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Merger Control 2025

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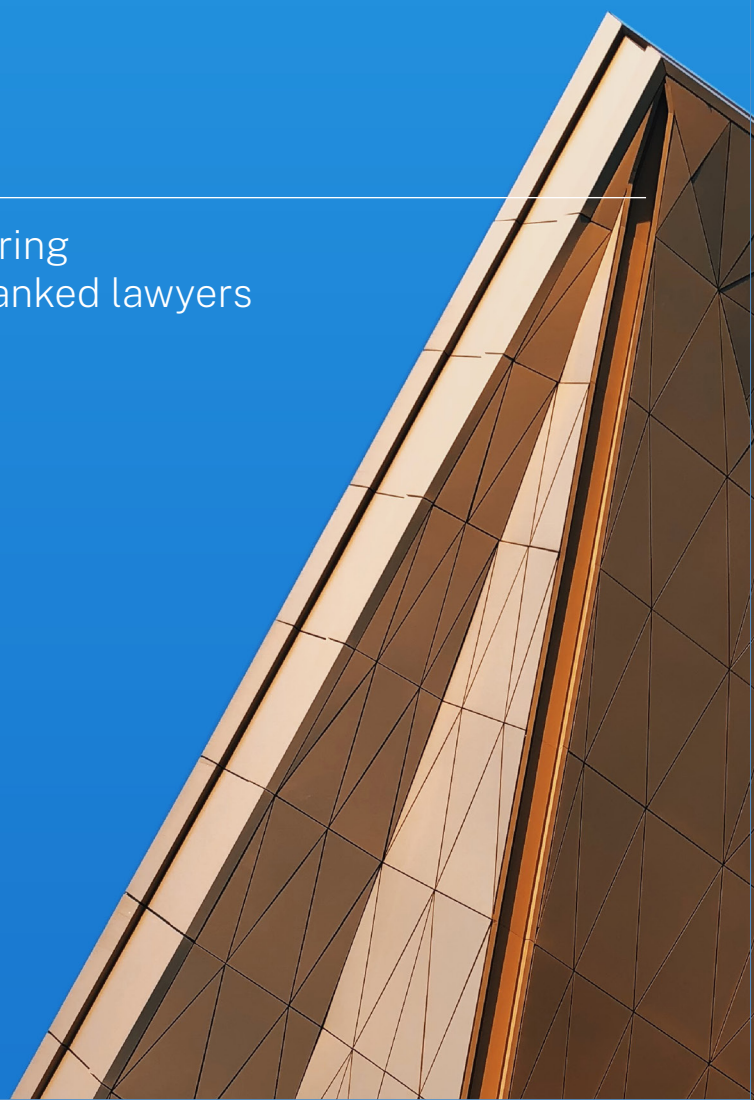

Thailand: Law & Practice

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THAILAND

Law and Practice

Contributed by:
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Chandler Mori Hamada Limited

Contents

Chandler Mori Hamada Limited is one of the largest and oldest full-service law firms in Thailand, with over 100 lawyers covering all areas of law. It has a dedicated team with extensive experience advising on antitrust and trade competition matters. Its experience covers the full spectrum of the applicable regulations, including abuse of dominance, general misconduct, severe and non-severe cartels, merger control and offshore arrangements. The Chandler Mori Hamada team offers the full spectrum of professional services within the realm of antitrust and trade competition law, including internal audits of business units to identify gaps, creation and revision of internal manuals for employees to prevent inadvertent breaches, merger control review and filing, internal training and workshops, general advice, revision of contracts for compliance while ensuring retention of commercial advantages and original desired positions, defence against allegations by counterparties and advice on investigations by the Office of Trade Competition Commission.

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1. Legislation and Enforcing Authorities

1.1 Merger Control Legislation

Merger control in Thailand is primarily governed by Section 51 of the Trade Competition Act, B.E. 2560 (2017) (the "Act"). This provision establishes the framework for assessing filing requirements for mergers and acquisitions to prevent severely anti-competitive transactions that could harm the market or consumer welfare. The Act is supplemented by various pieces of subordinate legislation, including announcements, guidelines and case precedents issued by the Trade Competition Commission of Thailand (TCCT), which serves as the regulatory authority responsible for enforcing the Act's provisions.

