

**The Trade Competition Commission Notice on
Guidelines for the Assessment of Collective Practices by Undertakings that are
Monopolization, Competition Reduction, or Competition Restriction in Market
B.E. 2561 (2018)**

Section 54 and Section 55 of the Trade Competition Act B.E. 2560 (2017) prohibit any undertaking to enter into an agreement with any other undertakings to conduct a practice that monopolizing, reducing competition, or limiting competition by defining natures of prohibited practices. Moreover, the last paragraph of Section 54 and Section 56 of the Act define the exemption for some practices.

By the virtue under Section 17 (3) of the Trade Competition Act B.E. 2560 and for the purposes of clearly and consistently assessing any practices in violation of Section 54 and Section 55 of the Act, as well as the exemption of such violation as per the last paragraph of Section 54 and Section 56, the Trade Competition Commission issues Notice detailed as follows:

1. This Notice is called “Guidelines for the Assessment of Collective Practices by Undertakings that are Monopolization, Competition Reduction, or Competition Restriction in Market.”

2. This Notice shall be effective on the following day after the day that this Notice being published in the Government Gazette onwards.

3. In this Notice,

“Monopoly” means an undertaking with no competition in a certain market having a power to independently determine its price and quantity of its product or service.

4. The Chairperson of the Trade Competition Commission shall be in charge of this Notice.

Chapter 1
General Provisions

5. To assess a collective action of undertakings under provision of Section 54 and 55, one of the followings shall be considered:

(1) an agreement that is legally enforceable and non-binding in which may be written or verbal; such agreement may be resulted from a meeting or consultation among undertakings, exchanges of documents, telephone communications or any other means;

(2) a decision made by an association or undertakings that get together in which is a resolution, such as rules, suggestions, recommendations, board's resolution, resolution from general meeting;

(3) a collective action without specific agreement or the decision-making without apparent evidence in which factual information on any concern of undertaking to behave collectively shall be assessed.

6. To assess an action that reduces competition, declining competition in a market shall be considered; such as a decreasing number of competitors, and decreasing quantity of a product or service in the market; the assessment shall be applied to an undertaking with a market share of 10 percent or more.

7. To assess an action that restricts competition, the competition that has been restricted in a particular market shall be considered; for instance, a certain competitor has been subject to restricted right or opportunity to sell a physical product or a service in a market, or to compete with one another in a market; the assessment shall be applied to an undertaking with a market share of 10 percent or more.

Chapter 2

Collective Actions that Substantially Harm Competition

Part 1

Action as an Offence under Section 54

8. A collective action by undertakings in a market shall be considered as the violation of Section 54 if it constitutes one or more of the following characteristics:

(1) Fixing price or setting any trading condition, directly or indirectly, affecting the price of a product or service which has one or more of the following characteristics:

(a) Fixing a buying or selling price of a product or service in a market; such as controlling a single price or a collective price range or a collective price movement, and determining a price range or an-agreed percentage of price change that each undertaking may increase or decrease;

(b) Imposing a trading condition, directly or indirectly, that affects the price of a product or service in the market; such as discount, fees including freight charge, additional service, payment terms and conditions, conditions for warranty.

(2) Limiting the quantity of a product or service that each undertaking produces, purchases, distributes, or provides (Quantity Limitation) with one of the following characteristics:

(a) Determining quantity produced, purchased, distributed, or service provided for each undertaking;

(b) Determining a proportion of production, purchase, distribution, or service providing for each undertaking;

(c) Allocating quotas in production, purchase, distribution, or service providing for each undertaking;

(3) Bid rigging whereby undertakings are mutually agreed before or impose coordinated conditions to allow a particular undertaking to win an auction or price competition in a procurement for a product or service or to block a particular undertaking to participate in such auction or price competition in a procurement for a product or service, with the following features:

(a) Auction or Price Competition in procurement for a product or service and

(b) Determination of any agreement or condition(s) that have one or more of the following objectives:

