

(Translation)

**Outcome of Decision of Trade Competition Commission
In case of the Subscription of Public Company**

	Mr. XX	the Complainant
Between		
	X Company	the Respondent

Complaint

The complainant made a complaint online on March 27, 2019. The summarize that the respondent is a public company and a listed company, in the stock exchange, engages in the business of marketing and advertising by expanding the advertising media network into many areas. The respondent engages an important business out of home media, such as mass transit media, outdoor advertising media, advertising media in office buildings, and advertising media in the airport etc. In addition, the respondent invested in other advertising media companies. The respondent subscribes for shares of the company XX which is a listed company in the stock exchange, and also engaged business in an advertising media at the price of XXXX. Causing the respondent has 18.60 percent of the company's shareholding and has a market shares in out of home more than 70 percent.

Facts

According to the facts which obtained from the fact-finding and evidence gathering by General Fact-Finding Division of the Office of the Trade Competition Commission, the respondent is a public limited company that registered in the Stock Exchange of Thailand, engages in marketing and advertising, aim at out of home media which is covered by (A) Advertising media in public transportation (BTS sky train project and sky train line extension project) which is divided into 2 main types are multimedia and static and (B) Advertising media in office buildings and residences. In addition, the respondent's subsidiary company and joint venture company are the company XX, in which the respondent held 31.65 percent of shareholding. They engage important outdoor advertising businesses which are billboards, digital billboards, and street furniture. (The pier areas below the BTS sky train station and the pier major intersection bridges) The company XX, in which the respondent held 30 percent of shareholding, is engaged in the advertising media business in Thailand's major airports. Including, Suvarnabhumi airport and Don Mueang airport and advertising media on an airplane.

/ The company...

The company XX is a listed company in the Stock Exchange of Thailand, which engages in out-of-home media and has a network covering both in-country and ASEAN region and aims at media management that is completely effective, able to meet the needs of all brands and products, and provides consulting services marketing plan. An invention of interesting content in the presentation of the main advertising media, including transit media, which focuses on an external and internal advertisement of air-conditioning buses, classic media, dynamic media, mall media, in-store media, airport media, and online media.

On March 26, 2019, the meeting of the respondent's board of directors 4th/2019 has approved the investment in the company XX as follows:

1. Subscription for new ordinary shares of the company XX in the amount of XXX, XXX, XXX shares, equivalent to 9.09 percent of the total shares sold after the issuance and the offering of the newly issued ordinary shares in this transaction of the company XX at the price of each share X.XX bath that total amount X, XXX, XXX, XXX.XX bath.

2. Subscription of the XX Company's existing shares in the amount of XXX,XXX,XXX shares, which the existing shareholders group, consisting of 4 persons as follows:

- (1) The company XX in the amount of XXX,XXX,XXX shares
- (2) The company XX in the amount of XX,XXX,XXX shares
- (3) Mr. XX in the amount of XXX,XXX,XXX shares
- (4) The company XX in the amount XX,XXX,XXX shares

After, the respondent held shares in the company XX. The respondent will send a representative to be a director of the company XX in any way.

In addition, the respondent invested in the company XX and entered into a business collaboration agreement with the Company XX by defining the collaborative framework of outdoor media business, both currently and in the future. As follows:

- (1) Collaboration to discuss a solution, expertise is taken by each advertising media business department and other businesses that each company has the expertise which collaborates to develop outdoor media businesses to reach the target group correctly and measurable. (2) Collaboration to discuss a solution that joints sourcing and manages advertising media which increase the quality of faster service and more efficient. In addition, collaboration manages resources, saving better economies scale and helps reduce complex costs between them. (3) Collaboration to discuss a solution marketing plan such as cross selling advertising media to customers and/or buying and selling advertising media between them. In addition, collaboration may present advertising media under the selling packages together that the presentation's outdoor media has many comprehensive and complete.

/The respondent...

The respondent disclosed information, which acquired assets to the president of the Stock Exchange of Thailand that the corporation between the respondent and the company XX will provide significant benefits to the respondent as follows: (1) Helping increase access to outdoor advertising media network, which will increase the opportunity and ability to sell advertising media to the respondent. This will result in the respondent's business profit growing continuously. In addition, the respondent received supporting income from the XX Company's share profit. (2) Both companies do joint expertise and experience out-of-home advertising media business, which will increase the opportunity to develop new advertising media production together. They will support the claimant's leadership, service offline to online marketing solutions in order to provide the most customers with target needs. (3) Using the systems and the technologies' collaboration will help to economies of scale, which will result in the respondent reduce operational costs. Especially, the Selling, General and Administrative Expense, which will result in the respondent's overall more efficient performance and provides better benefit to the respondent's shareholders.

The company XX sent a letter dated March 26, 2019, to the president of the stock exchange of Thailand. The company XX has rational to a collaborative business agreement with the respondent that will take advantage of the company XX as follows: (1) Collaboration to discuss a solution, expertise is taken by each advertising media business department and other businesses that each company has the expertise which collaborates to develop outdoor media businesses to reach the target group correctly and measurable. (2) Collaboration to discuss a solution that joints sourcing and manages advertising media, which increase the quality of faster service and more efficient. In addition, collaboration manages resources, saving better economies scale and helps reduce complex costs between them. (3) Collaboration to discuss a solution marketing plan such as cross selling advertising media to customers and/or buying and selling advertising media between them. In addition, collaboration may present advertising media under the selling packages together that the presentation's outdoor media has many comprehensive and complete.

