

**The Trade Competition Commission Notice on
Rules and Procedures on a Request for Prior Approval
B.E. 2561 (2018)**

As Section 59 of the Trade Competition Act B.E. 2560 (2017) allows an undertaking to request in advance to the Trade Competition Commission to assess and determine whether its proposed conduct(s) comply with the provisions of Section 50, Section 54, Section 55, Section 57, or Section 58 of the Act in which such request shall be compliant with the Rules and Procedures determined by the Commission.

By virtue of Section 17 (2) of the Trade Competition Act B.E. 2560 the Trade Competition Commission, therefore, announces the Notice as follows:

1. This Notice is called “The Trade Competition Notice on Rules and Procedures on a Request for Prior Approval B.E. 2561.”

2. This Notice shall be effective on the following day after the day that this Notice being published in the Government Gazette onwards.

3. In this Notice,

“Prior Approval” means an assessment of information concerning a proposed action or business operation of an undertaking who requested to obtain a decision under provisions of this Act;

“A Ruling” means a result from a Prior Approval;

“A Requester” means an undertaking requests for prior approval under the Provision of Section 59.

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

Chapter 1

General Provision

5. Prior Approval is to facilitate an undertaking who requests a pre-approval ruling from the Commission upon its intended or proposed action or business operation on the following issues:

(1) whether such action is an action of an undertaking with dominant position under the Provision of Section 50;

(2) whether such action is a business operation under the Provisions of Section 54, 55, 57, or 58.

Chapter 2

Submission of a Request

6. A requester for the prior approval shall submit a request to the Commission to assess a certain action or business operation under a single specific provision of the Act by paying relevant fees at rates predetermined by the Ministerial Regulations on Fees for Merger Approval, Request for Prior Approval, and Duplication or Certification of Orders or Ruling B.E. 2561 which has been legislated pursuant to Section 6 and providing detailed information for prior approval as follows:

(1) Details of a requester and an issue that the requester intends to have prior approval in the Form enclosed;

(2) Other clarifications concerning a proposed action or business operation which shall at least provide the following details:

(a) An explanation of an intended or a proposed action or business operation requested for prior approval including natures or characteristics of such action or operation, its essence(s), its objective(s) and its intended period and length of time;

(b) An explanation for consequence(s) of an intended or a proposed action or business operation on competition of a product or service;

(c) Other relevant information supporting the assessment by the Commission.

7. A submission of a request shall be made in person or by any authorized person with a proper power of attorney at the Office of the Trade Competition Commission.

Chapter 3

Acceptance and Dismissal of a Request

8. After the submission of documents as described in 6 (1) and (2) and the payment of appropriate fees, the Office shall provide an evidence of submitting the request which states a serial number of the request's acceptance for further correspondence regarding the process of prior approval.

9. The Commission may dismiss the request due to one of the following reasons:

(1) An action or a business operation in a request has been admitted as a complaint to the Office regardless of whether it is related to the same provisions of the Act as requested prior approval or not;

(2) An action or a business operation in a request is under investigation by the Office regardless of whether it is related to the same provisions of the Act as requested prior approval or not;

(3) It is apparent that an action or a business operation is already being conducted or has been committed by a requester;

In a case of dismissal, the Commission shall notify the requester within seven (7) days of having a decision to dismiss the request. In this regard, the relevant fees once paid will not be refunded.

Chapter 4

Prior Approval

10. Upon the acceptance of a request, the Office shall proceed according to the following steps:

(1) The Secretary-General shall propose the request to the Chairperson of the Commission within seven (7) days from the day that the request being received;

(2) To assess the request, the Commission may call upon additional information from the requester in writing or in person;

(3) For the assessment of the request, the Commission shall assess exclusively information submitted by the requester as described in 6 (1) and (2) and additional clarification(s) requested by the Commission;

(4) A prior approval by the Commission may impose any condition, extent, and/or time constraint for the requester to comply for the purposes of the Act;

(5) The Commission shall conclude the assessment of the request within sixty (60) days from the date of the request being accepted and the Office shall notify the requester within seven (7) days from the date of the Commission's decision on the request;

If the Commission is unable to conclude the assessment within the abovementioned period, the Commission shall notify the requester at least fifteen (15) days before an expiration of that period along with reason(s) or necessity(ies) for not being able to conclude the assessment as well as an estimated time of conclusion; The total period of assessment shall not exceed ninety (90) days from the date of the request being accepted; If the requester do no longer wish to pursue a prior approval, all fees once paid shall be refunded.

