



**Conferencia de las
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JUNTA DE COMERCIO Y DESARROLLO
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CUESTIONES RELACIONADAS CON EL DERECHO DE LA COMPETENCIA
DE ESPECIAL IMPORTANCIA PARA EL DESARROLLO

PREPARACIÓN DE UN MANUAL DE LEGISLACIÓN
SOBRE LA COMPETENCIA

Manual de legislación sobre la competencia

Nota de la secretaría de la UNCTAD

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INTRODUCCIÓN

1. En el apartado c) del párrafo 6 de la sección F del Conjunto de Principios y Normas equitativos convenidos multilateralmente para el control de las prácticas comerciales restrictivas se prevé la compilación de un manual sobre legislación en materia de prácticas comerciales restrictivas.
2. Por otra parte, la Cuarta Conferencia encargada de examinar todos los aspectos del conjunto de principios y normas, celebrada en Ginebra del 25 al 29 de septiembre de 2000, y el Grupo Intergubernamental de Expertos en Derecho y Política de la Competencia en su tercer período de sesiones, celebrado en Ginebra del 2 al 4 de julio de 2001, pidieron a la secretaría de la UNCTAD que siguiera publicando nuevos números del Manual sobre legislación de la competencia, incluidos los instrumentos regionales e internacionales, que deberían complementarse con un resumen de las principales disposiciones del derecho de la competencia sobre la base de las aportaciones que hagan los Estados miembros (véase la resolución aprobada por la Conferencia de Examen, TD/RBP/CONF.5/16, y las conclusiones convenidas del tercer período de sesiones del Grupo Intergubernamental de Expertos, TD/B/COM.2/CLP/L.7).
3. En consecuencia, la secretaría ha preparado la presente nota, que contiene comentarios y textos de la legislación sobre la competencia de Indonesia, Nueva Zelandia y Tailandia*.
4. Así pues, hasta la fecha la secretaría de la UNCTAD ha publicado notas con observaciones y textos de leyes sobre la competencia y sobre prácticas comerciales restrictivas de 45 países: Alemania, Argelia, Bélgica, Brasil, Bulgaria, Canadá, Chile, Colombia, Côte d'Ivoire, Croacia, Dinamarca, España, Estados Unidos de América, Finlandia, Francia, Georgia, Hungría, Indonesia, Italia, Jamaica, Kenya, Japón, Lituania, Marruecos, México, Noruega, Nueva Zelandia, Pakistán, Polonia, Portugal, Reino Unido de Gran Bretaña e Irlanda del Norte, República Checa, República de Corea, República Eslovaca, Rumania, Senegal, Sri Lanka, Sudáfrica, Suecia, Tailandia, Túnez, Turquía, Ucrania, Venezuela y Zambia.
5. En su nota del 8 de marzo de 1996, el Secretario General de la UNCTAD pidió a los Estados que todavía no lo hubieran hecho, o que después de su última comunicación hubieran promulgado nuevas leyes o modificado la legislación vigente sobre la competencia, que proporcionaran a la secretaría de la UNCTAD la legislación, las decisiones judiciales y las observaciones pertinentes, ajustándose al esquema facilitado (véase infra). (Sin embargo, en el caso de los Estados que hayan adoptado leyes sobre la competencia por primera vez, las observaciones no tienen necesariamente que ajustarse al esquema.) Para facilitar la reproducción de los textos de la legislación en más de uno de los idiomas oficiales de las Naciones Unidas, se invitó a los Estados a que, de ser posible, proporcionaran los textos de su legislación en uno o más de los idiomas oficiales de las Naciones Unidas.
6. La secretaría de la UNCTAD da las gracias a los Estados que han aportado los materiales solicitados para la compilación del manual y pide nuevamente a los Estados que aún no lo hayan hecho que respondan a la petición del Secretario General de la UNCTAD mencionada precedentemente.

* Estas contribuciones se reproducen en el idioma y la forma en que se han presentado a la secretaría.

ESQUEMA PARA LA INFORMACIÓN DESTINADA AL MANUAL

- A. Descripción de los motivos de la promulgación de la legislación.
- B. Descripción de los objetivos de la legislación y de la medida en que han evolucionado desde que se promulgó la primera legislación.
- C. Descripción de las prácticas, actos o comportamientos sujetos a control, indicando para cada uno de ellos:
 - a) El tipo de control, por ejemplo: prohibición absoluta, prohibición en principio o examen caso por caso; y
 - b) El grado de control a que están sometidas las prácticas, actos o comportamientos especificados en los párrafos 3 y 4 de la sección D del Conjunto de principios y normas, así como cualesquiera otras prácticas, actos o comportamientos que puedan ser objeto de control, en particular los relacionados expresamente con la defensa de los consumidores, por ejemplo la publicidad engañosa.
- D. Descripción del ámbito de aplicación de la legislación, indicando:
 - a) Si es aplicable a todas las transacciones de bienes y servicios y, si no lo es, qué transacciones están excluidas;
 - b) Si se aplica a todas las prácticas, actos o comportamientos que tienen efectos en el país, con independencia de donde se realicen;
 - c) Si depende de la existencia de un acuerdo o de que éste se ejecute.
- E. Descripción del órgano o los órganos (administrativos o judiciales) encargados de la aplicación de la legislación, con indicación de las posibles disposiciones sobre notificación e inscripción, y facultades principales de ese órgano u órganos.
- F. Descripción de cualquier legislación paralela o suplementaria, en particular tratados o acuerdos con otros países en los que se establezca algún tipo de cooperación o procedimiento para solucionar controversias en la esfera de las prácticas comerciales restrictivas.
- G. Descripción de las principales decisiones tomadas por órganos administrativos o judiciales, y cuestiones concretas a que se refieren esas decisiones.
- H. Bibliografía resumida en la que se citen fuentes de la legislación y las principales decisiones, así como publicaciones oficiales y textos o extractos de la legislación en la materia.

COMENTARIOS A LA LEGISLACIÓN RELATIVA A LA COMPETENCIA

I. COMENTARIOS DEL GOBIERNO DE INDONESIA A LA LEGISLACIÓN NACIONAL RELATIVA A LA COMPETENCIA

Antecedentes

Durante el primer plan de desarrollo a largo plazo, la expansión económica de Indonesia fue extraordinaria. Ello fue debido al crecimiento de diversos sectores y a la política de desarrollo económico prevista en las orientaciones generales del país y en el plan quinquenal de desarrollo, así como a otras varias políticas económicas. A pesar del considerable progreso logrado, que se reflejó en la elevada tasa de crecimiento, persisten aún muchos desafíos y problemas económicos. En realidad, las oportunidades comerciales creadas en las tres últimas décadas no han permitido que toda la población pueda participar en el crecimiento de los diferentes sectores económicos.

El fomento de la empresa privada durante este período se vio obstaculizado por toda clase de políticas oficiales ineficaces, que causaron la distorsión de los mercados; por otra parte, la empresa privada prosperó gracias a prácticas desleales de competencia comercial. Estos fenómenos fueron consecuencia de la estrecha relación existente entre los decisores y los operadores comerciales. Además, estos últimos estaban estrechamente vinculados con las élites dominantes, por lo que adquirieron privilegios extraordinarios que fomentaron la disparidad social. La aparición de consorcios y de un pequeño grupo de poderosos operadores que no respetaban los principios de la verdadera actividad empresarial fue uno de los factores causantes de la extremada fragilidad de la economía, y de su incapacidad de competir.

Debido a las malas condiciones para la competencia comercial y a la necesidad de proteger por igual a todas las partes y crear un ambiente de equidad para la competencia, el Gobierno y el Parlamento de Indonesia acordaron promulgar la Ley N° 5 de 1999, por la que se prohibían las prácticas monopolísticas y la competencia comercial desleal.

Objetivos

La actividad empresarial en Indonesia deberá basarse en criterios de democracia económica, con la debida atención al equilibrio entre los intereses de los operadores comerciales y el sector público. De acuerdo con los principios rectores de la política nacional en materia de competencia, los objetivos de la legislación indonesia sobre la competencia son los siguientes:

- a) Salvaguardar los intereses del público y promover la eficiencia económica como medio de mejorar el bienestar de la población;
- b) Crear un ambiente propicio a la empresa mediante prácticas leales de competencia comercial, con objeto de asegurar la igualdad de oportunidades comerciales para las empresas grandes, medianas y pequeñas del país;
- c) Impedir las prácticas monopolísticas y la competencia comercial desleal o irregular por parte de las empresas, y

- d) Promover la eficacia y la eficiencia de la actividad comercial.

Elementos principales de la Ley N° 5 de 1999

Los elementos principales de la Ley sobre la competencia en Indonesia (Ley N° 5 de 1999) son los siguientes.

A. Acuerdos prohibidos

Este capítulo comprende los oligopolios, la fijación de precios, la discriminación de precios, el mantenimiento de precios de reventa, la asignación de mercados, el boicoteo, los cárteles, los trusts, el oligopsonio, la integración vertical, los tratos exclusivos y los acuerdos cerrados.

La mayor parte de las prácticas comerciales se basan en los criterios de la recta razón. Sólo unas pocas prácticas se consideran propiamente ilegales; una de ellas es la fijación de precios. Además, el acuerdo entre los operadores comerciales podrá considerarse oligopolio si dos o tres operadores, o un grupo de ellos, controlan conjuntamente la producción y/o la comercialización de los bienes y/o servicios, en un porcentaje superior al 75% de la parte del mercado de un determinado tipo de bienes o servicios. La cifra del 75% es una presunción.

B. Actividades prohibidas

Este capítulo comprende el monopolio, el monopsonio, el control de mercado, la fijación de precios abusiva y el pacto colusorio. Al igual que en el caso del oligopolio, los criterios para determinar si la práctica constituye un monopolio o un monopsonio son solamente presunciones.

C. Posición dominante

Este capítulo se refiere a las administraciones interconectadas, la propiedad compartida, las fusiones y las adquisiciones. Se entenderá que un operador comercial, o un grupo de operadores, ocupa una posición dominante si controla el 50% o más de la parte del mercado, o si dos o tres operadores comerciales, o un grupo de operadores, controlan el 75% o más de la parte del mercado.

D. Comisión de Supervisión de la Competencia Comercial

En este capítulo se describe la condición jurídica de la Comisión, su composición, su mandato y su autoridad.

E. Procedimiento para resolver los casos relativos a la competencia comercial

F. Sanción/castigo

Este capítulo trata de la acción administrativa y de las sanciones penales y de otro tipo.

G. Otras disposiciones

Quedan exentas de las disposiciones de esta ley:

- a) Las acciones o acuerdos cuyo propósito sea aplicar la ley vigente;
- b) Los acuerdos relacionados con los derechos de propiedad intelectual, como los de licencias, patentes, marcas de fábrica, derecho de autor, diseño industrial, circuitos integrados y secretos comerciales, y los relativos a la franquicia; o
- c) Los acuerdos para la normalización técnica de los productos y/o servicios que no restrinjan ni obstaculicen la competencia; o
- d) Los acuerdos de distribución que no prevean el nuevo suministro de las mercancías o servicios a un precio inferior al precio convenido en el acuerdo; o
- e) Los acuerdos de cooperación en la investigación para promover o mejorar los niveles de vida de la población en general; o
- f) Los acuerdos internacionales que hayan sido ratificados por el Gobierno de la República de Indonesia; o
- g) Los acuerdos y/o acciones destinados a promover las exportaciones, que no surtan efectos de desviación del comercio interno o del suministro de los mercados; o
- h) Las empresas que se dediquen al comercio en pequeña escala; o
- i) Las actividades comerciales cooperativas destinadas exclusivamente a sus miembros.

Fuentes de legislación

Ley modelo sobre las prácticas comerciales restrictivas, publicadas por la UNCTAD (Rev.5) y otras leyes de diversos países.

II. COMENTARIOS DEL GOBIERNO DE NUEVA ZELANDIA A LA LEGISLACIÓN NACIONAL RELATIVA A LA COMPETENCIA

A. Razones de la legislación

Las primeras leyes sobre la competencia en Nueva Zelanda se promulgaron en 1986, pero ya en 1905 existían varias leyes relativas a esta cuestión. Entre 1958 y 1986 rigió la Ley de prácticas comerciales, que se basaba principalmente en las leyes vigentes en el Reino Unido. Este tipo de legislación era formalista, y consistía en listas de prácticas que podían ser objeto de investigación y que, por regla general, sólo se prohibían si se consideraban contrarias al interés público.

La promulgación de la Ley de comercio y de la Ley del comercio equitativo, ambas de 1986, supuso un cambio de planteamiento. Estas leyes se redactaron en un período caracterizado por las amplias reformas destinadas a aumentar la competitividad y la eficiencia de la economía neozelandesa, reduciendo el control del Gobierno y la regulación directa de la actividad comercial. El objetivo de la nueva legislación consistía en garantizar que las normas privadas no sustituirían a la regulación pública de los mercados, recientemente abolida.

El nuevo planteamiento consistía en evitar en la medida de lo posible las reglamentaciones propias de una determinada industria, dando preferencia a las normas generales aplicables a todos los sectores. La Ley de comercio contiene prohibiciones generales de disposiciones o prácticas cuya finalidad o efecto sean contrarios a la competencia. La Ley del comercio equitativo prevé disposiciones relativas a la conducta fraudulenta, prácticas no equitativas y normas de seguridad e información del consumidor.

B. Objetivos de la legislación

El objetivo de la ley de comercio de 1986 consiste en promover la competencia en los mercados de Nueva Zelanda en beneficio, a largo plazo, de los consumidores. Para alcanzar este objetivo, la ley:

- Prohíbe la adopción o la aplicación de disposiciones comerciales que reduzcan sustancialmente la competencia;
- Prohíbe a las empresas aprovechar un grado sustancial de poder sobre el mercado para reducir la competencia;
- Establece la inspección de las fusiones y las absorciones para impedir una reducción sustancial de la competencia; y
- Establece el control de los precios en los mercados donde no haya competencia.

La ley parte de una presunción favorable a la competencia, porque las prácticas pro-competitivas suelen aumentar la eficiencia y, por consiguiente, el bienestar general de los consumidores. No obstante, pueden autorizarse determinadas prácticas si se demuestra que el beneficio del público es más importante que el daño causado a la competencia.

El objetivo de la Ley del comercio equitativo es garantizar que los consumidores reciban la información adecuada y precisa que necesitan para elegir con conocimiento de causa, que es un requisito previo indispensable para competir en el mercado. Asimismo, la ley protege a los comerciantes honrados cuando sufren perjuicios de resultados de las prácticas comerciales fraudulentas o abusivas de sus competidores.

C. Prácticas sujetas a control

i) Prácticas comerciales restrictivas

Los artículos 27 y 28 de la parte II de la Ley de comercio prohíben los contratos, disposiciones o acuerdos cuya finalidad o efecto, o efecto probable, sea causar una reducción sustancial de la competencia.

