

**The Trade Competition Commission Notice on
Guidelines for the Assessment of Harmful Practices
B.E. 2561 (2018)**

Section 57 of the Trade Competition Act B.E. 2560 (2017) prohibits any undertaking to conduct any practice that harms other undertakings which is prescribed by the law. By the virtue of Section 17 (3) of the Trade Competition Act B.E. 2560 and for the purposes of clarity and consistency in assessing any practice in violation of Section 57 of the Act, therefore, the Trade Competition Commission issues the Notice detailed as follows:

1. This Notice is called “The Trade Competition Commission Notice on Guidelines for the Assessment of Harmful Practices B.E. 2561 (2018)”

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,

“Market Power” means a power and an ability of an undertaking to influence direction or condition for doing business in a relevant market;

“Superior Bargaining Power” means a power and an ability of an undertaking to control, direct, determine direction, or impose condition(s) for doing business with another undertaking whereby that another undertaking must implicitly acquiesce.

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

Chapter 1
General Provision

5. An offence under the provision of Section 57 incurring a loss to another undertaking shall be assessed from apparent and factual economic loss, such as revenue loss of that another undertaking, loss in market value of a product or service, and loss of opportunity in producing goods or service. Chapter 2

Assessment of Market Power and Superior Bargaining Power

6. To assess market power, it shall be presumed that an undertaking with a market share of 10 percent or higher is deemed to have market power and shall consider other additional factors

concurrently; such as a number of undertakings in a market, registered capital, access to factors of productions, distribution channels, business networks, necessary infrastructure for doing business, and laws and regulations.

7. To assess superior bargaining power, one or more of the followings shall be considered:

(1) An undertaking has to rely on a purchase of goods or service from another undertaking whereby the value of transaction between these two undertakings is 30 percent or higher of the revenue earned from the purchase or the sale of that product or service;

(2) In a case that an undertaking has to rely on a purchase of a product or service from another undertaking whereby the value of transaction between these two undertakings is less than 30 percent of the revenue from the purchase or the sale of that product or service, one or more of these features shall be met:

(a) that undertaking is unable to find or have no alternative trade partner;

(b) Dealing with an alternative trade partner would incur significant operating expenses exceeding benefits from dealing with an existing trade partner.

Chapter 3

Offences

8. An unfair discriminatory practice is a practice conducted by an undertaking against other undertaking(s) by setting price, quantity of product, or other trade practices in production, acquisition, or distribution in such a way that correspond with one or more of the following characteristics:

(1) Set an unfairly low selling price;

(2) Set an unfairly high buying price;

(3) Prevent an undertaking to participate in any association or business gathering unfairly.

9. An unfair exercise of market power or superior bargaining power shall have the following characteristics:

(1) An undertaking has market power or superior bargaining power over another undertaking;

(2) An undertaking exercises its market power or its superior bargaining power to take advantage over, or restricting alternative(s) of, its trading party unfairly.

10. Imposition of trading condition(s) that restrict or prevent an operation of other undertaking unfairly having one or more of the following characteristics:

- (1) Discriminatory trading conditions for different customers or different geographical areas without due cause;
- (2) Discriminatory trading conditions favouring some specific undertakings unfairly;
- (3) Discriminatory trading condition(s) that reciprocally benefits a trading party of a competitor to induce that party to switch from the competitor to trade with an undertaking in question;
- (4) Compulsory condition(s) without due cause requiring a trading party to buy other product(s) or service(s) from other undertaking(s) if the trading party want to buy a product or service from an undertaking in question;
- (5) Condition(s) prohibiting a trading party doing business or dealing with competitor(s) of an undertaking in question without due cause;
- (6) Unfair trading condition(s) that restrict or limit transaction between a trading party and other undertaking;
- (7) Unfair control of an appointment of employee(s) in an undertaking of a trading party;
- (8) Unfair intervention of competitor's transaction;
- (9) Unfair intervention of competitor's internal management through the use of voting rights, appointment of management, or other means in competitor's business;
- (10) Refusal to deal with a trading party without due cause.

Chapter 4
Guidelines for the Assessment of Unfair Practices

11. To assess a certain action whether it is unfair, the following criteria shall be considered concurrently:

- (1) Such action is not commonly practiced as trade norms;
- (2) There is an imposition of condition(s) without written evidence and without prior notice in a reasonable period of time as normally practiced in such trade;
- (3) Such action has no justifiable explanation(s) from the perspective of business, marketing, or economics;
- (4) Other relevant factors.

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