

Over Twenty Years of Implementation: Reflecting on the Contribution of Thailand's Trade Competition Act with Respect to Merger Control

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Abstract

In light of economic development, competition law plays an important role in the control and sanctioning of business operators conducting anticompetitive activities within a jurisdiction. In Thailand, the first Trade Competition Act was passed in 1999 (the “1999 Act”), with the purpose of protecting consumers from unfair trade practices, shielding businesses from anticompetitive behavior, and facilitating the development of the country’s economy. The 1999 Act was later repealed by the Trade Competition Act 2017 (the “2017 Act”), replacing all existing laws on trade and market competition under the 1999 Act, and providing more stringent regulations and safeguards to prevent anticompetitive activities and promote fair competition in all economic sectors of Thailand. For over 20 years, the Trade Competition Act has been successful in creating a framework for economic growth. However, it has been ineffective due to several factors, such as weak legislation and lack of effective enforcement. Specifically, two recent landmark cases involving mega acquisitions could potentially pose serious risks to consumers and the entire Thai economy. This article aims to firstly provide a brief overview of Thailand’s economic development and mainly discuss about an overview of Thailand’s competition law since the enactment of the 1999 Act, followed by amendments to the law in 2017. Landmark cases relating to merger control are provided and discussed. Lastly, proposals to amend the laws pursuant to such landmark cases are presented.

Keywords

Trade Competition Act, Anticompetitive Activities, Amendments, Implementation, Merger Control, Monopoly

1. Introduction

Over the past four decades, Thailand has demonstrated remarkable advancements in both social and economic development, undergoing a noteworthy transition from a low-income to an upper middle-income nation within the span of a single generation. This transformation positions Thailand as a widely acknowledged success story in the area of development, characterized by sustained robust growth and notable poverty alleviation. Notably, the Thai economy performed an impressive average annual growth rate of over 7 percent during the prosperous years spanning from 1960 to 1996, and despite the challenges posed by the Asian Financial Crisis, it continued to exhibit a resilient growth rate of 5 percent from 1999 to 2005. This economic expansion played an essential role in the generation of millions of employment opportunities, consequently facilitating the upliftment of a substantial populace from impoverished conditions ([The World Bank, 2023](#)).

Nonetheless, the potential for growth stemming from the export-led model, which was a prominent driver of Thailand's economic expansion not too long ago, appears to have markedly diminished, primarily attributed to a stagnation in productivity. The average growth in total factor productivity experienced a decline, dropping from a peak of around 3 percent per annum in the early 2000s to a mere 1.3 percent over the period from 2009 to 2017. Furthermore, private investment exhibited a notable decrease, dwindling from over 40 percent in 1997 to about 17 percent of Gross Domestic Product ("GDP") in 2019. Simultaneously, indicators such as foreign direct investment flows and engagement in global value chains have exhibited signs of stagnation ([The World Bank, 2023](#)).

In Thailand, notable business entities have demonstrated considerable success, acquiring numerous industries within the country. These major corporations are predominantly owned by a select few families, positioning them among the one percent of the population with unparalleled influence over political, economic and social spheres. The establishment and operations of these business have been noteworthy, contributing significantly to the national GDP. Over time, these entities have evolved into substantial conglomerates within the contemporary market economy. However, the absence of adequate laws and regulations to regulate the expansion of these major enterprises has led Thailand to be documented as having the most substantial wealth gap globally, as reported by Credit Suisse in 2018. The Global Wealth Report and Databook, released in December 2018, indicated that the wealth inequality has emerged as a significant concern for Thailand's social stability since then, and the situation is anticipated to exacerbate further in the present ([ASEAN Today, 2019](#)). In the context of recent merger cases of large business operators in the country that pose a potential threat to competition within particular industries, these instances shed light on the shortcomings within existing laws and regulations, as well as the efficacy of regulatory agencies. Such inadequacies have the potential to exacerbate wealth inequality in the country. Consequently, it becomes imperative for Thailand to

engage in a comprehensive discourse on its competition law framework, contemplating potential amendments to relevant laws and regulations.

