

THAI *COMPETITION LAW* Aspects of Merger & Acquisition

Since the economic situation is highly competitive nowadays, **Mergers and Acquisitions (“M&A”)** is one mechanism that entrepreneurs choose to expand its business capabilities, gain competitive advantage or significant market share or to diversify its products or services.

In order to prevent unfair trade competition arising from the M&A transaction, the Office of Trade Competition Commission (the “OTCC”) will monitor business operators to facilitate a free and fair platform for trade competition.

What is M&A under the Trade Competition law?



Under the Trade Competition Law¹, **M&A** is defined as:

1. Mergers among manufacturers, sellers, or service providers whether the business units will be maintained, liquidated or established as a new business unit.
2. Acquiring the entire or part of the **assets** of a business to ‘control policy’, direct or manage the business.
3. Acquiring all or part of the **shares** of a company to ‘control policy’, direct or manage the business.

To determine whether the acquisition is an asset or share acquisition that is deemed to be a ‘control of policy’, directing or managing the business, the following criterias must be taken into account:

Acquiring assets	Acquiring shares
The acquisition value should exceed 50% of the total value of assets used in the regular business operations for the previous fiscal year the business acquired. ²	1. Purchasing or acquiring shares at the end of a specific period exceeding 25% of the total voting rights of any listed company .
	2. Purchasing or acquiring shares exceeding 50% of the total voting rights of any private company .

If the M&A transaction is considered as ‘M&A’ under the Trade and Competition Law and such M&A could ‘**substantially reduce competition**’ or create ‘**business market monopolization**’ or a ‘**dominant position in a market**’, the business unit in the M&A transaction is required by law to either notify the M&A transaction to the OTCC or request for the OTCC’s permission before proceeding with the M&A.

¹ Section 51 of the Trade Competition Act

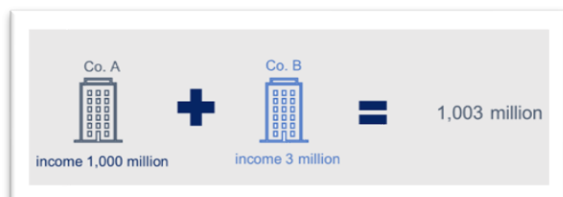
² No. 3 of the OTCC’s Notification

Dealing with M&As which substantially reduces competition in a market

M&As that may substantially reduce competition in a market are those with the following conditions:

1. The combination of the business that:

At least one company has income
≥ THB 1,000 million



OR

Combined company has income
≥ THB 1,000 million



2. The combination does not result in a monopoly or a dominant position in a market.

In this case, the acquiring company **must notify the OTCC within 7 (seven) days after completing the M&A**. Failure would result in an administrative fine not exceeding THB 200,000 and not exceeding THB 10,000 per day until resolved.

Dealing with M&As that could cause a 'monopoly' or a 'dominant position'

- M&As that may cause a **monopoly**
"There is only one entrepreneur in the market who independently determines the price and quantity of the products and has revenue exceed THB 1,000 million or higher."
- M&As that may cause a **dominant position in a market** can be separated into two types:



Single Dominant	Collective Dominant
<ul style="list-style-type: none"> - Single entrepreneur or - 50% of market share; and - Revenue exceeds THB 1,000 million 	<ul style="list-style-type: none"> - Top three entrepreneurs or - 75% of market share (all together); and - Revenue exceeds THB 1,000 million

When the M&A is regarded as causing a 'monopoly' or a 'dominant position in a market', the company **needs to obtain permission to combine the business from the OTCC**. Once the OTCC approves, the company can then proceed with the transaction; otherwise **an administrative fine not exceeding 0.5% of the total value of the transaction** will be imposed.

Based on our experience, the OTCC not only considers the revenue received but also considers the sales amount in any market by calculating the sales amount of the related company.

In addition, to avoid violating the law, before combining the business, the company should consult with the OTCC officer to consider whether or not the deal will be under the condition of substantially reducing competition, creating a monopoly or creating a dominant position in a market.

Case study

CP Group & Tesco Lotus - CP Group purchased Tesco Lotus supermarket business

The OTCC viewed that the merger of CP Group (Charoen Pokphand Group Co., Ltd) and Tesco Lotus was not considered a monopoly. The reason was because the result of this transaction did not affect the market shares of hypermarket and supermarket, but there was an impact only with the market of convenience stores. However, this impact would be considered that it provided several benefits to the economy.

CP Group & Siam Makro - Entire Business Transferred between CP Group and Siam Makro

Siam Makro, as a subsidiary of CP Group, had taken control of the retailer Lotus from other affiliates of CP Group by Entire Business Transfer (EBT). The OTCC viewed that this EBT transaction was not against the Anti-Trust or competition law since the transaction of Siam Makro and CP Group's affiliates would be considered as an internal business reorganization and would not affect the market shares.

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Keyword: Monopoly, Anti-Trust, Trade Competition, M&A, Merger & Acquisition, Combination, Entire Business Transfer, EBT, Shares Purchase, Market Shares, OTCC, Reorganisation

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