El artículo 29 prohíbe los contratos, disposiciones o acuerdos entre competidores que contengan disposiciones excluyentes, salvo que pueda demostrarse que no reducen sustancialmente la competencia. En virtud de los artículos 30 y 34, se entiende que los contratos, disposiciones o acuerdos que fijan, controlan o mantienen los precios de bienes o servicios reducen sustancialmente la competencia. Los artículos 37 y 38 prohíben el mantenimiento de precios de reventa.

Cualquiera de estas disposiciones contrarias a la competencia puede ser autorizada por la Comisión de Comercio si se demuestra que el beneficio del público es más importante que el daño causado a la competencia.

El artículo 36 establece que nadie que ejerza un grado sustancial de poder sobre el mercado deberá aprovecharlo para restringir la entrada en el mercado, impedir a una persona competir en el mercado, o disuadirla de hacerlo, o expulsar a cualquier persona de un mercado. Esta clase de comportamientos no podrán ser autorizados.

La parte II de la Ley de comercio no contiene prohibiciones contra los monopolios. Se permite el monopolio, pero no su utilización con fines anticompetitivos.

Las sanciones por el incumplimiento de las disposiciones relativas a las prácticas comerciales restrictivas son las siguientes:

- Sanciones pecuniarias de un máximo de 10 millones de dólares, o el triple de la ganancia ilegal para las personas jurídicas, y de un máximo de 500.000 dólares para las personas físicas (que no podrán ser indemnificadas con respecto a estas sanciones en caso de incumplimiento del artículo 30);
- Los interdictos u órdenes de desistimiento para que las personas jurídicas o físicas cuyo comportamiento entrañe un incumplimiento de la ley abandonen estas prácticas;
- La concesión de indemnizaciones o el reconocimiento de daños ejemplares a toda persona que haya sufrido una pérdida o daño por causa de un incumplimiento de la ley.

ii) Adquisiciones de empresas

La parte III de la Ley de comercio prohíbe las adquisiciones de acciones o activos de una empresa si la transacción da lugar, o es probable que dé lugar, a una reducción sustancial de la competencia.

La ley prevé un sistema de notificación previa voluntaria de las adquisiciones de empresas. Las partes podrán solicitar a la Comisión de Comercio el visto bueno o la autorización antes de proceder a una adquisición de este tipo. El visto bueno confirma que la adquisición no dará lugar a una reducción sustancial de la competencia. La autorización permite una adquisición contraria a la competencia cuando los beneficios para el público sean proporcionalmente mayores. La Comisión dispone de 10 días hábiles para desestimar o conceder una solicitud de visto bueno, y de 60 días hábiles para hacer lo propio con una autorización. Estos plazos pueden ampliarse con el consentimiento del solicitante y de la Comisión de Comercio.

El hecho de no haber obtenido un visto bueno o autorización no hace ilegítima la adquisición, pero significa que la Comisión, o terceras partes, podrán impugnarla ante los tribunales.

Los incumplimientos de la parte III de la ley conllevan las siguientes sanciones:

- Sanciones pecuniarias hasta un máximo de 5 millones de dólares para las personas jurídicas, y hasta un máximo de 500.000 dólares para las personas físicas;
- Interdictos u órdenes de desistimiento para impedir que se efectúen las adquisiciones;
- Orden a una persona física o jurídica para que se desprenda de determinados activos o acciones;
- Concesión de indemnizaciones por daños a toda persona que haya sufrido una pérdida o un daño como consecuencia del incumplimiento de la ley.

iii) Protección del consumidor

La Ley del comercio equitativo de 1986 prohíbe la conducta fraudulenta o que induzca a error, las representaciones falsas, las prácticas no equitativas y la venta de bienes y servicios de baja calidad. Las prohibiciones no se limitan a los tratos con los consumidores, sino que incluyen también las transacciones entre empresas.

Las principales disposiciones de la ley son las siguientes:

- Se prohíbe en general a las personas dedicadas al comercio las conductas fraudulentas o que induzcan a error (art. 9);
- Se prohíben ciertos tipos de representaciones falsas, en relación con el empleo (art. 12), y los bienes o servicios, incluida la falsa pretensión de que un bien o servicio tenga un precio, norma, calidad, origen o historial determinados, o un uso o ventaja especial, o haya recibido una aprobación o recomendación particulares (art. 13);

- Se prohíben ciertas prácticas comerciales poco equitativas, como las ventas en cadena, las ofertas de ventajas comerciales a cambio de la comunicación de nombres de posibles clientes, y las ofertas publicitarias falsas (arts. 17 a 24); y
- Se determinan las normas de información del consumidor y seguridad del producto (arts. 27 a 33).

El incumplimiento de la Ley del comercio equitativo puede sancionarse con una multa, un interdicto o una orden de indemnización por daños. Asimismo, los tribunales pueden ordenar que se publique una rectificación de un anuncio o una declaración, a expensas de la persona o la empresa que haya cometido el incumplimiento. Además, podrán dictarse otras órdenes civiles declarando la nulidad o la modificación total o parcial de un contrato, o dando instrucciones a una persona para que devuelva una suma de dinero o pague una indemnización.

D. Alcance de la legislación

i) Personas responsables

El artículo 3 (1A) establece que la Ley de comercio rige para los bienes y servicios comerciados en los mercados neozelandeses, o para otros bienes o servicios que pueden sustituirles en la práctica, como norma consuetudinaria aceptada.

Las personas que incumplan las decisiones relativas a las prácticas comerciales restrictivas y las adquisiciones comerciales podrán ser susceptibles de sanciones, interdictos u órdenes de indemnización por daños.

Asimismo podrán imponerse sanciones, interdictos u órdenes de indemnización por daños a las personas que ayuden, consientan, aconsejen, induzcan o traten de inducir, concierten un pacto colusorio o participen a sabiendas por cualquier concepto, directa o indirectamente, en un acto de incumplimiento de otra persona.

ii) Exenciones

Las disposiciones de la ley sólo serán aplicables al Estado cuando éste participe en una transacción comercial, con la salvedad de que el Estado no deberá pagar ninguna sanción pecuniaria ni podrá ser enjuiciado por un delito con arreglo a la ley.

Las prácticas que estén expresamente autorizadas por otras leyes u órdenes ejecutivas estarán exentas de las prohibiciones relativas a las prácticas comerciales de la parte II de la Ley de comercio. Además, estarán exentos: los acuerdos que restrinjan la competencia entre asociados; los acuerdos entre personas jurídicas interconectadas; los acuerdos para proteger el fondo de comercio de una empresa en venta; los acuerdos para cumplir las normas de calidad de un producto; los acuerdos relativos a la remuneración, las condiciones de empleo, el horario de trabajo o las condiciones de trabajo de los empleados; los acuerdos aplicables exclusivamente a las exportaciones de Nueva Zelanda, y las acciones emprendidas por grupos de consumidores.

Asimismo, quedarán exentas las disposiciones aplicables exclusivamente al transporte de mercancías de entrada o salida de Nueva Zelanda por mar, y el comportamiento conforme a un derecho de propiedad intelectual reconocido por la ley.

iii) Aplicación extraterritorial

El artículo 4 de la Ley de comercio hace extensivas sus disposiciones a cualquier comportamiento que, fuera de Nueva Zelandia, tenga una persona residente o que explote un negocio en el país, siempre y cuando este comportamiento afecte a un mercado de Nueva Zelandia.

Otras disposiciones de la ley conciernen específicamente a su aplicación a los abusos del poder de mercado en las transacciones transtasmanianas. Estas disposiciones tienen que ver con el Acuerdo por el que se estrechan las relaciones económicas entre Nueva Zelandia y Australia, que ha dado lugar al desmantelamiento de la mayor parte de las barreras impuestas por el Gobierno al comercio entre estos países. Por consiguiente, un número cada vez mayor de transacciones y adquisiciones comerciales entre los dos países surten efectos en el proceso competitivo.

La legislación prevé la cooperación entre la Comisión de Comercio y la Comisión de Prácticas Comerciales de Australia en la investigación de comportamientos contrarios a la competencia registrados en un país y que afecten al mercado de bienes del otro. Con arreglo a los artículos 98H(2) y 99A de la Ley de comercio, cada Comisión puede recibir información y documentos en nombre de la otra. La Ley de la prueba de 1908, la Ley de la judicatura de 1908 y la Ley de cumplimiento recíproco de las sentencias de 1934 se han modificado para que los tribunales de los dos países puedan ayudarse mutuamente en las causas relativas a prácticas contrarias a la competencia. Los tribunales australianos pueden entregar citaciones en Nueva Zelandia, y viceversa. Las presentaciones a los tribunales pueden hacerse por vídeo o por teléfono, y los tribunales de uno u otro país pueden aplicar fácilmente los fallos, órdenes e interdictos recíprocos. Además cada tribunal puede celebrar una vista en el otro país, cuando sea menester.

iv) Existencia y efecto de los acuerdos

Las disposiciones que prohíben las prácticas que reducen sustancialmente la competencia suelen aplicarse a los contratos, los arreglos y los entendimientos. Por "contrato" se entiende un acuerdo que tiene fuerza legal. Por "acuerdos y entendimientos" se entienden instrumentos de menos fuerza que un contrato formal, como un plan convenido que no sea de obligado cumplimiento.

Deben concurrir dos circunstancias: en primer lugar, debe existir una connivencia, demostrada por algún tipo de comunicación entre las partes, y una indicación de intenciones o de la expectativa de que se actuará en cierto modo. El comportamiento es un indicador importante, y puede incluir la prueba de un comportamiento paralelo, estructuras similares de fijación de precios, acciones conjuntas, oportunidades para que las partes lleguen a un entendimiento (como reuniones de la industria), o pruebas de un pacto colutorio entre las partes.

E. Mecanismo de ejecución

La ejecución pública de las leyes sobre la competencia es responsabilidad de la Comisión de Comercio. La Comisión puede abrir una investigación sobre un presunto incumplimiento de la Ley de comercio, de resultados de una denuncia o de sus propias actividades de vigilancia. Las investigaciones son análogas a las indagaciones criminales.

Cuando procede a efectuar una investigación, la Comisión goza de las siguientes facultades:

- Obtener información exigiendo la entrega por escrito de ciertos datos o documentos, o la comparecencia ante la Comisión para dar testimonio;
- Obtener y ejecutar órdenes de registro, y pedir asistencia para localizar la información requerida; y
- Decretar el carácter confidencial de la investigación.

Una vez se haya concluido una investigación, y se haya determinado la existencia de un incumplimiento, la Comisión podrá optar entre una serie de medidas ejecutivas encaminadas a garantizar el cumplimiento. La Comisión podrá:

- Hacer una advertencia;
- Resolver administrativamente la cuestión con la parte o partes, que tendrán que acceder a modificar su conducta y comprometerse por escrito a ello;
- Solicitar un interdicto o imponer una orden de desistimiento, en virtud de lo cual la persona interesada deberá abstenerse de la actividad que haya causado el incumplimiento de la ley; o
- Incoar un procedimiento ante el Tribunal Superior de Justicia.

Las personas jurídicas o físicas podrán presentar también una demanda ante el Tribunal Superior de Justicia contra el incumplimiento de la Ley de comercio.

Las cuestiones relativas a la Ley de comercio se tramitan en la jurisdicción civil. El Tribunal Superior de Justicia está facultado a oír declaraciones y recibir documentos de información a título de prueba, que en otro caso no sería admisible, cuando dicha prueba pueda ayudar al Tribunal a zanjar efectivamente la cuestión. En algunos casos, las decisiones del Tribunal Superior de Justicia podrán recurrirse ante el Tribunal de Apelaciones.

F. Legislación paralela y suplementaria

i) Bienes o servicios controlados

Las partes IV y V de la Ley de comercio establecen el control de precios de los bienes y los servicios. Si se declara bajo control a un determinado bien o servicio, la Comisión de

Comercio podrá autorizar su suministro o adquisición a reserva de las medidas relativas a los precios, la fiscalidad o la calidad.

La parte IVA de la ley dispone que la Comisión de Comercio puede imponer el control de precios a las grandes compañías de electricidad por propia iniciativa, sin necesidad de hacer una recomendación al efecto al Ministro de Comercio. La Comisión decidirá los márgenes del control de los precios impuesto a estas grandes compañías. Además, la Comisión deberá comprobar el valor de los activos comunicados por las compañías de electricidad, y hacer un examen de los métodos de evaluación, que actualmente están basados en el valor óptimo de privación.

ii) Servicios esenciales

En Nueva Zelanda la regulación del acceso a los servicios esenciales se basa principalmente en la Ley de comercio de 1986. Esta ley está complementada por reglamentaciones relativas a la revelación de la información para las distintas industrias, destinadas a favorecer la transparencia de las empresas que gozan de poder sobre los mercados; en caso de que se cometan abusos de carácter monopolístico, existe la posibilidad de imponer reglamentos más estrictos, como el control de precios.

Sin embargo, en varios sectores las industrias tienen reglamentos propios. La Ley de reforma de la industria de la electricidad, de 1998, dispone la reestructuración de la industria de la electricidad para facilitar la competencia y limita las relaciones entre las compañías de electricidad y las empresas de distribución, que no sean en condiciones de igualdad.

La Ley de la industria de la electricidad, de 2001, tiene por objetivo principal alentar a la industria de la electricidad a que encuentre sus propias soluciones para garantizar un suministro eficiente, equitativo, fiable y ambientalmente sostenible de electricidad a todos los consumidores. No obstante, si la industria no cumple estos objetivos, la Ley establece que el Gobierno podrá intervenir e imponer requisitos regulatorios. La regulación que puede imponerse es de amplio alcance, e incluye el establecimiento de una junta de gobierno que puede reglamentar el funcionamiento de los mercados de la electricidad.

Se prevé adoptar otras reglamentaciones específicas en el sector de las telecomunicaciones.

iii) Cooperación internacional

En su calidad de miembro de la OCDE, Nueva Zelanda cumple las Recomendaciones de 1986 sobre la cooperación internacional respecto de la notificación de investigaciones o actuaciones judiciales a otros países miembros, si éstos pueden verse afectados en sus intereses. Se tiene en cuenta si la investigación o procedimiento está relacionado con la conducta de una persona residente en otro país miembro, o que lleva a cabo una actividad comercial en este país, o si es probable que dicha conducta surta efectos en la competencia en un mercado de otro país miembro.

G. Otras informaciones

Para más información, sírvanse dirigirse a:

El Director
Competition and Enterprise Branch
Ministry of Economic Development
P.O. Box 1473
Wellington
Nueva Zelanda

Número de teléfono: (644) 472 0030

Número de fax: (644) 499 1791

Sitio Web: *med.govt.nz*

o bien a:

Commerce Commission
P.O. Box 2351
Wellington
Nueva Zelanda

Número de teléfono: (644) 471 0180

Número de fax: (644) 471 0771

Sitio Web: *comcom.govt.nz*

Publicaciones

La Comisión de Comercio publica folletos y opúsculos relativos a la aplicación de la Ley de comercio y la Ley del comercio equitativo. En el sitio Web de la Comisión, *www.comcom.govt.nz*, puede obtenerse más información.