Considering the competition law framework in Thailand, it is prudent to initiate the examination from its roots in other jurisdictions, particularly within Southeast Asia. In most Southeast Asian countries, competition laws have been developed to comply with the conditions set by international organizations. Indonesia passed a law in 1999 to comply with certain conditions set by the IMF, imposed after the 1996 Asian financial crisis. Singapore passed a law in early 2005 to fulfill its obligations under the U.S.-Singapore bilateral free trade agreement. Vietnam enacted its law in June 2005 to fulfill WTO accession commitments. On the other hand, Thailand voluntarily established its own national competition law and has faced criticism for not providing any effective law enforcement outcomes as no cases have reached trial during the first 18 years since the first Trade Competition Act came into effect in 1999 (Nikomborirak, 2006).

In 1999, Thailand's first national competition law was implemented in accordance with the 1997 Constitution. Article 50 of the Constitution guarantees citizens the right to enjoy free and fair competition, and Article 87 states that the State should maintain a free economic system through market forces while preventing direct and indirect monopolies from engaging in business competition. Therefore, the introduction of the competition law was viewed as a key tool for enacting the provisions of the 1997 Constitution and ensuring a truly free and fair marketplace. Research conducted by Deunden Nikomborirak indicates that Thailand received minimal technical assistance from the World Bank and UNCTAD in putting the law into effect (Nikomborirak, 2006).

The Trade Competition Commission ("TCC") was established under the 1999 Act, granting it the authority to investigate and eliminate anticompetitive agreements, issue orders and decisions, and impose administrative sanctions. However, Nikomborirak suggests that the fundamental provisions stated in the 1999 Act are not instantly enforceable, as they require the approval of the Cabinet before becoming valid. Furthermore, Nikomborirak brings attention to the TCC's composition, which is partially run by the Minister of Commerce, potentially resulting in political intervention during the process of investigation. Additionally, 50 percent of the 12 expert commissioners need to come from the private sector, as recommended by the Federation of Thai Industries and the Thai Chamber of Commerce. This may lead to corporate lobbying and a lack of transparency in the due process of administration, thus demonstrating the inefficiency of law enforcement (Nikomborirak, 2006).

Nikomborirak has criticized Thailand's competition law for being problematic and impractical, citing a lack of competition cases since its enactment in 1999. Furthermore, transparency and information disclosure are lacking, and the selection process of commissioners is not made available to the public. This has profoundly affected the enforcement of the law. Four cases in the two years after its implementation, which included cable television monopoly, whiskey and beer

tied-sales, unfair trade practices in large retail, and exclusive dealing in the motorcycle market, were not settled due to lack of jurisdiction, absence of a dominance threshold, and unjustified delays, despite violating certain provisions in the 1999 Act (Nikomborirak, 2006).

2. Trade Competition Act 2017

The 1999 Act was subsequently revised and repealed by the 2017 Act. A study by Posathorn Chuthamani revealed that the provisions under the 2017 Act have been developed to be more applicable to the current economic situation. However, substantive problems remain. Political intervention is still problematic as the Prime Minister has the power to appoint commissioners with the approval of the Council of Ministers. Furthermore, the TCC has never collected and disclosed market information to the public which could subsequently be problematic in terms of detecting activities that tend to breach certain provisions (Chunthamani, 2019). Interestingly in 2020, the TCC eventually approved the acquisition of Tesco Stores (Thailand and Malaysia) by CP Group¹. The public and other non-governmental organizations criticized the decision as it tends to create a business operator that owns 75 percent of the market share in both the retail and wholesale markets (Chandler, 2020).

The 2017 Act preserves many core concepts from the previous Act, including those relating to mergers and acquisitions, the abuse of a dominant market position, restrictive agreements or practices among business operators, and unfair trade practices—the details of which are outlined below (Luengwattanakit, 2018).

2.1. Mergers and Acquisitions

The amendments made to the merger control procedure now require both pre- and post-procedures from a business operator. A business merger potentially resulting in a significant decrease in competition must be reported to the TCC within seven days of the merger date, while a business merger that may result in a monopoly or a dominant market position must receive prior approval from the TCC, according to Section 51 of the 2017 Act. A business operator violating this provision may be subject to a fine of no more than 0.5 percent of the transaction value (pre-merger approval), as well as a fine of no more than 200,000 THB and an additional fine of no more than 10,000 THB throughout any period of continued violation, according to Sections 80 and 81 of the 2017 Act (Suthisarnsuntorn, 2023).

