

Corporate Crisis Management Newsletter
Asia Newsletter

- I. Nishimura & Asahi has acquired Thailand's SCL Group**
- II. Active Law Enforcement by Thai Trade Competition Commission**

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I. Nishimura & Asahi has acquired Thailand's SCL Group

Nishimura & Asahi has acquired SCL Group (“SCL”), one of Thailand’s leading local firms. The deal created one of Thailand’s largest Japanese law firms, as well as one of the largest, well-resourced and most diverse international business law practices in Southeast Asia.

Following the October 2019 acquisition, the new firm operates under the name “SCL Nishimura” and comprises over 100 lawyers and professional staff providing top-quality legal and business-advisory services.

Nishimura & Asahi opened its Bangkok office in 2013, under the name Nishimura & Asahi (Thailand) Co., Ltd. As a result of the SCL integration, SCL Nishimura will have a significantly larger support structure, thereby establishing a stronger presence in the Thai legal market and meeting the growing and varied demands for legal services throughout the Southeast Asia region.

II. Active Law Enforcement by Thai Trade Competition Commission

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The new Thai Trade Competition Act (the “**2017 Act**”) was enacted on 7 July 2017 and came into force on October 5 of the same year, replacing the previous Trade Competition Act (the “**1999 Act**”). The 2017 Act established the Thai Trade Competition Commission (the “**TCC**”) as a new independent enforcement authority, and aimed to establish a more robust trade competition regime.

On 5 August 2019, the TCC declared its rulings in the following three cases, which are worthy of attention from Japanese companies doing business in Thailand.

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1. Abuse of Dominant Position by Energy Drink Manufacturer

Between October 2011 and July 2012, an energy drink manufacturer in Thailand (the “**Drink Manufacturer**”) prohibited distributors in Thailand (the “**Distributors**”) from selling competitors’ energy drinks. The Drink Manufacturer threatened to suspend supply to Distributors that did not comply with the restriction. In August 2012, the Distributors filed a complaint with the Trade Competition Commission of the Department of Internal Trade of the Ministry of Commerce (the “**TCC predecessor**”) claiming that the above actions violated the following provisions of the 1999 Act which prohibit:

- the imposition, by a business operator with market dominance, of unfair compulsory conditions requiring other business operators to restrict supply of service, production, or purchase or sale of goods, or limit their opportunities to choose to purchase or sell goods, or to receive or supply service from other business operators (Section 25 (2) of the 1999 Act, equivalent to Section 50 (2) of the 2017 Act);
- interfering in the business operations of other business operators without reasonable cause (Section 25 (4) of the 1999 Act, equivalent to Section 50 (4) of the 2017 Act);
- carrying out an action contrary to free and fair competition, which has the effect of destroying, damaging, obstructing, impeding, or restricting the business operations of other business operators, or is intended to prevent other business operators from carrying out business, including causing them to cease their business (Section 29 of the 1999 Act, equivalent to Section 57 of the 2017 Act).

The TCC found that the Drink Manufacturer had a market share of over 50% and sales exceeding one billion baht in the previous year. Accordingly, the Drink Manufacturer was recognized as having market dominance, as defined in Section 3 of the 1999 Act (equivalent to Section 5 of the 2017 Act). The TCC further found that the Drink Manufacturer’s actions violated Sections 25 (2) and (4), as well as Section 29, of the 1999 Act. In February 2019, the TCC sent the case to the public prosecutor’s office. Of note is that violations of Sections 25 (2) and (4) of the 1999 Act were subject to the criminal penalties of imprisonment for not more than 3 years, a fine of not more than 6 million baht, or both, under Section 51 of the 1999 Act. The equivalent in the 2017 Act is Section 72, although, it has been slightly modified; violations of Section 50 (2) and (4) of the 2017 Act can be subject to the criminal penalties of imprisonment for not more than 2 years, a fine of not more than 10% of the turnover of the year in which the violation took place, or both. Further, where an offender is a legal entity and the offence is committed under instruction or through the conduct of a director, such director can also be subject to criminal penalties under Section 54 of the 1999 Act (equivalent to Section 77 of the 2017 Act).

As the TCC has the power to settle criminal proceedings related to violations of the Trade Competition Act, the Drink Manufacturer expressed to them a desire for settlement. In the settlement, the Drink Manufacturer and its director paid the TCC a fine of 12 million baht in total.

2. Unfair Trade Practice related to Promotional Coupons

In 2011, a hypermarket (a very large store that sells a wide range of goods) company in Thailand (the “**Hypermarket Company**”) prepared advertising brochures stating that coupons issued by two competing supermarket companies in Thailand (the “**Supermarket Companies**”) could be used at the stores of the Hypermarket Company for twice their value, and distributed the brochures to consumers near stores belonging to the Supermarket Companies. The Supermarket Companies filed a complaint with the TCC predecessor claiming that these actions violated Section 29 of the 1999 Act.

While the TCC found that these actions constituted an unfair trade practice under Section 29 of the 1999 Act, the provision for criminal penalties related to violations of Article 29 of the 1999 Act was abolished upon enactment and enforcement of the 2017 Act, and the provision for administrative penalties related to such violations under the 2017 Act could not be applied retroactively. Therefore, the TCC did not apply penalties to the above-mentioned actions.

Separately, the Supermarket Companies filed a lawsuit against the Hypermarket Company for damages based on tort, for which the Supreme Court of Thailand ordered the Hypermarket Company to pay approximately four million baht.

3. Unfair Trade Conditions Set by Agricultural Wholesalers

This case relates to actions taken after the enforcement of the 2017 Act and, as such, the TCC's ruling was made pursuant thereto.

Between September and October 2017, the wholesalers of agricultural products in the provinces of Chiang Mai and Me Honson (the “**Wholesalers**”) restricted the farmers in the province of Me Honson (the “**Farmers**”) from selling agricultural products to other wholesalers, and forced a reduction in the purchase price of the agricultural products that the Wholesalers purchased from the Farmers. Further, for those Farmers who did sell their agricultural products to other wholesalers, the Wholesalers fixed the sales prices. The Farmers filed a complaint with the TCC claiming that these actions violated the 2017 Act (specifically, the prohibition on unfairly setting trading conditions that restrict or prevent the business operations of others (Section 57 (3)).

The Wholesalers alleged that their actions were permissible because they provided seeds free of charge to the Farmers, however, the TCC determined that the actions constituted an unfair trade practice under Section 57 (3) of the 2017 Act. The TCC initially imposed an administrative penalty of 50 thousand baht on the Wholesaler but it subsequently reduced the amount to 25 thousand baht in light of the degree of cooperation by the Wholesalers with the TCC's investigation.

4. Comments

The above cases suggest that the TCC will continue to increase enforcement actions against anti-competitive behavior under the 2017 Act. Since there are many cases pending in the TCC and many more TCC decisions are expected in the near future, it is important for Japanese companies doing business in Thailand to continue to keep a close watch on TCC trends.



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Metas Sansuk joined SCL Group in 2016. He trained in the fields of commercial and banking laws at Norton Rose Fulbright (Bangkok office) and gained experience as a legal consultant with Kasikorn Bank, one of the major banks in Thailand. He finished his first Master of Laws in Commercial and Competition Law in 2014 and the second in Information Technology (IT) and Intellectual Property Law (IP) in 2015 (under the Academic Excellence Scholarship) with the University of East Anglia. His key practice areas are IP, IT, and competition law.