nominated to the Council of Ministers for approval under section 12 (3) a period of less than five years has elapsed since the release from the penalty, except for an offence committed through negligence or a petty offence;

(11) not being a person who has been sentenced by a judgment or order of the Court to the effect that the property shall vest in the State by reason of unusual wealthiness or an unusual increase of property;

(12) not having previously been expelled or dismissed from or ordered to leave the Government service, a State agency, a State enterprise or a private agency by reason of any corruption in office or grave misconduct or any deemed corrupt practice and malfeasance in the Government service;

(13) not being a judge of the Constitutional Court, a member of the Election Commission, an ombudsman, a member of the National Anti-Corruption Commission, a member of the State Audit Commission or a member of the National Human Rights Commission;

(14) not having been removed from office under the organic law on anti-corruption.

Section 10. In addition to the qualifications and prohibitions under section 9, a member shall:

(1) not hold any position in a business organisation or be a partner with the managerial power in a partnership or a shareholder holding shares in excess of five percent of the total capital in any company;

(2) not be a Government official having a permanent position or salary;

(3) not be an official or employee of a State agency or local administration or not be a supervisory member or adviser of a State agency which operates business;

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(4) not be a holder of any position in an institute or association formed as part of an assembly of business operators having common objects or benefits in trade.

In the case where the person selected under section 12 is a person under paragraph one, the Prime Minister may make the appointment only when such person has resigned the status as a person under paragraph one and such resignation is made within thirty days as from the date of the selection, but if such person fails to resign within the specified time, it shall be deemed that such person has never been selected as a member and action shall be taken for the selection of a member in replacement of such person under section 12.

Section 11. In appointing members, there shall be a Selection Committee made up of nine members to be in charge of selecting persons suitable for being nominated as members, which shall consist of the following persons:

- (1) Permanent Secretary for Finance;
- (2) Permanent Secretary for Agriculture and Co-operatives;
- (3) Permanent Secretary for Commerce;
- (4) Permanent Secretary for Justice;
- (5) Permanent Secretary for Industry
- (6) Secretary-General of the National Economic and Social Development Board;
- (7) Secretary-General of the Consumer Protection Board;
- (8) President of the Board of Trade of Thailand;
- (9) President of the Federation of Thai Industries.

The Selection Committee shall elect one of its members as Chairperson of the Selection Committee.

The Chairperson of the Selection Committee and a member of the Selection Committee shall not have the right to apply for being a member.

The Office shall serve as the secretariat for the selection of members.

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The Chairperson of the Selection Committee and a member of the Selection Committee shall receive remuneration and other allowances in the performance of work as prescribed by the Council of Ministers.

Section 12. In selecting and appointing members, action shall be taken as follows:

(1) the Selection Committee shall publish a recruitment of persons who have such work or have performed such work as to reveal their possession of knowledge and expertise or experience under section 8 and who have the qualifications and are not under prohibitions under section 9 and section 10, for general information for at least consecutive thirty days;

(2) the Selection Committee shall, upon the lapse of the period of time under (1), consider and select applicants, who possess the qualifications required for being members, in order to achieve the number of members under section 7 and shall submit a list of names of the selected persons to the Minister together with details of such persons, with a clear indication of or evidence indicating their suitability in a particular area under section 8, possession of the qualifications and freedom from the prohibitions under section 9 and section 10;

(3) the Minister shall submit the list of names of persons selected as members together with the details under (2) to the Council of Ministers within fifteen days as from the date of receipt of the nomination from the Selection Committee, for approval;

(4) upon the Council of Ministers' approval of persons for being members in conformity with the required number, the matter shall be submitted to the Prime Minister for making an order appointing them as members.

In the case where the Council of Ministers gives approval in the number below that in which members are required to be appointed, the Selection Committee shall proceed with the consideration and selection of persons until the deficient number is made up. For this purpose, action shall be taken under (1), (2), (3) and (4) until the required number of members is fulfilled.

In the first appointment of members, upon the Council of Ministers' approval of persons as members in conformity with the required number, such persons shall meet for electing amongst themselves Chairperson and one Vice Chairperson before submission of the matter to the Prime Minister for an appointment order.

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The period of time, rules, procedures and conditions for the selection of members shall be as prescribed in the Ministerial Regulation.

Section 13. A member shall hold office for a term of four years and may serve for only two terms.

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

The members who vacate office at the expiration of the term shall remain in office for continuing the performance of duties until new members are appointed.

Not less than ninety days before the expiration of the term, the Selection Committee shall take action to expeditiously complete the selection of persons suitable for being appointed as new members.

Section 14. In addition to the vacation of office upon the expiration of the term, a member vacates office upon:

- (1) death;
- (2) resignation;
- (3) being removed by a resolution of the Council of Ministers on the ground of neglect of duties, misbehaviour or lack of competence;
- (4) being disqualified or being under prohibitions under section 9;
- (5) committing an act in violation of section 10.

When the Chairperson, the Vice Chairperson or a member vacates office under paragraph one, action shall be taken for selecting and appointing the Chairperson, Vice Chairperson or member to fill the vacancy under section 12. In this regard, the person appointed shall be in office for the remaining term of the replaced person except that if less than ninety days remain in the term of office, the appointment of a new member may be omitted.