III. COMENTARIOS DEL GOBIERNO DE TAILANDIA A LA LEGISLACIÓN NACIONAL RELATIVA A LA COMPETENCIA

A. Antecedentes de la Ley de la competencia de Tailandia

Los orígenes de la Ley de la competencia de Tailandia se sitúan en de la Ley contra los monopolios y la fijación de precios, de 1979. Esta ley se divide en dos partes, la relativa a la fijación de precios y la relativa a los monopolios. Esta última parte tiene por objeto promover la competencia equitativa, y en ella se faculta al Comité Central a ocuparse de las estructuras comerciales que puedan crear monopolios y aplicar prácticas comerciales restrictivas. Sin embargo, dados los problemas de ejecución que causó esta ley, el Departamento del Comercio Interno, que es el responsable de este sector, dividió el texto de la ley original en dos nuevas leyes: La Ley sobre el precio de los bienes y los servicios y la Ley de la competencia. Esta última ley, que entró en vigor el 30 de abril de 1999, tiene gran importancia para el control de las actividades comerciales.

B. Finalidad de la ley

La finalidad de la Ley de la competencia, de 1999, es promover un comercio libre y equitativo mediante, principalmente, la regulación de las prácticas comerciales.

C. Comportamientos contrarios a la competencia previstos por la ley

La ley define los comportamientos contrarios a la competencia, determinando tres categorías principales: el dominio abusivo del mercado, las fusiones y otros comportamientos contrarios a la competencia.

I) Dominio abusivo del mercado

El objetivo de esta parte de la ley consiste en prohibir que un operador comercial que domine el mercado utilice abusivamente su posición o eleve barreras a la entrada de otros operadores comerciales. Por "operador comercial que domine el mercado" se entiende uno o más operadores comerciales de cualquier bien o servicio que se intercambie en el mercado del operador, y cuyo volumen de ventas supere el nivel prescrito por la Comisión de la Competencia. Los actos prohibidos son los siguientes:

- 1) Fijar o mantener precios injustificados de compra o de venta de bienes, o remuneraciones injustificadas de servicios;
- 2) Fijar directa o indirectamente condiciones injustificadas que obliguen a otros operadores comerciales que sean clientes del interesado a restringir los servicios, la producción, la compra o la distribución de bienes, o a limitar las oportunidades de compra o venta de bienes o de recepción o suministro de servicios, o de obtener créditos de otros operadores comerciales;
- 3) Suspender, reducir o restringir de modo injustificable los servicios, la producción, la compra, la distribución, la entrega o la importación, o destruir o dañar bienes para que las existencias sean de nivel inferior a la demanda de mercado;

- 4) Intervenir en la administración de las empresas de otras personas, sin razones que lo justifiquen.

II) La parte de la Ley relativa a las fusiones tiene por objeto impedir las fusiones que puedan dar lugar a monopolios o a una competencia desleal. La ley define las fusiones que dan lugar a una participación en el mercado, un volumen de ventas o un nivel de capital o de activos superiores a los especificados por la Comisión de la Competencia; estas fusiones deberán ser aprobadas por la Comisión.

III) Prohibir a un operador comercial que entre en colusión, connivencia o colaboración con otro operador comercial para crear un monopolio, reducir la competencia o restringirla de cualquiera de los modos siguientes:

- 1) Fijar un precio único de venta de bienes o servicios, o un precio acordado, o limitar el volumen de ventas de bienes o servicios;
- 2) Fijar un precio único de compra de bienes o servicios, o de un precio acordado, o limitar el volumen de compras de bienes o servicios;
- 3) Concertar un acuerdo para dominar o controlar el mercado;
- 4) Concertar un acuerdo o determinar una condición en connivencia, para que una sola parte pueda ganar una licitación o subasta de bienes o servicios o para impedir que una parte participe en una licitación o subasta de bienes o servicios;
- 5) Delimitar las zonas geográficas en las que un operador comercial pueda distribuir o limitar la distribución de bienes o servicios, o determinar los clientes a los que un operador comercial podrá vender bienes o proporcionar servicios, excluyendo a los operadores de la competencia de la distribución de estos bienes o servicios;
- 6) Delimitar las zonas geográficas en las que un operador comercial podrá comprar bienes o servicios o determinar las personas a las que los operadores comerciales podrán comprar los bienes o servicios;
- 7) Determinar la cantidad de bienes o servicios que cada operador comercial podrá producir, comprar, distribuir o suministrar, para que las existencias sean de nivel inferior a la demanda de mercado;
- 8) Reducir la calidad de los bienes o los servicios a un nivel inferior al de la precedente producción, distribución o suministro, tanto si la distribución se efectúa al mismo precio o a un precio superior;
- 9) Nombrar o delegar a una persona como distribuidor o proveedor único de los mismos bienes o servicios o de la misma clase de bienes o servicios;
- 10) Determinar las condiciones o la práctica de la compra o la distribución de bienes o el suministro de servicios, con objeto de conseguir una práctica uniforme o convenida.

Si existiera la necesidad comercial de tomar una de las medidas prohibidas en el artículo 27(5-10) de la ley, el operador comercial deberá solicitar la aprobación previa de la Comisión de la Competencia.

IV) La ley se ocupa también de los acuerdos entre operadores comerciales nacionales y extranjeros que desempeñen una actividad restrictiva de la libertad o la oportunidad de una persona residente en el país de comprar directamente bienes o servicios de operadores no residentes en el país, para uso propio.

V) Con objeto de impedir un comportamiento que no esté previsto en las anteriores disposiciones, la ley prohíbe a los operadores comerciales cualquier práctica que no sea de competencia libre y equitativa, y que destruya, dañe, obstruya o impida o limite la actividad comercial de otros operadores, impida a otras personas dedicarse a una actividad comercial, o cause el cese de una actividad comercial.

Como puede verse, las prácticas, actos o comportamientos comerciales controlados por la Ley de la competencia de 1999 son los previstos en los párrafos 3 y 4 de la sección D del Conjunto de Principios y Normas.

D. Ámbito de aplicación de la legislación

La Ley de 1999 no se aplica a los actos de las administraciones central, provincial y local; a las empresas estatales comprendidas en la Ley de procedimiento presupuestario; a los grupos de agricultores, cooperativas o sociedades cooperativas que la ley reconoce como beneficiarios para los agricultores, y a las empresas contempladas en el Reglamento Ministerial.

La Ley de la competencia es aplicable a actos o comportamientos cometidos en el Reino de Tailandia, así como a los cometidos fuera del país pero que tienen efectos en el Reino.

En términos generales, la Ley de la competencia se promulgó independientemente de la existencia de cualquier acuerdo.

E. Órgano de ejecución

D) La Comisión de la Competencia está integrada por el Ministro de Comercio (Presidente), el Secretario Permanente del Ministerio de Comercio (Vicepresidente), el Director General del Departamento de Comercio Interno (miembro y secretario) y el Secretario Permanente del Ministerio de Hacienda, así como un máximo de 12 personas cualificadas; todas estas personas son responsables de la ejecución de la ley.

Los miembros de la Comisión no deberán ser funcionarios públicos, ni ocupar posiciones políticas, ni ser miembros ejecutivos de los partidos políticos, ni participar en la administración de dichos partidos. Los miembros desempeñarán su cargo durante dos años, y, si son reelegidos, no podrán ejercer más de dos mandatos consecutivos. La Comisión estará facultada y obligada a considerar las denuncias, prescribir normas relativas a la posición dominante en el mercado, examinar las solicitudes de fusión de empresas o proceder a la reducción o limitación conjunta de la competencia y dictar normas para la suspensión, el cese, la corrección o la modificación de las actividades de los operadores comerciales.

II) Un subcomité especializado estará compuesto de un mínimo de cuatro personas y un máximo de seis, designados por la Comisión, que sean expertas en la materia y tengan conocimientos y experiencia en diversas disciplinas tales como el derecho, la ciencia, la ingeniería, la farmacología, la agricultura, la economía, el comercio, la contabilidad o la administración de empresas y un representante del Departamento de Comercio Interno en condición de miembro y secretario. El subcomité estará facultado y obligado a examinar las conductas indicativas de dominio del mercado, las fusiones de empresas y la reducción o restricción de la competencia, y dictaminar al respecto; a considerar la autorización a fusionar empresas o proceder a la reducción o la restricción de la competencia; y dictaminar al respecto, y a examinar las cuestiones que le indique la Comisión, y dictaminar al respecto.

III) Un subcomité de investigación se compondrá de una persona con conocimientos y experiencia en derecho penal, que deberá proceder del cuerpo de funcionarios de la policía o de los fiscales de los tribunales, un máximo de cuatro personas que posean conocimientos y experiencia en economía, derecho, comercio, agricultura o contabilidad, y un representante del Departamento de Comercio Interno en calidad de miembro y secretario. El subcomité estará facultado y obligado a realizar investigaciones e indagaciones en relación con los delitos cometidos en violación de esta ley.

IV) Un comité de apelaciones estará integrado por un máximo de siete personas cualificadas, con conocimientos y experiencia en derecho, economía, administración de empresas o administración pública, designados por el Consejo de Ministros, y de diversos funcionarios designados por el Director General del Departamento de Comercio Interno que ejercerán las funciones de secretario y secretarios adjuntos. El comité estará facultado y obligado a examinar las apelaciones contra una orden de la Comisión y a zanjar al respecto, y a dictar mandamientos de suspensión de la ejecución de las órdenes de la Comisión por las que se exija a un operador comercial que suspenda, cese, rectifique o modifique prácticas tales como el dominio del mercado, la fusión de empresas o la reducción o restricción conjuntas de la competencia.

V) Las medidas destinadas a velar por la ejecución de la Ley de la competencia son las siguientes:

- 1) La oficina de la Comisión de la Competencia vigilará las actividades y la conducta del operador comercial (esta actividad la llevará a cabo un oficial competente por iniciativa propia o como consecuencia de las reclamaciones de otros operadores comerciales o consumidores); si se determinase la existencia de un acto prohibido por la ley, deberá comunicarse a la Comisión.
- 2) La Comisión someterá el caso al subcomité investigador, encargado de establecer los hechos y las pruebas de los hechos. Asimismo, la Comisión podrá someter el caso al subcomité especializado, que lo examinará y comunicará su dictamen a la Comisión.
- 3) El subcomité de investigación y el subcomité especializado podrán exponer a la Comisión sus opiniones favorables o contrarias a que se abra un proceso. Al mismo tiempo, la Comisión podrá ordenar a los operadores comerciales que suspendan o abandonen su actividad.

- 4) En caso de que la Comisión dé orden de proceder, la Oficina de la Comisión de la Competencia comunicará estas opiniones al fiscal público, junto con la orden de abrir investigaciones para ulteriores actuaciones.

VI) Solicitud de autorización y examen de la solicitud

- 1) Cuando solicite la autorización de efectuar una fusión o una reducción o restricción conjunta de la competencia, el operador comercial expondrá las razones pertinentes, tanto de hecho como de derecho;
- 2) El operador comercial y cualquier otra persona que intervenga en el caso tendrán la oportunidad de dar explicaciones y exponer pruebas al efecto;
- 3) El operador comercial podrá rechazar la conclusión de la Comisión de la Competencia.

F. No existe ninguna legislación paralela o complementaria, incluidos los tratados o los acuerdos con otros países, que prevea la cooperación en materia de prácticas comerciales restrictivas, o procedimientos para la solución de diferencias al respecto

G. Recientemente se presentaron dos denuncias, respecto de las cuales la Comisión adoptó las siguientes decisiones

I. Ventas vinculadas de güisqui y cerveza

La Comisión resolvió que las ventas vinculadas de güisqui y cerveza se habían efectuado a nivel de subagentes y al por mayor. La fijación injustificada de condiciones que obligaban a los clientes a comprar la cerveza a un determinado operador comercial que dominaba el mercado violaban las disposiciones del párrafo 2 del artículo 25 de la Ley de la competencia. Como el Gobierno todavía no ha aprobado los criterios para determinar la existencia del dominio sobre el mercado, en este caso el párrafo 2 del artículo 25 no era aplicable. Por consiguiente, la Comisión ordenó a la secretaría que:

- Informase a los subagentes de que la vinculación de las ventas de cerveza constituía un comportamiento inadecuado y violaba el párrafo 2 del artículo 25 de la ley; por consiguiente, la cervecera Chang debía abandonar esta práctica;
- Vigílese las actividades de los productores de güisqui y de cerveza en particular, e informase a la Comisión periódicamente.

II. El monopolio de la televisión por cable

La Comisión resolvió lo siguiente:

- Las operaciones comerciales del grupo UBC (Compañía de Televisión por Cable) eran de carácter unitario y por consiguiente no violaban el párrafo 1 del artículo 27 de la Ley de la competencia. Ello era debido a que IBC (original) poseía el 98% de UBC (original), y los administradores eran los mismos. Se consideró que esto no constituía

un acuerdo concertado que pudiera violar el párrafo 1 del artículo 27 de la Ley de la competencia.

- El grupo UBC es el único operador comercial dedicado a la televisión por cable, y posee la totalidad del mercado, por lo que cabe considerar que lo domina. La subida de los precios del conjunto de servicios por parte del grupo UBC no constituía una violación del párrafo 1 del artículo 25, porque la compañía hacía frente a problemas financieros debidos a la devaluación del baht, e, incluso después de la fusión, se habían seguido registrando pérdidas.
- Como el ajuste del conjunto de servicios y las tarifas mensuales está sometido a la aprobación de la Organización de Comunicación de Masas de Tailandia, que es el concesionario, dicha organización debería vigilar los precios del conjunto de servicios de la compañía y el número de servicios, a fin de ofrecer más alternativas a los consumidores.
- La Comisión ordenó al Departamento de Comercio Interior, en su condición de secretario, que estudiase el contrato entre el grupo UBC y la Organización de Comunicación de Masas para determinar si el grupo podía considerarse una empresa estatal.

H. Bibliografía, con fuentes de la legislación y principales decisiones,
y difusión pública

La Ley de competencia de Tailandia pertenece al derecho civil. Así pues, la decisión de la Comisión se basará en los principios y los objetivos de la ley, junto con los hechos de cada caso.

En cuanto a la difusión pública, el Gobierno adoptó un manual y directrices de la ley, que ha puesto a disposición de los empresarios y del público en general con miras a su aplicación efectiva.

División de Asuntos Jurídicos
Departamento de Comercio Interno
Marzo de 2001

ANNEX I

INDONESIA

**THE PEOPLE'S LEGISLATIVE ASSEMBLY
OF THE REPUBLIC OF INDONESIA**

**LAW OF THE REPUBLIC OF INDONESIA
NUMBER.....YEAR.....
CONCERNING
PROHIBITION OF MONOPOLISTIC PRACTICES
AND
UNFAIR BUSINESS COMPETITION**

**BY THE GRACE OF THE ALMIGHTY GOD
THE PRESIDENT OF THE REPUBLIC OF INDONESIA,**

Considering:

- a. whereas development in the field of economy must be directed towards the achievement of social welfare based on Pancasila and the 1945 Constitution;
- b. whereas democracy in the field of the economy calls for equal opportunity for the every citizen to participate in the process of production and marketing of goods and/or services a fair, effective and efficient business environment, so as to be able to promote the growth of economy and the functioning of a reasonable market economy;
- c. whereas anyone engaging in business in Indonesia must exist in an atmosphere of fair and natural competition, hence there shall be no concentration of economic power in the hands of certain business actors, notwithstanding the commitments or conventions executed by the State of the Republic of Indonesia with regard to International Conventions;
- d. whereas in order to achieve the intentions mentioned in letters a, b and c herein, or DPR (People's Legislative assembly), a Law regarding the Prohibition of Monopolistic Practices and Unfair Business Competition needs to be set fourth;

In view of: Article 5 paragraph (1), Article 21 paragraph (1), Article 27 paragraph (2) and Article 33 of the 1945 Constitution,

With the approval of:

**THE PEOPLE'S LEGISLATIVE ASSEMBLY OF THE REPUBLIC OF INDONESIA
HAS DECIDED TO: -**

Stipulate: **LAW REGARDING THE PROHIBITION OF MONOPOLISTIC**

PRACTICES AND UNFAIR BUSINESS COMPETITION.
CHAPTER 1

GENERAL PROVISIONS

Article 1

Referred to in this Law as:

1. Monopoly shall be the control over the production and/or marketing of goods and/or over the utilization of certain services by one business actor or by one group of business actors.
2. Monopolistic practices shall be the centralization of economic power by one or more business actors, resulting in the control of the production and/or marketing of goods and/or services by certain business actors thus resulting in unfair business competition and potentially harmful to the interests of the public.
3. The centralization of economic power shall be the actual control of a market by one or more business actors, enabling to determine prices of goods and/or services.
4. Dominant position shall be a situation in which a business actor has no substantial competitor in the market concerned in relation to the market segment controlled, or a business actor has the strongest position among its competitors in the market concerned in relation to financial capacity, access capacity to supply or sales, and the capability to adjust supply or demand of certain goods or services.
5. Business actors shall be any individual or business entity, either incorporated or not incorporated as legal entity, established and domiciled or conducting activities within the jurisdiction of the Republic of Indonesia, either independently or jointly based on agreement, conducting various business activities in the economic field.
6. Unfair business competition shall be competition among business actors in conducting activities for the production and/or marketing of goods and/or services in an unfair or unlawful or anti-competition manner.
7. Agreement shall be the action of one or more business actors for binding themselves to one or more other business actors under whatever name, either in writing or not in writing.
8. Conspiracy or business conspiracy shall be a form of cooperation conducted by one business actor with another with the intention of controlling the market concerned in the interest of the conspiring business actors.
9. Market shall be an economic institution in which sellers and buyers, either directly or indirectly, can conduct trading transactions of goods/or services.
10. The market concerned shall be the market related to certain marketing scope or substitute of such goods and/or services.
11. Market structure shall be a market condition comprising of indicators concerning aspects with significant impact on business actors' behaviour and market performance, among other things the number of sellers and buyers, barriers to entering and leaving the market, product variety, distribution system and control of market segment.
12. Market behaviour shall be acts undertaken by business actors in their capacity as suppliers or buyers of goods and/or services in order to achieve the company's objectives among other things to achieve profits, growth of assets, sales targets and competition methods applied.

13. Market share shall be the percentage of the value of sales or purchase of certain goods or services controlled by a certain business actor on the market concerned in a certain calendar year.
14. Market price shall be the price paid in transactions of goods and/or services in accordance with the agreement reached among the parties concerned on the market concerned.
15. Consumers shall be every user of goods and/or services, both for personal use or well as for the interests of other people.
16. Goods shall be any physical objects, either tangible or intangible, movable or immovable, which may be traded, used, utilized or exploited by consumers or business actors.
17. Services shall be services in the form of work or performance traded in society to be utilized by consumers or business actors.
18. Business Competition Supervisory Committee shall be a committee formed to supervise business actors in conducting their business activities so that they do not conduct monopolistic practices and/or unfair business competition.
19. The District Court shall be a court as intended in prevailing laws and regulations, at the legal domicile of the business of the business actors concerned.

CHAPTER II PRINCIPLES AND PURPOSES

Article 2

Business activities of business actors in Indonesia must be based on economic democracy, with due observance of the equilibrium between the interests of business actors and the interests of the public.

Article 3

The purpose of enacting this Law shall be as follows:

- a. to safeguard the interests of the public and to improve economic efficiency as one of the efforts to improve the people's welfare;
- b. to create a conducive business climate through the stipulation of fair business competition in order to ensure the certainty of equal business opportunities for large-, middle- as well as small-scale business actors in Indonesia;
- c. to prevent monopolistic practices and/or unfair business competition that may be committed by business actors; and
- d. the creation of effectiveness and efficiency in business activities.

CHAPTER III

PROHIBITED AGREEMENTS

Part One Oligopoly

Article 4

- (1) Business actors shall be prohibited from entering into agreements with other business actors for jointly controlling the production and/or marketing of goods and/or services while may potentially cause the occurrence of monopolistic practices and/or unfair business competition.
- (2) Business actors may be suspected or denied to be jointly involved in the control of the production and/or marketing of goods and/or services, as intended in Article (1) herein, if two or three business actors or a group of business actors Control over 75 % (seventy-five percent) of the market segment of a certain type of goods or services.

Part Two Price Determination

Article 5

- (1) Business actors shall be prohibited from entering into agreements with their business competitors for the determination of the price of certain goods and/or services payable by consumers or customers on the same market.
- (2) The provisions intended in paragraph (1) of this Article shall not be applicable to the following:
 - a. an agreement entered into the context of a joint venture; or
 - b. an agreement entered into based on prevailing laws.

Article 6.

Business actors shall be prohibited from entering into agreements forcing a buyer to pay a price which is different from that payable b), other buyers for the same goods and/or services.

Article 7

Business actor shall be prohibited from entering into agreements with their business competitors to determine prices below market prices, which may potentially result in unfair business competition.

Article 8

Business actors shall be prohibited from entering into agreements with other business actors setting forth the condition that parties receiving goods and/or services shall not sell or re-supply goods and/or services received by them, at a price lower than the contracted price, potentially causing unfair business competition.

Part Three
Division of Territory

Article 9

Business actors shall be prohibited from entering into agreements with their business competitors which have the purpose of dividing marketing territory or allocating the market for goods and/or services, potentially resulting in monopolistic practices and/or unfair business competition.

Part Four
Boycott

Article 10

(1) Business actors shall be prohibited from entering into agreements with other business actors which could prevent other business actors from engaging in the same business, either for domestic or overseas market purposes.

(2) Business actors shall be prohibited from entering into agreements with other business actors for refusing to sell any goods and/or services from other business actors, so that such act:

- a. causes a loss or may be suspected of potentially causing a loss to other business actors; or
- b. limits other business actors in selling and or buying any goods and/or services from the market concerned.

Part Five
Cartels

Article 11

Business actors shall be prohibited from entering into agreements with their competing business actors, with the intention of influencing prices by arranging production and/or marketing of certain goods and/or services, that may result in monopolistic practices and/or fair business competition.

Part Six

Trust

Article 12

Business actors shall be prohibited from entering into agreements with other competing business actors for cooperation by establishing a joint company or a larger company, by keeping and maintaining the continuity of each company or its member, with the aim of controlling production and/or marketing of goods and/or services, which may result in monopolistic practices and/or unfair business competition.

Part Seven

Oligopsony

Article 13

(1) Business actors shall be prohibited from entering into agreements with other business actors with the aim of jointly controlling the purchase or acquisition of supplies for controlling prices of goods and/or services on the market concerned, which may result in monopolistic practices and/or unfair business competition.

(2) Business actors shall be reasonably suspected or deemed to be jointly controlling the purchase or acquisition of supplies as intended in paragraph (1) of this Article if two or three business actors or a group of business actors control over 75 (seventy-five percent) of the market segment of a certain type of goods or services.

Part Eight

Vertical Integration

Article 14

Business actors shall be prohibited from entering into agreements with other business actors with the intention of controlling the production of several goods which are products included in the production chain of certain related goods and/or services where each product link is the end product of the production process or of further processing, either in one direct link or indirect link, which may potentially result in unfair business competition and/or harmful to society.

Part Nine
Closed Agreements

Article 15

- (1) Business actors shall be prohibited from entering into agreements with other business actors, stipulating that the party receiving the goods and/or services shall only re-supply or not re-supply the aforementioned goods and/or services to certain parties and/or at a certain place.
- (2) Business actors shall be prohibited from entering into agreements with other parties stipulating that the party receiving certain goods and/or services must be prepared to buy other goods and/or services of the supplying business actor.
- (3) Business actors shall be prohibited from entering into agreements concerning prices or certain price discounts for goods and/or services, stipulating that the business actor receiving goods and/or services from the supplying business actor:
 - a. must be prepared to buy other goods and/or services from the supplying business actor; or
 - b. shall not buy, the same or similar goods and/or services from other business actors, competitors of the supplying business actor.

Part Ten
Agreement With Foreign Parties

Article 16

Business actors shall be prohibited from entering into agreements with foreign parties setting forth conditions that may result in monopolistic practices and/or unfair business Competition.

**CHAPTER IV
PROHIBITED ACTIVITIES**

Part One
Monopoly

Article 17

- (1) Business actors shall be prohibited from controlling the production and/or marketing of goods and/or services which may result in monopolistic practices and/or unfair business competition.

(2) Business actors may be reasonably suspected or deemed to control the production and/or marketing of goods and/or services as intended in paragraph (1) of this article in the following events:

- (a) there is no substitute available yet for the goods and/or services concerned; or
- (b) causing other business actors to be unable to enter into business competition for the same goods and/or services; or
- (c) one business actor or a group of business actors controls over 50% (fifty per cent) of the market segment of a certain type of goods or services.

Part Two
Monopsony

Article 18

(1) Business actors shall be prohibited from controlling the acquisition of supplies or from acting as sole buyer of goods and/or services on the market concerned which may potentially result in monopolistic practices and/or unfair business competition.

(2) Business actor shall be reasonably suspected of controlling the acquisition of supplies or acting as sole buyer as intended in paragraph (I) of this article if a business actor controls over 50% (fifty per cent) of the market segment of a certain type of goods or services.

Part Three
Market Control

Article 19

Business actors shall be prohibited from engaging in one or more activities, either individually or jointly with other business actors, which may result in monopolistic practices and/or unfair business competition, in the following forms:

- a. refuse and/or impede certain other business actors in conducting the same business activities on the market concerned; or
- b. bar consumers or customers of their competitors from engaging in business relationship with such of their competitors; or
- c. limit the distribution and/or sales of goods and/or services on the market concerned; or engage in discriminative practices towards certain business sectors.

Article 20

Business actors shall be prohibited from supplying goods and/or services by selling while making a loss or by determining extremely low prices with the aim of eliminating or ruining the business of their competitors on the market concerned which may potentially result in monopolistic practices and/or unfair business competition.

Article 21

Business actors shall be prohibited from engaging in unfair practices in determining production and other costs as part of the price component of goods and/or services which may potentially result in unfair business competition.

Part Four
Conspiracy

Article 22

Business actors shall be prohibited from entering into conspiracies with other parties in order to determine awardees of tenders which may potentially result in unfair business competition.

Article 23

Business actors shall be prohibited from conspiring with other parties for obtaining information regarding the business activities of their competitors classified as company secret which may potentially result in unfair business competition.

Article 24

Business actors shall be prohibited from conspiring with other parties in order to impede the production and/or marketing of goods and/or services of their competitors with the aim of causing the goods and/or services offers or supplied the market concerned become less, either in quantity, quality or in timeliness required.

CHAPTER V
DOMINANT POSITION

Part One
General

Article 25

- (1) Business actors shall be prohibited from using dominant position either directly or indirectly to:
 - a. determine the conditions of trading with the intention of preventing and/or barring consumer from obtaining competition goods and/or services, both in terms of price and quality; or
 - b. limiting markets and technology developments; or
 - c. bar other potential business actor from entering the market concerned
- (2) Business actors shall have a dominant position as intended in paragraph (1) of this article in the following events:
 - a. if one business actor controls over 50% (fifty per cent) of the market segment of certain type of goods or services; or

- b. if two or three business actors or a group of business actors control over 75% (seventy-five percent) of the market segment of a certain type of goods or services.

Part Two
Multiple Positions

Article 26

A person concurrently holding the position as a member of the Board of Directors or as a Commissioner of a company shall be prohibited from simultaneously holding position as a member of the Board of Directors or commissioner in other companies, in the event that such companies.

- a. are in the same market segment; or
- b. have a strong bond in the field and/or type of business activities; or
- c. are jointly), capable of controlling the market share of certain goods and/or services which may potentially result in monopolistic practices and/or unfair business competition.

Part Three
Share Ownership

Article 27

Business actors shall be prohibited from owing majority shares in several similar companies conducting business activities in the same field on the same market, or establishing several companies with the same business activities in the same market, if such ownership causes:

- a. one business actor or a group of business actors to control over 50% (fifty per cent) of the market segment of certain type of goods or services;
- b. two or three business actors or a group of business actors to control over 75 (seventy-five per cent) of the market segment of a certain type of goods or services.

Part Four
Mergers, Consolidations and Acquisitions

Article 28

- (1) Business actors shall be prohibited from conducting mergers or consolidations of business entities resulting in monopolistic practices and/or unfair business competition.
- (2) Business actors shall be prohibited from conducting the acquisition of shares in other companies if such action may result in monopolistic practices and/or unfair business competition.

- (3) Further provision regarding the prohibition of mergers or consolidations of business entities as intended in paragraph (1) of this article and provisions concerning the acquisition of shares in companies as intended in paragraph (2) of this article shall be set forth in a government regulation.

Article 29

- (1) The committee must be notified of mergers or consolidations of business entities, or acquisition of shares as intended in Article 28 resulting in the assets value and/or selling price thereof exceeding a certain amount, by no later than 30 (thirty) days from the date of such merger, consolidation or acquisition.
- (2) Provisions regarding the determination of assets value and/or the selling price as well as the procedure for giving notice as intended in paragraph (1) of this article shall be stipulated in a government regulation.

CHAPTER VI BUSINESS COMPETITION SUPERVISORY COMMITTEE Part One Status

Article 30

- (1) For the supervision of the implementation of this law, a Business Competition Supervisory Committee shall be formed, hereinafter referred to as the Committee.
- (2) The Committee shall be an independent institution free from the Government's and other parties' influence and authority.
- (3) The Committee shall be responsible to the President.

Part Two Membership

Article 31

- (1) The Committee shall consist of a Chairperson acting concurrently as member, and of not less than 7 (seven) members
- (2) Members of the Committee shall be appointed and dismissed by the President upon the approval of the People's Legislative Assembly.
- (3) The Members of the Committee shall be appointed for a term of office of 5 (five) and they shall be eligible for reappointment for 1 (one) subsequent term of office.

(4) If due to the expiration of the term of office a vacancy occurs in the Committee's membership, the term of office of members may be extended until new members are appointed.

Article 32

Requirements for membership in the Committee shall be as follows:

- a. citizens of the Republic of Indonesia, at least 30 (thirty) years of age and not older than 60 (sixty) years at the time of appointment.
- b. Loyal to Pancasila and the 1945 Constitution;
- c. Believers in the devout to The Almighty God;
- d. Honest, fair and having good conduct;
- e. Residing with the territory of the Republic of Indonesia;
- f. Experienced in the field of business or possessing knowledge and expertise in the field of law and/or economics.
- g. Has never been imposed a criminal penalty;
- h. Has never been declared bankrupt by a court of justice; and
- i. Is not affiliated with a certain business entity.

Article 33

Membership in the Committee shall terminate due to the following reasons:

- a. demise; or
- b. resignation upon own request; or
- c. residing outside the territory of the State of the Republic of Indonesia; or
- d. continuous physical or mental illness; or
- e. expiration of term of membership in the committee; or
- f. dismissal.

Article 34

(1) The formation of Committee and its organisational structure, duties and functions shall be stipulated by a Presidential decree.

(2) For the uninterrupted implementation of its duties, the Committee shall be assisted by a secretariat.

(3) The Committee may form a working group.

(4) Provisions regarding the organisational structure, duties and functions of the secretariat and working Group shall be further regulated by a decision of the Committee.

Part Three
Duties

The duties of the Committee shall include the following:

- a. Evaluate agreements that may potentially result in monopolistic practices and/or unfair business competition as set forth in Article 4 up to and including Articles 16;
- b. Evaluate business activities and/or actions of business actors which may potentially result in monopolistic practices and/or unfair business competition as stipulated in Article 17 up to and including Article 24;
- c. Evaluate the existence of misuse of dominant position which may potentially result in monopolistic practices and/or unfair business competition set forth in Article 25 up to and including Article 28;
- d. Undertake actions in accordance with the authority of the Committee as set forth in Article 36;
- e. Provide advice and opinion concerning Government policies related to monopolistic practices and/or publications related to this law;
- f. Prepare guidelines and/or publications related to this law;

Submit periodic reports on the results of the Committee's work to the President and the People's Legislative Assembly (DPR).

Part Four
Authority

Article 36

The Committee's authority shall include the following:

- a. receive reports from the public and/or business actors regarding allegations of the existence of monopolistic practices and/or unfair business competition;
- b. conduct research concerning, the possibility of the existence of business activities and/or actions of business actors which may result in monopolistic practices and/or unfair business competition;
- c. Conduct investigation and/or inspection in allegations of cases of monopolistic practices and/or unfair business competition reported by the public or by business actors or discovered by the Committee as a result of its research;
- d. Make conclusion regarding the results of its investigation and/or inspection as to whether or not there are any monopolistic practices and/or unfair business competition;
- e. summon business actors suspected of having violated the provisions of this law;
- f. summon and invite witnesses, expert witnesses and any person deemed to have knowledge of violations of the provisions of this law;
- g. seek the assistance of investigator to invite business actors, witnesses, expert witnesses or any person as intended in Letters e and f of this article, who are not prepared to appear upon the Committee's invitation;

- h. request the statement of Government institutions related to the investigation and/or hearing of business actors in violation of the provisions of this law;
- i. obtain, examine and/or evaluate letters, documents or other instruments of evidence for investigation and/or hearing;
- j. determine and stipulate the existence or non-existence of losses on part of business actors or society;
- k. announce the Committee's decision to business actors suspected of having engaged in monopoly practices and/or unfair business competition;
- l. impose administrative sanctions on business actors violating the provisions of this law.

Part Five
Funding

Article 37

The expenses related to the performance of the duties of the Committee shall be charged to the State Revenues and Expenditures Budget and/or other sources permissible by virtue of the applicable laws and, regulations.

CHAPTER VII
DISPUTE SETTLEMENT PROCEDURE

Article 38

- (1) Any person having knowledge of the occurrence of or reasonably suspecting that a violation of this law has occurred, he can report it in writing to the Committee with a clear statement concerning the occurrence of violation, attaching the identity of the reporting party.
- (2) The party suffering losses as a result of violations of this law may file a written report to the Committee with a complete and clear statement regarding the occurrence of violation and losses inflicted, attaching the identity of the reporting party.
- (3) The identity of the reporting party intended in paragraph (1) of this article must be kept confidential by the Committee.
- (4) The reporting procedure as intended in paragraph (1) and paragraph (2) of this article shall be further stipulated by the Committee.

Article 39

- (1) Based on the report as intended in Article 38 paragraph (1) and paragraph (2), the Committee shall be obligated to conduct a preliminary investigation, and within 30 (thirty) days after receiving the report concerned, the Committee shall be obligated to determine whether or not further investigation is required.

(2) In further investigation the Committee shall be obligated to investigate the business actors against whom the report was submitted.

(3) The Committee shall be obligated to keep confidential the information obtained from business actors classified as company secret.

(4) If deemed necessary, the Committee may hear the testimony of witnesses, expert witnesses, and/or other parties.

In conducting activities as intended in paragraph (2) and paragraph (4) of this article, members of the Committee shall be provided with a warrant.

Article 40

(1) The Committee may conduct investigation of business actors if there is an allegation of the occurrence of violation of this law even though no report is filed.

(2) Investigation as intended in paragraph (1) of this article shall be conducted in compliance with the procedure stipulated in Article 3 9.

Article 41

(1) Business actors and/or other parties examined shall be required to submit instruments of evidence required in the investigation and/or hearing.

(2) Business actors shall be prohibited from refusing to be heard, from refusing to provide information required for investigation and/or hearing, or from impeding the investigation and/or hearing process.

(3) Violations of the provisions of paragraph (2) of this article shall be submitted by the Committee to the investigator for conducting investigation in accordance with the prevailing provisions.

Article 42

Instruments of evidence in the investigation by the Committee shall be in the form of:

- a. witness testimonies
- b. experts testimonies
- c. letters and/or documents
- d. information
- e. statement by business actors

Article 43

(1) The Committee shall be obligated to complete follow-up investigation within 60 (sixty) days from the time a follow-up investigation is conducted as intended in Article 3 9 paragraph (1).

(2) If required, the time frame for follow-up investigation as intended in paragraph (1) of this article may be extended by not more than 30 (thirty) days.

(3) The Committee shall be obligated to determine whether or not a violation of this law occurred within 30 (thirty) days from the completion of the follow-up investigation as intended in paragraph (1) or paragraph (2) of this article.

(4) The decision of the Committee as intended in paragraph (3) of this article must be read out in a hearing open to the public and the business actor concerned must be notified forthwith thereof.

Article 44

(1) Within 30 (thirty) days from the time business actor concerned receives notice about the Committee's decision as intended in Article 43 paragraph (4), the business actor concerned shall be obligated to implement such decision and to submit an implementation report to the Committee.

(2) Business actors may appeal to the District Court by no later than 14 (fourteen) days after receive notification of the aforementioned decision.

(3) Business actors not appealing within the time frame as intended in paragraph (2) of this article shall be deemed to have accepted the Committee's decision.

(4) In the event that the provisions of paragraph (1) and paragraph (2) of this article are not implemented by the business actor concerned, the Committee shall submit such decision to the investigator for conducting investigation in accordance with the provisions of prevailing laws and regulations.

(5) Decisions of the Committee as intended in Article 43 paragraph (4) shall serve as initial evidence sufficient for investigators to conduct investigation.

Article 45

(1) The District Court concerned must examine appeals by business actors as intended in Article 44 paragraph (2) within 14 (fourteen) days from the time the filing of such appeal is received.

(2) The District Court must make a decision within 30 (thirty) days from the commencement of the hearing of the aforementioned appeal.

(3) The party filing an appeal in respect of the decision of the District Court as intended in paragraph (2) of this article, may appeal to the Supreme Court of the Republic of Indonesia within 14 (fourteen) days.

(4) The Supreme Court must make a decision within 30 (thirty) days from the time the appeal is received.

Article 46

(1) In the event that there are no appeals, the decision of the Committee as intended in Article 43 paragraph (3) shall have permanent legal force.

(2) The executive enforcement of the decision of the Committee as intended in paragraph (1) of this article shall be requested of the District Court

CHAPTER VIII SANCTIONS

Part One Administrative Measures

Article 47

(1) The Committee shall be authorised to impose sanctions in the form of administrative measures against business actors violating the provisions of this law.

(2) Administrative measures as intended in paragraph (1) of this article may be in the following forms:

- a. stipulations of declaring agreements intended in Article 4 up to and including Article 13, Article 15 and Article 16 as null and void; and/or
- b. ordering business actors to stop vertical integration as referred to in Article 14; and/or
- c. ordering business actors to stop activities proven to have been causing monopolistic practices and/or unfair business competition and/or being harmful to society; and/or
- d. ordering business actors to stop the misuse of dominant position; and/or
- e. determine the cancellation of mergers or consolidations of business entities and acquisition of shares as intended in Article 28; and/or
- f. stipulation of compensation payment; and/or imposition of a minimum fine of Rp.1,000,000,000, (Rupiah one billion) and a maximum fine of Rp. 25,000,000,000, (Rupiah twenty-five billion).

Part Two
Basic Criminal Sanctions

Article 48

(1) Violations of the provisions of Article 4, Article 9 up to and including Article 14, Article 1 G up to and including Article 19, Article 25, Article 27, and Article 28 of this law shall be subject to the criminal sanction of a fine of minimum Rp. 25,000,000,000,- (Rupiah twenty-five billion) and maximum Rp. 100,000,000,000,- (Rupiah one hundred billion), or the criminal sanction of imprisonment as a replacement of fine for no longer than 6 (six) months.

(2) Violations of the provisions of Article 5 up to and including Article 8, Article 15, Article 20 up to and including Article 24, and Article 26 of this law shall be subject to the criminal sanction of a fine of minimum Rp. 5,000,000,000, (Rupiah five billion) or Rp. 25,000,000,000,- (Rupiah twenty-five billion) or a criminal sanction of imprisonment as replacement of fine for no longer than 5 (five) months.

(3) Violation of the provisions of Article 41 of this law shall be subject to a fine of minimum Rp, 1,000,000,000,- (Rupiah one billion) and maximum Rp.5,000,000,000,- (Rupiah five billion) or the criminal sanction of imprisonment as replacement of the fine no longer than 3 (three) months.

Part Three
Additional Criminal Sanctions

Article 49

In compliance with the provisions of Article 10 of the Criminal Code, in addition to the sanctions set forth in Article 48 additional criminal sanctions may be imposed in the following of:

- a. revocation of business license; or
- b. prohibiting business actors proven to have violated this law from filling the positions of director or commissioner for at least 2 (two) years and for no longer than 5 (five) years; or ordering to stop certain activities or actions resulting in losses to other parties.

CHAPTER IX
MISCELLANEOUS PROVISIONS

Article 50

Not included in the provision of this law shall be as follows:

- a. actions and or agreements intended to implement applicable laws and regulations;
or
- b. agreements related to intellectual property rights, such as licenses, patents, trademarks, copyrights, industrial product design, integrated electronic circuits, and trade secrets as well as agreements related to franchise; or

- c. agreements for the stipulation of technical standards of goods and/or services which do not inhibit, and/or impede competition; or
- d. agency agreements which do not stipulate the re-supply of goods and/or services at a price level lower than the contracted price; or
- e. cooperation agreements in the field of research for the upgrading and improvement of the living standard of society at large; or
- f. international agreements ratified by the Government of the Republic of Indonesia; or
- g. export oriented agreements and/or actions not disrupting domestic needs and/or supplies; or
- h. business actors of the small-scale; or
- i. activities of co-operatives aimed specifically at serving their members.

Article 51

Monopoly and/or concentration of activities related to the production and/or marketing of goods and/or services affecting the livelihood of society at large and branches of production of strategic nature to the state shall be stipulated in a law and shall be implemented by State-Owned Enterprises and/or institutions formed or appointed by the Government.

CHAPTER X TRANSITIONAL PROVISIONS

Article 52

(1) As from the effectiveness of this law, all laws and regulations stipulating or related to monopolistic practices and/or business competition shall be declared as remaining in effect in so far as not contradictory or not superseded by new ones by virtue of this law.

(2) Business actors having entered into agreement and/or conducting activities and/or undertaking actions not complying with the provisions of this law shall be given 6 (six) months from this law's coming into effect to make adjustments.

CHAPTER XI CLOSING PROVISIONS

Article 53

This law shall become effective within 1 (one) year as from its promulgation.

Stipulated in Jakarta

On.....

THE PRESIDENT OF THEE REPUBLIC OF INDONESIA BACHARUDDIN JUSUF
HABIBIE

Promulgated in Jakarta
On.....

STATE MINISTER SECRETARY OF STATE OF THE REPUBLIC OF INDONESIA
AKBAR TANDJUNG
STATE GAZETTE OF THE REPUBLIC OF INDONESIA YEAR NUMBER.....

THE PEOPLE'S LEGISLATIVE ASSEMBLY OF
THE REPUBLIC OF INDONESIA

ELUCIDATION ON
THE LAW OF THE REPUBLIC OF INDONESIA
CONCERNING THE PROHIBITION OF MONOPOLISTIC
PRACTICES AND UNFAIR BUSINESS COMPETITION

GENERAL

Economic development in the First Long Term Development has resulted in much progress, among other things with the improvement of social welfare. The aforementioned progress achieved in development has been supported by development policies in various fields including policies in the field of economy as set forth in the General State Policy and Five Year Development Plan, as well as in various other economic policies.

Despite the substantial progress achieved in the First Long Term Development, reflected in high economic growth. Many challenges or issues still remain, parallel to globalization trends in the economy and the dynamics and development of private businesses since the early 1990s.

The business opportunities created during the last three decades have in fact not enabled all levels of society to participate in development in various economic sectors. The development of the private sector during the above mentioned period has on the one hand been marked by various forms of inadequate Government policies leading to market distortion. On the other hand, the development of the private sector has in fact been mainly the result of unfair business competition conditions.

The above described phenomenon has developed and has been supported by the relationship between decision makers and business actors, either directly or indirectly, leading to the further deterioration of the situation. The implementation of national economy has not quite adhered to the mandate of Article 33 or the 1945 Constitution, and has shown a very monopolistic tendency.

Businessmen close to the elite of power has obtained extreme facilities resulting in the creation of social gap. The emergence of conglomerates and a group of strong businessmen not supported by the spirit of real entrepreneurship has been one of the factors which caused the economic capacity to become extremely vulnerable and un-competitive:

The above situation and condition has caused us to have to study and rearrange business activities in Indonesia, so that businesses can grow and develop in a fair and appropriate way, leading to the creation of a fair business competition climate, and in order to avoid the concentration of economic power around one certain person or group, among other things in the form of monopolistic practices and unfair business competition harmful to society, which are contradictory to the ideals of social justice.

Therefore, it is necessary to stipulate the Law Concerning the Prohibition of Monopolistic Practices and Unfair Business Competition intended for the enforcement of

provisions of law and providing equal protection for every business actor in an effort to create fair business competition.

This law provides guarantee of legal certainty for stimulating further a rapid economic development in an effort to improve social welfare, as well in implementation of the spirit and intentions of the 1945 Constitution.

For an effective implementation of this law and implementing regulations thereof in accordance with its principles and objectives, it is necessary to form a Business Competition Supervisory Committee, i.e. an independent institution free from the influence of the Government and other parties, having the authority to conduct supervision of business competition and, to impose sanctions. Such sanctions shall be in the form of administrative measures, whereas criminal sanctions shall be under the authority of the court of justice.

In general, the substance of the Law Concerning the Prohibition of Monopolistic Practices and Unfair Business Competition consists of 6 (six) regulatory parts such as:

1. prohibited agreements:
2. prohibited actions:
3. dominant position:
4. Business Competition Supervisory Committee:
5. Law enforcement
6. Miscellaneous provisions

This law has been drawn up based on the principles of Pancasila (State Philosophy) and the 1945 Constitution, and it has been based on economic democracy with due observance of equilibrium between the interests of business actors and public interest with the aim of: safe guarding public interest and protecting consumers; develop a conducive business climate through the creation of fair business competition, and ensure certainty in equal business opportunity for every person; preventing monopolistic practices and/or unfair business competition .created by business actors; and creating effectiveness and efficiency in business activities in the context of improving the efficiency of national economy as one of the efforts for improving social welfare.

ARTICLE BY ARTICLE

- Article 1
Self-explanatory
- Article 2
Self-explanatory
- Article 3
Self-explanatory
- Article 4
Self-explanatory
- Article 5
Self-explanatory
- Article 6

Self-explanatory

Article 7

Self-explanatory

Article 8

Self-explanatory

Article 9

Agreements may be vertical or horizontal in nature. These agreements are prohibited because business actors eliminate or reduce competition by dividing the market or market allocation. Marketing territory may mean the territory of the state of the Republic of Indonesia, for example regency, province, or other regional territory. Dividing marketing territory or market allocation means dividing territory in order to obtain or supply goods, services, or goods and services, determining parties from which goods, services, goods and services may be obtained or supplied.

Article 10

Self-explanatory.

Article 11

Self-explanatory.

Article 12

Self-explanatory.

Article 13

Self-explanatory.

Article 14

Referred to as controlling the production of a number of products being part of a production series which can be referred to as vertical integration shall be the control of a production process series of certain goods upstream to downstream or a process continuing for certain services by certain business actors. Even though vertical integration practices can result in low priced goods and services, these can cause unfair business competition which are harmful to economic cells in society. Such practices are prohibited in so far as they cause unfair business competition and or are harmful to society.

Article 15

Paragraph (1)

Supplying means making supplies available, either in the form of goods or services in the context of trading, lease, lease purchase and leasing activities.

Paragraph (2)

Self-explanatory.

Paragraph (3)

Letter a

Self-explanatory.

Letter b

Article 16

Self-explanatory.

Article 17

Paragraph (1)

Self-explanatory.

Paragraph (2)

Letter a

Self-explanatory.

Letter b

Referred to as other business actors are business actors possessing significant competitive capacity in the market concerned..

Letter c

Self-explanatory.

Article 19

Letter a

Rejecting or impeding certain business actors may not be done unreasonably or for non-economic reasons, for example due to difference in ethnic group, race, social status, and others.

Self-explanatory

Letter b

Self-explanatory.

Letter c

Self-explanatory.

Letter d

Self-explanatory.

Article 20

Self-explanatory.

Article 21

Unfair practices in determining production and other costs shall be violation of the prevailing laws and regulations for obtaining production factors lower than the actual.

Article 22

Tenders shall be bids submitted to contract certain work, for the procurement of goods, or the provisions of services.

Article 23

Self-explanatory.

Article 24

Self-explanatory.

Article 25

Self-explanatory.

Article 26

Letter a

Self-explanatory.

Letter b

Companies shall be closely related if such companies support each other or are directly related in the production, marketing, or production and marketing process.

Letter c

Self-explanatory.

Article 27

Self-explanatory.

Article 28

Paragraph (1)

Business entities shall be companies or forms of business, either incorporated as legal entities (e.g. limited liability companies) or not incorporated as legal entities, engaging in a type of business of permanent and continuous nature, with the aim of generating profits.

Paragraph (2)

Self-explanatory.

Paragraph (3)

Self-explanatory.

Article 29

Self-explanatory.

Article 30

Self-explanatory.

Article 31

Paragraph (1)

The Chairperson and the Deputy Chairperson of the Committee shall be elected from among and by Members of the Committee.

Paragraph (2)

Self-explanatory.

Paragraph (3)

Self-explanatory.

Paragraph (4)

Extension of the term of membership in the Committee in order to avoid vacancy may not exceed 1 (one) year.

Article 32

Letter a

Self-explanatory.

Letter b

Self-explanatory.

Letter c

Self-explanatory.

Letter d

Self-explanatory.

Letter e

Self-explanatory.

Letter f

Self-explanatory.

Letter g

Not having been imposed with a criminal penalty means not having been imposed with a criminal penalty due to a capital criminal act or due to violation of moral.

Letter h

Self-explanatory.

Letter I

Not affiliated with a business entity means that as from the time the person concerned becomes member of the Committee, such person has not acted as:

Member of the Board of Commissioners or supervisors, or of the board of directors of a company.

Member of management or inspection body of a co-operative;

Party providing services to a company, such as consultant, public accountant and appraiser.

Majority shareholder in a company.

Article 33

Letter a

Self-explanatory.

Letter b

Self-explanatory.

Letter c

Self-explanatory.

Letter d

To be stated in the form of a statement by an authorised physician.

Letter e

Self-explanatory.

Letter f

Terminated, among other things, for the reason of no longer meeting requirements for committee membership as intended in Article 32.

Article 34

Paragraph (1)

Self-explanatory.

Paragraph (2)

Secretariat shall be the organisational unit supporting or assisting the Committee in the implementation of its duties.

Paragraph (3)

Working unit shall be a professional team appointed by the Committee to assist in the implementation of certain tasks at a certain time.

Paragraph (4)

Self-explanatory.

Article 35

Self-explanatory.

Article 36

Self-explanatory.

Letter a

Self-explanatory.

Letter b

Self-explanatory.

Letter c

Self-explanatory.

Letter d

Self-explanatory.

Letter e

Self-explanatory.

Letter f

Self-explanatory.

Letter g

Investigator shall be investigator as intended in Law Number 8 Year 1981.

Letter h

Self-explanatory.

Letter I

Self-explanatory.

Letter j

Self-explanatory.

Letter k

Self-explanatory.

Letter l

Self-explanatory.

Article 37

In principle the State is responsible for the operational implementation of the Committee's duties by providing support in the form of funding through the State Revenues and Expenditures Budget. However, bearing in mind the broad and various scope and field of the Committee's duties, the Committee may obtain funds from other sources not contradictory to the prevailing laws and regulations, which are not binding in nature and shall not have an impact on the Committee's independence.

Article 38

Self-explanatory

Article 39

Self-explanatory

Article 40

Self-explanatory

Article 41

Paragraph (1)

Self-explanatory.

Paragraph (2)

Self-explanatory:

Paragraph.(3)

Submitted by the Committee to the investigators for investigation shall not only be criminal acts or actions as intended in paragraph (2) of this article, but also principal cases under investigation and caring by the Committee.

Article 42

Self-explanatory

Article 43

Paragraph (1)

Self-explanatory

Paragraph (2)

Self-explanatory

Paragraph (3)

The Committee's decision making as intended in paragraph (3) of this Article shall be conducted in a Council meeting consisting of at least 3 (three) Committee members.

Paragraph (4)

Referred to as notification shall be forwarding an excerpt from the Committee's decision to the business actor concerned.

Article 44

Paragraph (1)

30 (thirty) days as from the receipt of the excerpt from the Committee's decision by the business actor concerned or his local proxy.

Paragraph (2)

Self-explanatory

Paragraph (3)

Self-explanatory

Paragraph (4)

Self-explanatory.

Paragraph (5)

Self-explanatory

Article 45

Self-explanatory

Article 46

Self-explanatory.

Paragraph (I)

Self-explanatory

Paragraph (2)

Letter a

Self-explanatory

Letter b

Stopping vertical integration shall be, among other things by cancelling the agreement, transferring a party of the company to another business sector, or changing the form of production series.

Letter c

The termination of certain activities or actions shall be ordered, and not be the entire business activities of the business actor concerned.

Letter d

Self-explanatory

Letter e

Self-explanatory

Letter f

Indemnity shall be granted to the business actor concerned and to other parties having suffered a loss.

Letter g
Self-explanatory
Article 48
Self-explanatory
Article 49
Self-explanatory
Article 50
Letter a
Self-explanatory.
Letter b
Self-explanatory
Letter c
Self-explanatory
Letter d
Self-explanatory
Letter e
Self-explanatory.

Annex II

NEW ZEALAND

The analysis below of the Commerce Act 1986 and the Fair Trading Act 1986, as well as texts of these acts and of appropriate amendments acts are available at the Internet website <http://www.knowledge-basket.co.nz>.

Commerce Act 1986 005
Commenced: 1 May 1986

ANALYSIS

Analysis

Title

- 1 Short Title and commencement
- 2 Interpretation
- 3 Certain terms defined in relation to competition
- 4 Application of Act to conduct outside New Zealand
- 5 Application of Act to the Crown
- 6 Application of Act to Crown corporations
- 7 Law relating to restraint of trade and breaches of confidence not affected

I: The Commerce Commission

- 8 Establishment of Commission
- 9 Membership of Commission
- 10 Terms and conditions of appointment
- 11 Associate members
- 12 Deputy Chairman and acting Deputy Chairman
- 13 Termination of appointment of members
- 14 Disclosure of financial interests
- 15 Meetings of Commission
- 16 Chairman may direct Commission to sit in Divisions
- 17 Assent to determination
- 18 Officers of Commission
- 19 Money to be appropriated by Parliament for purposes of this Act
- 20 Funds of Commission
- 21 Bank accounts
- 22 Accounts and audit
- 23 Investment of money
- 24 Exemption from income tax
- 25 Functions of Commission in relation to dissemination of information
- 26 Commission to have regard to economic policies of Government

II: Restrictive Trade Practices Practices Substantially Lessening Competition

- 27 Contracts, arrangements, or understandings substantially lessening competition prohibited
- 28 Covenants substantially lessening competition prohibited
- 29 Contracts, arrangements, or understandings containing exclusionary provisions prohibited

Price Fixing

- 30 Certain provisions of contracts, etc., with respect to prices deemed to substantially lessen competition
- 31 Joint venture pricing exempt from application of section 30
- 32 Certain recommendations as to prices for goods and services exempt from application of section 30
- 33 Joint buying and promotion arrangements exempt from application of section 30
- 34 Certain provisions of covenants with respect to prices deemed to substantially lessen competition

Practices Substantially Lessening Competition Conditional Upon Authorisation

- 35 Contracts or covenants subject to authorisation not prohibited under certain conditions

Use of Dominant Position in a Market

- 36 Use of dominant position in a market

Resale Price Maintenance

- 37 Resale price maintenance by suppliers prohibited
- 38 Resale price maintenance by others prohibited
- 39 Recommended prices
- 40 Withholding the supply of goods
- 41 Preventing the supply of goods
- 42 Special evidentiary provisions in respect of certain resale price maintenance practices
- 43 Statutory exceptions
- 44 Other exceptions
- 45 Exceptions in relation to copyright, patents, plant varieties, registered designs, and trade marks
- 46 Saving in respect of mergers or takeovers

III: Mergers and Takeovers

- 47 "Merger or takeover proposal" defined
- 48 Certain other terms defined
- 49 Application to building societies

- 50 Certain merger or takeover proposals require clearance or authorisation
51 Contracts subject to condition of clearance or authorisation

IV: Control of Prices Declaration of Price Control

- 52 "Controlled goods or services" defined
53 Governor-General may impose price control in circumstances of restricted competition
54 Commission may report to Minister as to price control

Authorised Prices for Controlled Goods or Services

- 55 Controlled goods or services not to be supplied except in accordance with authorised price

Miscellaneous Provisions

- 56 Records to be kept for pricing purposes
57 Other Acts relating to price control not affected

V: Authorisations and Clearances Restrictive Trade Practices

- 58 Commission may grant authorisation for certain restrictive trade practices
59 Authorisation not to be granted in relation to contracts, etc., made before determination by Commission
60 Procedure for applications for authorisation of restrictive trade practices
61 Determination of applications for authorisation of restrictive trade practices
62 Commission to prepare draft determination in relation to restrictive trade practices
63 Commission may grant provisional authorisation
64 Procedure at conference
65 Commission may vary or revoke authorisations

Merger or Takeover Proposals

- 66 Commission may grant clearances or authorisations for merger or takeover proposals
67 Commission may grant clearance or authorisation of merger or takeover proposal which has been implemented
68 Conferences in relation to merger or takeover proposals
69 Clearances and authorisations of mergers and takeover proposals to be notified to New Zealand Stock Exchange

Authorisation of Prices for Controlled Goods or Services

- 70 Authorised prices for controlled goods or services to be determined by Commission
71 Commission may authorise provisional price
72 Alternative undertakings as to prices of controlled goods or services

73 Considerations to be observed by Commission

74 Conferences in relation to authorisation of price for controlled goods or services

VI: Enforcement, Remedies, and Appeals Jurisdiction of Courts

75 Jurisdiction of High Court

76 Jurisdiction of District Courts

77 Additional lay members of High Court for purposes of appellate jurisdiction in respect of Commission determinations

78 Lay members of High Court in certain cases

79 Evidence not otherwise admissible

Restrictive Trade Practices

80 Pecuniary penalties

81 Injunctions may be granted by Court for contravention of Part II

82 Actions for damages for contravention or Part II

Mergers and Takeovers

83 Contravention of section 50 an offence

84 Injunctions may be granted by Court for contravention of Part III

85 Court may order divestiture of assets in respect of contravention of Part III

Control of Prices

86 Contravention of section 55 an offence

87 Injunctions may be granted by Court for contravention of Part IV

Injunctions Generally

88 General provisions relating to granting of injunctions

89 Other orders

90 Conduct by servants or agents

Appeals From Determinations of Commission

91 Appeals in relation to determinations by Commission

92 Persons entitled to appeal

93 Determination of appeals

94 Court may refer appeals back for reconsideration

95 Provisions pending determination of appeal

96 Court may order proceedings to be heard in private

97 Appeal to Court of Appeal in certain cases

VII: Miscellaneous Provisions

- 98 Powers to obtain information, documents, and evidence
- 99 Powers of Commission to take evidence
- 100 Powers of Commission to prohibit disclosure of information, documents, and evidence
- 101 Notices
- 102 Service of notices
- 103 Failure to comply with notices, etc.
- 104 Determinations of Commission
- 105 Delegation by Commission
- 106 Proceedings privileged
- 107 Annual report
- 108 Regulations
- 109 Commission may prescribe forms
- 110 Repeals, revocations, savings, and consequential amendments
- 111 Transitional provisions in respect of certain contracts, arrangements, or understandings
- 112 Transitional provisions in respect of goods and services subject to price control under Commerce Act 1975
- 113 Transitional provisions in respect of goods and services subject to price restraint under regulations made under Commerce Act 1975
- 114 Transitional provisions in respect of milk pricing
- 115 Savings in respect of certain provisions of Commerce Act 1975
- 116 Winding up of Commerce Commission established under Commerce Act 1975
- 117 Members of Commerce Commission established under Commerce Act 1975 deemed to be members of Commission
- 118 Lay members of Administrative Division of High Court appointed pursuant to Commerce Act 1975 deemed to be lay members of Administrative Division of High Court appointed under this Act

