Bangkok Global Law
540, Unit 1705, 17th Floor, Mercury Tower,Ploenchit Road,
Lumpini, Pathumwan, Bangkok 10330 Thailand
Tel: +(66) 2 2525895-6 Fax: +(66) 2 2525897
Website: www.bgloballaw.com
E-mail: info@bgloballaw.com

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Thailand's competitive law in perspective of OECD

In May 2025, the Trade Competition Commission of Thailand (TCCT), in collaboration with the OECD, presented the results of the OECD Peer Review of Thailand's competition law and policy. This review forms part of the second phase of the OECD-Thailand Country Program and aims to assess the strengths and weaknesses of Thailand's competition framework, especially following the implementation of the Trade Competition Act B.E. 2560 (2017) ("TCA").

Institutional Framework: Independence Achieved, Resources Lacking

The 2017 TCA marked a transformative step in Thailand's competition regime, establishing the TCCT as an independent authority with enforcement powers over anticompetitive agreements, abuse of dominance, merger control, and unfair trade practices. However, the OECD highlighted significant limitations regarding the TCCT's operational resources. Budgetary constraints and a limited number of personnel dedicated to core enforcement functions hinder the agency's efficiency and impact.

Scope of Application: Key Exemptions Weaken Uniform Enforcement

The OECD raised concerns about the TCA's limited scope due to broad exemptions:

- **State-Owned Enterprises (SOEs):** While the TCA aimed to curtail blanket exemptions, many SOEs remain outside the law's reach due to exceptions based on public interest or national security. This allows SOEs to compete with private firms on unequal terms.

- **Regulated Sectors:** Certain industries like telecommunications, energy, banking, and insurance are governed by separate competition rules, leading to fragmented oversight and enforcement gaps.

- **Extraterritoriality:** The law's unclear stance on cross-border conduct limits its effectiveness in addressing anticompetitive practices originating outside Thailand that still impact the local market.

Enforcement Challenges: Legal and Procedural Hurdles

Thailand's enforcement of competition law remains limited:

- **High Standard of Proof:** Hardcore cartels and abuse of dominance are treated as criminal offences, requiring proof beyond a reasonable doubt—a standard rarely met in competition cases globally.

- **Rule of Reason for Cartels:** Unlike international practice, Thailand assesses even hardcore cartels under a rule of reason, allowing certain collusions to be exempted if market share is below 10%.

- **Bid Rigging Jurisdiction:** Overlaps between the TCCT and the National Anti-Corruption Commission have created ambiguity in prosecuting bid rigging in public procurement.

- **Dominance Assessment:** The focus remains on market share metrics and perceived unfairness, rather than assessing harm to market competition.

- **Detection and Transparency:** With no formal leniency or whistleblower mechanisms in place and only brief summaries of decisions made public, enforcement suffers from low detection rates and limited deterrence.

Merger Control: A Dual System in Need of Reform

Thailand operates a dual merger control regime:

- **Ex-ante approval:** Required for mergers creating a monopoly or dominant position.

- **Ex-post notification:** Required after completion for mergers reducing competition, but TCCT has no power to block or remedy such mergers.

The OECD criticized this structure as ineffective. The vague and potentially high notification thresholds deter timely filing, while the TCCT's inability to intervene post-merger undermines competition oversight. Additionally, the assessment relies heavily on structural dominance rather than overall market effects, and procedural transparency is limited, with no formal role for third-party input.

OECD Recommendations: Towards a More Robust Framework

To strengthen Thailand's competition law regime, the OECD made the following key recommendations:

- **Broaden Application:** Ensure the TCA applies to SOEs engaged in commercial activities and clarify boundaries in regulated sectors. Establish clear extraterritorial application.

- **Enhance Resources and Structure:** Increase TCCT's budget and staffing. Review the use of external inquiry subcommittees.

- **Strengthen Enforcement:** Introduce administrative penalties for hardcore cartels and dominance abuse. Treat hardcore cartels as per se illegal. Implement leniency and whistleblower protections. Refocus enforcement on competitive effects.

- **Reform Merger Control:** Eliminate or empower the ex-post regime. Adopt objective, lower thresholds with a local nexus. Improve procedural fairness and introduce a fast-track for non-problematic transactions.

Should you have any question, please do not hesitate to contact us via info@bgloballaw.com