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Pending the appointment of the Chairperson, Vice Chairperson or member under paragraph two, the remaining members may continue the performance of duties and, in this regard, it shall be deemed that the Commission consists of the existing Chairperson, Vice Chairperson or members unless the number of the remaining persons is less than four.

Section 15. In the case where the Chairperson or the Vice Chairperson vacates office under section 13 and a new member has been appointed or in the case where the Chairperson or the Vice Chairperson vacates office under section 14, the Commission may, at its meeting, elect one member as Chairperson or Vice Chairperson and the matter shall be submitted to the Prime Minister for making an order appointing such person as Chairperson or Vice Chairperson, as the case may be.

Section 16. A person who vacates the office of Chairperson, Vice Chairperson or member shall not hold any position in a limited company, public limited company or any other business entity which is a party to the consideration proceeding of the Commission unless such person has vacated office for not less than two years.

Section 17. The Commission shall have the powers and duties as follows:

- (1) to make recommendations to the Minister on the issuance of Ministerial Regulations under this Act;
- (2) to issue Rules or Notifications in the execution of this Act;
- (3) to regulate business operation and prescribe practices in the interest of ensuring free and fair trade competition;
- (4) to consider complaints and investigate the commission of offences under this Act;
- (5) to consider and decide requests under section 59;
- (6) to prescribe Rules on investigation and enquiries to be conducted by an enquiry sub-committee;
- (7) to issue Notifications appointing competent officials for performing activities under this Act;

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(8) to take criminal proceedings following a complaint made by the injured person under section 78;

(9) to consider and fix administrative fines under section 80, section 81, section 82 and section 83 and also institute actions before the Administrative Court;

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

(11) to give opinions and make recommendations to the Minister and the Council of Ministers in connection with State policies on trade competition;

(12) to give State agencies advice on Regulations, Rules or orders which cause obstacles to trade competition, constitute trade barriers, restrict competition or reduce trade competition and thereby engender unfairness amongst business operators;

(13) to lay down plans and strategies on and directions for the administration of work of the Office;

(14) to issue Rules or Regulations on the organisational structure, personnel administration, budgeting, finance and property affairs and other operations of the Office;

(15) to perform any other activities as provided by law to be the powers and duties of the Commission.

All Rules or Notifications which are of general application shall come into force upon their publication in the Government Gazette.

Section 18. The Commission shall cause to be held the hearing of opinions of stakeholders as well as general members of the public in order that the opinions obtained are to be taken into consideration before issuance of Rules or Notifications in connection with the regulation of trade competition which are intended to be of general application. For this purpose, information on matters and issues to which the hearing of opinions relates shall be provided and the period of time for the hearing of opinions shall not be less than thirty days except that the Commission may, in the case of emergency or urgent necessity, fix the period of less than thirty days for the hearing of opinions.

The Office shall prepare a record summarising the result of the hearing of opinions, consisting of opinions obtained, resolutions or results of the consideration of the

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Commission in response to such opinions and also reasons therefor as well as directions for further proceeding, and disseminate such record via an information network system of the Office.

Section 19. At a meeting of the Commission, the presence of not less than one half of the total number of members is required to constitute a quorum.

At a meeting of the Commission, if the Chairperson is not present or is unable to perform the duty, the Vice Chairperson shall preside over the meeting. If the Vice Chairperson is not present or is unable to perform the duty, one member shall be elected at the meeting to preside over the meeting.

A decision of a meeting shall be by a majority of votes. In casting votes, each member shall have one vote. In the case of an equality of votes, the person presiding over the meeting shall have an additional vote as a casting vote.

Section 20. The Commission has the power to appoint sub-committees for considering or performing any activities as entrusted by the Commission.

Section 21. The Commission shall appoint one or more enquiry sub-committees consisting of, for each committee, persons possessing knowledge and experience in criminal cases appointed from persons who are or were public prosecutors, persons who are or were policemen, persons who are or were State officials possessing the knowledge and experience in economics, law, commerce, accountancy or any necessary area, as members of the enquiry sub-committee, and shall entrust a competent official to serve as a member and secretary of the enquiry sub-committee. In this regard, an enquiry sub-committee shall meet and elect one member of the enquiry sub-committee as its Chairperson.

An enquiry sub-committee shall have the power and duty to conduct investigation and enquiries in connection with the commission of offences under this Act and shall, when it considers that the enquiries are completed, prepare opinions thereon as well as a brief for submission to the Commission within twelve months as from the date of its being appointed by the Commission except that, in the case of necessity, the period may be extended for not more than six months provided that reasons and necessity for the extension of time shall also be recorded in the brief.

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Section 22. The provisions of section 19 shall apply *mutatis mutandis* to a meeting of a sub-committee and an enquiry sub-committee.

Section 23. The Chairperson, Vice Chairperson and members shall serve on a full-time basis and receive remuneration, allowances for the performance of duties and other benefits as prescribed by the Council of Ministers. In this regard, in prescribing remuneration, regard shall also be had to prohibitions from holding office subsequent to the vacation of office under section 16 as well.