In addition, a business merger also covers one which has the effect of maintaining the status of one business and terminating the status of another, or creating a new business entity. According to Section 51, this includes the purchase of assets or shares, whether in whole or in part, of another business, with

¹Before acquisition, CP Group already had 12,225 convenience stores as well as a chain of Siam Makro wholesale stores.

the aim of controlling business administration policies and management. This provision excludes a business merger solely for the purpose of reorganizing the internal structure of business operators that have a relationship through policies or directorial power (Suthisarnsuntorn, 2023).

2.2. Abuse of Market Power

Pursuant to the 1999 Act and its relevant regulations, the determination of market dominance is based on market share and sales volume. The 2017 Act maintains this principle but also requires that the TCC shall also be able to consider other factors, such as the amount of capital, distribution channels, the number and network of competitors, business infrastructure, and relevant government regulations. Additionally, in determining a business operator's market power, the 2017 Act stipulates that the market share and sales volume of other operators with a policy or control relationship in the same market shall also be taken into account. The TCC shall publish criteria for determining a business operator with market dominance, which must be reviewed at least once every three years, as per Section 5 of the 2017 Act (Rajah & Tann Asia, 2017).

2.3. Anticompetitive Agreements

Section 54 makes a distinction between cartels with competing entities in the same market, involving: 1) price fixing; 2) market allocation; 3) bid rigging; and 4) output control. These are considered to be "hardcore cartels." Section 55 covers agreements between business operators in any market, involving: 1) fixing conditions in price, market allocation, and output control; 2) reducing the quality of goods or services; 3) appointing or entrusting any person as a sole distributor; 4) fixing conditions or practices to secure performance; and 5) any other actions prescribed by the TCC in its notification. These are considered to be "non-hardcore cartels," to which administrative fines are applicable. In contrast, hardcore cartels are subject to criminal penalties (Rajah & Tann Asia, 2017).

The 2017 Act illustrates a better understanding and clearer concept of each anticompetitive agreement, which could potentially benefit the TCC and other business operators alike.

2.4. Unfair Competition Practices

Section 57 of the 2017 Act limits the broad interpretation of Section 29 of the 1999 Act, which defines actions undermining fair competition very liberally. The list of anticompetitive conduct portrayed in Section 57 of the 2017 Act is still quite broad and should have provided further clarity (Rajah & Tann Asia, 2017).

3. Merger Control and Other Major Notifications

In October 2018, five significant notifications were issued under the 2017 Act. These notifications include guidelines on market definition, market share, prohibited conduct of business operators with dominant market power, unfair

conduct of related business operators, hardcore and non-hardcore cartels, as well as unfair conduct that may cause damage to other business operators. The issuance of these notifications represents significant progress toward ensuring the effectiveness of the Act. Previously, the absence of guidelines made the Act barely enforceable (Suthisarnsuntorn, 2023).

Apart from the initial five notifications, the TCC has issued further notifications such as merger control, unfair conduct between wholesalers and retailers, and conditions for settling fines for unfair conduct in franchising. The merger control notification is considered one of the most significant from the TCC and came into effect in December 2018. This notification is mandatory, with the exception of the internal reorganization of businesses with affiliated policies and controls. Mergers that significantly reduce competition in a specific market should be notified to the TCC within seven days of the merger. Conversely, mergers that may produce a monopoly or a dominant market position in the same market require prior approval from the TCC (Suthisarnsuntorn, 2023).

The 2017 Act, with the issuance of the TCC's Notification on Rules, Procedures, and Conditions for Merger Approval (2018) and the Notification on Rules, Procedures, and Conditions for Notification of Merger Transaction (2018), put into effect a dual process for merger control, covering Sections 51 to 53:

1) Post-merger notification is required for mergers that may cause a substantial reduction of competition in a particular market. After closing on the mergers, the acquirer or surviving entities must alert the TCC if either the sales of any of the merging parties or the sales of both of them combined reach THB 1 billion (approximately US\$30 million) or more within the relevant market, and no monopoly or dominant position is attained. A post-merger notification must be filed within seven days after the completion of the transaction.