Schedule(s)

- 1 FIRST SCHEDULE: Classes of Merger or Takeover Proposals Requiring Prior Clearance or Authorisation by the Commission
- 2 SECOND SCHEDULE: Enactments Amended
- 3 THIRD SCHEDULE: Enactments Repealed
- 4 FOURTH SCHEDULE: Orders and Notices Revoked

Fair Trading Act 1986 121

Commenced: 1 Mar 1987

ANALYSIS

Analysis

Title

1 Short Title and commencement

2 Interpretation

3 Application of Act to conduct outside New Zealand

4 Application of Act to the Crown

5 Application of Act to Crown corporations

6 Functions of Commission in relation to dissemination of information

7 Money to be appropriated by Parliament for purposes of this Act

8 Annual report

I: Misleading and Deceptive Conduct, False Representations, and Unfair Practices **Misleading and Deceptive Conduct**

9 Misleading and deceptive conduct generally

10 Misleading conduct in relation to goods

11 Misleading conduct in relation to services

12 Misleading conduct in relation to employment

False Representations

13 False representations

14 False representations and other misleading conduct in relation to land

15 Limited application of sections 9 to 14 of this Act to news media

16 Certain conduct in relation to trade marks prohibited

Unfair Practices

17 Offering gifts and prizes

18 Trading stamp schemes prohibited

19 Bait advertising

20 Referral selling

21 Demanding or accepting payment without intending to supply as ordered

22 Misleading representations about certain business activities

23 Harassment and coercion

24 Pyramid selling schemes

25 Provisions of this Part of this Act not limited by reference to other provisions of this Part of this Act

26 Importation of goods bearing false trade description or false trade mark prohibited

II: Consumer Information

- 27 Consumer information standards
- 28 Standards may be declared to be consumer information standards

III: Product Safety

- 29 Product safety standards
- 30 Standards may be declared to be product safety standards
- 31 Unsafe goods
- 32 Compulsory product recall
- 33 Importation of certain goods prohibited

IV: Safety of Services

- 34 Meaning of "services"
- 35 Safety standards in respect of services
- 36 Standards may be declared to be services safety standards

V: Enforcement and Remedies Jurisdiction of Courts

- 37 Jurisdiction of High Court
- 38 Jurisdiction of District Courts
- 39 Jurisdiction of Small Claims Tribunals

Offences

- 40 Contraventions of provisions of Part I, Part II, Part III, and Part IV an offence

Civil Proceedings

- 41 Injunctions may be granted by Court for contravention of Part I, Part II, Part III, and Part IV
- 42 Order to disclose information or publish advertisement
- 43 Other orders
- 44 Defences
- 45 Conduct by servants or agents
- 46 Finding in proceedings to be evidence

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- 47 Powers to obtain documents and inspect goods
- 48 Proceedings privileged
- 49 Repeals and consequential amendments
- 50 Saving of other laws

Schedule(s)

- 1 FIRST SCHEDULE: Enactment Amended
- 2 SECOND SCHEDULE: Enactments Repealed
- 3 THIRD SCHEDULE: Orders and Notices Revoked

Annex III

THAILAND

Tentative Translation

**COMPETITION ACT,
B.E. 2542 (1999)**

Bhumibol Adulyadej, Rex.,
Given on the 22nd Day of March B.E. 2542;
Being the 54th Year of the Present Reign.

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:

Whereas it is expedient to have a law on competition by revising the rules relating to anti-monopoly provided in the law on price fixing and anti-monopoly;

Whereas it is aware that this Act contains certain provisions in relation to the restriction of rights and liberties of persons, in respect of which section 29, in conjunction with section 31, section 35, section 36, section 45, section 48 and section 50 of the Constitution of the Kingdom of Thailand so permit by virtue of the provisions law;

Be it, therefore, enacted by the King, by and with the advice and consent of the National Assembly, as follows:

Section 1. This Act is called the "Competition Act, B.E. 2542 (1999) "

Section 2. This Act shall come into force after thirty days as from the date of its publication in the Government Gazette.**

Section 3. In this Act:

"business" means an undertaking in agriculture, industry, commerce, finance, insurance, and services and shall include other undertakings prescribed by Ministerial Regulations;

"finance" means commercial banking under the law on commercial banking, finance and credit foncier businesses under the law on operation of finance, securities and credit foncier businesses, and securities business under the law on securities and securities exchange;

**Published in Government Gazette, Vol. 116, Part 22b, dated 31st March 1999.

"business operator" means a distributor, producer for distribution orderer or importer into the Kingdom for distribution or purchaser for production or redistribution of goods or a service provider in the course of business;

"goods" means an article capable of utilisation or consumption, including a document of title to an article;

"service" means the procurement of work by way of commission, the granting of any right or the giving of permission to use or to have benefits in any property or any undertaking in return for monetary remuneration or other benefit but shall not include the hire of service;

"price" means a price of goods and shall also include remuneration for the performance of a service;

"business operator with market domination" means one or more business operators in the market of any goods or service who have the market share and sales volume above that prescribed by the Commission with the approval of the Council of Ministers and published in the Government Gazette, having regard to the market competition;

"Commission" means the Competition Commission;

"member" means a member of the Competition Commission;

"Secretary-General" means the Secretary-General of the Competition Commission;

"competent official" means a Government official appointed by the Minister to perform activities under this Act;

"Minister" means the Minister having charge and control of the execution of this Act.

Section 4. This Act shall not apply to the act of:

- (1) Central administration, provincial administration or local administration;
- (2) State enterprises under the law on budgetary procedure;
- (3) Farmers' groups, co-operatives or co-operative societies recognised by law and having as their object the operation of businesses for the benefit of the occupation of farmers;
- (4) businesses prescribed by the Ministerial Regulation, which may provide for exemption from the application of this Act in whole or only in respect of any particular provision thereof.

Section 5. The Minister of Commerce shall have charge and control of the execution of this Act, provided that in respect of financial undertakings, the Minister of Commerce and the Minister of Finance shall jointly have charge and control, and shall have the power to appoint competent officials, issue Ministerial Regulations for the execution of this Act and issue Notifications hereunder.

Such Ministerial Regulations and Notifications shall come into force upon their publication in the Government Gazette.

CHAPTER 1

Competition Commission

Section 6. There shall be the Competition Commission consisting of the Minister of Commerce as Chairman, Permanent-Secretary for the Ministry of Commerce as Vice-Chairman, Permanent-Secretary for the Ministry of Finance and not less than eight, but not more than twelve, qualified persons with knowledge and experience in law, economics, commerce, business administration or public administration appointed by the Council of Ministers, provided that at least one-half of whom must be appointed from qualified members in the private sector, as members and the Secretary-General shall be a member and secretary.

The appointment of the qualified persons under paragraph one shall be in accordance with the rules and procedure prescribed in the Ministerial Regulation.

Section 7. A qualified person appointed as member must not be a political official, holder of a political position, executive member or holder of a position with the responsibility in the administration of a political party.

Section 8. The Commission shall have the powers and duties as follows:

(1) to make recommendations to the Minister with regard to the issuance of Ministerial Regulations under this Act;

(2) to issue Notifications prescribing market share and sales volume of any business by reference to which a business operator is deemed to have market domination;

(3) to consider complaints under section 18 (5);

(4) to prescribe rules concerning, the collection and the taking of goods as samples for the purposes of examination or analysis under section 19 (3);

(5) to issue Notifications prescribing the market share, sales volume, amount of capital, number of shares, or amount of assets under section 26 paragraph two;

(6) to give orders under section 30 and section 31 for the suspension, cessation, correction or variation of activities by business operators;

(7) to issue Notifications prescribing the form, rules, procedure and conditions for the application for permission to merge businesses or initiate the joint reduction or restriction of competition under section 35;

(8) to consider an application for permission to merge businesses or initiate the joint reduction or restriction of competition submitted under section 35;

(9) to invite any particular person to give facts, explanations, advice or opinions;

(10) to monitor and accelerate an inquiry sub-committee's conduct of an inquiry of offences under this Act.

(11) to prescribe rules for the performance of work of the competent officials for the purpose of the execution of this Act;

(12) to perform other acts provided by the law to be the powers and duties of the Commission;

(13) to consider taking criminal proceedings as requested in the complaint lodged by the injured person under section 55.

Section 9. The qualified member under section 6 shall hold office for a term of two years.

At the expiration of the term under paragraph one, if a new qualified member is not yet appointed, the qualified member who vacates office at the expiration of the term shall continue to hold office for the purpose of the performance of work until a newly appointed qualified member takes office.

The qualified member who vacates office at the expiration of the term may be re-appointed but may not serve for more than two consecutive terms.

Section 10. The provisions of section 75, section 76, section 77, section 78, section 79, section 80, section 81, section 82 and 83 of the Administrative Procedure Act, B.E. 2539 (1996) shall apply to the appointment of a qualified member, the vacation of office of a qualified member and a meeting of qualified members *mutatis mutandis*, and a qualified member shall also vacate office upon being under the prohibitions under section 7.

Section 11. The Commission may appoint a sub-committee to consider and make recommendations on any matter or perform any act as entrusted and prepare a report thereon for submission to the Commission.

Section 12. The Commission shall appoint one or more specialised sub-committees consisting of, for each sub-committee, not less than four and not more than six persons qualified in the matter concerned and having knowledge and experience in various fields such as law, science, engineering, pharmacology, agriculture, economics, commerce, accountancy, or business administration as members, with the representative of the Department of Internal Trade as a member and secretary.

The specialised sub-committee shall elect one member as Chairman.

Section 13. The specialised sub-committee has the duty to consider and give opinions to the Commission on the following matters, as entrusted by the Commission:

(1) the matter concerning the conduct indicative of market domination, a merger of businesses, the reduction or restriction of competition under section 25, section 26, section 27, section 28 and section 29;

(2) the consideration of an application for permission to merge businesses or initiate the reduction or restriction of competition under section 37;

(3) other matters to be considered at the request of the Commission and other acts to be performed as entrusted by the Commission.

For the purpose of this Act, a specialised sub-committee may submit opinions or recommendations to the Commission with regard to the execution of this Act.

In carrying out the acts under paragraph one, the specialised sub-committee shall have the power to issue a written summons requiring the persons concerned to give statements or furnish documents or any other evidence for supplementing its consideration.

Section 14. The Commission shall appoint one or more inquiry sub-committees consisting of, for each sub-committee, one person possessing knowledge and experience in criminal cases who is appointed from police officials, public prosecutors and, in addition, not more than four persons possessing knowledge and experience in economics, law, commerce, agriculture, or accountancy, as members, with the representative of the Department of Internal Trade as a member and secretary.

The inquiry sub-committee shall have the power and duty to conduct an investigation and inquiry in connection with the commission of offences under this Act and, upon completion thereof, submit opinions to the Commission for further consideration.

The inquiry sub-committee shall elect one member as Chairman.

Section 15. In the performance of the duties under this Act, a member of the Commission and a member of an inquiry sub-committee under section 14 shall have the same powers and duties as an inquiry official under the Criminal Procedure Code.

Section 16. In the case where the Commission submits to the public prosecutor the opinion for prosecution, an objection to the public prosecutor's non-prosecution order under the Criminal Procedure Code shall be the power to be exercised by the Chairman of the Commission in place of the Commissioner-General of the Royal Thai Police Force or the *Changwad* Governor as the case may be.

Section 17. The provisions of section 9 and section 10 shall apply *mutatis mutandis* to the sub-committee, specialised sub-committee and inquiry sub-committee.

CHAPTER 11
Office of the Competition Commission

Section 18. There shall be established the Office of the Competition Commission in the Department of Internal Trade, Ministry of Commerce, with the Director-General of the Department of Internal Trade as the Secretary-General, who shall be the superior official responsible for the official affairs of the Office, with the powers and duties as follows:

(1) to carry out administrative tasks of the Commission, the Appellate Committee and sub-committees appointed by the Commission;

(2) to prescribe regulations for the purpose of the work performance of the Office of the Competition Commission;

(3) to monitor the movement and oversee the conduct of business operators and report the same to the Commission;

(4) to conduct studies, analyses and research in relation to goods, services, and business conduct and make recommendations and give opinions to the Commission on the prevention of market domination, merger of businesses and reduction and restriction of competition in the operation of businesses;

(5) to receive complaints by which it is alleged by any person that violation of this Act has occurred and to carry out its preliminary consideration for submission to the Commission, in accordance with the regulations prescribed and published in the Government Gazette by the Commission;

(6) to co-ordinate with Government agencies or agencies concerned, for the purpose of the performance of duties under this Act;

(7) to perform the acts in, the implementation of Notifications, regulations and resolutions of the Commission and perform such acts as entrusted by the Commission, the Appellate Committee or the sub-committee appointed by the Commission

Section 19. In the execution of this Act, the competent official shall have the following powers;

(1) to issue a written summons requiring any person to give statements, facts or written explanations or furnish accounts, records, documents or any evidence for examination or supplementing his consideration,

(2) to enter the place of business, place of production, place of distribution, place of purchase, warehouse or place of service of the business operator or of any person or other place reasonably suspected to have therein a violation of the provisions of this Act, for the purpose of examining the conformity with this Act or for searching and seizing evidence or property which may be confiscated under this Act or arresting the offender under this Act without a warrant of search in the following cases:

(a) where a flagrant offence is evidently being committed in the place;

(b) where a person having committed a flagrant offence has, while being pursued, taken refuge, or there are serious grounds for suspecting that such person is concealing, in the place;

(c) where there are reasonable grounds for suspecting that the evidence or property which may be confiscated under this Act is found in the place and there are reasonable grounds to believe that by reason of delay in obtaining a warrant of search the evidence or property is likely to be removed, concealed, destroyed or transformed from its original state;

(d) where the person to be arrested is the owner of the place and there is a warrant for such arrest or such arrest may be made without a warrant;

Provided that, for these purposes, the competent official has the power to inquire into facts or summon accounts, records, documents or other evidence from the business operator or from the person concerned or order such persons who are in such place to perform necessary acts;

(3) to collect or take goods, in a reasonable quantity, as samples for an examination or analysis without payment of the prices of such goods, in accordance with the rules prescribed by the Commission in the Government Gazette;

(4) to attach documents, accounts, records or evidence for the purpose of examination and taking legal proceedings under this Act.