In reviewing merger cases, the TCCT conducts a detailed analysis to ensure compliance with the Act, considering factors such as market concentration, potential barriers to entry and the overall impact on competition. To enhance its decision-making process, the TCCT often looks to internationally recognised precedents from other major jurisdictions, drawing insights from established practices in global competition law. This comparative approach enables the TCCT to align its regulatory standards with international norms, promoting a fair and competitive market environment in Thailand.

1.2 Legislation Relating to Particular Sectors

There are a few specific provisions regarding merger control that exist within other industries, such as telecommunications and energy, that technically may be used in place of (but practically alongside with) the merger control provisions of the Act. Merger control for all other industries is governed by the Act.

In general, other areas of trade competition (misconduct, cartels, etc) are also solely governed by the Act.

1.3 Enforcement Authorities

While the TCCT is the primary regulator, it may ask other regulators for opinions during any process.

2. Jurisdiction

2.1 Notification

If the prospective merger transaction is deemed reportable under the Act (whether requiring pre-merger approval or a post-merger notification), it must be filed with the TCCT on a mandatory basis. Business operators are responsible for determining whether their transaction is reportable.

2.2 Failure to Notify

If a transaction requires approval and the parties breach this requirement, the parties can be fined up to 0.5% of the transaction value, and in theory the transaction may be unwound, although this has never been enforced before. If a transaction requires post-merger notification and the parties breach this requirement, they can be fined up to THB200,000 (approximately USD6,120 or EUR5,380 as of 7 May 2025) plus THB10,000 per day (approximately USD310 or EUR270 as of 7 May 2025) during the time such breach is ongoing. Directors and other natural persons responsible for such breach may also be fined alongside the juristic parties.

Please note that the TCCT has almost always imposed fines on both the juristic parties and their responsible natural persons.

2.3 Types of Transactions

A merger under the Act is defined as corporate amalgamation, acquisition reaching or passing 25% of voting rights in any Thailand-listed company, acquisition of more than 50% of voting rights in any other type of company, or acquisition of more than 50% of operating assets.

Under the merger control scheme, parties are required to make specific filings based on the anticipated impact of the transaction on market dynamics. If a merger is expected to create or strengthen a dominant player position, or involves the acquisition of an existing dominant entity, the parties must submit a pre-merger approval filing. This process allows the authority to assess potential anti-competitive effects before the transaction is approved.

Conversely, if the merger is projected to substantially reduce competition without establishing new dominance or enhancing any existing dominance, the acquiring or resulting entity is obligated to complete a post-merger notification filing. This filing must be made after the transaction has been executed, enabling authorities to monitor and address any competitive concerns that may arise from the merger's completion.

Notably, internal reorganisations, which typically do not affect external market competition, are exempt from these filing requirements.

A dominant player is defined as any business operator:

- with at least 50% of market share and THB1 billion (approximately USD31 million or EUR27 million as of 7 May 2025) in annual sales for any market (normally the domestic market); or
- a top-three operator with combined 75% of market share and by itself having THB1 billion in annual sales and at least 10% of market share for any market (normally the domestic market). Substantial reduction of competition is defined as having THB1 billion in annual sales for any market (normally the domestic market.)

2.4 Definition of "Control"

See the firms paragraph in **2.3 Types of Transactions** for the thresholds of changes that trigger

merger filing. See **2.7 Business/Corporate Entities Relevant for the Calculation of Jurisdictional Thresholds** for corporate linkage (control) that mandates group calculation.

2.5 Jurisdictional Thresholds

There are two main thresholds when it comes to a merger control test: the control threshold and sales threshold in the relevant market. Both of these could impact market competition. See **2.3 Types of Transactions** for further details.