2) Pre-merger clearance must be obtained by the acquirer or merging parties from the TCC when a merger may result in a monopoly or a dominant position (since these notions are defined in the TCC's Notification on Criteria as being an undertaking with a dominant position (2020)). The TCC has a period of 90 days (which can be extended by 15 days) to issue a decision from the time they receive the filing. They may also set conditions for clearance. If any of the parties fail to agree with the decision of the TCC, they may file an appeal to the Administrative Court within 60 days from receipt of the decision (Norton Rose Fulbright, 2022).

4. Landmark Cases

4.1. CP Group's Acquisition of Tesco

4.1.1. Background of the Case

CP Group, an acquiring company, is Thailand's largest conglomerate founded in 1921. It operates through various subsidiaries across several sectors, comprising consumer staples, telecommunications, and real estate which provides services

to clients worldwide. Over 30 percent of the Group's revenue is generated by its agricultural sector (Roman, Yeo, Kapelari, & Smahon, 2020).

CP Group includes several public and private entities, consisting of Charoen Pokphand Foods Public Company Limited ("CPF") and CP ALL Public Company Limited ("CPALL"). CPF operates as an integrated agro-industrial and food business including livestock and aquaculture such as broiler, swine, shrimp, and fish across 17 countries (Tesco PLC, 2020). Additionally, CPALL is the sole operator of 7-Eleven convenience stores in Thailand. They furthered their reach in 2013 by acquiring Siam Makro Public Company Limited, which runs membership-based cash-and-carry trade centers in Thailand (CPALL, 2023).

Tesco PLC ("Tesco"), a target company, is a British retail company founded in 1919. It concentrates on grocery and general merchandise retail including insurance services and retail banking, providing services to customers mainly in the United Kingdom, Ireland, and Europe. Recently, the company exited the Asian market, having operated in Thailand through Tesco Stores (Thailand) Limited and Malaysia through Tesco Stores (Malaysia) Sdn Bhd (Roman, Yeo, Kapelari, & Smahon, 2020).

On March 9, 2020, Tesco announced that it had entered into a conditional agreement with a combination of CP Group entities namely CPF, CPALL, CP Retail Development Company Limited ("CPRD"), Charoen Pokphand Holding Co., Ltd, and CP Merchandising Co., Ltd. in respect of the sale of Tesco's business in Thailand and Malaysia which included Tesco's entire shareholding in Tesco Stores (Thailand) Limited ("Tesco Thailand"), Tesco Stores (Malaysia) Sdn Bhd ("Tesco Malaysia"), along with any respective subsidiaries (referred to collectively as the "Asia Business"). Tesco Thailand and Tesco Malaysia were collectively referred to as Tesco Asia Group. The consideration payable to Tesco according to the sale represented a company value of US\$10.6 billion on a cash and debt-free basis. The sale was subject to customary regulatory approval in Thailand and Malaysia as well (Tesco PLC, 2020).

According to the announcement, Tesco received several offers for the Asia Business and the board unanimously concluded that the offer by CP Group to acquire the business for an enterprise value of US\$10.6 billion should be recommended to shareholders (Tesco PLC, 2020).

On the same day, CPF launched a statement announcing their expectation to acquire 20 percent of Tesco's shares, with the intention of expanding their business across Thailand and Malaysia. The announcement concluded that CPF aimed to acquire shares or economic interest of up to 20 percent of the total issued shares in Tesco Asia Group. The company aimed to further strengthen its value chain in terms of distributing channels in Thailand and Malaysia, improving the range of consumer options in these areas. CPF also expected to modernize its distribution channels of meat products to match consumers' behavior and demand. Furthermore, the company strongly believed that the investment in Tesco Asia Group would provide greater opportunities for the whole CP Group in expanding its retail sector business (CPF, 2020).

