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CONSEIL DU COMMERCE ET DU DÉVELOPPEMENT

COMMISSION DE L'INVESTISSEMENT, DE LA TECHNOLOGIE
ET DU DÉVELOPPEMENT DES ENTREPRISES

**DROIT DE LA CONCURRENCE: QUESTIONS REVÊTANT
UNE IMPORTANCE PARTICULIÈRE POUR
LE DÉVELOPPEMENT**

**ÉTABLISSEMENT D'UN MANUEL SUR LE DROIT
DE LA CONCURRENCE**

Manuel sur le droit de la concurrence

Note du secrétariat de la CNUCED

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INTRODUCTION

1. L'Ensemble de principes et de règles équitables convenus au niveau multilatéral pour le contrôle des pratiques commerciales restrictives prévoit, à la section F.6 c), l'établissement d'un manuel des législations appliquées en matière de pratiques commerciales restrictives.
2. En outre, la quatrième Conférence des Nations Unies chargée de revoir tous les aspects de l'Ensemble, qui s'est tenue à Genève du 25 au 29 septembre 2000, ainsi que le Groupe intergouvernemental d'experts du droit et de la politique de la concurrence à sa troisième session, tenue à Genève du 2 au 4 juillet 2001, ont prié le secrétariat de la CNUCED de continuer à publier de nouvelles livraisons du Manuel des législations appliquées en matière de concurrence, y compris des instruments régionaux et internationaux, qui devrait être complété par un résumé des principales dispositions des lois sur la concurrence établi à partir de communications des États membres (voir la résolution adoptée par la Conférence, TD/RBP/CONF.5/16) et les conclusions concertées adoptées par le Groupe intergouvernemental d'experts à sa troisième session (TD/B/COM.2/CLP/L.7).
3. Le secrétariat a donc établi la présente note, qui contient les commentaires de l'Indonésie, de la Nouvelle-Zélande et de la Thaïlande sur leur législation en matière de concurrence*.
4. À ce jour, le secrétariat de la CNUCED a publié dans son Manuel des notes présentant le texte et le commentaire des lois sur la concurrence de 45 pays: Afrique du Sud, Algérie, Allemagne, Belgique, Brésil, Bulgarie, Canada, Chili, Colombie, Côte d'Ivoire, Croatie, Danemark, Espagne, États-Unis d'Amérique, Finlande, France, Géorgie, Hongrie, Indonésie, Italie, Jamaïque, Japon, Kenya, Lituanie, Maroc, Mexique, Nouvelle-Zélande, Norvège, Pakistan, Pologne, Portugal, République de Corée, République tchèque, Roumanie, Royaume-Uni de Grande-Bretagne et d'Irlande du Nord, Sénégal, Slovaquie, Sri Lanka, Suède, Thaïlande, Tunisie, Turquie, Ukraine, Venezuela et Zambie.
5. Le Secrétaire général de la CNUCED, dans une note du 8 mars 1996, a prié les États membres qui ne l'avaient pas encore fait, ainsi que ceux qui avaient modifié leur législation sur la concurrence ou adopté des dispositions nouvelles depuis leur dernière communication au secrétariat de la CNUCED, de fournir à celui-ci le texte de leurs lois et décisions judiciaires, accompagné de commentaires, selon le mode de présentation prescrit (voir ci-après) (cependant, dans le cas des États qui ont adopté de telles lois pour la première fois, la présentation des commentaires peut s'écarter de ce modèle). Pour faciliter la publication des textes législatifs dans plusieurs langues officielles de l'ONU, les États ont été invités à fournir si possible des traductions dans au moins une autre de ces langues.
6. Le secrétariat remercie les États qui lui ont envoyé les renseignements demandés pour l'établissement du Manuel, et invite de nouveau ceux qui ne l'ont pas encore fait à répondre à la demande du Secrétaire général de la CNUCED.

* Les communications sont reproduites telles quelles, dans la langue dans laquelle elles ont été reçues.

MODE DE PRÉSENTATION DES RENSEIGNEMENTS À FOURNIR POUR LE MANUEL

- A. Exposé des raisons qui ont motivé l'adoption de la législation.
- B. Description des objectifs de la législation et de leur évolution depuis l'adoption de la législation initiale.
- C. Description des pratiques, actes ou comportements soumis au contrôle, en indiquant pour chacun:
 - a) Le type de contrôle – par exemple interdiction pure et simple, interdiction de principe ou examen cas par cas;
 - b) La mesure dans laquelle les pratiques, actes ou comportements visés aux paragraphes 3 et 4 de la section D de l'Ensemble de principes et de règles sont soumis à ce contrôle, ainsi que les autres pratiques, actes ou comportements susceptibles d'y être assujettis et ceux qui font l'objet de mesures expressément liées à la protection du consommateur, comme la lutte contre la publicité mensongère.
- D. Description du champ d'application de la législation, en indiquant:
 - a) Si elle est applicable à toutes les transactions portant sur des biens et des services et, dans la négative, quelles transactions sont exclues;
 - b) Si elle s'applique à la totalité des pratiques, actes ou comportements ayant des effets sur le pays, quelle qu'en soit l'origine géographique;
 - c) Si elle dépend de l'existence d'un accord, ou de l'entrée en vigueur dudit accord.
- E. Description du mécanisme (administratif et/ou judiciaire) d'application, en indiquant les éventuels accords de notification et d'enregistrement et les principaux pouvoirs de l'organe ou des organes compétents.
- F. Description de toute législation parallèle ou supplémentaire, y compris des traités ou conventions avec d'autres pays, prévoyant une coopération ou des procédures pour régler les différends dans le domaine des pratiques commerciales restrictives.
- G. Description des principales décisions prises par les organes administratifs et/ou judiciaires, et des questions qui en font expressément l'objet.
- H. Bibliographie succincte donnant la référence des textes législatifs et des principales décisions, ainsi que les documents explicatifs publiés par les pouvoirs publics, ou les textes législatifs ou certains passages de ces textes.

COMMENTAIRES SUR LA LÉGISLATION EN MATIÈRE DE CONCURRENCE

I. COMMENTAIRE DU GOUVERNEMENT INDONÉSIEEN SUR LA LOI INDONÉSIEENNE RELATIVE À LA CONCURRENCE

Historique

L'expansion que l'économie indonésienne a connue au cours de la première phase de développement à long terme du pays a donné lieu à un progrès considérable dû par l'essor de plusieurs secteurs, auquel ont contribué une politique de développement économique exposée dans les orientations générales de la nation ainsi qu'un plan quinquennal de développement et d'autres types de mesures économiques. Même si la forte croissance de l'activité témoigne de l'importance des progrès accomplis, l'Indonésie se heurte encore à de nombreux défis et problèmes économiques. En fait, les débouchés commerciaux créés au cours des 30 dernières années n'ont pas permis à l'ensemble de la population de profiter du développement de plusieurs secteurs de l'économie ni d'y prendre part.

Pendant cette période, le développement du secteur privé a été entravé par toutes sortes de mesures gouvernementales inefficaces ayant pour effet de fausser le marché, mais il tenait en fait pour l'essentiel à l'existence d'une concurrence commerciale déloyale. Ce phénomène, qui a pris de l'ampleur, a été favorisé par le lien étroit existant entre les décideurs et les agents économiques. Ces derniers, côtoyant de près l'élite dirigeante, ont en outre obtenu un trop grand nombre de facilités, ce qui a suscité une fracture sociale. L'apparition de conglomérats et d'un petit groupe d'agents économiques puissants mais dépourvus d'un véritable esprit d'entreprise, a été l'un des facteurs qui ont fragilisé l'économie à l'extrême, la rendant incapable de concurrence.

Vu le caractère malsain de la concurrence commerciale et la nécessité de fournir à tous la même protection et de créer une concurrence loyale, le Gouvernement et le Parlement indonésiens ont promulgué la loi n° 5 de 1999 sur l'interdiction des pratiques monopolistiques et de la concurrence commerciale déloyale.

Objectifs

Les agents économiques indonésiens se fonderont, dans l'exercice de leurs activités, sur le principe de la démocratie économique, dans le souci de respecter l'équilibre entre leurs propres intérêts et l'intérêt général. Pour faire en sorte que la politique indonésienne en matière de concurrence s'inspire de ce principe, la loi indonésienne sur la concurrence poursuit les objectifs suivants:

- a. Sauvegarder l'intérêt général et rendre l'économie plus efficace, dans le cadre des efforts consentis pour améliorer le bien-être de la population;
- b. Créer un climat propice aux affaires en stimulant une concurrence économique loyale, afin de garantir l'égalité des débouchés commerciaux aux entreprises indonésiennes, quelle qu'en soit la taille;

- c. Prévenir les pratiques monopolistiques et/ou la concurrence commerciale déloyale ou malsaine à laquelle peuvent se livrer les entreprises; et
- d. Générer efficacité et productivité dans les activités commerciales.

Teneur de la loi n° 5 de 1999

Le droit indonésien de la concurrence, qui fait l'objet de la loi n° 5 de 1999, comporte les dispositions suivantes:

A. Accords prohibés

Sont visés par ce chapitre les oligopoles, la fixation des prix, la discrimination par les prix, les prix imposés, la répartition des marchés, le boycottage, les ententes, les oligopsones, l'intégration verticale, l'exclusivité et les accords de vente conditionnels.

La plupart des pratiques commerciales obéissent à une règle de bon sens. Quelques-unes seulement, dont la fixation des prix, sont à proprement parler considérées comme illicites. Par ailleurs, un accord conclu entre des agents économiques peut être considéré comme un oligopole si deux ou trois ou un groupe d'entre eux exercent ensemble sur la production et/ou la commercialisation de biens et/ou de services un contrôle correspondant à plus de 75% de la part de marché de tel ou tel type de biens ou de services. Le chiffre de 75 % cité dans l'article n'est donné qu'à titre indicatif.

B. Activités prohibées

Sont visés par ce chapitre les monopoles et monopsones, le contrôle du marché, les prix abusivement bas et les coalitions. Comme dans le cas de l'oligopole, les critères appliqués pour déterminer s'il y a monopole ou monopsonne ne sont fournis qu'à titre indicatif.

C. Position dominante

Sont visées par ce chapitre les directions imbriquées, la détention d'actions, les fusions et les acquisitions. Les agents économiques ont une position dominante si l'un d'eux ou un groupe d'entre eux contrôle une part de marché égale ou supérieure à 50 %, ou si deux ou trois agents ou un groupe d'agents contrôlent une part de marché égale ou supérieure à 75 %.

D. Commission de surveillance de la concurrence commerciale

Ce chapitre porte sur les statuts de la Commission, sa composition, ses devoirs et sa compétence.

E. Procédure pour le traitement des affaires de concurrence commerciale

F. Sanction/Répression

Ce chapitre porte sur les mesures administratives, les sanctions d'ordre pénal et les autres sanctions de ce type prévues.

