

An Exemption for Vertical Restraint Regarding Intellectual Property Licensing: Case Study of Thailand

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Abstract : Throughout the history of Antitrust regimes in Thailand, Thailand has been trying to prevent collusive practices in the market through the amendments of the Trade Competition Act, and Thailand just passed the current Trade Competition Act of B.E. 2560 in 2017 of which several aspects of the law were amended in order to enhance the prevention of collusive outcome through both vertical trade restraints and horizontal trade restraints. An agreement is vertical when it involves arrangements that are in a complementary relationship. In Section 55 of the Act, any agreements to reduce the price, quantity, or quality of the goods, agreements to assign a sole retailer for the goods, and the agreement to impose conditions on the retailers are not allowed. However, Section 56 provides exemptions for the vertical relationship between the business operators, the franchise agreement, and the licensing agreement as long as such agreements do not surpass the necessity to do so, create monopolization, or affect the consumers in terms of price, quality, quantity, or options. The paper aims to explore the extent of the exemption under Section 56 and sequential regulations in terms of the vertical trade restraints regarding intellectual property licensing, and, at the same time, compare with the exemptions under the European Union competition law, and Singapore competition law. Comparative legal analysis with leading jurisdiction will illustrate the application of the newly enacted Thai Competition Act in terms of its enforcement in the global impact of IP rights, which, by nature are de jure or de facto international protection.

Keywords : antitrust, competition law, vertical restraint, intellectual property, IP licensing

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