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Thailand[*1]

Thailand[2], situated in Southeast Asia, is one of the most popular tourist destinations of the region. The unified Kingdom, founded in the 14th century, was known as Siam until 1939, and a bloodless coup seven years before that resulted in the establishment of a constitutional monarchy. Thailand is the only country in the region that has never been colonised and was only briefly occupied by Japan during the Second World War.

Bordering the Andaman Sea and the Gulf of Thailand, the country shares its land borders with Myanmar, Lao PDR, Cambodia and Malaysia. Thailand's capital is Bangkok, and the country is divided into 76 administrative districts. Thailand consists of three main categories of ethnic groups; approximately 75 percent are Thai, 14 percent of the population is Chinese, and other ethnic groups make up circa 11 percent.

PROFILE	
Population:	62 million***
GDP (Current US$):	142.2 billion**
Per Capita Income: (Current US$)	2,190 (Atlas method)*** 7,010 (at PPP.)**
Surface Area:	513.1 thousand sq. km
Life Expectancy:	69.1 years**
Literacy (%):	92.6 (of ages 15 and above)**
HDI Rank:	76***

Sources:
- World Development Indicators Database, World Bank, 2004
- Human Development Report Statistics, UNDP, 2004

(**) For the year 2002
(***) For the year 2003

Economy

Thailand has always encouraged a free market economy, readily welcomes foreign investment, and shares a close economic relationship with the US. The Government of Thailand advocates a strong expansionist policy and greatly supports economic development in villages.

The country's main exports consist of textiles and footwear, fish products, rice, rubber, jewellery, cars, computers, and electrical appliances.

Since its recovery from the Southeast Asian crisis, the economy has been growing steadily, through increased consumption, investment spending, and strong export growth. Thailand was one of East Asia's top economic performers in 2002, and upon recovery from the effects of the Asian financial crisis, its economy is projected to grow between 5.8 and 6.6 percent. However, the country continues to have a relatively weak banking sector and a high proportion of non-performing loans, which may continue to cause concern.

Competition Evolution and Environment

In the mid 1970s, Thailand's economy was dominated by the agricultural sector. The manufacturing sector was relatively small, accounting for less than 20 percent of GDP, and manufactured exports comprised only 32 percent of total exports in 1977-81. Yet, industry and trade were highly concentrated. This high concentration was mostly as a result of government policies, including factory licensing; capacity controls; concessions; investment promotion policies of the Board of Investment, which favoured large-scale and well-established firms; and tariff surges, in the early 1970s.

In 1971, 40 out of 78 industries had three firm concentration ratios of at least 67 percent. Agricultural trade, during the period, was dominated by trade

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1 Comments on the paper were received from Deunden Nikomborirak, Thailand Development Research Institute Foundation (TDRIF).
2 Some of the information in this introduction has been compiled from the CIA world factbook, http://www.cia.gov/cia/publications/factbook/geos/th.html

associations that acted as the collusive instrument of large traders, an activity made possible by the Government's export quota policy. Some studies have found that many firms carried out business processes and transactions using the influence of the military and politicians.

The political changes in the 1970s led to the implementation of some sort of competition legislation in 1979. The changes began with the opening up of politics following the student uprising in 1973. The high inflation rate, caused by the first oil crisis and the commodity boom, forced the Government to enact the prevention of Excessive Trade Profit Act in 1974. Following a military coup in 1976, the country swung from the Left to the extreme Right. After the military staged another coup in 1977, the new Government prepared for national elections and civilian rule, aimed at easing the tensions that had arisen during the previous government.

In a response to the public outcry of the widespread collusive behaviour of businessmen and the ineffectiveness of the Excessive Profit Trade Law, the Government, supported by a group of radical army commanders, enacted the Price Control and Anti-monopoly Act B. E. 2522 AD 1979. This Law was enacted with the aim of protecting consumers from inflationary pressures and collusive practices amongst businesses that led to excessive pricing, and was passed when the trade balance began to worsen as a result of the appreciation of the Thai currency: Baht.

Despite successes in price control, the law suffered from the following drawbacks:

- The provisions on anticompetitive practices were incomplete as many vertical restrictive arrangements were not covered;
- There was no provision on M&As;
- The anti-monopoly provisions were hardly imposed. This is because before the Law could be enforced, the business allegedly indulging in anticompetitive practices would officially have to be declared a 'controlled business'. Since there was no clear definition of a monopoly, only ice-manufacturing was declared a controlled business in the two-decade history of the Act.