Remuneration and other allowances for the performance of duties of the Chairperson of a sub-committee and members of a sub-committee under section 20 and section 21 shall be as prescribed by the Council of Ministers.

Section 24. In the performance of duties under this Act, the Chairperson, Vice Chairperson, members and members of an enquiry sub-committee shall be officials under the Penal Code and have the same powers and duties as those of an enquiry official under the Criminal Procedure Code.

Section 25. In the case where the Commission is of the opinion that prosecution should be undertaken and refers the opinion together with the brief to the Public Prosecutor but the Public Prosecutor issues a non-prosecution order, the Chairperson shall exercise the power of the Commission-General of the Thai Police or the *Changwat* Governor, as the case may be, in making the opposition to the non-prosecution order of the Public Prosecutor in accordance with the provisions of the Criminal Procedure Code.

In the case where the Chairperson opposes the order of the Public Prosecutor, the brief together with the opposing opinion shall be referred to the Attorney-General for consideration. If the Attorney-General is of the opinion that the brief and the opinion referred to by the Chairperson are not so complete as to justify prosecution, the Attorney-General shall notify it to the Commission for further proceeding. For this purpose, incomplete items shall fully be indicated on the same occasion. In this case, the Chairperson and the Attorney-General shall jointly appoint a working group, consisting of representatives from each side in an equal number, with the powers and duties to consider incomplete evidence and gather evidence to

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achieve completeness and refer the same to the Attorney-General for further issuing an order for the case.

The Office shall serve as the secretariat of the working group under paragraph two.

Section 26. The institution of criminal actions and the institution of actions for claiming damages under this Act shall fall within the jurisdiction of the Intellectual Property and International Trade Court.

CHAPTER II

OFFICE OF THE TRADE COMPETITION COMMISSION

Section 27. There shall be established the Office of the Trade Competition Commission as a State agency which is neither a Government agency nor a State enterprise and which shall be ascribed a status as a juristic person.

Affairs of the Office are not subject to the law on labour protection, the law on labour relations, the law on social security and the law on compensation but officials and workers of the Office shall receive not less remunerative benefits than those provided under the law on labour protection, the law on social security and the law on compensation.

Section 28. The Office shall have its headquarters in Bangkok or a *Changwat* nearby and may establish its branch offices at any other places.

Section 29. The Office shall have the powers and duties as follows:

- (1) to be responsible for clerical work of the Commission and sub-committees;
- (2) to monitor business operators' conduct possibly causing the violation of this Act and report it to the Commission;
- (3) to conduct studies, exploration, analysis and research in connection with goods, services and business operation conduct and propose directions for and opinions on the promotion, development and regulation of business operation;

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(4) to prepare databases of sizes of markets for goods or services which have monopolistic tendencies as determined by the Commission and disseminate them to the public;

(5) to receive complaints under which any person has made an allegation of the violation of this Act and take action in seeking facts and gathering evidence pertinent to the complaints in order to acquire sufficient facts for submission to the Commission for consideration, in accordance with the Rule prescribed by the Commission;

(6) to hold ownership or possessory rights and hold any real rights;

(7) to establish rights or enter into any juristic act relating to property;

(8) to exchange information, participate in negotiations and enter into agreements and co-operation with domestic and foreign organisations or agencies on affairs concerning the operation of the Office;

(9) to provide or give co-operation to other organisations on education and training as well as the development of knowledge in connection with trade competition;

(10) to co-ordinate and co-operate with Government agencies and State agencies concerned in the performance of duties under this Act;

(11) to receive fees as provided in the law and remuneration, service charges or incomes from the operation of work;

(12) to disseminate results of the Commission's decisions to the public;

(13) to prepare annual reports indicating works and obstacles encountered in the operation of work of the Commission and the Office for submission to the Council of Ministers and public dissemination;

(14) to implement Notifications, Rules and resolutions of the Commission and perform activities as entrusted by the Commission or sub-committees;

(15) to perform any other activities provided by law to be the powers and duties of the Office.

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Section 30. The Office shall have the Secretary-General who shall be responsible for the operation of work of the Office and directly answerable to the Chairperson of the Commission and shall be the superior of officials and employees of the Office.

The Secretary-General shall represent the Office in affairs of the Office which concern third persons. For this purpose, the Secretary-General may authorise any person to perform particular work on the Secretary-General's behalf, in accordance with the Rule prescribed by the Commission.

Section 31. The Chairperson of the Commission, with the approval of the Commission, shall appoint and remove the Secretary-General.

Rules and procedures for the announcement of recruitment, the selection and the appointment of the Secretary-General shall be as prescribed in the Notification of the Commission.

Section 32. A person to be appointed as Secretary-General shall possess the qualifications as follows:

- (1) being of Thai nationality;
- (2) being of not over sixty-five years of age;
- (3) being able to work for the Office on a full-time basis;
- (4) possessing knowledge and expertise in law, economics, finance, accountancy, industry, business administration, consumer protection or other areas as prescribed in the Notification of the Commission;
- (5) possessing other qualifications as prescribed in the Notification of the Commission.

Section 33. A person possessing any of the following descriptions shall be prohibited from being Secretary-General:

- (1) being a bankrupt or having previously been a dishonest bankrupt;
- (2) being an incompetent person or a *quasi*-incompetent person;

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(3) being a person sentenced by a judgment to imprisonment and detained by a warrant of the Court;

(4) being a person previously sentenced by a judgment to imprisonment except for an offence committed through negligence or a petty offence;

(5) being a director, manager or person with the executive or managerial power in a limited company or public limited company or any other business entity governed by this Act;

(6) being a Government official, official or employee of a Government agency or a State enterprise or any other agency of the State or of a local administration;

(7) being or having previously been a holder of a political position unless a period of not less than one year has elapsed since the vacation of office;

(8) being or having previously been an executive member or holder of any other position in a political party or an official of a political position unless a period of not less than one year has elapsed since the vacation of office;

(9) having previously been expelled or dismissed from or ordered to leave the Government service, a State agency, a State enterprise or a private agency by reason of any corruption in office or grave misconduct or any deemed corrupt practice and malfeasance in the Government service;

(10) being a person who has been sentenced by a judgment or order of the Court to the effect that the property shall vest in the State by reason of unusual wealthiness or an unusual increase of property;

(11) being a holder of any position in an institute or association formed as part of an assembly of business operators having common objects or benefits in trade.

Section 34. The Secretary-General shall receive salaries and other remunerative benefits as determined by the Commission. In determining salaries, regard shall also be had to prohibitions from holding office subsequent to the vacation of office of Secretary-General under section 43 as well.

Section 35. The Secretary-General shall hold office for a term of four years.

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

Section 36. In addition to the vacation of office upon the expiration of the term, the Secretary-General vacates office upon:

- (1) death;
- (2) resignation;
- (3) being disqualified under section 32 or being under prohibitions under section 33;
- (4) being a person who has interests under section 41;
- (5) being removed by a resolution of the Commission on the ground of neglect of duties, misbehaviour or lack of competence.

Section 37. There shall be Deputy Secretary-Generals in the number determined by the Commission for assisting the Secretary-General in the performance of duties as entrusted by the Secretary-General.

Section 38. The Secretary-General has the powers and duties as follows:

- (1) to recruit, appoint and dismiss officials and employees, increase, reduce or cut their salaries or wages, inflict disciplinary penalty upon them and also remove them from office, in accordance with the Regulations prescribed by the Commission and, in the case of officials holding office as Deputy Secretary-General, high-ranking administrators and internal auditors, with prior approval of the Commission;
- (2) to lay down Rules on the performance of work of the Office insofar as they are not contrary to or inconsistent with Regulations or resolutions of the Commission;
- (3) to perform any other activities as provided by law to be the powers and duties of the Secretary-General.

Section 39. In the performance of duties, the Secretary-General may authorise officials to act on the Secretary-General's behalf, in accordance with the Regulation prescribed by the Commission.

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The person authorised under paragraph one shall have the same powers and duties as those of the Secretary-General in respect of the matter to which the authorisation relates.

Section 40. In the case where there is no holder of the office of Secretary-General or there is such office holder who is unable to perform duties, the Commission shall appoint one Deputy Secretary-General as Acting Secretary-General. In the case where there is no Deputy Secretary-General or there are Deputy Secretary-Generals but Deputy Secretary-Generals are unable to perform duties, the Commission shall appoint one official of the Office as Acting Secretary-General.

The Acting Secretary-General under paragraph one shall have the same powers and duties as those of the Secretary-General.

Section 41. The Secretary-General shall not have any interest in juristic acts made with the Office or undertakings carried out for the Office whether directly or indirectly except the mere holding of shares, for investment in good faith in a limited company or public limited company which carries out the act involving such interest, not exceeding the limit prescribed in the Regulation of the Commission.

In the case where the ascendant, spouse, descendant or ascendant of the spouse of the Secretary-General carries out an act under paragraph one, it shall be deemed that the Secretary-General has interests under paragraph one.

Section 42. Any juristic act or undertaking made in a manner not in conformity with section 41 is not binding upon the Office.

Section 43. A person who vacates office of Secretary-General shall not hold any position in a limited company, public limited company or any other business entity that is a party to the proceedings of the Commission unless a period of not less than two years has elapsed since the vacation of office.

Section 44. Money and property in the operation of the Office consist of:

- (1) money and property transferred under section 91;
- (2) money paid by the Government as an inaugural fund;

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(3) general subsidies allocated by the Government;

(4) fees, remuneration, service charges or incomes from the operation of work;

(5) money or property donated or subsidies from foreign sources including international organisations, without any conditions or commitment which may affect the performance of work of the Commission or the Office;

(6) fruits or any benefits accruing on money or property of the Office.

Section 45. All incomes received by the Office from the operation of work in each year shall vest in the Office for funding such expenses incurred in its operation and such appropriate costs as maintenance costs and depreciation, remunerative benefits of the Commission and sub-committees and reserves for affairs of the Office or for other activities.

Incomes under paragraph one are not required to be remitted to the Treasury as State revenues.