G. Dispositions supplémentaires

Les dispositions de la loi ne s'appliquent pas:

- a. aux mesures et/ou accords visant à mettre en œuvre la législation en vigueur;
- b. aux accords portant sur les droits de propriété intellectuelle tels que les licences, brevets, marques de fabrique ou de commerce, droits d'auteur, dessins ou motifs industriels, circuits intégrés et secrets de fabrique, ni aux accords de franchise;
- c. aux accords ayant trait à la normalisation technique de produits, de biens et/ou de services qui ne restreignent ni n'entravent la concurrence;
- d. aux accords conclus à des fins de distribution n'ayant pas pour objet de remettre sur le marché des biens et/ou des services à un prix inférieur au prix convenu dans l'accord;
- e. aux accords de coopération en matière de recherche visant à relever ou à améliorer les conditions de vie de la population en général;
- f. aux accords internationaux ratifiés par le Gouvernement de la République indonésienne;
- g. aux accords et/ou mesures ayant pour but l'exportation, qui ne portent pas préjudice au commerce intérieur ni à l'approvisionnement du marché;
- h. aux entreprises placées dans la catégorie des petites entreprises;
- i. aux activités des coopératives expressément et uniquement destinées à leurs membres.

Sources de la législation

Loi type sur les pratiques commerciales restrictives publiée par la CNUCED (Rev. 5) et textes des lois d'autres pays.

II. COMMENTAIRE DU GOUVERNEMENT NÉO-ZÉLANDAIS SUR LA LÉGISLATION NÉO-ZÉLANDAISE EN MATIÈRE DE CONCURRENCE

A. Raisons qui ont motivé l'adoption de la législation

Les lois fondamentales de la Nouvelle-Zélande en matière de concurrence ont été promulguées en 1986, mais il y a eu toute une série de lois analogues depuis 1905. Entre 1958 et 1986, le droit applicable aux pratiques commerciales se fondait essentiellement sur la législation du Royaume-Uni. Ce type de législation, de caractère formaliste, reposait sur des listes de pratiques pouvant donner lieu à enquête, et ne visait dans l'ensemble qu'à prévenir celles réputées contraires à l'intérêt général.

L'adoption des lois de 1986 sur le commerce et sur les pratiques commerciales loyales a modifié une telle façon de voir. Ces lois s'inscrivaient dans le cadre de vastes réformes visant à renforcer la compétitivité et l'efficacité de l'économie néo-zélandaise en réduisant la régulation directe de l'activité commerciale par les pouvoirs publics. La législation avait pour objet de veiller à ce qu'un régime privé se substitue à la régulation des marchés par l'État.

Cette nouvelle approche consistait à éviter le plus possible les réglementations sectorielles et à recourir à des règles générales applicables à tous les secteurs. La loi sur le commerce interdit les arrangements ou pratiques ayant un objet ou un effet anticoncurrentiel. La loi sur les pratiques commerciales loyales contient des dispositions relatives aux comportements frauduleux, aux pratiques déloyales et aux normes de sécurité et d'information des consommateurs.

B. Objectifs de la législation

La loi de 1986 sur le commerce vise, dans l'intérêt à long terme des consommateurs, à promouvoir la concurrence sur le marché néo-zélandais au moyen des dispositions suivantes:

- Interdiction des arrangements commerciaux de nature à affaiblir sensiblement la concurrence;
- Interdiction faite aux entreprises de tirer profit d'une emprise substantielle sur le marché à des fins anticoncurrentielles;
- Examen des fusions et des acquisitions afin de prévenir un affaiblissement sensible de la concurrence; et
- Contrôle des prix sur les marchés d'où la concurrence est absente.

La loi est implicitement favorable à la concurrence, car les pratiques favorisant le jeu de la concurrence sont souvent synonymes d'une plus grande efficacité et, partant, d'un plus grand bien-être des consommateurs dans leur ensemble. Toutefois, telle ou telle pratique peut être autorisée s'il est démontré que les avantages qu'elle offre sur le plan de l'intérêt général l'emportent sur les inconvénients qu'elle présente du point de vue de la concurrence.

La loi sur les pratiques commerciales loyales vise à faire en sorte que les consommateurs soient suffisamment informés pour pouvoir faire leur choix en connaissance de cause, condition *sine qua non* de toute concurrence. La loi protège également les opérateurs respectueux de l'éthique dont les intérêts sont lésés quand leurs concurrents se livrent à des pratiques commerciales frauduleuses ou déloyales.

C. Pratiques soumises au contrôle

i) Pratiques commerciales restrictives

Les articles 27 et 28 de la partie II de la loi sur le commerce interdisent les contrats, les arrangements ou les conventions ayant pour objet, pour effet ou pour effet probable d'affaiblir sensiblement la concurrence.

L'article 29 interdit les contrats, arrangements ou conventions entre concurrents qui contiennent des exclusions, à moins qu'il puisse être démontré que les clauses en question n'affaiblissent pas sensiblement la concurrence. Les contrats, arrangements ou conventions qui fixent, contrôlent ou maintiennent les prix des biens ou des services sont réputés affaiblir sensiblement la concurrence en vertu des articles 30 et 34. Les articles 37 et 38 interdisent les prix imposés.

La Commission du commerce peut autoriser tel ou tel arrangement anticoncurrentiel s'il est démontré que les avantages qu'il offre sur le plan de l'intérêt général l'emportent sur les inconvénients qu'il présente du point de vue de la concurrence.

L'article 36 interdit à quiconque exerce une emprise substantielle sur le marché d'en tirer parti pour restreindre l'accès au marché, prévenir ou dissuader un tiers de se livrer à la concurrence, ou l'évincer du marché. Un tel comportement ne peut être autorisé.

La partie II de la loi sur le commerce ne contient pas d'interdiction des monopoles. Ceux-ci sont autorisés, mais ils ne peuvent être mis à profit à des fins anticoncurrentielles.

Sanctions prévues en cas d'infraction aux dispositions relatives aux pratiques commerciales restrictives:

- Sanctions pécuniaires pouvant atteindre, pour les personnes morales, 10 millions de dollars ou trois fois les gains illicites qu'elles ont réalisés, et 500 000 dollars pour un particulier (qui peut ne pas être indemnisé en cas d'infraction à l'article 30);
- Injonctions ou ordonnances de ne pas faire empêchant les entreprises ou les particuliers d'adopter des comportements qui constituent une infraction à la loi; et
- Octroi de dommages-intérêts compensatoires et exemplaires à toute personne ayant subi une perte ou un préjudice du fait d'une infraction à la loi.

ii) Acquisitions ou rachats d'entreprises

La partie III de la loi sur le commerce interdit les acquisitions d'actions ou d'actifs d'une entreprise si la transaction a ou risquerait d'avoir pour effet d'affaiblir sensiblement la concurrence.

La loi prévoit un système de notification préalable volontaire des acquisitions ou des rachats d'entreprises. Les parties peuvent s'adresser à la Commission du commerce pour qu'elle approuve ou autorise l'opération envisagée. L'acquisition est approuvée si elle n'entraîne pas d'affaiblissement sensible de la concurrence; une autorisation permet de procéder à des acquisitions ou à des rachats anticoncurrentiels présentant des avantages nets pour l'intérêt général. La Commission a 10 jours ouvrables pour refuser ou accorder son approbation, et 60 jours ouvrables pour refuser ou accorder son autorisation. Ces délais peuvent être prolongés d'un commun accord entre le requérant et la Commission du commerce.

La non-obtention d'une approbation ou d'une autorisation ne rend pas illicite la réalisation d'une acquisition, mais signifie que celle-ci peut faire l'objet d'une contestation judiciaire par la Commission ou des tiers.

Sanctions en cas d'infraction à la partie III de la loi:

- Sanctions pécuniaires pouvant atteindre 5 millions de dollars pour les personnes morales et 500 000 dollars pour un particulier;
- Injonctions ou ordonnances de ne pas faire pour prévenir la réalisation de l'acquisition;
- Ordres donnés à un particulier ou à une société de se défaire d'actifs ou d'actions précis; et
- Octroi de dommages-intérêts compensatoires à toute personne ayant subi une perte ou un préjudice du fait d'infractions à la loi.

iii) Protection des consommateurs

La loi de 1986 sur les pratiques commerciales loyales interdit les pratiques dolosives et les comportements frauduleux, les descriptions fallacieuses, les pratiques déloyales, et les produits et services non conformes aux normes. Ces interdictions ne se limitent pas aux relations avec les consommateurs mais visent également les transactions entre entreprises.

Principales dispositions:

- Les professionnels du commerce doivent s'abstenir, d'une manière générale, d'adopter des pratiques dolosives ou des comportements frauduleux (art. 9);
- Certains types de descriptions fallacieuses ou mensongères sont interdits, notamment en matière d'emploi (art. 12), de biens ou de services (prix, norme applicable, qualité, origine, historique, usages ou avantages, agrément, etc.) (art. 13);
- Certaines pratiques commerciales déloyales sont également prosrites, notamment la vente à la boule de neige, la vente à la chaîne, et la publicité mensongère à l'aide de prix d'appel (art. 17 à 24); et
- Les normes en matière d'information des consommateurs et de sécurité des produits sont précisées (art. 27 à 33).

Une infraction à la loi sur les pratiques commerciales loyales peut entraîner une amende, une injonction ou l'octroi de dommages-intérêts compensatoires. Les tribunaux peuvent également ordonner des publicités correctives ou des déclarations rectificatives aux frais de la personne ou de la société qui s'est rendue coupable de l'infraction. D'autres ordonnances peuvent être rendues pour frapper de nullité tout ou partie d'un contrat, modifier un contrat ou enjoindre à une personne de rembourser une somme d'argent ou de verser une indemnité.

D. Champ d'application de la législation

i) Personnes assujetties à la loi

Selon le paragraphe 1 A) de son article 3, la loi sur le commerce s'applique au marché néo-zélandais des biens et des services, ainsi qu'à d'autres biens ou services que l'on peut raisonnablement et commercialement considérer comme équivalents.

Des sanctions, dommages-intérêts ou injonctions peuvent être requis à l'égard des personnes qui contreviennent aux décisions rendues en matière de pratiques commerciales restrictives et d'acquisitions ou de rachats d'entreprises.

Des sanctions, dommages-intérêts ou injonctions peuvent aussi être requis à l'égard de quiconque aide, encourage, conseille, incite ou tente d'inciter une autre personne à commettre une infraction, ou conspire à cet effet, ou est de quelque façon que ce soit directement ou indirectement, sciemment impliqué dans une infraction commise par une autre personne, ou partie à cette infraction.

ii) Exemptions

Ces dispositions ne s'appliquent à la Couronne que dans les cas où celle-ci se livre à une activité commerciale, si ce n'est qu'elle ne peut être assujettie à une sanction pécuniaire ni poursuivie pour une infraction visée par la loi.

