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The Trade Competition Commission's Announcement Regarding Guidelines for Consideration of Market Definition and Market Share

On 4 October 2018, the Trade Competition Commission ("**Commission**") issued the announcement Re: Guidelines for Consideration of Market Definition and Market Share B.E. 2561 (A.D.2018) ("**Announcement**"). The primary purpose is so the procedures of market definition will be transparent and in accordance with the international approach. The details of the Announcement are summarized as follows: -

- In order to consider the market definition, the Commission shall consider conditions, which are limitations on competition of goods and services in relation to demand and supply substitutability and potential competition, which may occur in the future.
- In order to consider demand substitutability of goods and services, the Commission shall consider information such as
 - historical data in a period of not more than 5 years showing quantitative and qualitative tests;

- rules or regulations of the government which are limitations on substitutability of goods or services with regard to characteristic, price, or purpose of usage, other obstacle; or
- limitation in relation to the change of using substitutable goods or services with regard to characteristic, price, or purpose of usage.
- In case of consideration of the supply substitutability of goods and services, the Commission shall take into account of relevant factors in order to consider the ability of manufacturers, distributors or service providers in changes to production. Additionally, conduct marketing of relevant goods or provide relevant services in which the manufacturers, distributors or service providers do not have to bear significant costs or risk, which is resulted from the change of the price.
- In consideration of future potential competition, the Commission shall also consider specific factors and circumstances on a case by case basis that may impact conditions of entering into the markets of goods and services, which may impact the level of such potential competition.
- In consideration of market share, the Commission shall consider from percentage of selling, sale volume and quantity of production or production capacity or services in the market.

This Announcement came into effect as of 2 November 2018.

The Trade Competition Commission's Announcement Regarding Guidelines for Consideration of the Prohibited Act of the Business Operator with a Dominant Position of Market Power

On 4 October 2018 the Trade Competition Commission ("**Commission**") issued the announcement Re: Guideline for Consideration of the Prohibited Act of the Business Operator with a Dominant Position of Market Power B.E. 2561 (A.D.2018) ("**Announcement**"). The Announcement is intended to clarify the misconduct under Section 50 of the Trade Competition Act as follows:-

- Unfairly fixing or maintaining the level of purchasing or selling price of goods or service shall mean any of the following acts: -
 - Predatory pricing which means pricing goods or service at low level for the purpose of elimination of the business operator that is a competitor from the same market;
 - Pricing below cost which means pricing goods or service higher than Average Variable Cost (AVC) but lower than Average Total Cost (ATC);
 - Pricing discrimination which means imposing or maintaining purchasing or selling price of goods or service for each trading partner unfairly;
 - Margin squeeze which means imposing selling price of goods or services, which is raw material, for business operator, which is its own customer and competitor in the market of upstream and downstream of goods or service, at an unfair high price;
 - Excessive pricing which means imposing or maintaining price at high level unfairly; or
 - Imposing or maintaining purchasing or selling price of goods or service in other unfair manners.
- Imposing an unfair condition for another business operator which is its trading partner in order to limit service, production, purchase, or sale of goods, or to limit an opportunity in purchasing or selling goods, receiving or providing service, or seeking credit from other business operators shall mean any of the following acts: -
 - Imposing condition for another business operator which is its trading partner such as
 - Discount schemes of the selling price of goods or service;

