

Comparative Analysis between Thailand and the United States of a Wholesale Exemption for Vertical Restraint Regarding Intellectual Property Licensing

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Abstract : Competition law is not a new thing in Thailand. Thailand first passed the first competition law during the Second World War in order to stop business operator monopolizing food and basic living supplies. The competition law in Thailand has been amended several times during the past eighty years in order to make it suitable for the current economic and social condition. In 2017, Thailand enacted the current Trade Competition Act of B.E. 2560, which contain several changes to the regime in order to enhance a prevention of collusive practices and monopolization through both vertical restraints and horizontal restraints. Section 56 of the Act provides exemptions for the vertical relationship; i.e., the arrangement in form of complementary relationship, between business operators, franchising agreements between franchisor and franchisee, and licensing agreement between licensor and licensee. The key is that such agreements must not be excessive, create monopolization or attempt to monopolize, or cause any impacts the consumers regarding price, quality, quantity of the goods. The goal of the paper is to explore the extent of the exemption under Section 56 and its sequential regulations regarding vertical trade restraints in the case intellectual property licensing. The research will be conducted in form of a comparative analysis on exemptions for collusive practices under the United States Antitrust law and the Thai Competition Act of B.E. 2560. The United Antitrust law, fairly similar to the Thai Competition Act of B.E. 2561, views the intellectual property licensing to have pro-competitive benefits to the market as long as the intellectual property licensing agreement does not harm the competition amongst the business operators that could have or would have been competitors. The United States Antitrust law identifies the relationship between the parties of the agreement whether such agreement is horizontal or vertical or both. Even though the nature of licensing agreements is primarily vertical, the relationship between licensor and licensees can also be horizontal if they could have been potential competitors in the market as well. The United States Antitrust law frowns upon, if not prohibits, the horizontal restraints regarding the intellectual property licensing but does not impose the same restrictions on the vertical trade restraints regarding intellectual property licensing.

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

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