Les pratiques expressément autorisées par d'autres lois ou par des ordres en Conseil sont exemptées des prohibitions en matière de pratiques commerciales restrictives énoncées à la partie II de la loi sur le commerce. En outre, des exemptions sont prévues dans le cas des accords qui restreignent la concurrence entre partenaires; des accords conclus entre des groupes de sociétés; des accords visant à protéger l'image de marque d'une entreprise en cours de cession; des accords visant à satisfaire aux normes de qualité des produits; des accords en matière de rémunération, de conditions d'emploi, d'horaires de travail, ou de conditions de travail des salariés; des accords se rapportant exclusivement aux exportations en provenance de Nouvelle-Zélande; et des actions engagées par des groupes de consommateurs.

D'autres exemptions s'appliquent aux dispositions ayant exclusivement trait au transport par mer de marchandises à destination et en provenance de Nouvelle-Zélande et au comportement à adopter conformément à un droit de propriété intellectuelle reconnu par la loi.

iii) Application extraterritoriale

L'article 4 de la loi sur le commerce étend l'application de la loi à tout comportement adopté en dehors de Nouvelle-Zélande par une personne résidant ou exerçant une activité commerciale en Nouvelle-Zélande, dans la mesure où un tel comportement a des effets sur un marché néo-zélandais.

La loi comporte aussi des dispositions spécifiques qui en étendent l'application aux abus de position dominante entre pays riverains de la mer de Tasman. Ces dispositions correspondent à celles de l'Accord de renforcement des relations économiques entre la Nouvelle-Zélande et l'Australie, qui a entraîné le démantèlement de la plupart des obstacles imposés par les pouvoirs publics aux échanges entre ces deux pays. De plus en plus de transactions commerciales et d'opérations d'acquisition transtasmaniennes ont donc des effets sur le fonctionnement de la concurrence dans les deux pays.

La législation prévoit une coopération entre la Commission du commerce et la Commission australienne des pratiques commerciales dans les enquêtes sur tout comportement anticoncurrentiel se manifestant dans un pays et ayant des effets sur un marché de produits dans

l'autre. En vertu du paragraphe 2) de l'article 98H et de l'article 99A de la loi sur le commerce, les deux commissions peuvent recevoir des informations et des documents pour le compte l'une de l'autre. La loi de 1908 intitulée *Evidence Act*, la loi de la même année intitulée *Judicature Act* et celle de 1934 intitulée *Reciprocal Enforcement of Judgments Act* ont été modifiées pour permettre aux tribunaux de chacun des deux pays d'aider l'autre à juger les affaires de pratiques anticoncurrentielles. Les tribunaux australiens peuvent convoquer des témoins en Nouvelle-Zélande et inversement. Les représentations à la Cour peuvent être adressées par liaison vidéo ou téléphone, et les jugements, ordonnances et injonctions sont susceptibles d'application directe par chacune des deux juridictions. En outre, le tribunal compétent peut s'il y a lieu siéger dans l'autre pays.

iv) Existence et effet des accords

Les dispositions interdisant les pratiques qui affaiblissent sensiblement la concurrence font généralement référence à des contrats, à des arrangements et à des conventions. Par «contrat», on entend un accord ayant force exécutoire. Les «arrangements et conventions» ont un caractère moins officiel qu'un contrat en bonne et due forme, comme un plan convenu qui peut ne pas être juridiquement applicable.

Deux éléments s'avèrent nécessaires, à savoir une unité de vues attestée par une forme ou une autre de communication entre les parties, et le signe d'une intention d'agir ou de se préparer à agir d'une certaine façon. Le comportement est un indicateur important qui peut faire apparaître des agissements parallèles, des structures de fixation des prix analogues, une action conjointe, des occasions données aux parties de parvenir à une entente (réunions professionnelles, par exemple), ou des preuves de collusion entre les parties.

E. Mécanisme d'application

Il incombe à la Commission du commerce de faire respecter la législation. Elle peut ouvrir une enquête au sujet d'une infraction présumée à la loi sur le commerce soit à la suite d'une plainte, soit dans le cadre de ses propres activités de surveillance. Ces enquêtes sont analogues aux procédures d'instruction pénale.

La Commission est dotée des pouvoirs d'enquête ci-après:

- Pouvoir de se procurer des informations en demandant aux personnes de communiquer certains renseignements par écrit, de produire certains documents ou de comparaître devant la Commission pour témoigner;
- Pouvoir d'obtenir et d'exécuter des mandats de perquisition et de demander une aide pour rechercher les informations nécessaires; et
- Pouvoir de délivrer une injonction de tenir une information confidentielle.

Une fois l'enquête close sur une constatation d'infraction, la Commission dispose de plusieurs moyens pour faire respecter la législation. Elle peut:

- adresser un avertissement;

- trouver un arrangement administratif avec la ou les parties, qui doivent accepter de modifier leurs pratiques et prendre des engagements signés en bonne et due forme à cette fin;
- solliciter une injonction ou rendre une ordonnance de ne pas faire, pour empêcher telle ou telle personne de se livrer à des activités contraires à la loi; ou
- entamer des poursuites judiciaires devant la Haute Cour.

Des personnes physiques ou morales peuvent également s'adresser à la Haute Cour en cas d'infraction à la loi sur le commerce.

Les affaires relevant de la loi sur le commerce sont des procédures civiles. La Haute Cour est habilitée à se faire communiquer, à titre de preuves, des déclarations, des documents et des informations qui ne seraient pas recevables autrement, si ces preuves peuvent l'aider à traiter une affaire. Dans certains cas, ses décisions peuvent faire l'objet d'un recours auprès de la cour d'appel.

F. Législation parallèle et supplémentaire

i) Biens et services soumis à un contrôle

Les parties IV et V de la loi sur le commerce portent sur les biens et les services dont les prix sont soumis à un contrôle. Si des biens ou des services sont considérés comme réglementés, la Commission du commerce peut en autoriser la fourniture ou l'acquisition sous réserve de l'adoption de mesures en matière de prix, de fiscalité ou de qualité.

Selon la partie IV A de la loi, la Commission du commerce impose de sa propre initiative une réglementation des prix aux principaux exploitants de lignes électriques, plutôt que de faire une recommandation en ce sens au Ministère du commerce. La Commission détermine des seuils à cet effet. En outre, elle doit vérifier les valeurs que les exploitants communiquent concernant leurs actifs et examiner les méthodes d'évaluation utilisées, qui reposent actuellement sur la valeur attribuée en cas d'éviction optimisée (valeur intrinsèque).

ii) Installations essentielles

La Nouvelle-Zélande se fonde principalement sur la loi de 1986 sur le commerce pour réglementer l'accès aux installations essentielles. Cette loi est complétée par des réglementations sectorielles relatives à la divulgation des informations, qui visent à rendre transparents les résultats des entreprises ayant une emprise sur le marché, et par la menace d'une réglementation plus contraignante, comme le contrôle des prix, en cas d'abus d'une position de monopole.

Plusieurs secteurs font toutefois l'objet d'une réglementation spécifique. L'*Electricity Industry Reform Act 1998* prévoit une restructuration du secteur électrique pour faciliter la concurrence et limiter les liens entre exploitants de lignes électriques et entreprises de fourniture d'électricité qui pourraient ne pas obéir au principe d'une pleine concurrence.

L'*Electricity Industry Reform Act 2001* vise pour l'essentiel à encourager le secteur de l'électricité à élaborer ses propres solutions pour veiller à ce que l'électricité soit fournie à

tous les consommateurs d'une manière efficace, équitable, fiable et écologiquement viable. Toutefois, si le secteur ne parvient pas à atteindre ces objectifs, la loi prévoit l'intervention des pouvoirs publics par le biais d'une réglementation imposant des prescriptions. Celle-ci a un large champ d'application et comprend la création d'une autorité de tutelle habilitée à édicter des règles régissant le fonctionnement des marchés de l'électricité.

Une autre réglementation, propre au secteur des télécommunications, est en passe d'être adoptée.

iii) Coopération internationale

En tant que membre de l'OCDE, la Nouvelle-Zélande respecte les recommandations de 1986 de cette organisation sur la coopération internationale relative à la notification des enquêtes ou procédures à d'autres pays membres dont les intérêts peuvent être mis en cause. Les critères retenus consistent à déterminer si l'enquête ou la procédure porte sur le comportement d'une personne résidant ou exerçant une activité commerciale dans un autre pays membre et si ce comportement risque d'avoir un effet sur la concurrence sur un marché d'un autre pays membre.

G. Informations complémentaires

Pour de plus amples informations, prière de s'adresser à:

The Director
Competition and Enterprise Branch
Ministry of Economic Development
P.O. Box 1473
Wellington
Nouvelle-Zélande

N° de téléphone: (644) 472 00 30
N° de télécopieur: (644) 499 17 91
Site Web: med.govt.nz

ou à l'adresse suivante:

Commerce Commission
P.O. Box 2351
Wellington
Nouvelle-Zélande

N° de téléphone: (644) 471 01 80
N° de télécopieur: (644) 471 07 71
Site Web: comcom.govt.nz

Publications

La Commission du commerce publie des brochures et des plaquettes sur le fonctionnement de la loi sur le commerce et de la loi sur les pratiques commerciales loyales. Des renseignements complémentaires figurent sur le site Web de la Commission (www.comcom.govt.nz).

III. COMMENTAIRE DU GOUVERNEMENT THAÏLANDAIS SUR LA LOI THAÏLANDAISE RELATIVE À LA CONCURRENCE

A. Évolution du droit thaïlandais de la concurrence

Le droit thaïlandais de la concurrence a commencé à se développer avec l'adoption de la loi de 1979 sur la fixation concertée des prix et les monopoles (*Price Fixing and Anti-Monopoly Act of 1979*). Cette loi comprend deux parties, la première consacrée à la fixation concertée des prix, la seconde à l'action antimonopole. La partie sur les monopoles vise à promouvoir une concurrence loyale et habilite le Comité central à surveiller les structures commerciales susceptibles de créer une situation de monopole et de se livrer à des pratiques commerciales restrictives. Cependant, vu les problèmes posés par sa mise en œuvre, le Ministère du commerce intérieur, chargé de faire appliquer la loi, l'a adaptée en la scindant en deux textes, l'un traitant des prix des biens et des services et l'autre de la concurrence. La loi sur la concurrence entrée en vigueur le 30 avril 1999 met l'accent sur le contrôle du comportement des entreprises.

B. Objectif de la loi

La loi de 1999 sur la concurrence commerciale a pour objectif d'encourager un commerce équitable et sans entraves en surveillant les pratiques commerciales.

C. Comportements anticoncurrentiels visés par la loi

Dans le cadre de la loi, les comportements anticoncurrentiels ont été définis et divisés en trois catégories principales: l'abus de position dominante, les fusions, et les autres comportements anticoncurrentiels.

