



Business merger of True and DTAC

An ongoing controversial issue arises in regard to the proposed business merger between the two giant telecommunication companies, True Corporation Public Company Limited (“TRUE”) and Total Access Communication Public Company Limited (“DTAC”). This deal can potentially be foreseen whether this merger can be approved by the relevant authorities, it may greatly have impacts on the telecommunication market including: unfair competition, limitation of the choices for the consumers, and infringement of data privacy.

It is argued that the TRUE and DTAC merger is that by notifying this deal to the National Broadcasting and Telecommunications Commission (“NBTC”), the NBTC has classified this deal as a red flag. However, at the moment, the question arises of whether the NBTC neither has power to consider nor reject such business merger of TRUE and DTAC, or the only power the NBTC have is to impose the specific measures regarding market dominance in order to prevent public interest from damage.

On 17 August 2022, the NBTC came up with the first plan with the help of Office of the Council of State, to proceed with the TRUE and DTAC deal. According to Section 6 of the Act on Organization to Assign Frequency Waves and Regulate the Radio Broadcasting Business Television and Telecommunications (No.4) Act B.E. 2564 (A.D. 2021), the NBTC a power to appoint seven commissioners to consider whether or not the NBTC shall be eligible to render the resolution on the proposed business merger between TRUE and DTAC. Unfortunately, there are only five qualified commissioners where, three of them were of the view that the NBTC has the power to approve or block the deal but other two said that this is out of scope of the NBTC’s power.

Compared to the business merger case between Advanced Info Service Public Company Limited (“AIS”) and Triple T Internet Public Company Limited (“TTTBB”) couple years ago, where AIS acquired TTTBB’s business, Clause 4 of Notification of the National Telecommunications Commission regarding measures for prevention of monopoly or unfair competition in telecommunications business B.E. 2549 (A.D. 2006) (the “Old Notification”), provided that this type of transaction required permission by NBTC. However, the Old Notification was no longer applied.