1) to enable a particular undertaking to win the auction or the price competition for that product or service;

2) to block any undertaking(s) to participate in the auction or the price competition for that product or service;

(4) Allocating each geographical area whereby each undertaking is able to sell or to limit sale or buy a product/ service, or partitioning market by purchaser or seller allocation for each undertaking with the condition that no other undertaking as agreed before to buy or to distribute that product or service in which having one or more of the following characteristics:

(a) Determination of a geographical area for each undertaking to distribute, to reduce distribution, or to buy a product or service in that respective area;

(b) Identifying a trading party including buyers or sellers that each undertaking can engage in the distribution or purchase of a product or service and other undertakings agreed not to buy or to sell such product or service.

Part 2

Exception of an Offence under Section 54

9. A collective action by undertakings under common policy relations or common controlling interests, pursuant to the Trade Competition Commission Note on The Trade Competition Commission Notice on Rules for the Assessment of Undertakings under Common Policy Relations or Common Controlling Interests B.E. 2561 (2018), shall not be considered as an offence under Section 54.

Chapter 3

Collective Actions that Harm Competition

Part 1

Action as an Offence under Section 55

10. A collective action by undertakings in a market shall be considered as the violation of Section 55 if it constitutes one or more of the following characteristics:

(1) A collective action as in 8 (1), (2), or (4) between undertakings that are not competitors in the same market in which shall be assessed as described in 8;

(2) Reducing quality of a product or service to a condition lower than that previously produced, sold, or provided by considering quality reduction in a product or service in a market of each undertaking to a condition lower than that produced, sold, or provided where each undertaking may have differences in quality reduction of its product or service ;

(3) Appointing or authorizing any person as a exclusive dealer to sell an identical product/ service or the same type of it with the following characteristics:

(a) an appointment or authorization may be in writing or in other forms;

(b) an appointed or authorized person may be a person or a juristic person;

(c) such person that is appointed or authorized to be the exclusive dealer is a competitor in the same market or equivalent market;

(4) Imposing condition(s) or procedure(s) on buying or selling a product or service such that undertakings in the market have to comply with the following characteristics:

(a) Determining a condition(s) or procedure(s) for each undertaking to comply in which it may be in writing or in other forms;

(b) Being such condition(s) or procedure(s) related to buying or selling a product or service in the market.

Part 2

Exception of an Offence under Section 55

11. A collective action by undertakings as follows shall not be considered as the violation of Section 55:

(1) A collective action by undertakings under common policy relations or common controlling interests, pursuant to the Trade Competition Commission Notice on The Trade Competition Commission Notice on Rules for the Assessment of Undertakings under Common Policy Relations or Common Controlling Interests B.E. 2561 (2018);

(2) A joint agreement for a purpose(s) of development in production, distribution, and the promotion of technical or economic advancement;

(3) A joint agreement in a business pattern binding by a contract between undertakings of different parts-in business process whereby one party is a right holder in a product or service, trademark, or business or business-support operation and another party has been licensed to use such rights in exchange for remuneration, fees, and other compensations as agreed in the contract; such as a franchise agreement or authorized dealer.

12. A collective agreement in 11 (2) and (3) shall have the following characteristics:

(1) Not imposing any restriction(s) beyond necessity in achieving the purposes determined in the contract as described in 11 (2) and (3); benefits from the purposes of this exception shall be proportionate to the adverse consequences by restricting competition in the market;

(2) Not creating a monopoly power or significant competition restriction in the market whereby a collective action subject to these exceptions shall not institute a monopoly or undertakings in question shall not have a combined market share of less than 10 percent;

(3) Concern about consequences for consumers in terms of price, quality, quantity, and alternatives of that product or service.

This Notice is announced on 4 October B.E. 2561 (2018)

Sondhirat Sondhijirawong

Minister of Commerce acting as the Chairperson of
The Trade Competition Commission