In the case where incomes of the Office are insufficient for costs incurred in the efficient operation of the Office and appropriate costs and money cannot be obtained from other sources, the State shall allocate appropriations to the Office in a necessary amount in order to serve as general subsidies under section 44 (3).

Section 46. The Office shall expeditiously remit administrative fines under this Act to the Treasury as State revenues upon the lapse of a period of time for instituting an action or upon the finality of the decision of the Court, as the case may be.

Section 47. For the purpose of allocating appropriations to the Office under section 44 (3), the Office shall submit to the Council of Ministers appropriations for the budget year for which the request for support is made, for the purpose of setting aside general subsidies of the Office in the Annual Appropriation Bill or the Supplementary Appropriations Bill, as the case may be.

Section 48. Property of the Office shall not be subject to legal execution and a person shall not invoke a period of prescription as a defence against the Office in any matter involving property of the Office.

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Section 49. The Office shall prepare its financial statements and operational accounts for submission to the auditor within one hundred twenty days as from the end of the budget year.

In every budget year, the State Audit Office shall be the auditor and assessor of the disbursement of money and property of the Office. For this purpose, it shall analyse the effectiveness of the disbursement of money, provide an opinion as to the extent to which such disbursement has been carried out in accordance with the objects and met the goals and prepare a report thereon for submission to the Commission, the Council of Ministers and the National Assembly.

The Office shall be the audit reception unit under the organic law on State audit.

CHAPTER III

PREVENTION OF MONOPOLIES AND UNFAIR TRADE

Section 50. A business operator with a dominant position in a market shall not carry out any act in any of the following manners:

- (1) unreasonably fixing or maintaining purchasing or selling prices of goods or fees for services;
- (2) fixing conditions in an unfair manner requiring other business operators that are such business operator's trade partners to restrict services, production, purchase or distribution of goods or restrict opportunities in purchasing or selling goods, receiving or providing services or obtaining credit from other business operators;
- (3) suspending, reducing or restricting services, production, purchase, distribution, deliveries or importation into the Kingdom without reasonable justifiable reasons, or destroying or causing damage to goods, with a view to reducing the quantity at a point lower than the market demand;
- (4) intervening in the operation of business of other persons without justifiable reasons.

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Section 51. A business operator that carries out a business merger which may result in significant reduction of competition in any market in accordance with the rules prescribed in the Notification of the Commission shall notify the result of the business merger to the Commission within seven days as from the date of the business merger.

A business operator that intends to carry out a business merger which may result in a monopoly or a status as a business operator with a dominant position in a market shall obtain permission from the Commission.

The Notification under paragraph one shall also indicate the minimum amount or number of the market share, sales volume proceeds, capital, shares or assets.

A business merger 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 or management, in accordance with the rules prescribed in the Notification of the Commission;

(3) a purchase of the whole or part of shares of another business, whether directly or indirectly, with a view to controlling business administration policies, administration or management, in accordance with the rules prescribed in the Notification of the Commission.

The notification of a business merger under paragraph one and the application for permission as well as the granting of permission for a business merger under paragraph two shall be in accordance with the rules, procedures and conditions prescribed in the Notification of the Commission.

The provisions of paragraph one and paragraph two shall not apply to a business merger for the purpose of internal restructure of business operators that possess relationship through policies or the directorial power in accordance with the rules prescribed in the Notification of the Commission.

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Section 52. The Commission shall complete its consideration as to whether to grant permission under section 51 paragraph two within ninety days as from the date of receipt of the application and may, in the case of necessity preventing the completion of the consideration within the time limit, extend the time for a period not exceeding fifteen days, provided that reasons and necessity for the extension of time shall also be recorded in its consideration and decision.

The Commission shall, in considering whether to grant permission, have regard to reasonable necessity in the business, benefits to the promotion of the operation of business, inability to cause serious damage to the economy and inability to affect important legitimate interests of consumers in general.

In the case of issuing an order granting permission, the Commission may fix any period of time or conditions to be observed by the permitted business operator.

The Commission shall indicate, on both questions of law and questions of fact, reasons for issuing an order granting permission or refusing to grant permission and members taking part in the consideration shall enter their signature, and the provisions of section 61 paragraph two shall apply *mutatis mutandis*.

The business operator that is notified of the order of the Commission and disagrees with such order has the right to institute an action before the Administrative Court within sixty days as from the date of receipt of the notification of the order.

Section 53. A business operator permitted to carry out a business merger shall carry it out in accordance with the period of time and conditions required by the permission of the Commission.

In the case of violation of or failure to comply with paragraph one, the Commission shall have the power to revoke the permission order in whole or in part and, in this regard, may fix a period of time for the performance.

Section 54. Any business operator shall not, by acting in concert with other business operators competing in the same market, carry out any act amounting to a monopoly, reduction of competition or restriction of competition in that market in any of the following manners:

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(1) fixing purchasing prices or selling prices or any trade conditions, whether directly or indirectly, which affect prices of goods or services;

(2) restricting the volume of goods or services to be produced, purchased, distributed or provided by each business operator as agreed;

(3) fixing terms or conditions in a collusive manner with a view to enabling one party to win a bid or a tender for goods or services or with a view to preventing one party from participating in a bid or a tender for goods or services;

(4) fixing areas in which each business operator may distribute or reduce the distribution of or purchase goods or services or fixing purchasers or sellers to whom or from whom each business operator may distribute or purchase goods or services and requiring other business operators to refrain from purchasing or distributing or to purchase such goods or services.