In 1990, following a bloodless coup, the military appointed a businessman and former diplomat, Anand Panyarachun, as the Head of State. Under the Panyarachun administration, the Government was staffed with law academicians and technocrats, who undertook several measures to initiate economic reforms and promote competition in Thai markets including

- lowering tariff peaks in the automobile industry;
- abolishing price controls on gasoline;
- removing licensing regulations on the cement industry; and
- promoting private participation in telecom and electricity sectors.

Competition Law and Overall Regulatory Framework

Institutions

The Government realised that the promotion of a market-based economy would need a strong competition culture in the markets. Therefore, in 1991, the Government set up a Commission to review Thailand's antitrust law. The Commission felt that the legal framework was outdated and did not suit the economic scenario of the time. Keeping in mind, the new economic developments and foreign investments, the Commission drafted a new antitrust law that, after eight years, four Governments and a new Constitution (1997) advocating free and fair competition, was passed in April 1999.

Consequently, the Price Control and Anti-monopoly Act was replaced by two laws: Trade Competition Act (TCA) B.E. 2542 AD 1999 and the Goods and Services Price Control Act B.E. 2542 AD 1999. A Trade Competition Commission (TCC) was established to enforce the TCA. The Minister of Commerce is its Chairman and the Permanent Secretary of the Ministry of Commerce is the Vice-Chairman. The Permanent Secretary of the Ministry of Finance is also a member of the TCC and the Director General of the Department of Internal Trade (DIT) serves as its Secretary General. The Cabinet appoints the other members, numbering between 8 and 12, half of whom are from the private sector. The Office of Trade Competition (OTC) works under the DIT, which in turn reports to the Minister of Commerce.

The scope of the TCA applies to all types of business operations except:

- state enterprises;
- co-operative societies;
- agriculture;
- central and regional Government agencies; and
- exemptions for businesses prescribed under Ministerial Regulation. (So far, none have been suggested herein).

Competencies and Anticompetitive Business Practices

The TCA lays out the following provisions for the protection of competition:

- Section 25 prohibits businesses in a dominant position to abuse their market power, by:
  1. Setting unfair prices for goods and services, as in resale price maintenance, predatory pricing etc;
  2. Setting unfair trading conditions, such as exclusive dealing;
  3. Limiting the supply of goods and services to create an artificial shortage; and
  4. Intervening in other businesses without proper reasons.
- Section 26 prohibits any merger that may create monopolistic power or reduce competition, unless the merger is approved by the TCC on the grounds that it is beneficial for the economy;

- Section 27 disallows business operators from conspiring, colluding or collaborating with one another, in order to create monopolistic power or reduce competition. However, the TCC provides rules and procedures to apply for exemption, in case any anticompetitive agreement is felt to be reasonably necessary for the business and which will not cause serious harm to the economy;
- Section 28 prohibits exclusive dealing between domestic and overseas business operators;
- Section 29 proscribes business operators from performing any act, which destroys, impairs or impedes fair competition; and

Box 33.1: Merger Led to Monopoly in the Cable TV Sector

The nation-wide cable television service in Thailand became a monopolistic industry, in February 1998, as the two operators, the International Broadcasting Corporation (IBC) and the United Television Network (UTV), merged to become one single entity - the United Broadcasting Corporation (UBC).

Against public sentiment, the Mass Communication Organisation of Thailand (MCOT), the State Enterprise holding television licensing authority in Bangkok, approved the merger[3]. The main justification for the merger was the need for the operators to consolidate, given the cost hike following a sudden sharp devaluation of the baht in June 1997, marking the beginning of the country's financial crisis, which spread globally.

In May 1999, UBC raised its monthly subscription fee for its 'gold package' – i.e. the subscription package with the largest number of channels – by a whopping 22.47 percent from 890 bahts (US$23) to 1090 (US$28) per month.

An expert sub-committee was established to investigate whether the cable monopoly was abusing its market power in general, and whether the price increase was excessive. The sub-committee produced an 80-page investigation report.

Later on, the TCC decided that since the cable television service is a regulated service, the *de facto* regulatory body, the MCOT, should handle the matter, which is responsible for tariff approval and ensuring licensees' compliance to the terms of the licence. The case was therefore transferred after which it was never heard of again.

Source: Cable Television Monopoly Case Study: An Investigation by the Thai Trade Competition Commission: Deunden Nikomborirak, Research Director, Thailand Development Research Institute

- Failure to abide by the above provisions could result in a jail term of up to three years and/or a fine of up to six million *bahts* (approximately US$156,000). Repeat offences can lead to double punishment.

Other Regulatory Legislation and Institutions

The Goods and Services Price Control Act B.E. 2542 AD 1999 was enacted with the purpose to:
- protect consumer from price-fixing and unfair service charges; and
- ensure a sufficient supply of goods to meet local demands and prevent hoarding and artificial shortages.

The Act generally applies to controlled goods or services that are announced by the Government from time to time. It covers all business activities, with the exception of those undertaken by the central and local governments. The Goods and Services Price Control Commission, which sits in the DIT, is responsible for enforcing the Act. The powers of the Commission include:
- deciding the goods and services to be controlled by the Act;
- prescribing the volume, storage place, cost, expenses, on controlled goods, and plans to export, import, and distribute them along with the methods thereof;
- prohibiting or permitting the export or import into any area of controlled goods; and
- prescribing measures to protect hoarding, or excess storage of controlled goods and services.

There is also a section of the Act, which is broad enough to apply to any kind of goods and services. Under this section, business operators are banned from engaging in activities that may raise or lower the price of the goods and services concerned, or may lead to a confusion regarding their prices. Any offence of the Act can attract a fine of up to 140,000 *bahts* (US$3640) and/or imprisonment of up to seven years.

The Foreign Business Act

The Foreign Business Act 1999, which replaced the Alien Business Act 1972, is the most important law affecting foreign business ownership. It regulates 43 categories of business activities that have been divided into three schedules:
- Schedule 1: containing businesses wherein only minority ownership is permitted. There are no provisions to apply for majority ownership unless there is an exception in a certain treaty or law. Businesses covered include radio, television, forestry, fishing in Thai territorial waters, and the trade, and auction of Thai antiques and other objects of historical value;
- Schedule 2: allowing for the minority foreign ownership without need for approval. Up to 60 percent (which can

3 The licensing authority is presently suspended pending the establishment of the National Broadcasting Commission, the independent regulatory body established by law.

be extended to 75 percent under special conditions) ownership is possible with the Government's approval. Businesses therein include sericulture, the manufacturing and printing of Thai silk, salt farming, mining, timber processing, and areas involving national security; and
- Schedule 3: in which it is possible to gain minority ownership without permission. Majority ownership is possible with the permission of the Commercial Registration Department and Alien Business Board. Once the permission is granted, other conditions may be imposed under the Act. Rice milling, accountancy, legal services, tourism, advertising, architecture, and certain kinds of construction, brokerage and auctioneering are included in this schedule.

The Alien Business Board is the regulatory authority concerned.

Sectoral Regulation

Thailand also has various sectoral regulatory authorities. Some of them are:

- The National Broadcasting Commission (NBC) for radio and television broadcasting;
- The National Telecommunications Commission (NTC), which regulates the telecommunications sector;
- The Bank of Thailand (BOT), which deals with the banking and finance sector; and
- The Securities Exchange Commission (SEC), which looks after the securities market.

The Ministry of Energy is the official regulatory body for the energy sector. The Ministry was formed in October 2002 to bring together the various energy-related offices, departments and units from the Office of the Prime Minister, the Ministries of Industry, Commerce, Interior, and Science, Technology and Environment. The Ministry is to formulate Thailand's energy policy; however, the Electricity Generating Authority of Thailand (EGAT) holds power-purchasing contracts that may contain certain aspects of regulations, while electricity prices are determined by Ministerial Commissions.

The Electricity Regulatory Commission (ERC) is to be established to implement Thailand's energy policy as well as regulate the energy sector. This body will in fact have four main functions. First, it forecasts demand and supply of electricity. Second, it plans future investment based on these forecasts. Third, it ensures the security and reliability of Thailand's power supply. Fourth, the ERC will determine the optimal pricing of Thailand's electricity and make sure that consumer interests are properly served.

The ERC will have seven Commissioners, six of which will be Government representatives, as well as experts in the relevant fields. A Chief Operating Officer is to be appointed, who will also act as the secretary to the ERC.[4]

Box 33.2: Electricity Generating Authority of Thailand

The state-owned Electricity Generating Authority of Thailand (EGAT) produces more than 15,000 MW of electricity per annum, and buys nearly 11,000 MW from independent power producers. EGAT not only generates or buys most of the nation's power, but also holds a monopoly on transmission to the distributors, who are the Metropolitan Electricity Authorities and the Provincial Electricity Authorities.