Prior to the completion of this transaction, the investment was subject to the full satisfaction of the conditions precedent, including approval for the sale of shares at the shareholders' meeting of Tesco as well as the TCC of Thailand where an application for approval was to be submitted. The approval of the Ministry of Domestic Trade and Consumers Affairs of Malaysia was also required with regard to the transaction in Malaysia (CPF, 2020). Upon fulfillment of all the conditions, the entire transaction was expected to be paid for in cash on a cash and debt-free basis, resulting in CP Group holding 86.9 percent of Tesco Thailand and 100 percent of Tesco Malaysia (Roman, Yeo, Kapelari, & Smahon, 2020).

4.1.2. The TCC's Decision on the Merger Request

CP Group filed a merger request with the TCC seeking permission to merge its retail business with Tesco Thailand via its subsidiary, CPRD, on July 31, 2020. The TCC approved the merger, with seven commercial conditions stated in the publication via its official website, by a majority vote on November 6, 2020. The majority stated that the merger would provide the merging parties, already dominant players in the modern retail and wholesale markets for consumer products, with additional market power. Nevertheless, the merger would not result in a monopoly, according to the justifiable business rationale. The potential merger would only result in a material reduction in competition, but not cause serious damage to the economy or the interests of consumers, pursuant to Sections 51 and 52 of the 2017 Act (Anuktanakul & Laohapairoj, 2020).

The TCC issued seven commercial conditions: 1) a three-year ban on acquisitions in the modern trade sector, with an exemption for e-commerce; 2) a requirement that the merging parties increase the sales volume of agricultural and community products supplied by small and medium-sized enterprises, or OTOP² products, by at least 10 percent of the previous year's figures, for a period of five consecutive years; 3) a prohibition on exchanging certain trade data between the two merging sides; 4) a requirement that Ek-Chai Distribution Co., Ltd. (a subsidiary of Tesco Thailand) maintains contracts with existing suppliers and distributors for two years, with the exception of amendments that would benefit such suppliers and distributors, provided they give their consent; 5) the merging parties are obligated to promote products from and enhance trade terms with small and medium-sized enterprises; 6) a temporary obligation to report to the TCC for a period of three years; and 7) the establishment of codes of conduct by the merging parties (Anuktanakul & Laohapairoj, 2020).

On the other hand, three dissenting commissioners voiced their concerns that the merger may lead to monopoly or undue influence on the economy. They noted that the merging parties operate in various industries across a wide range of businesses and possess substantial market shares in relevant markets. This

²“One Tambon, One Product” is a local entrepreneurship stimulus program aimed at supporting the unique products made and marketed within each Thai sub-district (Tambon) throughout Thailand.

merger could have a significant impact on competitors and consumers that may result in the departure of some competitors from the market, thus reducing the choices available to consumers (Anuktanakul & Laohapairoj, 2020).

4.1.3. Concerns over the Decision

The TCC's decision on this case raised alarmingly pertinent questions regarding its integrity. Their decision stated that CP Group's acquisition of Tesco's network of approximately 2000 hypermarkets and smaller-format stores in Thailand would result in increased market power, but not create a monopoly in the retailing sector.

Prior to this merger, CP Group operated several retail sectors in Thailand, running over 12,000 7-Eleven convenience stores under license from 7-Eleven Inc, a U.S. subsidiary of Japan's Seven & i Holdings; 134 Makro cash-and-carry stores; 610 CP Fresh Mart supermarkets; and some e-commerce platforms³. The merger increases the group's market share in the hypermarket sector from 24 to 63 percent, giving them control over both Makro and Tesco Lotus (Pananonnd, 2020).

According to the decision, the commission's interpretation of market power does not comply with the reality of modern retail markets, where hypermarkets, supermarkets, convenience stores, and online platforms completely distribute similar products to consumers. By ignoring this, they may not result in a monopoly in one specific market, misunderstanding the purpose of the 2017 Act, which is to provide free and fair trade among business operators and create greater competitiveness in the market economy (Pananonnd, 2020).

