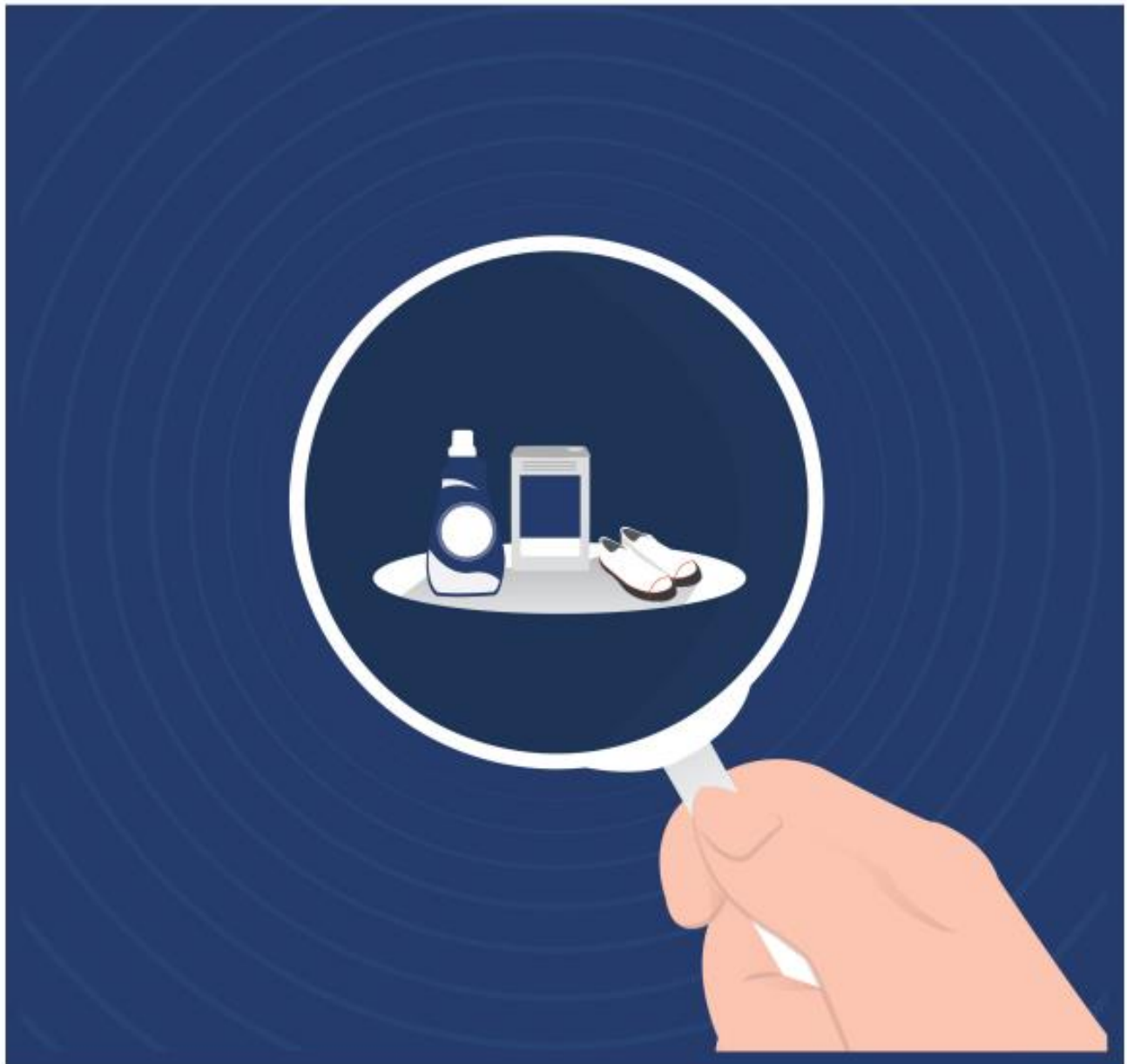


Article 2

Market and Market Share Analysis



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1. Introduction

Trade Competition Law aims to regulate business operations to maintain a free and fair market and contribute to optimal efficiency that positively impacts the overall development of business entities, consumers, and the economy. The main principle of the law aims at regulating all relevant conducts, which may hinder its objective. For example, conduct taken by a dominant business entity or that with monopoly power that can excessively impact the market, such as immediately cutting down the production quantity without any appropriate reason, leads to product scarcity and significant price increase. Such action may be concluded as a violation of the Trade Competition Law. However, the critical component in considering the core materials of the Trade Competition Law is the definition of the term “Market”, which must be analyzed before considering the prohibited acts imposed by the Trade Competition Act B.E. 2560 (2017). Conducting market analysis will provide a comprehension of the market structure, the barriers to entry, and some conducts that may be concluded as a violation of the Trade Competition Law. In this article, there will be three relevant words: *market*, *relevant markets*, and *market definition*, which all mean the same in the context of the Trade Competition Law.