The provisions of paragraph one shall not apply to conduct amongst business operators that possess relationship through policies or the directorial power in accordance with the rules prescribed in the Notification of the Commission.

Section 55. Any business operator shall not, by acting in concert with other business operators, carry out any act amounting to a monopoly, reduction of competition or restriction of competition in any market in any of the following manners:

(1) fixing conditions as indicated in section 54 (1), (2) or (4) amongst business operators that are not competitors in the same market;

(2) reducing the quality of goods or services to a level lower than that in the previous production, distribution or provision;

(3) 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;

(4) fixing conditions or practices with regard to the purchase or distribution of goods or the provision of services in order to secure performance as agreed;

(5) concluding mutual agreement in other manners as prescribed in the Notification of the Commission.

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Section 56. The provisions of section 55 shall not apply to the following cases:

(1) conduct amongst business operators that possess relationship through policies or the directorial power in accordance with the rules prescribed in the Notification of the Commission;

(2) mutual agreement in trade with a view to putting forth the development of the production or distribution of goods and the promotion of technical or economic advancements;

(3) mutual agreement in the form of a business model whereby business operators at different levels make a contract under which one party grants a licence for the use of rights in the goods or services, trademarks, business methods or business support and the other party becomes a licensee with the obligation to pay royalties or fees or give any other remuneration as indicated in the contract;

(4) agreed terms or business models of such descriptions as prescribed in the Ministerial Regulation with the advice of the Commission.

Mutual agreement under paragraph one (2) and (3) shall not create greater restrictions than necessary for the achievement of the aforesaid benefits and shall not result in monopolistic power or restrict competition in the market concerned materially, having regard also to impacts on consumers.

Section 57. A business operator shall not carry out any act which prejudices other business operators in any of the following manners:

(1) unfairly causing barriers to the operation of business of other business operators;

(2) unfairly exploiting superior market power or bargaining power;

(3) unfairly fixing trade conditions restricting or impeding the operation of business of other persons;

(4) carrying out an act of such other descriptions as prescribed in the Notification of the Commission.

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Section 58. A domestic business operator shall not, without reasonable justification, make with a foreign business operator a juristic act or contract which results in unfair monopolistic conduct or trade restriction and seriously affects the economy and benefits of consumers in general.

Section 59. For the purpose of facilitating the operation of business, a business operator may submit a request to the Commission for considering and deciding the following matters in advance:

- (1) the conduct of the business operator with a dominant position in a market under section 50;
- (2) the business operation of the descriptions under section 54, section 55, section 57 or section 58.

The submission of a request under paragraph one shall be in accordance with the rules and procedures prescribed in the Notification of the Commission.

In giving a decision following a request under paragraph one, the Commission may fix any conditions to be complied with by the business operator for the purpose of the execution of this Act.

A decision of the Commission shall be binding only upon the requester and in accordance with the scope and period of time fixed by the Commission. If it is subsequently apparent to the Commission that the information received from the requester and relied on in the consideration and decision of the Commission is materially incorrect or incomplete or the business operator that has submitted the request fails to comply with the conditions fixed by the Commission under paragraph three, the Commission shall revoke the decision and notify it to the business operator.

Section 60. In the case where the Commission has evidence justifying the belief that a business operator violates or will violate section 50, section 51 paragraph two, section 54, section 55, section 57 or section 58, the Commission shall have the power to order, in writing, the business operator to suspend, cease or rectify the act concerned, in accordance with the rules, procedures, conditions and period of time for the performance as prescribed by the Commission.

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In issuing an order under paragraph one, the Commission may prescribe any conditions to the extent necessary for the achievement of the purposes of this Act.

The business operator that is notified of the order under paragraph one and disagrees with such order has the right to institute an action before the Administrative Court within sixty days as from the date of receipt of the notification of the order.

Section 61. In issuing an order under section 60, the Commission shall indicate reasons therefor on both questions of fact and questions of law and members taking part in the consideration shall enter their signatures.

The notification of an order under paragraph one shall be given within seven days as from the date of the order of the Commission and the provisions of section 66 shall apply *mutatis mutandis*.

Section 62. The person who is notified of an order under section 60 shall comply with such order unless the Administrative Court renders judgment or issues an order requiring a stay of the execution of the order or revoking the order of the Commission.

CHAPTER IV

COMPETENT OFFICIALS

Section 63. In the execution of this Act, competent officials shall have the powers as follows:

(1) to demand, in writing, any person to give statements, notify facts or prepare written explanations or furnish accounts, registers, documents or any evidence, for examination or assisting consideration;

(2) to enter into places of business, places of production, places of distribution, places of purchase, places of storage of goods or place of services of business operators or any person or any other places reasonably suspected to involve violation of the provisions of this Act, for conducting inspection and ensuring the execution of this Act or for searching and seizing or

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attaching documents, accounts, registers or other evidence, for the purposes of examination and pursuing legal proceedings under this Act;

provided that, for these purposes, competent officials shall have the power to make factual enquiries or call accounts, registers, documents or other evidence from business operators or from persons concerned and also instruct such persons present at such places to take action to the extent necessary;

(3) to collect or take goods, in a reasonable quantity, as samples for examination or analytical tests without paying prices for such goods, in accordance with the rules prescribed in the Notification of the Commission.