Pursuant to the commercial conditions issued by the TCC, another concern raised is whether these conditions are practically enforceable. It seems impossible for the TCC to determine what kind of information cannot be shared between merging parties. For example, the temporary ban excludes e-commerce platforms from acquisition, allowing CP Group to expand its business further in online sales through acquisition. Additionally, the effectiveness of the TCC is being criticized, since the outcomes show the weak enforcement of competition policies, mostly benefiting large and powerful business operators (Pananonnd, 2020).

4.2. Acquisition of True and Dtac

4.2.1. Background of the Case

According to Section 4(4) of the 2017 Act, this business acquisition is exempt since it falls under the law governing trade competition. Additionally, Section 27(11) of the Act on Organization to Assign Radio Frequency and to Regulate the Broadcasting and Telecommunications Services 2010 empowers the National Broadcasting and Telecommunications Commission ("NBTC") to set measures to prevent any anticompetitive conduct and unfair trade practices in the telecommunications services sector. Furthermore, Sections 21 and 22 of the Tele-

³As of 25 November 2020.

communications Business Act 2001 also furnish the NBTC with the power to bar licensees from conducting business practices which reduce or otherwise restrict competition in this market.

On November 21, 2021, CP Group and Telenor Group announced that they had agreed to establish a new telecom-tech company composed of True (supported by CP Group) and Dtac (supported by Telenor Group). The new company would be a merger of equals, supported by its key sponsoring shareholders. Moreover, the new company would be the leading telecommunications service provider, equipped with the capabilities to accelerate Thailand's progressive digital technology agenda in terms of innovation, network performance, and investment strength (Telenor, 2021).

Until recently, the telecommunications market in Thailand has had only a few competitors. AIS (Advanced Info Service) leads the market with a share of around 44.5 percent, while True and Dtac have approximately 32.6 and 19.6 percent, respectively. Consequently, the new company would take over a market share of over 50 percent, thus becoming the new leader and replacing AIS (Barton, 2021).

On January 25, 2022, True and Dtac filed a merger notification with the NBTC and informed the regulator that they were ready to provide further information or clarification as needed (Telenor, 2022).

4.2.2. The NBTC's Decision on Merger Request

On October 20, 2022, the NBTC gave its approval to the merger request by True and Dtac, voting 3:2 with certain conditions attached. These conditions include 1) a limitation of service fees and a prescribed fee ceiling; 2) independent verification of cost structures and service pricing by experts hired by the operator, at the said operator's expense; 3) obligations to adhere to the resolution for at least five years post-merger; 4) a commitment to provide space for the operations of Mobile Virtual Network Operators (MVNOs); and 5) the setting of separate rates for voice, data, and messaging services (Thai PBS World, 2022a).

The decision has been criticized by consumers and businesses, who have called into question whether the majority of commissioners failed to perform their duty, believing they do not have the power to approve or reject the merger request (Thai PBS World, 2022b).

On the contrary, the minority voiced several concerns against the decision. One of the commissioners pointed out that True had already obtained a 31.99 percent share of the market, whereas Dtac had 17.41 percent⁴. The merger would lead to a high market share of 49.40 percent, resulting in a new entity, creating a duopoly with AIS. Moreover, the merger could potentially have a negative effect on the national economy, since mobile phone service charges are likely to increase, leading to a higher cost of living for Thai people. The commissioner further indicated that there is a strong possibility that this merger would lead to a monopoly and unfair competition, which is contrary to Sections 40, 60, 61, and

⁴As of 25 October 2022.

75 of the 2017 Constitution⁵. Importantly, this merger may affect competition in other markets, since one of the merging parties has a close relationship with a conglomerate that dominates the wholesale and retail businesses. Another commissioner also mentioned that this merger would cover both infrastructure and services in the mobile phone and internet broadband markets, increasing the chance of creating barriers to new competitors, rising service charges, and offering low-quality services to consumers (Thai PBS World, 2022b).

4.2.3. Concerns over the Decision

This deal has faced obstacles from its inception since both consumers and businesses in the market have opined that it would benefit neither consumers nor the national economy. Somkiat Tangkitvanich, President of Thailand Development Research Institute, who has long been a vocal critic of the merger, remarked that if this merger had occurred in other countries, it would be labeled as the capture of a regulatory authority, in which a large business gains influence over a regulator. Tangkitvanich also highlighted that one condition of the merger was for True and Dtac to lower their service charges by 12 percent within 90 days; however, this was too little for such large entities, since service charges could rise by up to 244 percent after the merger if they agreed to it (Thai PBS World, 2022b).