I) L'abus de position dominante

La loi vise à interdire à un agent économique en position dominante de tirer parti de sa position ou de faire obstacle à l'entrée d'autres agents économiques sur le marché. Par «agent économique en position dominante», on entend un ou plusieurs agents économiques qui détiennent une part de marché et affichent un volume des ventes supérieur au niveau prescrit par la Commission de la concurrence. Sont prohibés les actes ci-après:

1. La fixation ou le maintien abusifs de prix d'achat ou de vente pour les biens ou de droits pour les services;
2. La fixation abusive par un agent économique de conditions obligatoires imposant directement ou indirectement à d'autres agents économiques qui sont ses clients de restreindre leurs services, leur production, l'achat ou la distribution de biens, ou de limiter les possibilités d'acheter ou de vendre des biens, de recevoir ou de fournir des services, ou d'obtenir des crédits auprès d'autres agents économiques;
3. La suspension, la réduction ou la restriction, sans raisons valables, de services, de la production, de l'achat, de la distribution, des livraisons ou de l'importation, ou le fait de détruire ou d'endommager des biens pour en ramener la quantité à un niveau inférieur à la demande du marché;

4. L'ingérence dans l'exploitation d'une entreprise appartenant à des tiers sans raisons valables.

II) La partie de la loi consacrée aux fusions a été adoptée pour prévenir les fusions susceptibles de déboucher sur un monopole ou d'entraîner une concurrence déloyale. Les fusions définies par la loi qui se soldent par une part de marché, un volume des ventes, un capital social ou des actifs supérieurs à ceux spécifiés par la Commission de la concurrence peuvent se réaliser si celle-ci l'autorise.

III) La loi interdit à un agent économique de conspirer, de se livrer à la collusion ou de collaborer avec un autre agent économique en vue de créer un monopole, de réduire la concurrence ou de la restreindre de l'une des façons suivantes:

1. Fixer un prix de vente unique ou convenu pour les biens ou les services, ou restreindre le volume des ventes de biens ou de services;
2. Fixer un prix d'achat unique ou convenu pour les biens ou les services, ou restreindre le volume des achats de biens ou de services;
3. Conclure un accord dans le but d'obtenir une position dominante ou le contrôle du marché;
4. Imposer un accord ou fixer une condition par collusion pour permettre à une partie de remporter une soumission ou un appel d'offres portant sur des biens ou des services, ou pour empêcher une partie d'y participer;
5. Délimiter des zones géographiques dans lesquelles chaque agent économique peut distribuer des biens ou des services ou en restreindre la distribution, ou déterminer à quels clients chaque agent économique peut vendre des biens ou fournir des services, en excluant d'autres agents de la concurrence portant sur la distribution de ces biens et de ces services;
6. Délimiter des zones géographiques dans lesquelles chaque agent économique peut acheter des biens ou des services ou déterminer à qui les agents peuvent acheter des biens ou des services;
7. Déterminer la quantité de biens ou de services que chaque agent économique peut produire, acheter, distribuer ou fournir en vue de la ramener à un niveau inférieur à la demande du marché;
8. Abaisser la qualité de biens ou de services en deçà de ce qu'elle était lorsque ces biens et services étaient produits, distribués ou fournis auparavant, qu'ils soient distribués au même prix ou à un prix plus élevé;
9. Désigner un distributeur ou fournisseur exclusif des mêmes biens ou services ou du même type de biens ou de services, ou charger quelqu'un de cette tâche;

10. Fixer des conditions ou établir une pratique en matière d'achat ou de distribution de biens ou de fourniture de services pour parvenir à une pratique uniforme ou convenue.

Si, du fait d'impératifs commerciaux, il s'avère nécessaire de recourir aux mesures visées à l'article 27 (5-10), l'agent économique demande l'autorisation préalable de la Commission de la concurrence.

IV) La loi traite aussi des accords conclus entre des agents économiques nationaux et étrangers exerçant une activité qui restreint la liberté ou la possibilité donnée à une personne résidant dans le Royaume d'acheter directement auprès d'agents économiques implantés hors de celui-ci des biens ou des services destinés à son usage personnel.

V) Afin d'empêcher tout autre comportement qui pourrait ne pas être visé par les dispositions précitées, la loi interdit également à un agent économique de se livrer à des agissements qui ne relèvent pas d'une concurrence libre et loyale et qui auraient pour conséquence de détruire, de compromettre, d'empêcher ou de restreindre l'activité commerciale d'autres agents, d'empêcher d'autres personnes d'exercer des activités, ou de faire cesser leurs activités.

Ainsi qu'il ressort de ce qui précède, les pratiques commerciales visées par la loi de 1999 sur la concurrence commerciale correspondent aux pratiques, actes ou comportements énumérés aux paragraphes 3 et 4 de la section D de l'Ensemble de principes et de règles.

D. Champ d'application de la législation

La loi de 1999 ne s'applique pas aux actes de l'administration centrale, provinciale et locale, aux entreprises publiques agissant en vertu de la législation relative aux procédures budgétaires, aux groupes d'agriculteurs, coopératives ou sociétés coopératives dont les activités sont légalement considérées comme servant les intérêts des agriculteurs, ni aux activités prescrites en vertu d'un règlement ministériel.

Cela étant, la loi sur la concurrence s'applique aux actes ou aux comportements se manifestant dans le Royaume de Thaïlande, ainsi qu'à ceux qui se manifestent en dehors du Royaume mais qui ont un effet sur son territoire.

D'une manière générale, la loi sur la concurrence a été promulguée indépendamment de l'existence de tel ou tel accord.

E. Organe d'application

I) La Commission de la concurrence se compose du Ministre du commerce (Président), du Secrétaire permanent du Ministère du commerce (Vice-Président), du Directeur général du Département du commerce intérieur (membre et secrétaire) et du Secrétaire permanent du Ministère des finances. Douze autres membres, au maximum, remplissant les conditions requises, sont chargés de faire appliquer la loi.

Les membres désignés ne doivent pas être des responsables politiques, ni occuper une charge politique, ni être membres exécutifs de l'administration d'un parti politique, ni détenir un poste à responsabilité au sein d'une telle administration. Leur mandat est de deux ans et ils

ne peuvent être reconduits dans leurs fonctions pendant plus de deux mandats consécutifs. La Commission peut et doit examiner les plaintes, édicter des règles en matière de position dominante, examiner les demandes d'autorisation de fusion d'entreprises, ou prendre de façon concertée des dispositions visant à réduire ou à freiner la concurrence pour suspendre, faire cesser, corriger ou modifier les activités des agents économiques en donnant des instructions à cet effet.

II) Un sous-comité spécialisé se compose au minimum de quatre personnes et au maximum de six personnes désignées par la Commission, compétentes en ce qui concerne le sujet traité et ayant des connaissances et une expérience dans divers domaines (droit, sciences, ingénierie, pharmacologie, agriculture, économie, commerce, comptabilité, gestion des entreprises, etc.), et d'un représentant du Département du commerce intérieur en qualité de membre et de secrétaire. Ce sous-comité peut et doit examiner et émettre des avis sur les comportements qui laissent entrevoir une position dominante, les fusions d'entreprises et toute réduction ou restriction de la concurrence, sur l'octroi d'une autorisation de fusionner des entreprises ou de prendre des dispositions visant à réduire ou à limiter la concurrence, ainsi que sur d'autres sujets portés à son attention par la Commission.

III) Le sous-comité d'enquête se compose d'une personne versée dans les affaires pénales, désignée parmi des fonctionnaires de police ou des procureurs généraux, de quatre personnes maximum possédant des connaissances et de l'expérience en économie, en droit, en commerce, en agriculture ou en comptabilité, et d'un représentant du Département du commerce intérieur siégeant en qualité de membre et secrétaire. Les sous-comités peuvent et doivent enquêter sur les infractions à la loi.

IV) Le comité d'appel se compose au maximum de sept personnes compétentes désignées par le Conseil des ministres, ayant des connaissances et une expérience en droit, en économie, en gestion des entreprises ou en administration publique, et de fonctionnaires du Département du commerce intérieur désignés par le Directeur général du Département et faisant office de secrétaire et de secrétaires adjoints. Ce comité peut et doit examiner et traiter tout recours présenté contre une ordonnance émanant de la Commission, et suspendre par une injonction toute ordonnance de cette dernière exigeant d'un agent économique qu'il suspende, annule, rectifie ou modifie un acte, tel que position dominante, fusion d'entreprises ou entente en vue de réduire ou de restreindre la concurrence.

V) Les mesures prévues pour mettre en œuvre la loi sur la concurrence sont les suivantes:

1. Le bureau de la Commission de la concurrence surveille les actes et supervise le comportement de l'agent économique (sous la responsabilité du fonctionnaire compétent ou à la suite de plaintes déposées par des agents économiques ou des consommateurs) et, si une infraction à la loi est constatée, la Commission en est informée.
2. La Commission porte l'affaire devant un sous-comité d'enquête pour établir les faits et les preuves correspondantes. Elle peut aussi la porter à l'attention du sous-comité spécialisé pour qu'il l'examine et se prononce à ce sujet.

3. Le sous-comité d'enquête et le sous-comité spécialisé peuvent émettre des avis à la Commission concernant l'opportunité d'un ordre de poursuites ou d'abandon des poursuites. En même temps, la Commission peut demander aux agents économiques de suspendre l'acte en cause ou d'y renoncer.
4. Si la Commission délivre un ordre de poursuites, son bureau soumet au procureur général les avis qui lui sont parvenus, en même temps que le compte rendu d'enquête, en vue d'engager une procédure complémentaire.

VI) Demande d'autorisation et examen de cette demande

1. En vue d'obtenir l'autorisation de procéder à une fusion ou de réduire ou de restreindre la concurrence de façon concertée, l'agent économique fournit des arguments de fait et de droit suffisants à l'appui de sa demande;
 2. L'agent économique et les personnes liées reçoivent la possibilité de donner des explications et des preuves à l'appui de la demande;
 3. L'agent économique peut rejeter les conclusions de l'examen de la Commission de la concurrence.
- F. Il n'existe pas de législation parallèle ou supplémentaire, y compris sous forme de traités ou de conventions avec d'autres pays, prévoyant une coopération ou des procédures pour régler les différends dans le domaine des pratiques commerciales restrictives
- G. La Commission a rendu, à l'occasion de deux plaintes dont elle a été récemment saisie, les décisions ci-après:

I) Ventes liées de whisky et de bière

La Commission s'est prononcée sur la vente liée de whisky et de bière au niveau des revendeurs et des grossistes. Les conditions obligatoires fixées de manière déraisonnable par un agent économique en position dominante qui demandait à ses clients de restreindre leurs achats de bière contrevenaient aux dispositions du paragraphe 2 de l'article 25 de la loi sur la concurrence commerciale. Les critères permettant de définir la position dominante n'ayant pas encore été approuvés par le Cabinet, le paragraphe 2 de l'article 25 ne pouvait s'appliquer au cas d'espèce. La Commission a donc ordonné au secrétariat de:

- faire savoir aux revendeurs que les ventes liées de bière constituaient un comportement abusif et une infraction au paragraphe 2 de l'article 25 de la loi, et que Beer Chang devait donc y renoncer;
- surveiller les pratiques des producteurs de whisky et de bière en particulier et d'en rendre compte périodiquement à la Commission.