11. A prior approval is binding only with the requester and to the extent and time imposed by the Commission.

12. If, after the prior approval has been concluded, it is apparent to the Commission that requester-provided information used in the assessment is significantly incomplete or inaccurate or the requester does not comply with the Commission-imposed condition(s), the Commission shall withdraw that prior approval and notify the requester about that withdrawal after the Commission has the resolution;

Moreover, if it is discovered that false information, in which may be harmful to others or general publics, has been provided to the Office, the Office shall seek further legal prosecution and remedy(-ies).

This Notice is announced on 4 October B.E. 2561 (2018)

Sondhirat Sondhijirawong

Minister of Commerce acting as the Chairperson of

The Trade Competition Commission

For Official Use Only
Request Number:

Prior Approval Request Form under Section 59 of the Trade Competition Act B.E. 2560

1. Details of Requester

Name of the Undertaking

Type of Business Partnership Limited Partnership Company Limited Public Company Limited Others

Address

Represented by Mr/Ms

Position Authorized Signatory Appointed by Power of Attorney

Nature of Business

2. Legal Issue requested for Prior Approval

I, hereby, request the Trade Competition Commission to consider in advance if the information provided regarding an action or a business operation do violate the Trade Competition Act B.E. 2560 in one of the following issues (please select only one):

- An action of an undertaking with dominant position under Section 50
- A business operation under Section 54 (Collusion for monopolization, reduction, or restriction of competition in a market by price determination, quantity restriction, bid rigging, or dividing territories (market division))
- A business operation under Section 55 (Other Collusion beyond Section 54 and collusion between non-competitors for price determination, quantity restriction, or dividing territories)
- A business operation under Section 57 (Unfair Trade Practices)
- A business operation under Section 58 (Agreeing or contracting with foreign undertaking(s) without due cause)

3. Detailed Information for the Request

I, hereby, attach documents illustrating fact and information accompanying the request (in TH SarabunPSK 16 pts on A4 paper, page numbered, no page limit, and signed on every page at the bottom right of each page) as follow:

Document I: Explanation of an action or a business operation that the requester proposes to the Commission to have a prior approval including characteristics of such action or operation, essential features, objective(s), period and length of time for the intended action or operation

Document II: Explanation of consequence(s) of such action or operation to competition in product or service

Document III: Other relevant information of the Commission's interests.

(Sign) Requester

The Commission shall cancel the request for the cause of one of the followings:

(1) The requested action or operation has been admitted as a complaint by the Office regardless of provisions of the Act;

(2) The requested action or operation is under investigation of the Office regardless of provision of the Act;

(3) It is apparent that the requested action or operation is underway or has been executed;

If the Commission orders the request to be cancelled, the requester shall be informed within 7 days after the date of such decision without refund of any fee.

I, hereby, certify that all above-mentioned statements are true and have signed on a bottom right corner of every page of submitted documents, as well as certify all duplicates of documents and evidence and all fees are paid for.

(Sign) Requester

(.....)

Date:

Remark: If false information has been submitted to the Office, in which it may harm other(s) or general public, the requester shall be prosecuted by law.

Acceptance of the Request Form and Accompanied Documents

Mr/Ms Position

The requester proceeds with the following:

- Completed Prior Approval Request Form (filled and signed)
- Accompanied Documents

Comments/Preliminary Concern(s)

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Fees are paid for

(Sign) Officer
(.....)

Date: