

Merger Control in Thailand New Notifications: Implementation Rules

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Introduction

On the last workday of 2018, a number of notifications originally drafted by the Office of Trade Competition Commission (“OTCC”) were announced in the Government Gazette and became effective (“Notifications”). Among such Notifications, three regard merger control under the Trade Competition Act B.E. 2559 (2017) (“Act”), rendering the merger provisions under the Act immediately effective and workable by the OTCC. The Notifications also provided clarification on three main areas, as outlined below.

Application of Merger Provisions

Under the Act, transactions that qualified as “mergers” had remained unclear. However, the announcement of these Notifications has made it clear that there are three situations under which a transaction would be subject to the merger provisions. The situations referenced in the Notifications are: i) two competitors amalgamate to become a new entity; ii) one competitor acquires more than half of the relevant assets of another competitor, with the term relevant meaning assets for a particular market; and, iii) one competitor acquires and becomes the holder of at least 25% of all outstanding shares in a public company, or more than 50% in the case of a private company. Note that concerted actions of affiliated companies will be viewed together as having come from the same group/entity. Thus, if the competitors’ situation subjects them to merger control under the Act, then they must analyze the result of their transaction, and determine whether: i) they must apply for and obtain pre-transactional approval and possibly transactional conditions from the OTCC; ii) they must simply notify the OTCC of their transaction; or, 3) their transaction will not be subject to the Act.

Notification

Prior to issuance of the Notifications, the Act did not specify how or when a merged business was required to notify the OTCC. The Notifications have provided instructions, guidelines, and a form for the parties to complete and submit to the OTCC.

The Notifications state that a resultant entity with 1,000,000,000 Baht in annual sales within any particular market, but one that is *not* a dominant player under the definition of the law, must notify the OTCC within seven days after the completion of their merger. In addition, the Notifications have provided instructions

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as to how to submit the supporting documentation to the OTCC, and what exact corporate and contractual documents must be submitted along with their application. The Notifications were issued along with a specific form for this notice purpose, as mentioned above, and such form includes requirements for the provision of basic information ranging from a list of concerned businesses, timing of merger, to value of the businesses.

Approval

Last but not most importantly, under the Act, it was unclear how a prospective pair of businesses would seek pre-transactional approval for a merger from the OTCC. The Notifications provide a description of the documents and process required for such approval, much like the instructions and guidelines provided for the notice process described above. First, who must obtain approval has been clarified, i.e. the parties who have reached at least dominant player status. Second, parties which need to submit applications for approval now have a full list of documents that must be internally prepared (possibly with assistance from external counsel and other professionals) and submitted to the OTCC. Such documents will include structural analysis of the businesses, market details and impact of merger, etc. Third, timing of the application process is now fixed, meaning that applicants will know when to expect an answer, based on the date of their submission and receipt, or validly presume an answer if one is not issued by the OTCC within the timeline prescribed for them. Last, a comprehensive application form has been created for prospective businesses to complete, with requirements for information ranging from basic corporate and shareholder details to confidential brand, market, sales, supplier, customer, and market share details, all of which will be kept strictly confidential by personnel of the OTCC.

Importantly, the merger control provisions under the Act are currently enforceable. All prospective businesses which intend to combine and/or synergize forces should now carefully review this regulation before undertaking such contemplated action, as there can be serious implications from a monetary standpoint if the contemplated transaction is not properly and correctly undertaken pursuant to the new legislation now in effect.

This publication is intended to highlight an overview of key issues for ease of understanding, and not for the provision of legal advice. If you have any questions about this publication, please contact your regular contact persons at Mori Hamada & Matsumoto or Chandler MHM Limited, or any of the Key Contacts listed to the right above.