II) Monopole de la télédistribution

La Commission a pris les décisions ci-après:

- L'activité du groupe UBC (Compagnie de télédistribution) étant assimilable à celle d'une seule entité, elle ne contrevient pas au paragraphe 1 de l'article 27 de la loi sur la concurrence. Vu qu'IBC (société d'origine) détenait 98 % d'UBC et a la même équipe dirigeante, il ne s'agit pas d'un accord concerté susceptible de contrevenir à cette disposition de la loi.
- Le groupe UBC est l'exploitant commercial exclusif des activités de télédistribution et détient 100 % du marché, ce qui est considéré comme une position dominante. La majoration du prix de certaines gammes de services par le groupe n'est pas contraire au paragraphe 1 de l'article 25 puisque la compagnie s'est heurtée à des problèmes financiers dus à la dépréciation du baht et a essuyé des pertes, même après la fusion.
- Étant donné que toute modification de la gamme de services et de la redevance mensuelle est soumise à l'agrément de la Mass Communication Organization of Thailand (MCOT) (organisation nationale pour les communications), qui octroie les concessions, celle-ci devrait contrôler les prix appliqués par la compagnie à ses gammes de services et leur nombre pour permettre aux consommateurs de disposer d'options supplémentaires.
- Le Comité a ordonné au Département du commerce intérieur, en sa qualité de secrétariat, d'étudier le contrat conclu entre le groupe UBC et la MCOT pour déterminer si le groupe est une entreprise publique.

H. Bibliographie donnant la référence des textes législatifs et des principales décisions: diffusion auprès du public

La loi thaïlandaise sur la concurrence relève du système issu du droit romain. Les décisions de la Commission se fondent donc sur les principes et les objectifs de la loi ainsi que sur les faits de la cause.

En ce qui concerne sa diffusion auprès du public, le gouvernement a adopté, à l'intention du public et des hommes d'affaires, un manuel et des lignes directrices visant à assurer l'application de la loi.

Division juridique
Département du commerce intérieur
mars 2001

Annex I

INDONESIA

**THE PEOPLE'S LEGISLATIVE ASSEMBLY
OF THE REPUBLIC OF INDONESIA**

**LAW OF THE REPUBLIC OF INDONESIA
NUMBER.....YEAR.....
CONCERNING
PROHIBITION OF MONOPOLISTIC PRACTICES
AND
UNFAIR BUSINESS COMPETITION**

**BY THE GRACE OF THE ALMIGHTY GOD
THE PRESIDENT OF THE REPUBLIC OF INDONESIA,**

Considering:

- a. whereas development in the field of economy must be directed towards the achievement of social welfare based on Pancasila and the 1945 Constitution;
- b. whereas democracy in the field of the economy calls for equal opportunity for the every citizen to participate in the process of production and marketing of goods and/or services a fair, effective and efficient business environment, so as to be able to promote the growth of economy and the functioning of a reasonable market economy;
- c. whereas anyone engaging in business in Indonesia must exist in an atmosphere of fair and natural competition, hence there shall be no concentration of economic power in the hands of certain business actors, notwithstanding the commitments or conventions executed by the State of the Republic of Indonesia with regard to International Conventions;
- d. whereas in order to achieve the intentions mentioned in letters a, b and c herein, or DPR (People's Legislative assembly), a Law regarding the Prohibition of Monopolistic Practices and Unfair Business Competition needs to be set fourth;

In view of: Article 5 paragraph (1), Article 21 paragraph (1), Article 2 7 paragraph (2) and Article 33 of the 1945 Constitution,

With the approval of:

**THE PEOPLE'S LEGISLATIVE ASSEMBLY OF THE REPUBLIC OF INDONESIA
HAS DECIDED TO: -**

Stipulate: **LAW REGARDING THE PROHIBITION OF MONOPOLISTIC**

PRACTICES AND UNFAIR BUSINESS COMPETITION

CHAPTER I GENERAL PROVISIONS

Article 1

Referred to in this Law as:

1. Monopoly shall be the control over the production and/or marketing of goods and/or over the utilization of certain services by one business actor or by one group of business actors.
2. Monopolistic practices shall be the centralization of economic power by one or more business actors, resulting in the control of the production and/or marketing of goods and/or services by certain business actors thus resulting in unfair business competition and potentially harmful to the interests of the public.
3. The centralization of economic power shall be the actual control of a market by one or more business actors, enabling to determine prices of goods and/or services.
4. Dominant position shall be a situation in which a business actor has no substantial competitor in the market concerned in relation to the market segment controlled, or a business actor has the strongest position among its competitors in the market concerned in relation to financial capacity, access capacity to supply or sales, and the capability to adjust supply or demand of certain goods or services.
5. Business actors shall be any individual or business entity, either incorporated or not incorporated as legal entity, established and domiciled or conducting activities within the jurisdiction of the Republic of Indonesia, either independently or jointly based on agreement, conducting various business activities in the economic field.
6. Unfair business competition shall be competition among business actors in conducting activities for the production and/or marketing of goods and/or services in an unfair or unlawful or anti-competition manner.
7. Agreement shall be the action of one or more business actors for binding themselves to one or more other business actors under whatever name, either in writing or not in writing.
8. Conspiracy or business conspiracy shall be a form of cooperation conducted by one business actor with another with the intention of controlling the market concerned in the interest of the conspiring business actors.
9. Market shall be an economic institution in which sellers and buyers, either directly or indirectly, can conduct trading transactions of goods/or services.
10. The market concerned shall be the market related to certain marketing scope or substitute of such goods and/or services.
11. Market structure shall be a market condition comprising of indicators concerning aspects with significant impact on business actors' behaviour and market performance, among other things the number of sellers and buyers, barriers to entering and leaving the market, product variety, distribution system and control of market segment.
12. Market behaviour shall be acts undertaken by business actors in their capacity as suppliers or buyers of goods and/or services in order to achieve the company's objectives among other things to achieve profits, growth of assets, sales targets and competition methods applied.

13. Market share shall be the percentage of the value of sales or purchase of certain goods or services controlled by a certain business actor on the market concerned in a certain calendar year.
14. Market price shall be the price paid in transactions of goods and/or services in accordance with the agreement reached among the parties concerned on the market concerned.
15. Consumers shall be every user of goods and/or services, both for personal use or well as for the interests of other people.
16. Goods shall be any physical objects, either tangible or intangible, movable or immovable, which may be traded, used, utilized or exploited by consumers or business actors.
17. Services shall be services in the form of work or performance traded in society to be utilized by consumers or business actors.
18. Business Competition Supervisory Committee shall be a committee formed to supervise business actors in conducting their business activities so that they do not conduct monopolistic practices and/or unfair business competition.
19. The District Court shall be a court as intended in prevailing laws and regulations, at the legal domicile of the business of the business actors concerned.

CHAPTER II PRINCIPLES AND PURPOSES

Article 2

Business activities of business actors in Indonesia must be based on economic democracy, with due observance of the equilibrium between the interests of business actors and the interests of the public.

Article 3

The purpose of enacting this Law shall be as follows:

- a. to safeguard the interests of the public and to improve economic efficiency as one of the efforts to improve the people's welfare;
- b. to create a conducive business climate through the stipulation of fair business competition in order to ensure the certainty of equal business opportunities for large-, middle- as well as small-scale business actors in Indonesia;
- c. to prevent monopolistic practices and/or unfair business competition that may be committed by business actors; and
- d. the creation of effectiveness and efficiency in business activities.

CHAPTER III PROHIBITED AGREEMENTS

Part One Oligopoly

Article 4

(1) Business actors shall be prohibited from entering into agreements with other business actors for jointly controlling the production and/or marketing of goods and/or services while may potentially cause the occurrence of monopolistic practices and/or unfair business competition.

(2) Business actors may be suspected or denied to be jointly involved in the control of the production and/or marketing of goods and/or services, as intended in Article (1) herein, if two or three business actors or a group of business actors Control over 75 % (seventy-five percent) of the market segment of a certain type of goods or services.

Part Two Price Determination

Article 5

(1) Business actors shall be prohibited from entering into agreements with their business competitors for the determination of the price of certain goods and/or services payable by consumers or customers on the same market.

(2) The provisions intended in paragraph (1) of this Article shall not be applicable to the following:

- a. an agreement entered into the context of a joint venture; or
- b. an agreement entered into based on prevailing laws.

Article 6

Business actors shall be prohibited from entering into agreements forcing a buyer to pay a price which is different from that payable by other buyers for the same goods and/or services.

Article 7

Business actor shall be prohibited from entering into agreements with their business competitors to determine prices below market prices, which may potentially result in unfair business competition.

Article 8

Business actors shall be prohibited from entering into agreements with other business actors setting forth the condition that parties receiving goods and/or services shall not sell or re-supply goods and/or services received by them, at a price lower than the contracted price, potentially causing unfair business competition.

Part Three
Division of Territory

Article 9

Business actors shall be prohibited from entering into agreements with their business competitors which have the purpose of dividing marketing territory or allocating the market for goods and/or services, potentially resulting in monopolistic practices and/or unfair business competition.

Part Four
Boycott

Article 10

(1) Business actors shall be prohibited from entering into agreements with other business actors which could prevent other business actors from engaging in the same business, either for domestic or overseas market purposes.

(2) Business actors shall be prohibited from entering into agreements with other business actors for refusing to sell any goods and/or services from other business actors, so that such act:

- a. causes a loss or may be suspected of potentially causing a loss to other business actors; or
- b. limits other business actors in selling and or buying any goods and/or services from the market concerned.

Part Five
Cartels

Article 11

Business actors shall be prohibited from entering into agreements with their competing business actors, with the intention of influencing prices by arranging production and/or marketing of certain goods and/or services, that may result in monopolistic practices and/or unfair business competition.

Part Six
Trust

Article 12

Business actors shall be prohibited from entering into agreements with other competing business actors for cooperation by establishing a joint company or a larger company, by keeping and maintaining the continuity of each company or its member, with the aim of controlling production and/or marketing of goods and/or services, which may result in monopolistic practices and/or unfair business competition.

Part Seven
Oligopsony

Article 13

(1) Business actors shall be prohibited from entering into agreements with other business actors with the aim of jointly controlling the purchase or acquisition of supplies for controlling prices of goods and/or services on the market concerned, which may result in monopolistic practices and/or unfair business competition.

(2) Business actors shall be reasonably suspected or deemed to be jointly controlling the purchase or acquisition of supplies as intended in paragraph (1) of this Article if two or three business actors or a group of business actors control over 75 (seventy-five percent) of the market segment of a certain type of goods or services.

Part Eight
Vertical Integration

Article 14

Business actors shall be prohibited from entering into agreements with other business actors with the intention of controlling the production of several goods which are products included in the production chain of certain related goods and/or services where each product link is the end product of the production process or of further processing, either in one direct link or indirect link, which may potentially result in unfair business competition and/or harmful to society.

