

The Announcements of Trade Competition Commission
Subject: Criteria, Procedures and Conditions in requesting for the permission
and the permission for business merging
B.E. 2561

Section 51, paragraph two, of the Trade Competition Act B.E.2017 requires the business operators who conduct business merging that possibly causing monopoly or being the business operators with power over the market to obtain the permission from the Trade Competition Commission and Section 51, paragraph five, stipulates for the Trade Competition Commission to prescribe the criteria, procedures and conditions in requesting for the permission and the permission for business merging.

By virtue of Section 17 (2) and Section 51, paragraph five, of the Trade Competition Act B.E.2560, the Trade Competition Commission therefore issued the Notification as described below.

1. This Notification is called "Notification of the Trade Competition Commission on the criteria, procedures and conditions in requesting for the permission and the permission for business merging B.E.2561".

2. This Notification shall be enforced from the day following the date of its publication in the Government Gazette onwards.

3. In this Notification

“Monopoly” means being a single business operator in any particular market that has the power to determine the price and quantity of their products or services independently, and has sales amounts ranging from one billion baht or more.

4. The Chairperson of the Trade Competition Commission shall be in charge of this Notification

Category 1
Permission for business merging

5. The business operators with an intention to merge businesses under Section 51, paragraph four (1) (2) or (3) which may cause monopoly or possibly become the business operator with power over the market are required to submit the application for the permission together with supporting documents in accordance with Article 6. These can be submitted manually or by authorizing a person to act on behalf at the office. The fee must also be paid as prescribed in the ministerial regulations.

6. In requesting for business merging, the information must be filled and submitted to apply for the permission as specified by the Secretary-General with the supporting documents for the business merging permission as follows:

(1) Business merging plan and operation period

(2) Details about those who wish to merge businesses and those whose business is merged which must at least contain the shareholder structure, voting rights, total sales, and market shares.

(3) Results and analysis of business merging which must at least contain the following documents:

(A) Analysis of shareholder structure, control power of the persons wishing to do business merging in order to be considered on the policy relations or command authority before and after business merging.

(B) Analysis of market structure, products or services related to those who wish to merge business in order to evaluate the potential impact possibly occurring after business merging which must at least include the analysis result data as follows:

1) Analysis of market structure before and after business merging

2) Market scoping

3) Market shares of those who wish to merge businesses before and after business merging

4) The sales amount of the persons who wish to merge businesses before and after the business merging

5) Assessment of impact on the competition after business merging in the following issues:

A) Market concentration

B) Entry and Expansion by considering various factors such as laws and state regulations, transportation costs, access to patents in the original technology, access to raw materials or other production necessities, etc.

C) Non-Coordinated Effect which means the impact caused by the merged entity that can generate more profit from the price increase or reduction in the quality of products due to the reduced competition.

D) Coordinated Effect means the impact of business merging which may increase the possibility that business operators will cooperate to raise product prices after business merging

E) Impacts on the overall economic benefits and consumers

F) Other impacts possibly affecting the market competition

(if any)

6) Evaluation results of market performance after business merging

(4) The results of study and analysis on factors under Section 52, paragraph two, are as follows:

(A) Business necessities in business and benefits for business promotion

(B) Impact of economic damage

(C) Impact on important benefits that should be obtained by general consumers

7. Business merging for internally re-structuring of the business operators

having the relations in the policy or authority according to the rules announced by the Commission does not have to request for the permission on business merging following this Notification.

Category 2

Approval of business merging applications

8. After the business operators has submitted the documents under Article 6 and has already paid the fees, The office shall evidence indicating the number of the request receipt for the applicant to further monitor the operation.

Category 3

Business merging considerations

9. After the Office has receipt the request for the permission on business merging, the following steps will be taken.

(1) The Secretary-General proposes the request for business merging to the Chairperson of the Commission within seven days from the date of receiving the request for permission to be submitted to the Commission for consideration.

(2) The Commission may requests for additional information from the business operator who requests for the permission to merge businesses which may be made in writing requesting for the information or inviting the applicant to clarify.

(3) The Commission may sends letters to invite people to give opinions and supplementary information for consideration.

(4) The Commission shall complete the consideration within ninety days from the date of receipt of the request. In case there is the necessity of not being able to complete the consideration within the time limit, the period can be extended for no more than fifteen days by recording the reasons and the necessity to extend the time for consideration.

10. The Commission shall complete the consideration within ninety days from the date of receiving of the request. And in the case that there is the necessity not being able to complete the consideration within the time limit, the period can be extended for no more than fifteen days by recording the reasons and the necessity to extend the time for consideration.

In case of approval permission, the Commission may prescribe any term or condition for the authorized business operators to conform to.

The Commission must specify the reasons for granting or not granting the business to be merged with both facts and legal issues. The names of the considering

committees must be signed and the Office shall notify the applicant of the consideration result within seven days from the date of order of the Commission.

Category 4
Rights and duties of business operators

11. The business operator who has been notified of the results and disagrees with the said order has the right to file the lawsuit to the Administrative Court within sixty days from the date of receiving such order.

12. Business operators with an approval to merge businesses shall proceed according to the time and conditions that have been approved by the committee.

In case of a violation or failure to comply with the terms or conditions of the committee, the committee has the right to revoke all or part of the approval order by specifying the period of time to comply

Category 5
Transitory Provision

Article 13 Business merging that has been approved at the shareholders' meeting or at the meeting of the Executive Committee to merge businesses in accordance with law or has signed the contract to merge businesses before the effective date of this notification is exempt from submitting an application for permission under this notification.

Announced on _____ October B.E. 2561

(Mr. Sontirat Sonthijirawong)
Minister of Commerce, Chairperson of
Trade Competition Commission