The utility operates hydroelectric, thermal, and alternative power plants, as well as provides engineering, maintenance, and other energy-related services. In addition, EGAT owns stakes in two offshoot-generating companies. Due to union protests, the Thai Government delayed plans to privatise EGAT in an IPO in early 2004.

EGAT is responsible for the electricity generation and transmission systems of the country. It is also responsible for the establishment of the Community Development Fund, which aims at improving the quality of life of the communities in the vicinities of power projects and mitigating the adverse environmental impact. The Fund revenue will be derived from levies imposed on power plants, of which the installed capacity is greater than 1,000 KW. The rates will be as follows: 1.30 Satang/unit (1 Satang = US 0.025 cents) for lignite and coal-fired power plants, and 1.00 Satang/unit for other types of power plants.

The framework for authorisation of the Fund utilisation is divided into three categories, namely:

- Category 1: for the overall development of quality of life and the environment. The authorisation is under the Community Development Fund Committee;
- Category 2: for the development of quality of life and the environment of the people in the provinces where power plants are located. The authorisation is trusted to the respective Provincial Committees; and
- Category 3: for the development of quality of life and the environment of the people in the localities where power plants are located. The authorisation is entrusted to the respective Community Committees.

Source: http://www.eppo.go.th/doc/strategy2546/strategy.html

4 http://www.energy.go.th/center_cell/keynote/04-feb-04.htm

Consumer Protection

The Consumer Protection Act (CPA) 1979, subsequently amended, aims to protect consumers with respect to the sale, purchase, labelling and advertising of goods and services. The Consumer Protection Board supervises the enforcement of this law. The Board itself looks after the functioning of three sub-committees:

- The Advertising Committee, which takes action against false or misleading advertising;
- The Labelling Committee, which takes action in the event that labels are misleading, or do not accurately cite ingredients of the goods, especially when the goods have been designated as controlled; and
- The Contracts Committee, which may define certain categories of agreements as 'controlled' and may accordingly prescribe terms that may, or may not, be included therein.

These Committees investigate breaches under the Act, and have a system of punishment, comprising of fines and imprisonments, to deal with the offenders.

In addition to the CPA 1979, Thailand has other laws that protect consumer interests. Some of them are:

- The Food Act;
- The Public Health Act;
- The Credit Data Protection Act;
- Unfair Contract Terms Act; and
- Regulations concerning credit cards and loan agreements.

Concluding Observations and Future Scenario

Even though Thailand has had a second competition law for six years till now, the implementation has left much to be desired. The TCC has met only eight times since the notification of the law, which was on March 22, 2000. Such laxity can be attributed to drawbacks within the law, and the institutional set-up that enforces it. To ensure proper functioning of the TCC in the future, and to build a strong competition culture in Thailand, the Government will have to address the drawbacks. Some of these are:

- ***Composition of the Commission***. Since the Chairman of the TCC is the Minister of Commerce, and one half of its members are from the private sector, the TCC is very vulnerable to political intervention and the pursuit of individual interests. The appointment of economists, lawyers, etc, as full-time, independent members of the Commission needs to be encouraged;
- ***Room for discretion***. Many sections of the Act use terms like 'unreasonably' and 'without justifiable reasons' to decide whether a particular business has committed any offence. This leaves a lot of room for discretion. Very often, this and the lack of administrative transparency, has resulted in the Act being used on a discriminatory basis;
- ***Absence of dominance threshold.*** As long as the lack thereof persists, the TCC cannot deal with an alleged offender. Also, so far, the TCC has not given any formal decision in related cases, as it would have to reopen the case when the dominance threshold is decided. Otherwise the TCC would be bound by its decision, in terms of legal jurisdiction;
- ***Poor funding***. The Government has to be serious in providing adequate budgetary support to a new body; and
- ***Lack of public awareness and support***. The Government and the new Commission will need to generate awareness and implement advocacy programmes, to create a buy-in for the competition law.

Additionally, the TCC is expected to actively engage in competition advocacy to ensure long-term benefits to Thailand.

Suggested Reading

Nipon Poapongsakorn's paper entitled, '*The New Competition Law in Thailand: Lessons for Institution Building*'.