Part Nine
Closed Agreements

Article 15

- (1) Business actors shall be prohibited from entering into agreements with other business actors, stipulating that the party receiving the goods and/or services shall only re-supply or not re-supply the aforementioned goods and/or services to certain parties and/or at a certain place.
- (2) Business actors shall be prohibited from entering into agreements with other parties stipulating that the party receiving certain goods and/or services must be prepared to buy other goods and/or services of the supplying business actor.
- (3) Business actors shall be prohibited from entering into agreements concerning prices or certain price discounts for goods and/or services, stipulating that the business actor receiving goods and/or services from the supplying business actor:
- a. must be prepared to buy other goods and/or services from the supplying business actor; or
 - b. shall not buy), the same or similar goods and/or services from other business actors, competitors of the supplying business actor.

Part Ten
Agreement With Foreign Parties

Article 16

Business actors shall be prohibited from entering into agreements with foreign parties setting forth conditions that may result in monopolistic practices and/or unfair business Competition.

CHAPTER IV
PROHIBITED ACTIVITIES

Part One
Monopoly

Article 17

- (1) Business actors shall be prohibited from controlling the production and/or marketing of goods and/or services which may result in monopolistic practices and/or unfair business competition.

(2) Business actors may be reasonably suspected or deemed to control the production and/or marketing of goods and/or services as intended in paragraph (1) of this article in the following events:

- a. there is no substitute available yet for the goods and/or services concerned: or
- b. causing other business actors to be unable to enter into business competition for the same goods and/or services; or
- c. one business actor or a group of business actors controls over 50% (fifty per cent) of the market segment of a certain type of goods or services.

Part Two

Monopsony

Article 18

(1) Business actors shall be prohibited from controlling the acquisition of supplies or from acting as sole buyer of goods and/or services on the market concerned which may potentially result in monopolistic practices and/or unfair business competition.

(2) Business actor shall be reasonably suspected of controlling the acquisition of supplies or acting as sole buyer as intended in paragraph (I) of this article if a business actor controls over 50% (fifty per cent) of the market segment of a certain type of goods or services.

Part Three

Market Control

Article 19

Business actors shall be prohibited from engaging in one or more activities, either individually or jointly with other business actors, which may result in monopolistic practices and/or unfair business competition, in the following forms:

- a. refuse and/or impede certain other business actors in conducting the same business activities on the market concerned; or
- b. bar consumers or customers of their competitors from engaging in business relationship with such of their competitors; or
- c. limit the distribution and/or sales of goods and/or services on the market concerned; or engage in discriminative practices towards certain business sectors.

Article 20

Business actors shall be prohibited from supplying goods and/or services by selling while making a loss or by determining extremely low prices with the aim of eliminating or ruining the business of their competitors on the market concerned which may potentially result in monopolistic practices and/or unfair business competition.

Article 21

Business actors shall be prohibited from engaging in unfair practices in determining production and other costs as part of the price component of goods and/or services which may potentially result in unfair business competition.

Part Four Conspiracy

Article 22

Business actors shall be prohibited from entering into conspiracies with other parties in order to determine awardees of tenders which may potentially result in unfair business competition.

Article 23

Business actors shall be prohibited from conspiring with other parties for obtaining information regarding the business activities of their competitors classified as company secret which may potentially result in unfair business competition.

Article 24

Business actors shall be prohibited from conspiring with other parties in order to impede the production and/or marketing of goods and/or services of their competitors with the aim of causing the goods and/or services offered or supplied to the market concerned to become less, either in quantity, quality or in timeliness required.

CHAPTER V **DOMINANT POSITION**

Part One General

Article 25

- (1) Business actors shall be prohibited from using dominant position either directly or indirectly to:
- a. determine the conditions of trading with the intention of preventing and/or barring consumer from obtaining competition goods and/or services, both in terms of price and quality; or
 - b. limiting markets and technology developments; or
 - c. bar other potential business actor from entering the market concerned
- (2) Business actors shall have a dominant position as intended in paragraph (1) of this article in the following events:
- a. if one business actor controls over 50% (fifty per cent) of the market segment of certain type of goods or services; or

- b. if two or three business actors or a group of business actors control over 75% (seventy-five percent) of the market segment of a certain type of goods or services.

Part Two
Multiple Positions

Article 26

A person concurrently holding the position as a member of the Board of Directors or as a Commissioner of a company shall be prohibited from simultaneously holding position as a member of the Board of Directors or commissioner in other companies, in the event that such companies.

- a. are in the same market segment; or
- b. have a strong bond in the field and/or type of business activities; or
- c. are jointly), capable of controlling the market share of certain goods and/or services which may potentially result in monopolistic practices and/or unfair business competition.

Part Three
Share Ownership

Article 27

Business actors shall be prohibited from owing majority shares in several similar companies conducting business activities in the same field on the same market, or establishing several companies with the same business activities in the same market, if such ownership causes:

- a. one business actor or a group of business actors to control over 50% (fifty per cent) of the market segment of certain type of goods or services;
- b. two or three business actors or a group of business actors to control over 75 (seventy-five per cent) of the market segment of a certain type of goods or services.

Part Four
Mergers, Consolidations and Acquisitions

Article 28

- (1) Business actors shall be prohibited from conducting mergers or consolidations of business entities resulting in monopolistic practices and/or unfair business competition.
- (2) Business actors shall be prohibited from conducting the acquisition of shares in other companies if such action may result in monopolistic practices and/or unfair business competition.

- (3) Further provision regarding the prohibition of mergers or consolidations of business entities as intended in paragraph (1) of this article and provisions concerning the acquisition of shares in companies as intended in paragraph (2) of this article shall be set forth in a government regulation.

Article 29

- (1) The committee must be notified of mergers or consolidations of business entities, or acquisition of shares as intended in Article 28 resulting in the assets value and/or selling price thereof exceeding a certain amount, by no later than 30 (thirty) days from the date of such merger, consolidation or acquisition.
- (2) Provisions regarding the determination of assets value and/or the selling price as well as the procedure for giving notice as intended in paragraph (1) of this article shall be stipulated in a government regulation.

CHAPTER VI BUSINESS COMPETITION SUPERVISORY COMMITTEE

Part One

Status

Article 30

- (1) For the supervision of the implementation of this law, a Business Competition Supervisory Committee shall be formed, hereinafter referred to as the Committee.
- (2) The Committee shall be an independent institution free from the Government's and other parties' influence and authority.
- (3) The Committee shall be responsible to the President.

Part Two

Membership

Article 31

- (1) The Committee shall consist of a Chairperson acting concurrently as member, and of not less than 7 (seven) members
- (2) Members of the Committee shall be appointed and dismissed by the President upon the approval of the People's Legislative Assembly.
- (3) The Members of the Committee shall be appointed for a term of office of 5 (five) and they shall be eligible for reappointment for 1 (one) subsequent term of office.

(4) If due to the expiration of the term of office a vacancy occurs in the Committee's membership, the term of office of members may be extended until new members are appointed.

Article 32

Requirements for membership in the Committee shall be as follows:

- a. citizens of the Republic of Indonesia, at least 30 (thirty) years of age and not older than 60 (sixty) years at the time of appointment.
- b. Loyal to Pancasila and the 1945 Constitution;
- c. Believers in the devout to The Almighty God;
- d. Honest, fair and having good conduct;
- e. Residing with the territory of the Republic of Indonesia;
- f. Experienced in the field of business or possessing knowledge and expertise in
- g. the field of law and/or economics.
- h. Has never been imposed a criminal penalty;
- i. Has never been declared bankrupt by a court of justice; and
- j. Is not affiliated with a certain business entity.

Article 33

Membership in the Committee shall terminate due to the following reasons:

- a. demise; or
- b. resignation upon own request; or
- c. residing outside the territory of the State of the Republic of Indonesia; or
- d. continuous physical or mental illness; or
- e. expiration of term of membership in the committee; or
- f. dismissal.

Article 34

(1) The formation of Committee and its organisational structure, duties and functions shall be stipulated by a Presidential decree.

(2) For the uninterrupted implementation of its duties, the Committee shall be assisted by a secretariat.

(3) The Committee may form a working group.

(4) Provisions regarding the organisational structure, duties and functions of the secretariat and working Group shall be further regulated by a decision of the Committee.

Part Three
Duties

The duties of the Committee shall include the following:

- a. Evaluate agreements that may potentially result in monopolistic practices and/or unfair business competition as set forth in Article 4 up to and including Articles 16;
- b. Evaluate business activities and/or actions of business actors which may potentially result in monopolistic practices and/or unfair business competition as stipulated in Article 17 up to and including Article 24;
- c. Evaluate the existence of misuse of dominant position which may potentially result in monopolistic practices and/or unfair business competition set forth in Article 25 up to and including Article 28;
- d. Undertake actions in accordance with the authority of the Committee as set forth in Article 36;
- e. Provide advice and opinion concerning Government policies related to monopolistic practices and/or publications related to this law;
- f. Prepare guidelines and/or publications related to this law;

Submit periodic reports on the results of the Committee's work to the President and the People's Legislative Assembly (DPR).

Part Four
Authority

Article 36

The Committee's authority shall include the following:

- a. receive reports from the public and/or business actors regarding allegations of the existence of monopolistic practices and/or unfair business competition;
- b. conduct research concerning, the possibility of the existence of business activities and/or actions of business actors which may result in monopolistic practices and/or unfair business competition;
- c. Conduct investigation and/or inspection in allegations of cases of monopolistic practices and/or unfair business competition reported by the public or by business actors or discovered by the Committee as a result of its research;
- d. Make conclusion regarding the results of its investigation and/or inspection as to whether or not there are any monopolistic practices and/or unfair business competition;
- e. summon business actors suspected of having violated the provisions of this law;
- f. summon and invite witnesses, expert witnesses and any person deemed to have knowledge of violations of the provisions of this law;
- g. seek the assistance of investigator to invite business actors, witnesses, expert witnesses or any person as intended in Letters e and f of this article, who are not prepared to appear upon the Committee's invitation;

- h. request the statement of Government institutions related to the investigation and/or hearing of business actors in violation of the provisions of this law;
- i. obtain, examine and/or evaluate letters, documents or other instruments of evidence for investigation and/or hearing;
- j. determine and stipulate the existence or non-existence of losses on part of business actors or society;
- k. announce the Committee's decision to business actors suspected of having engaged in monopoly practices and/or unfair business competition;
- l. impose administrative sanctions on business actors violating the provisions of this law.

Part Five

Funding

Article 37

The expenses related to the performance of the duties of the Committee shall be charged to the State Revenues and Expenditures Budget and/or other sources permissible by virtue of the applicable laws and, regulations.

CHAPTER VII

DISPUTE SETTLEMENT PROCEDURE

Article 38

- (1) Any person having knowledge of the occurrence of or reasonably suspecting that a violation of this law has occurred, he can report it in writing to the Committee with a clear statement concerning the occurrence of violation, attaching the identity of the reporting party.
- (2) The party suffering losses as a result of violations of this law may file a written report to the Committee with a complete and clear statement regarding the occurrence of violation and losses inflicted, attaching the identity of the reporting party.
- (3) The identity of the reporting party intended in paragraph (1) of this article must be kept confidential by the Committee.
- (4) The reporting procedure as intended in paragraph (1) and paragraph (2) of this article shall be further stipulated by the Committee.