2.6 Calculations of Jurisdictional Thresholds

See **2.3 Types of Transactions**. Normally, market share is viewed through sales (volume or currency), but can also be viewed through production volume and production capacity. Normally, sales and market share calculations are done at the domestic level, but there are cases of exceptions where the geographical area is smaller (such as for products with special characteristics, like ice) or larger than domestic (such as for products that may cross borders more easily), although in such cases the parties may also have to provide domestic-market analysis.

2.7 Businesses/Corporate Entities Relevant for the Calculation of Jurisdictional Thresholds

First, control is defined as possessing a majority of voting rights or the ability to exert vote control across multiple levels, or the authority to appoint at least half of the directors at one level.

For the purpose of calculating thresholds in merger control, sales and market share figures are assessed on a group-wide basis. This encompasses all entities within the corporate group that fall under the control of the ultimate controlling entity. When evaluating a merger transaction, the combined sales and market shares of both parties involved are scrutinised collectively. This comprehensive approach ensures that the transaction's potential impact on market dynamics is accurately assessed, taking into account the full scope and extent of the corporate entities involved.

Changes in the business during the reference period, such as acquisitions, divestments or business closures, should be accounted for in the calculation to reflect a true representation of the current market position.

2.8 Foreign-to-Foreign Transactions

Under the current interpretation of the Act, foreign-to-foreign transactions are subject to merger control only if both groups involved have a corporate presence in Thailand and generate local sales or exert a local effect. A corporate presence in Thailand can be established either directly, through physical operations such as a factory, trade office or branch, or indirectly, via a subsidiary or affiliate operating business within Thailand.

Having a corporate presence in Thailand is only the first step in the assessment, and the parties will also have to meet the thresholds for market share and sales volume.

2.9 Market Share Jurisdictional Threshold

See **2.3 Types of Transactions** for market share information. Even if there is no overlap in any particular market, a filing may be required if the sales threshold and/or the market share threshold are met.

2.10 Joint Ventures

A joint venture by way of a new incorporation is not technically subject to the merger control provision of the Act. However, if the process of

setting up such joint venture touches upon asset transfer or share acquisition, then the merger filing requirement may be triggered.

2.11 Power of Authorities to Investigate a Transaction

Under the TCA, the TCCT has broad discretion to investigate transactions, including those that do not meet the jurisdictional thresholds. The TCCT can request documents, conduct interviews and impose fines or take other actions as it deems necessary. This authority extends to transactions that fall below the established thresholds, should the TCCT wish to examine the details or assess potential competitive impacts.

Importantly, there is no statute of limitations restricting the TCCT's ability to investigate a transaction. The TCCT retains the right to revisit and scrutinise a transaction at any time, including post-closing, to ensure compliance with competition law. Despite this expansive authority, there are no public records or announcements indicating that the TCCT has exercised this power to "call in" a transaction that clearly did not meet the thresholds.

2.12 Requirement for Clearance Before Implementation

If the transaction requires pre-merger approval, then the merger cannot take place until approval is granted.

2.13 Penalties for the Implementation of a Transaction Before Clearance

See **2.2 Failure to Notify**. For failure to submit a pre-merger filing, there have been no public announcements or records from the TCCT concerning penalties imposed.

On the other hand, in several post-merger filing cases (primarily for failure to meet the filing deadline), penalties have been imposed. A number of these cases have been published as precedents, including those cases involving foreign-to-foreign transactions.

2.14 Exceptions to Suspensive Effect

There are no general exceptions to the suspensive effect and there is no precedent indicating otherwise.

2.15 Circumstances Where Implementation Before Clearance Is Permitted

There are no circumstances where the authorities will permit closing before clearance and there is no precedent indicating otherwise. The only way to close a transaction without clearance is to ensure that relevant businesses are carved out in a way that will not trigger any requirement to file.