Furthermore, the condition for these two parties to submit their cost structures shows that the NBTC allowed the merger without knowing the cost structures of these two entities. From this perspective, the NBTC could be accused of not properly performing its duty. Consequently, Tangkitvanich urged consumer groups to file a petition with the Central Administrative Court, the Constitutional Court, as well as the National Anti-Corruption Commission to hear the case (Thai PBS World, 2022b).

Parinya Tewanarumitkul, a law professor from Thammasat University, has mentioned that the telecom regulator failed to properly perform its duties under the relevant laws and regulations, particularly during the voting process. Some of the commissioners believe that they have no authority to either approve or reject the case, whereas a subcommittee of the NBTC has stated that the NBTC has full power to decide on the merger request. Consequently, it could be argued that the NBTC has not been exercising its duty, violating Section 157 of the Criminal Code of Thailand (Thai PBS World, 2022b).

In November 2022, AIS filed a petition to the Central Administrative Court to revoke the regulatory approval of the merger of True and Dtac by the NBTC. The argument of AIS was supported by the Thailand Consumer Council, which also filed a similar petition to the same court on November 10, 2022. The Council stated that, with the merged entity becoming dominant in the market, it would completely restrict competition. Furthermore, the Council alleged that

⁵Available at

[https://constitutionnet.org/sites/default/files/2017-05/CONSTITUTION+OF+THE+KINGDOM+OF+THAILAND+\(B.E.+2560+\(2017\)\).pdf](https://constitutionnet.org/sites/default/files/2017-05/CONSTITUTION+OF+THE+KINGDOM+OF+THAILAND+(B.E.+2560+(2017)).pdf).

the NBTC's vote was illegal (Barton, 2022).

In March 2023, the merger between True and Dtac successfully closed, making it the largest telco merger in Southeast Asia based on combined enterprise value. As a result, True and Dtac essentially ceased to exist and the new entity known as True Corporation was awarded a commercial license by the Department of Business Development at the Ministry of Commerce. The merger is likely to result in an increase in the customer base of True Corporation to 55 million mobile subscribers, compared to the 45 million of AIS. Under the merger conditions set by the NBTC, the new company must retain the brands of Dtac and True for three years and continue to provide services and promotional rights to their customers. Thai consumer groups attempted to prevent the merger by requesting the Central Administrative Court to issue an injunction to stall the deal; however, this was rejected by the Court (Thai PBS World, 2023).

5. Proposals to Amend the Laws

In light of the implementation of the Trade Competition Act, Thailand faces a challenge in terms of addressing the current state of affairs and what can be expected in the future. Recent landmark cases illustrate the lack of efficacy within Thai competition law and policy, with decisions that appear to disregard the tenets and objectives of the law. Additionally, granting a specific entity the ability to acquire a substantial market share within an industry can undoubtedly pave the way for monopolistic behavior, wherein this entity gains the power to control prices. Such a practice not only affects competitors adversely but also has broader repercussions, including negative impacts on quality and the pricing of products. To rectify this, it is suggested that the following proposed amendments be applied.

1) With respect to CP Group's acquisition of Tesco, one key proposal is to amend the 2017 Act to better protect market competition from large retailers potentially abusing their size and market power. This could include introducing new rules on pricing and restricting certain forms of anticompetitive behavior such as predatory pricing, unfair promotion practices, and refusal to deal.

Furthermore, the 2017 Act could be amended to require larger retailers to introduce certain safeguards to ensure smaller retailers are not disadvantaged. This could include declaring certain products as the exclusive property of small retailers, ensuring small retailers are not excluded from promotions, and establishing requirements for the disclosure of pricing information. Significantly, Thailand's legal framework should include more stringent regulations on mergers and acquisitions to ensure they are conducted in the best interests of the public. This could involve introducing more rigid rules on pricing, market share, and other business practices to ensure mergers are not conducted with the aim of preventing competition.