In the case under (2), if the search amounts to a search under the Criminal Procedure Code, a warrant of search shall be required except that, where there is a reasonable cause to believe that a delay in obtaining a warrant of search will result in documents or evidence concerned being moved, concealed, destroyed or transformed, the search, seizure or attachment of documents or evidence connected with the commission of offences may be carried out without any warrant of search, provided that the Criminal Procedure Code on searching shall be complied with and no search shall be carried out in the night time unless it is the working hours of such place.

Section 64. In the performance of duties of competent officials, persons concerned shall render assistance as is reasonable.

Section 65. In the performance of duties, a competent official shall show an identification card to persons concerned.

The identification card shall be in accordance with the form prescribed in the Notification of the Commission.

Section 66. The provisions on the notification under the law on administrative procedures shall apply to the service of a written demand under section 63 (1) *mutatis mutandis*.

Section 67. In the performance of duties under this Act, competent officials shall be officials under the Penal Code.

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Section 68. In the performance of duties under this Act, competent officials shall have the same powers as those of administrative or police officials under the Criminal Procedure Code.

CHAPTER V

INSTITUTION OF ACTION FOR CLAIMING DAMAGES

Section 69. The person suffering damage on account of the violation of section 50, section 51 paragraph two, section 54, section 55, section 57 or section 58 shall have the right to institute an action for claiming damages from the violator.

In instituting an action for claiming damages under paragraph one, the Consumer Protection Board or an association or foundation accredited by the Consumer Protection Board under the law on consumer protection has the right to institute an action for claiming damages on behalf of consumers or members of the association or foundation, as the case may be.

Section 70. In instituting an action for claiming damages under section 69, if an action is not brought before the Court within one year as from the date on which the person suffering damage knew or should have known of the incidence, the right to bring an action before the Court shall lapse.

CHAPTER VI

PENALTIES

PART I

CRIMINAL PENALTIES

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Section 71. Any person who violates section 16 or section 43 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.

Section 72. Any person who violates section 50 or section 54 shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding ten percent of incomes in the year in which the offence is committed or to both.

In the case of the commission of the offence in the first year of the operation of business, the offender shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding one million Baht or to both.

Section 73. Any person who fails to comply with the written demand of the competent official under section 63 (1) 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 74. Any person who obstructs the performance of duties of the competent official under section 63 (2) or (3) 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 75. Any person who fails to render assistance to the competent official under section 64 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 76. Any person who discloses facts concerning the business or the operation of a business operator, being the facts which should be, in the usual course of dealings of the business operator, preserved and kept undisclosed and which such person has acquired or known on account of the execution of 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, except that it is the disclosure in the course of the performance of official service or for the purpose of the investigation, enquiries, legal proceedings, trial or the operation of the Office.

Any person who, having acquired or known any fact from the person under paragraph one, discloses such fact in a manner likely to prejudice any particular person shall be liable to the same penalty.

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Section 77. In the case where the offender is a juristic person, if the commission of the offence by such juristic person has resulted from the instruction or an action of a director or a manager or any person responsible for the operation of such juristic person or in the case where such person has the duty to give instructions or take action and refrains from giving instructions or taking action, thereby leading to the commission of the offence by such juristic person, such person shall also be liable to the penalty as provided for such offence.

Section 78. The injured person has the right to lodge a complaint in relation to the offence under section 72 to the Commission for consideration under this Act without right to institute a criminal action in such person's volition.

Section 79. All offences under this Act may be settled, by way of payment of a fine, by the Commission. In exercising such power, the Commission may entrust the Secretary-General to act on its behalf.

When the offender has made payment of the fine in such amount as required for the settlement within a specified period of time, the case shall be deemed to have been extinguished in accordance with the provisions of the Criminal Procedure Code.

The determination of the amount of a fine required for the settlement shall be in accordance with the rules, procedures and conditions prescribed in the Notification of the Commission.

PART II

ADMINISTRATIVE PENALTIES

Section 80. Any person who violates section 51 paragraph one shall be liable to an administrative fine at the rate not exceeding two hundred thousand Baht and to an additional fine at the rate not exceeding ten thousand Baht per day throughout the continuance of the violation.

Section 81. Any person who violates section 51 paragraph two or fails to comply with section 53 shall be liable to an administrative fine at the rate not exceeding zero point five percent of the value of the transaction involving the business merger.

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Section 82. Any person who violates section 55, section 57 or section 58 shall be liable to an administrative fine at the rate not exceeding ten percent of incomes in the year in which the offence is committed.

In the case of the commission of the offence in the first year of the operation of business, the offender shall be liable for an administrative fine at the rate not exceeding one million Baht.