3. Procedure: Notification to Clearance

3.1 Deadlines for Notification

See **2.2 Failure to Notify**. If the parties must obtain a pre-merger approval, then the approval must be obtained before the transaction is closed. If, however, the acquiring or resultant party only needs to undertake a post-merger notification filing, then such filing must be done within seven days from the transaction date. Any breach will result in penalties being incurred, which have been applied in the past.

3.2 Type of Agreement Required Prior to Notification

The TCCT normally does not check the depth of intention, but the parties must submit an agreement or parts thereof that address the merger transaction for their review.

3.3 Filing Fees

There is no filing fee for a post-merger notification filing, but there is a THB250,000 (approximately USD7,620 or EUR6,750 as of 7 May 2025) filing fee for pre-merger approval filing.

3.4 Parties Responsible for Filing

Both sides of the transaction (normally the entities attempting the transaction) will be responsible for filing the pre-merger approval filing, but sometimes the parent entities of the entities to the transaction can file in their place, and the officers have accepted this minor deviation in the past. Furthermore, in the past, a couple of cases were filed with only the signature of the acquiring side and the officers have also accepted this minor deviation. For post-merger notification filing, only the acquiring or resultant entity needs to file the document.

3.5 Information Included in a Filing

Post-merger notification filing is much less detailed than pre-merger approval filing, but both will generally require the transaction agreement (or at least relevant parts thereof), financial statements, annual reports, market share and sales figures, details of shareholders (pre and post transaction) and types of businesses, details of affected products and services and possibly a list of all products and services of the parties, and economic and commercial rationale for the transaction. All applications and attachments must normally be in Thai or translated into Thai, unless the applicant is specifically exempted from this requirement by the officers in charge. In the past, some case officers have accepted simple documents in English, such as certain pages of financial statements.

3.6 Penalties/Consequences of Incomplete Notification

If an application is incomplete on the face of it, the filing will not be formally accepted. However, if an application has been formally accepted but later the officers find any part to be incomplete or have additional follow-up questions, the parties will have to submit additional information, documents and details in order to receive final acknowledgement or approval, as the case may be. No penalties will be imposed, provided that the parties adhere to the statutory filing timeline.

3.7 Penalties/Consequences of Inaccurate or Misleading Information

If the parties are suspected to have filed something that may be incorrect, incomplete or misleading, the officers will require follow-up explanations, and if it is subsequently proven that such was done deliberately, then the officers will undertake further investigation or may propose that the TCCT reject the application for merger.

3.8 Review Process

For post-merger notification filings, the parties have to prepare a draft to the best of their ability, without the benefit of an unofficial review by the authorities, and must submit it within seven days after the transaction has been completed.

For pre-merger approval filing, the parties will need to informally submit the draft application for the officers' review. The officers will normally ask as many questions and request as many documents as they need until they are satisfied that the presentation to the TCCT will be smooth and defensible. This can take between a couple of months to many months, depending on the complexity of the deal and workload of the officers. After the officers provide their acquiescence, the parties can then formally submit the application to them and pay the review fee. The

authority will then have in total 90 days to review and provide an answer (a 15-day extension may be granted if necessary), which can be unconditional approval, conditional approval or rejection.

3.9 Pre-Notification Discussions With Authorities

Parties can engage in pre-notification discussions with the authorities and this is highly encouraged. The process will be treated confidentially.

3.10 Requests for Information During the Review Process

During the review process, it is common for the authority to issue requests for additional information to clarify certain aspects of the transaction. These inquiries do not pause or suspend the review timeline – the clock continues to run while the parties respond. Accordingly, it is imperative for operators to diligently and promptly provide the requested information in a timely and comprehensive manner. Failure to do so may adversely affect the outcome, potentially leading to a negative determination. Therefore, parties should proactively prepare for potential follow-up questions to ensure a thorough and favourable review.

3.11 Accelerated Procedure

There is no short-form or fast-track procedure for review.

4. Substance of the Review

4.1 Substantive Test

In determining whether a transaction should be approved under the TCA, the authority applies a comprehensive substantive test involving a wide-ranging analysis. This includes evaluating the transaction from multiple perspectives, including those of competitors, suppliers, vendors, service providers, customers and the general public, while assessing the potential impact on each group of stakeholders.