2. What is market?

2.1 Differences between the term “Market” in a general context and the Trade Competition Law context

The term “Market” in the context of the Trade Competition Law differs significantly from that in general. A market in this context does not refer to particular places like a flea market, fresh market, or any other marketplaces consisting of several big and small shops selling various types of goods that are called market in the general context.

The term “Market” in the Trade Competition Law is based on that of economics, referring to market comprises of sellers and buyers of goods and services regardless of its physical, or any other appearances. For example, the automobile market, online goods or services market, etc.

2.2 Definition of “Market” by the Trade Competition Law

A market in the context of the Trade Competition Act focuses on the substitutability of goods or services in the market. According to section 5 of the Trade Competition Act B.E. 2560 (2017), the term is “Relevant market of goods or services which are of the same type or substitutable,” requiring regards on qualifications, prices, or purposes of usage of the goods or services, and the area where such goods are sold, or such services are provided. Such a definition aims to give the meaning of “Relevant market” to evaluate whether the Trade Competition Act regulates business operators’ conduct. The market only covers the conduct of business operators in the relevant market. We will discuss the relevant market and its business operators later.

3. What is the market definition?

The market definition refers to the analysis of facts regarding goods or services substitutability by considering the relevant product and geographic markets as defined in the Announcement of the Trade Competition Commission Subject: guideline for finding market definition and market share B.E. 2561 (2018). It can be considered from production, distribution, and consumers' demand. Mainly such substitutability is measured from consumers' perspectives.

4. How is market definition relevant to the enforcement of the Trade Competition Law?

Market Definition is market structure consideration. Knowing which business operators are in the market and the barriers to entry help analyze whether a business operator has committed the prohibited acts imposed by the Trade Competition Law. It can be taken into consideration for regulating the business operations to ensure that they comply with the law.

4.1 Abuse of Dominance in section 50

To consider whether business operators commit an abuse of dominant position under section 50, the Commission has to determine first a definition of the market. Market definition is necessary to consider whether such a business operator is in the dominant position or not. It is the primary analysis which is crucial to identifying a dominant position which may shine a spotlight on the business operators who can exercise market power to harm others, consumers or overall economy. It can also consider whether the abuse of a dominant position has been committed in violation of section 50 (1) to (4).

4.2 Merger Consideration in section 51

Concerning the term "Merger" under section 51, the vital issue needed to be considered is (1) what market the parties to the possible transaction are in and (2) such markets definition. The underlining purpose is to consider whether the merger will cause significant reduction of competition in any markets or may lead to a monopoly or dominant position or not.

4.3 Joint conducts undertaken by business operators which monopolize, reduce, or restrict competition in section 54 and 55

In considering what joint conducts undertaken by business operators which monopolize, reduce, or restrict competition is, it is necessary to consider whether there is an agreement, collusion, or contract among business operators in the same or different market. It is also essential to identify the impact of such joint agreement which monopolizes, reduces, or restricts the competition.

4.4 Unfair Trade Practices in section 57

In considering what conducts result in damage to other business operators or can be concluded as so-called “Unfair trade practices” in section 57. A position of the business operator who commits such conduct is needed to be taken into account. The analysis may include whether the entity is in a dominant position, owns market power or bargaining power in the market, or its conducts obstruct business operations or impose any unfair business provisions in the market or not.

5. Market Definition

Market definition is vital in regulating business practices in accordance with the Trade Competition Law, particularly when considering the abuse of a dominant position in section 50. To define the market in this context, the Commission has to consider the demand and supply substitutability and the potential competition of goods and services.

The market in the context of the Trade Competition Law can be classified into two types: 1) Product market and 2) Geographic market.

5.1 Product and Service Market

5.1.1. The relevant product market is substitutable. It can be considered in the following aspects.

- **Demand** can be considered from consumers’ perspectives on qualifications, prices, or purpose of use of the product. For example, whether chicken egg and duck egg are in the same market or not can be considered from their price changes. If price change in one product affects the buyers’ purchase decision to buy another, then they are in the same market. For instance, if a chicken egg’s price is higher, about 5-10%, and consumers change from buying it to buy duck egg instead. That means a chicken egg and duck egg are in the same market. Other examples are soap bar and liquid soap, washing powder and washing liquid, etc. Regarding price change, consumers may consider other substitutable products that are sold in the market with similar price and quality as well.

- **Supply** can be considered from manufacturers’ production, qualifications of the products, their ability to change from producing one type of product to another with low cost of adjusting, and price levels. For example, in case of plumbing products and electrical conduits, a manufacturer may change from producing plumbing products to provide electrical conduits instead if electrical conduits’ price gets higher. Such a change in prices urges a manufacturer to alter his production because the forms and structures of manufacturing are similar, and the adjustment cost is low.