The company XX will reduce costs and will make a profit because of collaboration. In addition, Business collaboration does not the restriction of rights and liberties of the company XX and the respondent who do business operations, including the company XX and the respondent, who own subsidiary companies, do not the restriction of rights and liberties, and they will take a good opportunity for a new business.

After the company xx and the respondent did business collaboration, they have focused on proficiency and expertise to their main business. The company XX has the policy to operate governance of conflict of interest in additional "Charter of the Board of Directors" to prevent a conflict of interest. This policy stipulates the persons, who will be directors of the company,

/must not be...

must not be directors and/or administrators of a company that trade competition with the company and the directors who may be beneficiaries in the company's transaction or business planning (including, the directors who are representative of the respondent) cannot attend the meeting and make any decision. Including, they will not be disclosed any information. Therefore, the directors, who are not beneficiaries, decide on in transaction or business planning.

Issues of Decision

In this case, there are the issues of decision as follows:

It is whether or not the respondent subscribes to the newly issued shares of the company in the amount of XXX shares, representing 9.09 percent of total shares sold, and subscription of the existing shares from the group of 4 existing shareholders representing 9.50 present of the total shares sold, which any business operator conducting a merger which may substantially reduce competition in one or other markets, must be approved by the trade competition commission under section 51 of the Trade Competition Act, B.E. 2560 (2017).

Decision

The Trade Competition Act, B.E. 2560 (2017), Section 51 paragraph 1 provide that any business operator conducting a merger which may substantially reduce competition in a market under the criteria prescribed in the Commission's notification shall notify the outcome of such merger to the Commission within 7 days from the date of merging. Paragraph 2 provide that any business operator planning to conduct a merger which may cause a monopoly or result in a dominant position in a market, shall seek permission from the Commission. Paragraph 4 provide that a merger under paragraph (3) acquisition of all or part of the stocks of the other business, whether directly or indirectly, in order to control policy, business administration, direction, or management in accordance with the criteria prescribed in the Commission's notification and The Announcements of Trade Competition Commission, subject Criteria for Acquisition of Assets or Stocks, to Control of Business Administration Policy, or managing business consolidation B.E. 2561 dated October 4, 2018 Article 4 provide that subscription of company's shares directly or indirectly with any of the following: Subscription of all or part of the business in order to control business management policies or management, and merger under the Trade Competition Act. (1) Subscription or acquisition of stock warrant or securities warrant, which convertible security will buy stocks at the end of any day, increases or exceeds 25 percent of the total rights voters of other businesses under of the Securities and Exchange Act.

/The Trade...

The Trade Competition Commission has considered that, the fact has been obtained, the respondent is a listed of company in the Stock Exchange of Thailand. The respondent subscribed of the company's shares, which is a listed of company in the Stock Exchange of Thailand. The commission made a decision, the respondent subscribed of the XX company's shares, which bought assets or stocks, to control business management, service policies, or business consolidation management to the announcements of the Trade Competition Commission, subject Criteria for Acquisition of Assets or Stocks, to Control of Business Administration Policy, or managing business consolidation B.E. 2561 dated October 4, 2018 Article 4 (1).

Announcements of Trade Competition Commission Subscription or acquisition of stock warrant or securities warrant, which convertible security will buy stocks at the end of any day, increases or exceeds 25 percent of the total rights voters of other businesses under of the Securities and Exchange Act.

The fact that the respondent subscribes to the newly issued shares of the company in the amount of XXX shares, representing 9.09 percent of total shares sold, and subscription of the existing shares from the group of 4 existing shareholders representing 9.50 present of the total shares sold and existing shares of the XX company's shareholders. The respondent totally holds the XX Company's shares amount of XXX shares, representing 18.95 percent of the total shares sold. Therefore, this is not considered that the respondent who bought the shares at the end of any day, increases or exceeds 25 percent of the total rights voters of the XX Company. The action of the respondent does not a merger any business operator conducting a merger which may substantially reduce competition in a market under the criteria prescribed in the Commission's notification shall notify the outcome of such merger to the Commission within 7 days from the date of merging and this is not considered any business operator planning to conduct a merger which may cause a monopoly or result in a dominant position in a market, shall seek permission from the Commission under section 51 of the Trade Competition Act, B.E. 2560 (2017).

Resolution of the Trade Competition Commission

The Trade Competition Commission passes a unanimous resolution that the acts of the Respondent were not deemed to be those violating Section 51 of the Trade Competition Act, B.E. 2560 (2017) as coupled with the Notification of the Trade Competition Commission regarding Announcements of Trade Competition Commission, subject Criteria for Acquisition of Assets or Stocks, to Control of Business Administration Policy, or managing business consolidation B.E. 2561 dated October 4, 2018 Article 4 (1).

The case is dismissed. The Complainant will further be informed of the resolution.

Trade Competition Commission
May 2, 2019