The review process delves into both supply-side and demand-side dynamics, scrutinising vertical and horizontal relationships, as well as co-ordination and non-coordination aspects. The authority meticulously examines the market structure, identifying potential anti-competitive effects and any efficiencies that may arise from the transaction. Key considerations include barriers to entry, market share and the transaction's potential to spur or hinder innovation.

Ultimately, the overarching objective is to ensure that the transaction does not substantially lessen competition or adversely affect consumer welfare. Through this holistic approach, the authority seeks to uphold a fair and competitive market environment that fosters economic growth and consumer protection.

4.2 Markets Affected by a Transaction

In assessing which markets may be impacted by a transaction, the authority primarily focuses on markets with a value exceeding the THB1 billion threshold (approximately USD31 million or EUR27 million as of 7 May 2025). However, the authority may also examine markets below this threshold if such scrutiny is deemed necessary. Currently, there is no established precedent for a de minimis level below which competitive concerns are considered unlikely, provided the market meets the specified threshold. This approach underscores the authority's commitment to thoroughly evaluating the potential competitive impact across all relevant markets, including those of a smaller scale, to ensure the integrity of fair competition.

4.3 Reliance on Case Law

The authorities will rely on their own precedents and those from other major jurisdictions. Normally the TCCT will accept precedents from the EU, the US, Japan, Korea and Singapore.

4.4 Competition Concerns

The authority will look at all competition concerns from a holistic point of view. There is no clear precedent to pinpoint weight or to discard any of these areas.

4.5 Economic Efficiencies

The authority will normally consider economic efficiencies as the positive rationale to counter negative impact, but this does not mean that the efficiencies will automatically override all other issues.

4.6 Non-Competition Issues

As part of the review process, the authority may consider a range of non-competition issues, including industrial policy, national security, employment and other public interest concerns. Historically, environmental considerations have not been a focal point, and employment issues tend to receive less attention than industrial policy or national security. It is worth noting that the Act grants the authority broad discretion to evaluate any non-competition factors they deem relevant to the transaction.

Regarding foreign direct investment, these matters are governed by the Foreign Business Operation Act, B.E. 2542 (1999), which functions independently of the merger control framework and falls under the jurisdiction of a different authority. This legislation may require separate licences and filings for foreign direct investments or foreign subsidies, distinct from merger control rules. In practice, the consideration of non-competition issues varies, depending on the specific context and potential impact of each transaction.

4.7 Special Consideration for Joint Ventures

See **2.10 Joint Ventures**. At present, the Act does not have specific regulations governing joint ventures, although bilateral transactions forming part of the JV setup process – particularly those involving the transfer of assets from the JV partners to the JV entity – may trigger merger filing requirements.

5. Decision: Prohibitions and Remedies

5.1 Authorities' Ability to Prohibit or Interfere With Transactions

The authority has broad powers to prohibit or otherwise intervene in transactions that fall within their jurisdiction under the Act. If a transaction is deemed to contravene competition laws or poses significant anti-competitive risks, the TCCT can exercise its authority to block the transaction.

In practice, the TCCT typically initiates this process by issuing a formal notice to the parties involved, either requesting clarifications or instructing a suspension of the proposed merger. Failure to comply with such directives can result in significant penalties, including fines or the unwinding of the transaction. To justify their intervention, the authority must demonstrate that the transaction would substantially lessen competition or otherwise harm consumer welfare, in line with the overarching objective of maintaining a competitive market environment.

5.2 Parties' Ability to Negotiate Remedies

The parties involved in a transaction under scrutiny by the authorities may seek to negotiate remedies to address competition concerns, although the channels for such negotiations may be more limited than in other jurisdictions. It is generally advisable for parties to proactively propose remedies at the earliest stage of the review process. Doing so can promote a more constructive dialogue with the authority and demonstrate good faith and a willingness to co-operate. This proactive approach can help mitigate potential regulatory challenges and contribute to a more favourable outcome.