- Exclusive dealing which mean imposing condition for trading partner to purchase or sell goods or service from itself only;
- Forced quantity which means imposing condition for trading partner to purchase or sell goods or service in specified quantity;
- Tying sale which means imposing condition for trading partner to purchase additional products or services (tied product or service), if such trading partner would like to purchase certain products or service (tying product or service);
- Resale price maintenance which mean imposing condition for trading partner to sell goods or service in specified price or specified range of price; or
- Refusal to supply which mean refusing to sell goods or service to customer.
- Such condition must be any of the following conditions:
 - Limiting services, production, purchase, or sale of goods of trading partner;
 - Limiting an opportunity in purchasing or selling goods, receiving or providing service; or
 - Limiting an opportunity in seeking credit from other business operators.
- Such condition is unfair condition.
- Suspending, reducing or limiting service provision, production, sale, delivery, importation into the Kingdom without any appropriate reason, or destroying or damaging goods for the purpose of reducing the quantity to be lower than demand of the market shall mean any of the following acts:
 - Acting in any of the following acts:
 - Suspending, reducing, or limiting service provision, production, sale, delivery, importation into the Kingdom without any appropriate reason; or
 - Destroying or damaging goods.
 - Acting for the purpose of reducing the quantity to be lower than demand of the market.
- Intervening the business operation of the others without any appropriate reason shall mean any of the following acts:
 - Intervening the business operation of the others which is not its own business operation; or
 - Intervening the business operation without any appropriate reason.

This Announcement came into effect as of 2 November 2018.

Amendment on the Qualifications, Criteria and Incentives for the Smart Visa

On 6 November 2018 the Thai Cabinet has approved the amendment to improve qualifications, criteria and incentives for the Smart Visa with the focus on talented foreigners and investors to work or invest in the targeted industries in Thailand. The detail can be summarized as follows:

- Three new categories have been added to the scheme which are
 - Alternative dispute resolution services;
 - Human resource development for science and technology; and
 - Renewable energy and environment management.

- Increase privileges and benefits for Smart Visa holders to open a fast-track service for foreigners holding SMART Visas at all international airports that already have the fast track lane.
- Improvement on qualifications, criteria, and conditions for the Smart Visa are as follows:

Qualification of Smart 'T': Highly skilled professionals (Talent)

- Monthly income
 - The minimum average monthly income for highly skilled professional is decreased to be 100,000 Baht/month
 - The minimum average monthly income for experts in local startups and the retired experts is 50,000 Baht/month
 - No minimum monthly income for experts who work for a government agency, institute of higher education, institute of specialist training and alternative dispute resolution.
- Employment contract
 - No minimum period of employment for experts who work for a government agency and alternative dispute resolution while in the normal case, the employment contract must have the period of not less than 1 year.
- Certify on qualification and working in the targeted industries
 - In the case of employers being a government agency, such agency will certify the personal qualification and must be in the targeted industries themselves.
 - Talent in the alternative dispute resolution services will be certified for the qualification by a relevant government agency such as Thailand Arbitration Centre (THAC).
 - Other talent still will be certified by the related agencies previously appointed which are National Science and Technology Development Agency, National Research Council of Thailand, Thailand Institute of Scientific and Technological Research Digital Economy Promotion Agency (DEPA) and National Innovation Agency.

Qualification of Smart 'I': Investors

- The investor must have a minimum investment in at least in one of the followings:
 - minimum investment of not less than 20 Million Baht per individual investor in the business used the technology in the production process or services or venture capital companies certified by the government agency.
 - New startups, incubator programs or accelerator programs certified by the government agency require a minimum investment of not less than 5,000,000 Baht.

Qualification of Smart 'E': Executives

- The minimum average monthly income for high ranking professionals and executives is at 200,000 Baht where the previous conditions must be calculated only from the salary.

Qualification of Smart 'S': Foreign startup entrepreneurs

- Visa periods
 - Smart Visa for startups will have 3 periods - 6 months, 1 year, and 2 years.
 - In the case of foreign startup entrepreneurs who qualified for the Smart Visa conditions, although not participating in an incubation or accelerator program or equivalent program, shall be entitled to apply for Smart Visa with 2-year period for the first time.
- Financial Evidence
 - The minimum fixed saving account per person which has been opened for at least 3 months shall be presented.

- The foreigner who obtains the SMART Visa shall get the exemption under the Management on the Foreign Working Royal Decree B.E. 2560. So the foreigner can work without work permit in all areas of work. For the spouse of foreigner who obtain all types of SMART Visa is allowed to work in non-prohibited area of work only and for above eighteen-year-old legitimate child of foreigner, who obtains SMART T, is also allowed to work in non-prohibited area of work.

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