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Newsletter

OFFICE OF TRADE COMPETITION COMMISSION RELEASES SUMMARIES OF PAST CASES

The Thai Office of Trade Competition Commission (OTCC) has released summaries of multiple past cases. The release of details of these cases has been done to provide the public with insight into the facts of the cases, and to provide guidelines based on the precedents established from the review of these cases. An overview of some of the more important precedents set by the OTCC are discussed in this briefing.

Price fluctuations of a ride sharing application

Background

In this case, the OTCC reviewed a complaint lodged in connection with price fluctuations for services arranged through a ride-sharing application. A user lodged a complaint with the OTCC stating that the price for a trip quoted by a ride-sharing application fluctuated materially on two different days. The complaint alleged that the price fluctuations were unfair to users of the service.

OTCC decision

The OTCC declined to hear this case on technical grounds. The rationale of the OTCC in declining to hear the case was that a user is not a business operator pursuant to the definition prescribed by the Trade Competition Act 2017 (TCA). The OTCC did issue a case note that a user of such services still has many travel options and is not restricted to only use this mode of transportation/service. This case note implies that if the case did qualify to be heard by the OTCC, the OTCC may conclude that price fluctuations due to a shift in supply and demand are acceptable. This applies even though such price changes may seem difficult to explain or even arbitrary.

Prohibited conduct by brand owners

Background

In this case, a car brand owner was investigated by the OTCC for prohibiting its dealers from: 1) selling a certain series of vehicles to taxi fleet operators; and 2) selling cars in other dealers' jurisdictions.

In relation to the first issue, the rationale given by the brand owner, and accepted by the OTCC, revolved around the necessity to preserve the image and product positioning of the make and model of the particular car as household and sport models, and the avoidance of high maintenance costs for taxi fleet operators. In relation to the second issue, the brand owner argued that the prohibition on sales in other dealers' jurisdictions was not an actual prohibition on sales to consumers in those jurisdictions, but rather a prohibition on advertisements and events. The prohibition was put in place to maintain a proper level of intra-brand competition to ensure dealers' survival and the ability to provide after-market services to customers in each jurisdiction.

OTCC decision

The OTCC accepted the rationale provided by the car brand owner for the prohibition of sales of certain makes and models to taxi fleet operators. The OTCC also determined that the car brand owner's argument for prohibiting sales of cars in other dealers' jurisdictions was convincing, and

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accepted the rationale as presented. The OTCC recognized that consumers could still purchase those makes and models, regardless of where the consumers may reside.

Unilateral action, collusion and exemptions under the TCA

The OTCC, in accepting the rationale provided by the brand owner described above, provided additional guidance on possible actions by brand owners. The OTCC determined that prohibitions on dealers ordered by brand owners can morph from a unilateral action, which can be considered as an abuse and unlawful under Section 57 of the TCA (by one side against the “victims”), into one of collusion (cartel) between the brand owner and the dealer under Section 55 of the TCA. The explanation provided by the OTCC is that once an order by the brand owner is accepted by the dealer, both parties have attached themselves to a possibly unlawful arrangement, and both could be liable for violating the TCA.

Key lessons

The lesson that can arise from this case is that operators who have been ordered to do something must remain vigilant regarding what actions they are agreeing to follow, whether voluntarily or involuntarily, as the situation can quickly turn into one of an unlawful arrangement. On a related note, it is also worth mentioning that besides deeming the two prohibitions described above as lawful, the OTCC also confirmed that the relationship between the brand owner and the dealers is one that qualifies under the “franchise/dealership” exception under Section 56 of the TCA. This means the prohibition on sales of certain makes and models to taxi fleet operators is exempt by law from violating the TCA.

As the TCA and OTCC reviews are continuously evolving, we are continuing to monitor changes and decisions issued by the OTCC and will provide updates.

If you would like to discuss the legal implications of the OTCC decisions described in this briefing, please contact the authors listed in the right-hand column.