Article 39

- (1) Based on the report as intended in Article 38 paragraph (1) and paragraph (2), the Committee shall be obligated to conduct a preliminary investigation, and within 30 (thirty) days after receiving the report concerned, the Committee shall be obligated to determine whether or not further investigation is required.

(2) In further investigation the Committee shall be obligated to investigate the business actors against whom the report was submitted.

(3) The Committee shall be obligated to keep confidential the information obtained from business actors classified as company secret.

(4) If deemed necessary, the Committee may hear the testimony of witnesses, expert witnesses, and/or other parties.

In conducting activities as intended in paragraph (2) and paragraph (4) of this article, members of the Committee shall be provided with a warrant.

Article 40

(1) The Committee may conduct investigation of business actors if there is an allegation of the occurrence of violation of this law even though no report is filed.

(2) Investigation as intended in paragraph (1) of this article shall be conducted in compliance with the procedure stipulated in Article 3 9.

Article 41

(1) Business actors and/or other parties examined shall be required to submit instruments of evidence required in the investigation and/or hearing.

(2) Business actors shall be prohibited from refusing to be heard, from refusing to provide information required for investigation and/or hearing, or from impeding the investigation and/or hearing process.

(3) Violations of the provisions of paragraph (2) of this article shall be submitted by the Committee to the investigator for conducting investigation in accordance with the prevailing provisions.

Article 42

Instruments of evidence in the investigation by the Committee shall be in the form of:

- a. witness testimonies
- b. experts testimonies
- c. letters and/or documents
- d. information
- e. statement by business actors

Article 43

(1) The Committee shall be obligated to complete follow-up investigation within 60 (sixty) days from the time a follow-up investigation is conducted as intended in Article 3 9 paragraph (1).

(2) If required, the time frame for follow-up investigation as intended in paragraph (1) of this article may be extended by not more than 30 (thirty) days.

(3) The Committee shall be obligated to determine whether or not a violation of this law occurred within 30 (thirty) days from the completion of the follow-up investigation as intended in paragraph (1) or paragraph (2) of this article.

(4) The decision of the Committee as intended in paragraph (3) of this article must be read out in a hearing open to the public and the business actor concerned must be notified forthwith thereof.

Article 44

(1) Within 30 (thirty) days from the time business actor concerned receives notice about the Committee's decision as intended in Article 43 paragraph (4), the business actor concerned shall be obligated to implement such decision and to submit an implementation report to the Committee.

(2) Business actors may appeal to the District Court by no later than 14 (fourteen) days after receive notification of the aforementioned decision.

(3) Business actors not appealing within the time frame as intended in paragraph (2) of this article shall be deemed to have accepted the Committee's decision.

(4) In the event that the provisions of paragraph (1) and paragraph (2) of this article are not implemented by the business actor concerned, the Committee shall submit such decision to the investigator for conducting investigation in accordance with the provisions of prevailing laws and regulations.

(5) Decisions of the Committee as intended in Article 43 paragraph (4) shall serve as initial evidence sufficient for investigators to conduct investigation.

Article 45

(1) The District Court concerned must examine appeals by business actors as intended in Article 44 paragraph (2) within 14 (fourteen) days from the time the filing of such appeal is received.

(2) The District Court must make a decision within 30 (thirty) days from the commencement of the hearing of the aforementioned appeal.

(3) The party filing an appeal in respect of the decision of the District Court as intended in paragraph (2) of this article, may appeal to the Supreme Court of the Republic of Indonesia within 14 (fourteen) days.

(4) The Supreme Court must make a decision within 30 (thirty) days from the time the appeal is received.

Article 46

(1) In the event that there are no appeals, the decision of the Committee as intended in Article 43 paragraph (3) shall have permanent legal force.

(2) The executive enforcement of the decision of the Committee as intended in paragraph (1) of this article shall be requested of the District Court

CHAPTER VIII SANCTIONS

Part One Administrative Measures

Article 47

(1) The Committee shall be authorised to impose sanctions in the form of administrative measures against business actors violating the provisions of this law.

(2) Administrative measures as intended in paragraph (1) of this article may be in the following forms:

- a. stipulations of declaring agreements intended in Article 4 up to and including Article 13, Article 15 and Article 16 as null and void; and/or
- b. ordering business actors to stop vertical integration as referred to in Article 14; and/or
- c. ordering business actors to stop activities proven to have been causing monopolistic practices and/or unfair business competition and/or being harmful to society; and/or
- d. ordering business actors to stop the misuse of dominant position; and/or
- e. determine the cancellation of mergers or consolidations of business entities and acquisition of shares as intended in Article 28; and/or
- f. stipulation of compensation payment; and/or imposition of a minimum fine of Rp. 1,000,000,000, (Rupiah one billion) and a maximum fine of Rp. 25,000,000,000, (Rupiah twenty-five billion).

Part Two
Basic Criminal Sanctions

Article 48

(1) Violations of the provisions of Article 4, Article 9 up to and including Article 14, Article 1 G up to and including Article 19, Article 25, Article 27, and Article 28 of this law shall be subject to the criminal sanction of a fine of minimum Rp. 25,000,000,000,- (Rupiah twenty-five billion) and maximum Rp. 100,000,000,000,- (Rupiah one hundred billion), or the criminal sanction of imprisonment as a replacement of fine for no longer than 6 (six) months.

(2) Violations of the provisions of Article 5 up to and including Article 8, Article 15 Article 20 up to and including Article 24, and Article 26 of this law shall be subject to the criminal sanction of a fine of minimum Rp. 5,000,000,000, (Rupiah five billion) or Rp. 25,000,000,000,- (Rupiah twenty-five billion) or a criminal sanction of imprisonment as replacement of fine for no longer than 5 (five) months.

(3) Violation of the provisions of Article 41 of this law shall be subject to a fine of minimum Rp. 1,000,000,000,- (Rupiah one billion) and maximum Rp. 5,000,000,000,- (Rupiah five billion) or the criminal sanction of imprisonment as replacement of the fine no longer than 3 (three) months.

Part Three
Additional Criminal Sanctions

Article 49

In compliance with the provisions of Article 10 of the Criminal Code, in addition to the sanctions set forth in Article 48 additional criminal sanctions may be imposed in the following of:

- a. revocation of business license; or
- b. prohibiting business actors proven to have violated this law from filling the positions of director or commissioner for at least 2 (two) years and for no longer than 5 (five) years; or ordering to stop certain activities or actions resulting in losses to other parties.

CHAPTER IX
MISCELLANEOUS PROVISIONS

Article 50

Not included in the provision of this law shall be as follows:

- a. actions and or agreements intended to implement applicable laws and regulations; or
- b. agreements related to intellectual property rights, such as licenses, patents, trademarks, copyrights, industrial product design, integrated electronic circuits, and trade secrets as well as agreements related to franchise; or

- c. agreements for the stipulation of technical standards of goods and/or services which do not inhibit, and/or impede competition; or
- d. agency agreements which do not stipulate the re-supply of goods and/or services at a price level lower than the contracted price; or
- e. cooperation agreements in the field of research for the upgrading and improvement of the living standard of society at large; or
- f. international agreements ratified by the Government of the Republic of Indonesia; or
- g. export oriented agreements and/or actions not disrupting domestic needs and/or supplies; or
- h. business actors of the small-scale; or
- i. activities of co-operatives aimed specifically at serving their members.

Article 51

Monopoly and/or concentration of activities related to the production and/or marketing of goods and/or services affecting the livelihood of society at large and branches of production of strategic nature to the state shall be stipulated in a law and shall be implemented by State-Owned Enterprises and/or institutions formed or appointed by the Government.

CHAPTER X TRANSITIONAL PROVISIONS

Article 52

(1) As from the effectiveness of this law, all laws and regulations stipulating or related to monopolistic practices and/or business competition shall be declared as remaining in effect in so far as not contradictory or not superseded by new ones by virtue of this law.

(2) Business actors having entered into agreement and/or conducting activities and/or undertaking actions not complying with the provisions of this law shall be given 6 (six) months from this law's coming into effect to make adjustments.

CHAPTER XI CLOSING PROVISIONS

Article 53

This law shall become effective within 1 (one) year as from its promulgation.

Stipulated in Jakarta

On.....

THE PRESIDENT OF THEE REPUBLIC OF INDONESIA
BACHARUDDIN JUSUF HABIBIE

Promulgated in Jakarta
On.....

STATE MINISTER SECRETARY OF STATE OF THE REPUBLIC OF INDONESIA
AKBAR TANDJUNG
STATE GAZETTE OF THE REPUBLIC OF INDONESIA YEARNUMBER.....

THE PEOPLE'S LEGISLATIVE ASSEMBLY OF
THE REPUBLIC OF INDONESIA

ELUCIDATION ON
THE LAW OF THE REPUBLIC OF INDONESIA
CONCERNING THE PROHIBITION OF MONOPOLISTIC
PRACTICES AND UNFAIR BUSINESS COMPETITION

GENERAL

Economic development in the First Long Term Development has resulted in much progress, among other things with the improvement of social welfare. The aforementioned progress achieved in development has been supported by development policies in various fields including policies in the field of economy as set forth in the General State Policy and Five Year Development Plan, as well as in various other economic policies.

Despite the substantial progress achieved in the First Long Term Development, reflected in high economic growth. Many challenges or issues still remain, parallel to globalization trends in the economy and the dynamics and development of private businesses since the early 1990s.

The business opportunities created during the last three decades have in fact not enabled all levels of society to participate in development in various economic sectors. The development of the private sector during the above mentioned period has on the one hand been marked by various forms of inadequate Government policies leading to market distortion. On the other hand, the development of the private sector has in fact been mainly the result of unfair business competition conditions.

The above described phenomenon has developed and has been supported by the relationship between decision makers and business actors, either directly or indirectly, leading to the further deterioration of the situation. The implementation of national economy has not quite adhered to the mandate of Article 33 or the 1945 Constitution, and has shown a very monopolistic tendency.

Businessmen close to the elite of power has obtained extreme facilities resulting in the creation of social gap. The emergence of conglomerates and a group of strong businessmen not supported by the spirit of real entrepreneurship has been one of the factors which caused the economic capacity to become extremely vulnerable and un-competitive:

The above situation and condition has caused us to have to study and rearrange business activities in Indonesia, so that businesses can grow and develop in a fair and appropriate way, leading to the creation of a fair business competition climate, and in order to avoid the concentration of economic power around one certain person or group, among other things in the form of monopolistic practices and unfair business competition harmful to society, which are contradictory to the ideals of social justice.

Therefore, it is necessary to stipulate the Law Concerning the Prohibition of Monopolistic Practices and Unfair Business Competition intended for the enforcement of

provisions of law and providing equal protection for every business actor in an effort to create fair business competition.

This law provides guarantee of legal certainty for stimulating further a rapid economic development in an effort to improve social welfare, as well in implementation of the spirit and intentions of the 1945 Constitution.

For an effective implementation of this law and implementing regulations thereof in accordance with its principles and objectives, it is necessary to form a Business Competition Supervisory Committee, i.e. an independent institution free from the influence of the Government and other parties, having the authority to conduct supervision of business competition and, to impose sanctions. Such sanctions shall be in the form of administrative measures, whereas criminal sanctions shall be under the authority of the court of justice.

