



A new precedent decision on unfair trade practice by unfairly utilizing superior market power or superior bargaining power was issued by Trade Competition Commission of Thailand

On 30 May 2024, the Trade Competition Commission of Thailand (“TCC”) published its decision on a new case concerning determination of fee for selling movie tickets via online channel and ticketing kiosk.

In this case, the first accused is a company, operating a theater business and having a market share in the theater industry in Thailand exceeding 10 %, whom movie producers and distributors shall rely on for screening their movies in the theaters of the first accused. The first accused becomes an undertaking having market power in the theater industry in Thailand pursuant to The TCC’s Notification on Guidelines for the Assessment of Unfair Trade Practices Resulting in Damage to Other Undertakings.

Before making a decision, the TCC had considered that there are three reasoning factors, performed by the first accused, which would be deemed that the first accused utilized its marketpower. The aforementioned factors are:

- i. the first accused deducted the fee from selling movie tickets via online channel and ticketing kiosk from the revenue share, which had been agreed by the parties, without any consent from the movie producers and distributors of which their movies were screened in the theaters of the first accused;
- ii. this fee deduction condition has neither been made in writing nor informed to those movie producers and distributors in advance; and
- iii. that fee deduction is not considered as a trade tradition.

As a consequence, the TCC finally decided that the action of the first accused in fee deduction is considered as unfairly utilizing superior marketpower, which results in damage to other undertakings under section 57(2) of the Trade Competition Act B.E. 2560 (A.D. 2017). The first accused, therefore, is subject to the administrative fine according to section 82 of the Act.

Last but not least, since the action in such fee deduction is under responsibilities of the second accused and the second accused initiated the fee deduction, the second accused is also be reliable for the offence committed by the first accused. The second accused is therefore subject to the administrative fine in accordance with section 84 of the Act as well.