Section 83. Any person who violates an order under section 60 shall be liable to an administrative fine at the rate not exceeding six million Baht and to an additional fine at the rate not exceeding three hundred thousand Baht per day throughout the continuance of the violation.

Section 84. In the case where the offender liable to an administrative fine is a juristic person, if the commission of the offence by such juristic person has resulted from the instruction or an action of a director or a manager or any person responsible for the operation of such juristic person or in the case where such person has the duty to give instructions or take action and refrains from giving instructions or taking action, thereby leading to the commission of the offence by such juristic person, such person shall also be liable to the penalty as provided for such offence.

Section 85. In considering the issuance of an order inflicting an administrative fine, the Commission shall have regard to the gravity of the circumstances in which the offence has been committed.

In the case where the person who is inflicted with an administrative fine does not agree to pay the administrative fine, the provisions on administrative execution under the law on administrative procedures shall apply *mutatis mutandis*, and in the case where no official is available for undertaking the execution of the order or where officials are available but unable to undertake administrative execution, the Commission shall have the power to institute an action before the Administrative Court for the enforcement of payment of the fine. For this purpose, if the Administrative Court is of the opinion that the order demanding payment of such fine is lawful, the Administrative Court shall have the competence to try the case and render judgment and demand the seizure or attachment of property for an auction sale for the purpose of payment of the fine.

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TRANSITORY PROVISIONS

Section 86. The Trade Competition Commission under the Trade Competition Act, B.E. 2542 (1999) holding office on the day prior to the date on which this Act comes into force shall continue to perform duties under this Act until the Trade Competition Commission is appointed under this Act. In this regard, the selection and appointment of members of the Trade Competition Commission under this Act shall be completed within two hundred seventy days as from the date on which this Act comes into force.

Section 87. The Director-General of the Department of Internal Trade shall perform the duties of Secretary-General until the Secretary-General is appointed under this Act. In this regard, the appointment of Secretary-General shall be completed within one hundred eighty days as from the date of the first appointment of the Trade Competition Commission.

Section 88. For the purpose of facilitating the efficient operation of the Office, the Minister may grant approval under which Government officials attached to the Ministry of Commerce are permitted to perform work in the Office temporarily on not more than two occasions of two years each and on the basis that they shall receive salaries from their original agencies.

Section 89. Subject to section 90, Government officials who perform official duties in the Office of the Trade Competition Commission under the Trade Competition Act, B.E. 2542 (1999) and hold office on the date of the expiration of the time under section 90 shall be Government officials of the Department of Internal Trade of the Ministry of Commerce and shall perform duties in the Office. In this regard, it shall be deemed that such performance of duties is the performance of official duties of the Department of Internal Trade of the Ministry of Commerce.

Government officials who perform duties in the Office under paragraph one shall receive salaries, wages and rights as well as benefits as originally received for the time being until they are recruited and appointed into positions in the Office, provided that no appointment shall be made to the effect of their receiving lower salaries or wages than those originally received.

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Section 90. Government officials under section 89 who voluntarily intend to be transformed into officials of the Office shall, in exercising their right, notify their intention in writing to their superiors within sixty days as from the date on which this Act comes into force. Persons who fail to notify their intention within such period of time shall perform duties in the Department of Internal Trade of the Ministry of Commerce.

The recruitment and appointment of Government officials voluntarily intending to be transformed into officials under paragraph one for holding any position in the Office shall be in accordance with the manpower scale, qualifications and rates of salaries or wages as prescribed by the Commission.

Budgets in the category of salaries and wages of Government officials of the Department of Internal Trade of the Ministry of Commerce, who are recruited and appointed as officials of the Office under paragraph two shall be transferred to the Office as from the date of their recruitment and appointment.

Government officials who are recruited and appointed following their voluntary intention to be transformed into officials under paragraph one shall be deemed to have left the Government service on account of the termination or dissolution of positions under the law on Government pensions and gratuities or the law on the Government Pensions Fund, as the case may be.

Section 91. All undertakings, property, rights, duties, obligations and budgets of the Department of Internal Trade of the Ministry of Commerce insofar as they are concerned with the work of the Office of the Trade Competition Commission within the Department of Internal Trade of the Ministry of Commerce shall be transferred to the Office.

Section 92. All Ministerial Regulations, Notifications, rules or Rules issued under the Trade Competition Act, B.E. 2542 (1999) as in force on the day prior to the date on which this Act comes into force shall continue to be in force insofar as they are not contrary to or inconsistent with this Act until Ministerial Regulations, Notifications or Rules issued under this Act come into force.

The issuance of Ministerial Regulations, Notifications or Rules under paragraph one shall be completed within three hundred sixty-five days as from the date on which this Act comes into force. If their completion cannot be achieved, the Minister shall report the reasons therefor to the Council of Ministers for information.

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Countersigned by:

General Prayut Chan-o-cha
Prime Minister

Office of the Council of State

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RATES OF FEES

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|---|-------------------|
| (1) Applications for a business merger under section 51 paragraph two | 250,000 Baht each |
| (2) Requests for a decision under section 59 | 50,000 Baht each |
| (3) Fees for making copies or for certification of copies of orders under section 52, decisions under section 59 or orders under section 60 | 100 Baht per page |

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