Typical Remedies

Remedies have rarely been used, but those that have been used are an increase of participation of certain groups within the industry, moratorium on contractual change with vendors and suppliers, indefinite prohibition of sharing of certain data between the merging parties, etc.

5.3 Legal Standard

There is no legal standard that remedies must meet in order to be deemed acceptable. This is all at the discretion of the TCCT.

5.4 Negotiating Remedies With Authorities

See **5.2 Parties' Ability to Negotiate Remedies**. The parties are recommended to propose remedies from the beginning as it may be difficult to propose this during the review process by the TCCT. In theory, the authority can unilaterally impose a remedy as a condition to giving approval. In practice, the authority may discuss with the parties beforehand.

5.5 Conditions and Timing for Divestitures

There is no standard timing and this will entirely depend on the TCCT. If the remedies are not fully complied with, the parties will be deemed to have breached the order of the TCCT on the merger, and the TCCT can revoke the approval for the merger, meaning the parties will need to unwind the transaction. Generally, all conditions must be met as mandated by the TCCT before the merger can take place, unless such conditions are planned for any period after the closing.

5.6 Issuance of Decisions

A formal decision will be provided to the parties, whether it is an unconditional approval, a conditional approval or a rejection. Relevant parts of the decision may be issued to the public as a precedent, but commercially sensitive information will normally be redacted from the publication.

5.7 Prohibitions and Remedies for Foreign-to-Foreign Transactions

As long as a transaction falls under its mandate because of thresholds having been reached, regardless of whether it is a domestic or foreign-to-foreign transaction, the TCCT will oversee the case. The TCCT has historically imposed fines on foreign-to-foreign transactions, but there is no evidence of any outright prohibition.

6. Ancillary Restraints and Related Transactions

6.1 Clearance Decisions and Separate Notifications

The decision will cover all related arrangements, if such have been made known to the authority in the filing. If any part of the transaction is not made known to the authority, such will not be

covered by the decision and the parties can be at fault if the authority later learns of such part of the undisclosed arrangements, and such part somehow breaches the law on its own.

7. Third-Party Rights, Confidentiality and Cross-Border Co-Operation

7.1 Third-Party Rights

Any party can submit their opinion if they know about the pending case, and the TCCT may sometimes invite other parties to submit their opinion as well. However, these parties do not have any other right to stop the process of the TCCT, unless they find a valid cause of action to be filed with the Administrative Court.

7.2 Contacting Third Parties

The authority can contact third parties and has historically done so. Normally this is done via a written notice or questionnaire. There is no precedent that the authority has market-tested any remedies offered by the parties.

7.3 Confidentiality

Normally all details are kept strictly confidential. Only parts of the filing that do not contain commercially sensitive information may be published as a precedent.

7.4 Co-Operation With Other Jurisdictions

There is no clear evidence that the authority has historically shared details of specific transactions with other jurisdictions, but this has been indicated by the authority as one of its powers and intended courses of action. The authority, if wishing to do so, does not need the permission of the filing parties.

8. Appeals and Judicial Review

8.1 Access to Appeal and Judicial Review

The parties can technically resubmit the case if they can change the facts of the case or remedies, to simply ask for the TCCT's reconsideration. The parties can also appeal to the Administrative Court if they have a solid ground to argue so within 60 days after the date of decision.

8.2 Typical Timeline for Appeals

There has not been any case of appeal within the merger control realm based on publicly available information and the knowledge of the authors. The parties must appeal within 60 days after the date of decision.

8.3 Ability of Third Parties to Appeal Clearance Decisions

In theory, third parties can appeal to the Administrative Court if they have solid grounds that the decision was made in error. None of these attempts have been successful.

9. Foreign Direct Investment/ Subsidies Review

9.1 Legislation and Filing Requirements

There are different licensing requirements based on foreign ownership thresholds for different industries, but these do not concern antitrust or trade competition aspects of the operation or acquisition. Separate licensing may be required in any case.

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