In conclusion, these proposed amendments to the 2017 Act could have a significant and positive impact on the country's economy, competition, and con-

sumer protection. It is therefore important that the government considers these recommendations and takes action to ensure that Thai citizens are protected from unfair and anticompetitive practices.

2) Concerning the acquisition of True and Dtac, the proposed amendments should aim to create a more dynamic market structure and open up opportunities for new business models and innovative products and services. Firstly, the government should consider revising the current Telecommunications Business Act 2001 to ensure the same rules and regulations governing the telecommunications industry are applied throughout the market. The duties of the NBTC should also be precisely stated to comply with the fundamental purpose of competition law. In addition, the government should consider developing a more flexible licensing system that allows for the development of new business models, such as the implementation of innovative products and services.

Secondly, the government should consider creating a more robust regulatory environment that allows stakeholders to operate with greater freedom. This could include allowing more freedom to transfer services to the new operator and revising the obligations of larger players.

Finally, the government needs to provide measures to ensure that mergers result in improved quality of service and more dynamic competition. This could include introducing measures such as price caps, the imposition of obligations for greater access to infrastructure, and measures to ensure consumer rights are adequately protected.

3) It is time for Thailand to evaluate the potential benefits of having a single law for all anticompetitive transactions, regardless of industry. This unified legislation could provide greater advantages to business operators, consumers, and the national economy overall. In the case of the acquisition between True and Dtac, this transaction could have a significant impact on the competitiveness of the telecommunications industry. The outcome of the acquisition has been decided by a regulator who may not have expertise in this area. This could be cause for some concerns since it raises questions as to whether the transaction complies with the principles of competition law. Will this transaction promote free and fair competition in its industry, or create a business operator with a dominant market position, potentially monopolizing the industry and leading to higher service fees for consumers? If so, having multiple regulatory authorities dealing with the same issue might not provide a good result for the industry or the public.

Additionally, market failure manifests when a market proves incapable of efficiency allocating its resources. In the context of monopolies, the potential for abuse of power becomes a contributing factor to market failure. Specifically, market failure arises when the price mechanism neglects to consider all the costs and benefits associated with producing and consuming a particular good. Consequently, the market falls short in delivering the socially optimal quantity of the product. A monopoly, characterized by its control over an imperfect market, intentionally limits output with the aim of maximizing profit. The potential for

market failure in a monopoly arises when there is insufficient availability of the good and/or the price of the good becomes excessively high. The absence of market competitors poses a challenge for a monopoly in terms of sustaining competitiveness over time (LibreTexts, 2023). In order to proactively prevent monopolies that could potentially result in market failure, it is imperative for Thailand to initiate a discourse on this matter. This discussion should focus on implementing more robust safeguarding provisions, particularly concerning merger control.

6. Conclusion

With over two decades of implementation, the Trade Competition Act and its regulatory agency have unfortunately failed to effectively enforce the law and sanction anticompetitive conducts. Although the transactions of large conglomerates have contributed to national economic growth, significant issues remain for smaller and medium business operators as well as consumers. This is due to laws and government policies failing to promptly promote free and fair competition, leading to wealth inequality that still plagues Thailand. A potential future challenge involves the prospect of market failure arising when large corporations acquire a substantial market share in specific markets, potentially leading to a state of monopoly. Although this issue may not be readily apparent currently, indications suggest that it could materialize, particularly due to approvals granted in merger cases resulting in an increased market share for specific entities. Consequently, this has led to elevated prices for consumers. It is evident that such transactions also restrain competition within the industry, subsequently limiting choices for consumers. This condition hinders competitiveness within these particular industries, thereby posing obstacles to the economic development of the country. In the pursuit of economic reform, amending existing laws, along with the introduction of new regulations, can establish a fair and equitable business environment. Leveraging its potential, Thailand has the capacity to reestablish itself as a developing nation, fostering a market characterized by robust and fair competition. This approach aims to facilitate fair competition for every entity, while simultaneously ensuring proper consumer protection measures are in place.

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Data Availability Statement

The author confirms that the data supporting the findings of this study are available within the article and its supplementary materials.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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