

Newsletter

THE OFFICE OF TRADE COMPETITION COMMISSION CLARIFIES DEFINITION OF 'DOMINANT PLAYER'

The Office of Trade Competition Commission (the OTCC) has revised the definition of a 'Dominant Player' under Sections 50 and 51 of the Trade Competition Act B.E. 2561 (the Act) to eliminate any ambiguity as to the intent of the law. The clarification is important because if a contemplated merger (whether amalgamation or asset or share acquisition) between two businesses results in the new business operation being classified as a Dominant Player, then the merging parties need prior approval from the Trade Competition Commission before proceeding with the merger, pursuant to Section 51 of the Act. Furthermore, a Dominant Player's commercial operations will also be burdened with additional restrictions under Section 50 of the Act, as supplemented.

Determination of a Dominant Player

The Act provides two guidelines for determining Dominant Player status based on methodologies, market share and turnover / sales from the previous year for an operator, or operators. The thresholds for a Dominant Player are as follows:

Review Methodologies	Market Share Threshold	Turnover/Sales Threshold
Quasi-monopoly/single-player review: with one very large operator dominating the market	50% for such very large operator	Baht 1 Billion in the previous year for such particular market of product or service
Oligopoly/multiple-players review: with multiple large operators (only top 3 players are reviewed)	75% combined market share for top 3 players	Baht 1 Billion each in the previous year for such particular market of product or service

The OTCC's intent under the Act has always been that a determination of a Dominant Player uses these methodologies. The amendments do not change the position.

For the second methodology, an individual operator in the top 3 will not be considered a Dominant player if they do not have 1 Billion Baht in sales from the previous year or if their market share is less than 10%. It is important to note that the intent of the definition of a Dominant Player under the second methodology was that the individual exemption would not exempt the largest/top two operators in a market from being labelled as Dominant Players.

Ambiguity under the prior definition

The first method for determination of a Dominant Player has never been questioned. However, a small number of operators have questioned the second methodology. The operators have argued that the original definition, prescribed in 2018, could be interpreted to mean that if any operator in the top-three has less than 1 Billion Baht in sales from the previous year (while the combined market share of the three operators reaches 75% and the largest/top two player(s) each have 1 Billion Baht in sales from the previous year), all three operators would be exempted from being labelled a Dominant Player.

Clarity under the revised definition

The revisions to the definition of Dominant Player under the Act quash this argument for group-wide exemption and affirm the original intent of the law. The new definition was issued on 25 September 2020 and makes it

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clear that exemptions from being labelled a Dominant Player(s) will be afforded individually, and will not affect the Dominant Player status by the other operator(s) in the top-three group.

If you would like to discuss the issues raised in this article further or related issues, please contact the authors listed in the right-hand column.



This publication is intended to highlight an overview of key issues for ease of understanding, and not for the provision of legal advice. If you have any questions about this publication, please contact your regular contact persons at Mori Hamada & Matsumoto or Chandler MHM Limited. If you should have any inquiries about the publications, or would like more information about Chandler MHM Limited, please contact bd@mhm-global.com.