- **Potential Competition** involves considering particular factors or situations which may affect the conditions of entry in the relevant market and can influence the level of competition in such a market. In other words, it is assessing how difficult for the new business operators to enter the market by considering the potential of having new business operators come into the market. For instance, an innovative development of

elective cars expected to substitute for fuel cell cars in the future, and an electricity from renewable energy, solar and wind power, being substitutable, it may also affect to Electricity Generating Authority of Thailand.

5.1.2 Relevant Services Market is substitutable.

- **Demand** can be considered from consumers' perspectives on qualifications, prices, or purpose of use of the services. For example, whether fast train service and airline service are in the same market or not can be considered from their price changes. If price change in one service affects the buyers' purchase decision to buy another, then they are in the same market. For example, if a train ticket's price is higher by 5-10%, and consumers change from buying it to buy air ticket instead. That means fast train and airline are in the same market.

- **Supply** can be considered from manufacturers' services, qualifications of the services, their ability to change from delivering one type of service to another with low cost of adjusting, and price levels. For example, a motorcycle taxi works as taxi and offers food at the same time because the motorcycle taxi sees that food delivery provides a higher return. In contrast, the cost of delivering food is not much different from that of sending passengers.

- **Potential Competition** involves considering particular factors or situations which may affect the conditions of entry in the relevant market and can influence the level of competition in such a market. For example, online services business platform's users often choose to buy services which are familiar and well-known in general. These platforms are consisting of a large number of buyers and sellers, providing various kind of products and buying promotions, e.g. Lazada and Shopee which can affect other potential online business platforms who wish to enter the market.

5.2 Relevant Geographic Market

Relevant Geographic Market is needed to be considered after considering product and service market. It refers to the place where substitutable goods and services are sold with the same competing conditions.

- **Demand** when consumers consider the substitutability of goods and services in the same market, if there is a higher price in one place, they can buy goods and services from another location for substitution, with other things taken into consideration such as cost of delivering and the product durability.

Example 1: If there is a higher price of constructing materials in Bangkok, a contractor who is responsible for constructing housing estate may order constructing materials from other business operators from nearby provinces who sell the product with a similar price when cost and time of delivering meet his demand.

Example 2: Products which are in the same market may be sold in a different place. For instance, ice sold in Ubon Ratchathani and that in Chiang Mai. In that case, although the qualifications of the product might be the same, consumers in one province cannot buy a product from another due to the physical condition of ice which melts quickly and is unstable. If ice is delivered from Chiang Mai to Ubon Ratchathani, in a great long-distance, the cost of delivery will be extremely high; therefore, it cannot compete with ice in Ubon Ratchathani. It can be concluded that ices from these two provinces are not in the same market.

- **Supply** is a consideration taken by goods and services manufacturers who can tell, after taken cost and risk into account, that delivering a product for sale or competition in other areas will be more profitable. For example, an electrical conduit seller in Ang Thong can send his product to Suphan Buri for sale because that in Suphan Buri is at a higher price, motivating sellers from other places to compete.

- **Potential Competition** involves considering how difficult for a business operator from one place to enter another place. Considering factors, for example, are whether there are any barriers to entry, too high of delivering cost, or any other restrictions on cross-area delivery or not.

For instance, when the government imposes the area for pig sale, retail sellers in that area cannot bring pig from other regions to sell there. It can be concluded as one of the barriers to entry.

If there are several barriers to entry, it means that the capacity to extend the market is limited considering the present situation. On the contrary, if there are only a few barriers to entry, it means that the potential market can be more extensive than that in the present.

6. What is Market share?

Market share is the instrument used to measure the scale of business operators in the market. The Trade Competition Act B.E. 2560 (2017) and relevant the Announcements of the Trade Competition Commission state that market share must be in percentage. The amount of turnover, sales volume, productions, or production capacity in the market are possible alternatives for market share's calculation.

For example, in one market, there are 4 business operators with a total turnover 100,000 units which are:

- Business operator 1 with the turnover 44,000 units accounting for 44%
- Business operator 2 with the turnover 28,000 units accounting for 28%
- Business operator 3 with the turnover 18,000 units accounting for 18%
- Business operator 4 with the turnover 10,000 units accounting for 10%

This diagram shows the numbers of Market share and business operators in the market.

7. Importance of Market share and the application in the Trade Competition Law

Market share is an essential factor for indicating a dominant position or monopoly. It can also be used to calculate the market concentration, which helps to decide the complaints on conducts regarding trade competition and merger.

8. Summary

Market analysis is crucial in practically enforcing the law. The market definition can be considered in 2 aspects: products and services market and geographic market employing considering substitutability of goods and services, and place in the context of demand, supply, and potential competition.

The market definition will lead to the market share consideration, which can indicate a dominant position or monopoly, or the market concentration later on.