Section 20. In the performance of duties of the competent official, a person concerned shall render reasonable assistance.

Section 21. In the performance of duties, the competent official shall produce an identification card to the persons concerned.

The identification card shall be in accordance with the form prescribed by the Minister in the Government Gazette.

Section 22. The competent official shall procure service of the written summons under section 13 paragraph 3, section 19 (1) or section 44 (3) by directing it at the domicile or the place of business of the person named in the summons between sunrise and sunset or during working hours of such person or may send it by registered post requiring acknowledgement of receipt thereof.

In the case where the competent official serves the summons under paragraph one but the person named in the summons refuses to accept it without reasonable cause, the competent official shall request the administrative or police official to accompany the competent official for the purpose of leaving the summons on the spot. If the competent official does not meet the person named in the summons at his or her domicile or place of business, the summons may be served on any *sui juris* person who is living or working in that dwelling-place or place of business. If nobody is met or nobody agrees to accept the summons on behalf of the person

named therein, such summons shall be posted in a conspicuous place at the domicile or the place of business in the presence of the administrative or police official who accompanies as witness.

When the competent official has carried out the act under paragraph one or paragraph two, it shall be deemed that the person named in the summons has received it. In the case of the posting of the summons, it shall be deemed that such summons is received upon the lapse of five days as from the date of its posting. If the service is made by a registered post requiring acknowledgement of its receipt, it shall be deemed that the summons is received upon the lapse of five days as from the date of its receipt.

Section 23. In the execution of this Act, members, members of the Appellate Committee or of the sub-committee, Secretary-General, and competent officials shall be the officials under the Penal Code.

Section 24. For the purpose of arresting offenders under this Act, the competent official shall have the same powers as the administrative or police officer under the Criminal Procedure Code.

An arrest of the offender may be made without a warrant of arrest when a flagrant offence is evidently being committed or when there is any other circumstance under which the Criminal Procedure Code permits administrative or police official to make an arrest without a warrant of arrest.

CHAPTER III **Anti-Monopoly**

Section 25. A business operator having market domination shall not act in any of the following manners:

(1) unreasonably fixing or maintaining purchasing or selling prices of goods or fees for services;

(2) unreasonably fixing compulsory conditions, directly or indirectly, requiring other business operators who are his or her customers to restrict services, production, purchase or distribution of goods, or restrict opportunities in purchasing or selling goods, receiving or providing services or obtaining credits from other business operators;

(3) suspending, reducing or restricting services, production, purchase, distribution, deliveries or importation without justifiable reasons, or destroying or causing damage to goods in order to reduce the quantity to be lower than the market demand;

(4) intervening in the operation of business of other persons without justifiable reasons.

Section 26. A business operator shall not carry out a business merger which may result in monopoly or unfair competition as prescribed and published in the Government Gazette by the Commission unless the Commission's permission is obtained.

The publication by the Commission under paragraph one shall specify the minimum amount or number of market share, sale volume, capital, shares or assets in respect of which the merger of business is governed thereby.

The merger of business under paragraph one shall include:

(1) a merger made by a producer with another producer, by a distributor with another distributor, by a producer with a distributor, or by a service provider with another service provider, which has the effect of maintaining the status of one business and terminating the status of the other business or creating a new business;

(2) a purchase of the whole or part of assets of another business with a view to controlling business administration policies, administration and management;

(3) a purchase of the whole or part of shares of another business with a view to controlling business administration policies, administration and management.

The application by a business operator for the permission under paragraph one shall be submitted to the Commission under section 35.

Section 27. Any business operator shall not enter into an agreement with another business operator to do any act amounting to monopoly, reduction of competition or restriction of competition in the market of any particular goods or any particular service in any of the following manners:

(1) fixing selling prices of goods or services as a single price or as agreed or restricting the sale volume of goods or services;

(2) fixing buying prices of goods or services as a single price or as agreed or restricting the purchase volume of goods or services;

(3) entering into an agreement with a view to having market domination or market control;

(4) fixing an agreement or condition in a collusive manner in order to enable one party to win a bid or a tender for the goods or services or in order to prevent one party from participating in a bid or a tender for the goods or services;

(5) fixing geographical areas in which each business operator may distribute or restrict the distribution of goods or services, or fixing customers to whom each business operator may sell goods or provide services to the exclusion of other business operators from competing in the distribution of such goods or services;

(6) fixing geographical areas in which each business operator may purchase goods or services or fixing persons from whom business operators may purchase goods or services;

(7) fixing the quantity of goods or services in which each business operator may produce, distribute, or provide with a view to restricting the quantity to be lower than the market demand;

(8) reducing the quality of goods or services to a level lower than that in the previous production, distribution or provision, whether the distribution is made at the same or at a higher price;

(9) appointing or entrusting any person as a sole distributor or provider of the same goods or services or the same kind of goods or services;

(10) fixing conditions or practice with regard to the purchase or distribution of goods or the provision of services in order to achieve the uniform or agreed practice.

In the case where it is commercially necessary that the acts under (5), (6), (7), (8), (9) or (10) be undertaken within a particular period of time, the business operator shall submit an application for permission to the Commission under section 35.

Section 28. A business operator who has business relation with business operators outside the Kingdom, whether it is on a contractual basis or through policies, partnership, shareholding or any other similar form, shall not carry out any act in order that a person residing in the Kingdom and intending to purchase goods or services for personal consumption will have restricted opportunities to purchase goods or services directly from business operators outside the Kingdom.

Section 29. A business operator shall not carry out any act which is not free and fair competition and has the effect of destroying, impairing, obstructing, impeding or restricting business operation of other business operators or preventing other persons from carrying out business or causing their cessation of business.

Section 30. The Commission shall have the power to issue a written order requiring a business operator who has market domination, with the market share of more than seventy five percent, to suspend, cease or vary the market share. For this purpose, the Commission may prescribe rules, procedure, conditions and time limit for compliance therewith.

Section 31. In the case where the Commission considers that a business operator violates section 25, section 26, section 27, section 28 or section 29, the Commission shall have the power to issue a written order requiring the business operator to suspend, cease, rectify or vary such act. For this purpose, the Commission may prescribe rules, procedure, conditions and time limit for compliance therewith.

The business operator who receives the order under paragraph one and disagrees therewith shall have the right to appeal under section 46.

The business operator may not claim compensation from the Commission by reason that the Commission has issued the order under paragraph one.

Section 32. In the consideration of the case under section 31, the Commission must afford the business operator, members of the specialised sub- committee, members of the

inquiry sub-committee or competent officials concerned reasonable opportunities to give explanations and present supporting evidence.

In issuing an order under section 31, the Commission must specify reasons for such order both in questions of fact and in questions of law, and signatures of the members considering the case shall be entered.

The notification of the order under paragraph two shall be carried out within seven days as from the date of the Commission's order, and section 22 shall apply *mutatis mutandis*.

Section 33. The person receiving the order under section 31 must comply with such order unless the Court or the Appellate Committee passes a judgment or issues an order suspending the execution thereof or revoking the order of the Commission.

Section 34. In the case where the Court passes a judgment that any business operator is guilty of an offence under section 25, section 26, section 27, section 28 or section 29, the Court shall issue an order requiring the business operator to suspend, cease, rectify or vary such act.

CHAPTER IV

Application for Permission and Consideration of the Application

Section 35. Any business operator wishing to apply for permission to carry out the act under section 26 or section 27 (5), (6), (7), (8), (9) or (10) shall submit an application in accordance with the form, rules, procedure and conditions prescribed and published in the Government Gazette by the Commission.

The application must at least:

- (1) contain adequate reasons and specify necessity for the act;
- (2) specify the intended procedures therefor;
- (3) specify the duration therefor.

Section 36. The Commission shall complete the consideration of the application under section 35 within ninety days as from the date of its receipt; provided that the business operator, members of the specialised sub-committee or competent officials concerned must be afforded reasonable opportunities to give explanations and present supporting evidence.

In the case where the consideration cannot be completed within the time specified in paragraph one by reason of necessity, the Commission may grant an extension of time for not more than fifteen days, but the reasons and necessity for the extension shall also be recorded in the consideration and decision proceedings.

Section 37. When the Commission has made an inquiry and is of the opinion that the application under section 35 submitted by the business operator is reasonably necessary in the business, beneficial to business promotion, has no serious harm to the economy and has no effect on material and due interests of general consumers, the Commission shall issue a written order granting permission in favour of such business operator. But if the Commission issues an order rejecting permission, the order shall be notified in writing to the business operator without delay.

In granting permission under paragraph one, the Commission may fix the time or any condition for compliance by the business operator to whom permission is granted, and, if it is of the opinion that economic situations, facts or conduct relied on by the Commission in its consideration have changed, the Commission may amend, make addition to, or revoke such time or conditions at any time.

The business operator who receives the order of the Commission and disagrees with such order shall have the right to appeal under section 46.

Section 38. The Commission must specify reasons for the order granting or rejecting permission under section 37 both in questions of fact and in questions of law and the order shall contain signatures of the members considering the application, and the provisions of section 32 paragraph three shall apply *mutatis mutandis*.

Section 39. The business operator to whom permission is granted under section 37 must carry out the business within the scope, duration and conditions permitted by the Commission.

In the case where there is a violation of or failure to comply with paragraph one, the Commission shall have power to revoke the permission order under section 37 in whole or in part and may also fix the time within which compliance is required.

CHAPTER V

Initiation of an Action for Compensation

Section 40. The person suffering an injury in consequence of the violation of section 25, section 26, section 27, section 28 or section 29 may initiate an action for claiming compensation from the violator.

In initiating an action for claiming compensation under paragraph one, the Consumer Protection Commission or an association under the law on consumer protection has the power to initiate an action for claiming compensation on behalf of consumers or members of the association, as the case may be.

Section 41. If the action for claiming compensation under section 40 is not submitted to the Court within one year as from the date the person suffering the injury has or

ought to have had the knowledge of the ground thereof, the right to submit the action to the Court shall lapse.

CHAPTER VI **The Appeal**

Section 42. There shall be an Appellate Committee consisting of not more than seven qualified persons with knowledge and experience in law, economics, business administration or public administration appointed by the Council of Ministers as members.

The members of the Appellate Committee shall elect one member among themselves as Chairman.

The Director-General of the Department of Internal Trade shall appoint Government officials of the Department of Internal Trade to act as secretary and assistant secretaries.

Section 43. The person appointed as member of the Appellate Committee must not be under the prohibitions under section 7 and shall not be a member of the Commission.

Section 44. The Appellate Committee shall have the following powers and duties:

(1) to prescribe the rules and procedure for the appeal under section 47 paragraph one;

(2) to consider and decide on the appeal against an order of the Commission under section 31 or section 37;

(3) to issue a written summons requiring the persons concerned to give statements or furnish documents or evidence for the purpose of the consideration of the appeal;

(4) to issue an order suspending the execution of the order of the Commission under section 31 or section 37.

Section 45. A member of the Appellate Committee shall hold office for a term of four years.

In the initial period, at the expiration of two years, three members of the Appellate Committee shall vacate office by drawing lots and such vacation of office by drawing lots shall be deemed to be the vacation of office at the expiration of the term.

The provisions of section 9 paragraph three and section 10 shall apply to the Appellate Committee *mutatis mutandis*.

Section 46. The appeal against the order of the Commission under section 31 and section 37 shall be submitted to the Appellate Committee by the person receiving the order within thirty days as from the date of the knowledge of the Commission's order.

Section 47. The rules and procedure for the appeal shall be as prescribed and published in the Government Gazette by the Appellate Committee.

The Appellate Committee shall consider and decide on the appeal within ninety days as from the date of the receipt thereof and notify the decision in writing to the appellant, and the provisions of section 36 and section 38 shall apply *mutatis mutandis*.

The decision of the Appellate Committee shall be final.

When the Appellate Committee has decided upon the appeal, the Commission and business operators shall comply with such decision.

CHAPTER VII

Penalties

Section 48. Any person who fails to comply with the written summons issued by the specialised sub-committee, competent official or the Appellate Committee under section 13 paragraph three, section 19 (1) or section 44 (3), as the case may be, shall be liable to imprisonment for a term not exceeding three months or to a fine not exceeding five thousand Baht or to both.

Section 49. Any person who obstructs the performance of duties by the competent official under section 19 (2), (3) or (4) or section 22 shall be liable to imprisonment for a term not exceeding one year or to a fine not exceeding twenty thousand Baht or to both.

Section 50. Any person who fails to render assistance to the competent official under section 20 shall be liable to imprisonment for a term not exceeding one month or to a fine not exceeding two thousand Baht or to both.

Section 51. Any person who violates section 25, section 26, section 27, section 28 or section 29 or fails to comply with section 39 shall be liable to imprisonment for a term not exceeding three years or to a fine not exceeding six million Baht or to both, and, in the case of the repeated commission of the offence, shall be liable to the double penalty.

Section 52. Any person who fails to comply with the order of the Commission under section 30 or section 31 or with the decision of the Appellate Committee under section 47 shall be liable to imprisonment for a term of one to three years or to a fine of two to six million Baht, and to a daily fine not exceeding fifty thousand Baht throughout the occurrence of such violation.

Section 53. Any person who discloses information concerning the business or the operation of a business operator which, according to the ordinary course of dealing of the business operator, is the restrictive and confidential information and which such person has acquired or knew on account of the performance under this Act shall be liable to imprisonment for a term not exceeding one year, or to a fine not exceeding one hundred thousand Baht or to both, unless it is the disclosure in the performance of Government service or for the purpose of an inquiry or trial.

Any person who acquires or has the knowledge of any fact from the person under paragraph one and discloses such information in the manner likely to cause an injury to any person shall be liable to the same penalty.

Section 54. In the case where the person who commits an offence punishable under this Act is a juristic person, then, the managing director, the managing partner or the person responsible for the operation of the business of the juristic person in such matter shall also be liable to the penalty provided by the law for such offence unless it is proved that such act has been committed without his or her knowledge or consent or he or she has already taken reasonable action for preventing the commission of such offence from occurring

Section 55. The injured person in the offences under section 51 and section 54 may not institute a criminal action on his or her own motion but has the right to lodge a complaint with the Commission for consideration under this Act.

Section 56. All offences under this Act which are punishable by fine or imprisonment for a term not exceeding one year shall be under the power of the Commission to settle the cases. In exercising such power, the Commission may entrust a sub-committee, the Secretary-General or a competent official to act on its behalf.

When the offender has paid the fine in the fixed amount within the specified time, the case shall be deemed settled in accordance with the provisions of the Criminal Procedure Code.

Transitory Provision

Section 57. In the case where a business operator is under necessity and has carried out the acts specified in section 27 (5), (6), (7), (8), (9) or (10) on the day this Act comes into force, such person shall submit an application within ninety days as from the date of the entry into force of this Act, and when the application has been submitted, such business operator may continue to carry out the acts under section 27 (5), (6), (7), (8), (9) or (10) until the notification of the result of the consideration of the application is received

Countersigned by: Chuan Leekpai
Prime Minister