In general, the substance of the Law Concerning the Prohibition of Monopolistic Practices and Unfair Business Competition consists of 6 (six) regulatory parts such as:

1. prohibited agreements:
2. prohibited actions:
3. dominant position:
4. Business Competition Supervisory Committee:
5. Law enforcement
6. Miscellaneous provisions

This law has been drawn up based on the principles of Pancasila (State Philosophy) and the 1945 Constitution, and it has been based on economic democracy with due observance of equilibrium between the interests of business actors and public interest with the aim of: safe guarding public interest and protecting consumers; develop a conducive business climate through the creation of fair business competition, and ensure certainty in equal business opportunity for every person; preventing monopolistic practices and/or unfair business competition .created by business actors; and creating effectiveness and efficiency in business activities in the context of improving the efficiency of national economy as one of the efforts for improving social welfare.

ARTICLE BY ARTICLE

- Article 1
Self-explanatory
- Article 2
Self-explanatory
- Article 3
Self-explanatory
- Article 4
Self-explanatory
- Article 5
Self-explanatory
- Article 6

Self-explanatory

Article 7

Self-explanatory

Article 8

Self-explanatory

Article 9

Agreements may be vertical or horizontal in nature. These agreements are prohibited because business actors eliminate or reduce competition by dividing the market or market allocation. Marketing territory may mean the territory of the state of the Republic of Indonesia, for example regency, province, or other regional territory. Dividing marketing territory or market allocation means dividing territory in order to obtain or supply goods, services, or goods and services, determining parties front which goods, services, goods and services may be obtained or supplied.

Article 10

Self-explanatory

Article 11

Self-explanatory

Article 12

Self-explanatory

Article 13

Self-explanatory

Article 14

Referred to as controlling the production of a number of products being part of a production series which can be referred to as vertical integration shall be the control of a production process series of certain goods upstream to downstream or a process continuing for certain services by certain business actors. Even though vertical integration practices can result in low priced goods and services, these can cause unfair business competition which are harmful to economic cells in society. Such practices are prohibited in so far as they cause unfair business competition and or are harmful to society.

Article 15

Paragraph (1)

Supplying means making supplies available, either in the form of goods or services in the context of trading, lease, lease purchase and leasing activities.

Paragraph (2)

Self-explanatory

Paragraph (3)

Letter a

Self-explanatory

Letter b0

Article 16

Self-explanatory

Article 17

Paragraph (1)

Self-explanatory

Paragraph (2)

Letter a

Self-explanatory

Letter b

Referred to as other business actors are business actors possessing significant competitive capacity in the market concerned.

Letter c

Self-explanatory

Article 19

Letter a

Rejecting or impeding certain business actors may not be done unreasonably or for non-economic reasons, for example due to difference in ethnic group, race, social status, and others.

Self-explanatory

Letter b

Self-explanatory

Letter c

Self-explanatory

Letter d

Self-explanatory

Article 20

Self-explanatory

Article 21

Unfair practices in determining production and other costs shall be violation of the prevailing laws and regulations for obtaining production factors lower than the actual.

Article 22

Tenders shall be bids submitted to contract certain work, for the procurement of goods, or the provisions of services.

Article 23

Self-explanatory

Article 24

Self-explanatory

Article 25

Self-explanatory

Article 26

Letter a

Self-explanatory

Letter b

Companies shall be closely related if such companies support each other or are directly related in the production, marketing, or production and marketing process.

Letter c

Self-explanatory

Article 27

Self-explanatory

Article 28

Paragraph (1)

Business entities shall be companies or forms of business, either incorporated as legal entities (e.g. limited liability companies) or not incorporated as legal entities, engaging in a type of business of permanent and continuous nature, with the aim of generating profits.

Paragraph (2)

Self-explanatory

Paragraph (3)

Self-explanatory

Article 29

Self-explanatory

Article 30

Self-explanatory

Article 31

Paragraph (1)

The Chairperson and the Deputy Chairperson of the Committee shall be elected from among and by Members of the Committee.

Paragraph (2)

Self-explanatory

Paragraph (3)

Self-explanatory

Paragraph (4)

Extension of the term of membership in the Committee in order to avoid vacancy may not exceed 1 (one) year.

Article 32

Letter a

Self-explanatory

Letter b

Self-explanatory

Letter c

Self-explanatory

Letter d

Self-explanatory

Letter e

Self-explanatory

Letter f

Self-explanatory

Letter g

Not having been imposed with a criminal penalty means not having been imposed with a criminal penalty due to a capital criminal act or due to violation of moral.

Letter h

Self-explanatory

Letter i

Not affiliated with a business entity means that as from the time the person concerned becomes member of the Committee, such person has not acted as:

1. Member of the Board of Commissioners or supervisors, or of the board of directors of a company.
2. Member of management or inspection body of a co-operative;
3. Party providing services to a company, such as consultant, public accountant and appraiser.
4. Majority shareholder in a company.

Article 33

Letter a

Self-explanatory

Letter b

Self-explanatory

Letter c

Self-explanatory

Letter d

To be stated in the form of a statement by an authorised physician.

Letter e

Self-explanatory

Letter f

Terminated, among other things, for the reason of no longer meeting requirements for committee membership as intended in Article 32.

Article 34

Paragraph (1)

Self-explanatory

Paragraph (2)

Secretariat shall be the organisational unit supporting or assisting the Committee in the implementation of its duties.

Paragraph (3)

Working unit shall be a professional team appointed by the Committee to assist in the implementation of certain tasks at a certain time.

Paragraph (4)

Self-explanatory

Article 35

Self-explanatory

Article 36

Self-explanatory

Letter a

Self-explanatory

Letter b

Self-explanatory

Letter c

Self-explanatory

Letter d

Self-explanatory

Letter e

Self-explanatory

Letter f

Self-explanatory

Letter g

Investigator shall be investigator as intended in Law Number 8 Year 1981.

Letter h

Self-explanatory

Letter I

Self-explanatory

Letter j

Self-explanatory

Letter k

Self-explanatory

Letter l

Self-explanatory

Article 37

In principle the State is responsible for the operational implementation of the Committee's duties by providing support in the form of funding through the State Revenues and Expenditures Budget. However, bearing in mind the broad and various scope and field of the Committee's duties, the Committee may obtain funds from other sources not contradictory to the prevailing laws and regulations, which are not binding in nature and shall not have an impact on the Committee's independence.

Article 38

Self-explanatory

Article 39

Self-explanatory

Article 40

Self-explanatory

Article 41

Paragraph (1)

Self-explanatory

Paragraph (2)

Self-explanatory

Paragraph (3)

Submitted by the Committee to the investigators for investigation shall not only be criminal acts or actions as intended in paragraph (2) of this article, but also principal cases under investigation and caring by the Committee.

Article 42

Self-explanatory

Article 43

Paragraph (1)

Self-explanatory

Paragraph (2)

Self-explanatory

Paragraph (3)

The Committee's decision making as intended in paragraph (3) of this Article shall be conducted in a Council meeting consisting of at least 3 (three) Committee members.

Paragraph (4)

Referred to as notification shall be forwarding an excerpt from the Committee's decision to the business actor concerned.

Article 44

Paragraph (1)

30 (thirty) days as from the receipt of the excerpt from the Committee's decision by the business actor concerned or his local proxy.

Paragraph (2)

Self-explanatory

Paragraph (3)

Self-explanatory

Paragraph (4)

Self-explanatory

Paragraph (5)

Self-explanatory

Article 45

Self-explanatory

Article 46

Self-explanatory

Paragraph (1)

Self-explanatory

Paragraph (2)

Letter a

Self-explanatory

Letter b

Stopping vertical integration shall be, among other things by cancelling the agreement, transferring a party of the company to another business sector, or changing the form of production series.

Letter c

The termination of certain activities or actions shall be ordered, and not be the entire business activities of the business actor concerned.

Letter d

Self-explanatory

Letter e

Self-explanatory

Letter f

Indemnity shall be granted to the business actor concerned and to other parties having suffered a loss.

Letter g
Self-explanatory
Article 48
Self-explanatory
Article 49
Self-explanatory
Article 50
Letter a
Self-explanatory
Letter b
Self-explanatory
Letter c
Self-explanatory
Letter d
Self-explanatory
Letter e
Self-explanatory

Annex II

NEW ZEALAND

The analysis below of the Commerce Act 1986 and the Fair Trading Act 1986, as well as texts of these acts and of appropriate amendments acts are available at the Internet website <http://www.knowledge-basket.co.nz>.

Commerce Act 1986 005 Commenced: 1 May 1986

ANALYSIS

Analysis

Title

- 1 Short Title and commencement
- 2 Interpretation
- 3 Certain terms defined in relation to competition
- 4 Application of Act to conduct outside New Zealand
- 5 Application of Act to the Crown
- 6 Application of Act to Crown corporations
- 7 Law relating to restraint of trade and breaches of confidence not affected

I: The Commerce Commission

- 8 Establishment of Commission
- 9 Membership of Commission
- 10 Terms and conditions of appointment
- 11 Associate members
- 12 Deputy Chairman and acting Deputy Chairman
- 13 Termination of appointment of members
- 14 Disclosure of financial interests
- 15 Meetings of Commission
- 16 Chairman may direct Commission to sit in Divisions
- 17 Assent to determination
- 18 Officers of Commission
- 19 Money to be appropriated by Parliament for purposes of this Act
- 20 Funds of Commission
- 21 Bank accounts
- 22 Accounts and audit
- 23 Investment of money
- 24 Exemption from income tax
- 25 Functions of Commission in relation to dissemination of information
- 26 Commission to have regard to economic policies of Government

II: Restrictive Trade Practices Practices Substantially Lessening Competition

- 27 Contracts, arrangements, or understandings substantially lessening competition prohibited
- 28 Covenants substantially lessening competition prohibited
- 29 Contracts, arrangements, or understandings containing exclusionary provisions prohibited

Price Fixing

- 30 Certain provisions of contracts, etc., with respect to prices deemed to substantially lessen competition
- 31 Joint venture pricing exempt from application of section 30
- 32 Certain recommendations as to prices for goods and services exempt from application of section 30
- 33 Joint buying and promotion arrangements exempt from application of section 30
- 34 Certain provisions of covenants with respect to prices deemed to substantially lessen competition

Practices Substantially Lessening Competition Conditional Upon Authorisation

- 35 Contracts or covenants subject to authorisation not prohibited under certain conditions

Use of Dominant Position in a Market

- 36 Use of dominant position in a market

Resale Price Maintenance

- 37 Resale price maintenance by suppliers prohibited
- 38 Resale price maintenance by others prohibited
- 39 Recommended prices
- 40 Withholding the supply of goods
- 41 Preventing the supply of goods
- 42 Special evidentiary provisions in respect of certain resale price maintenance practices
- 43 Statutory exceptions
- 44 Other exceptions
- 45 Exemptions in relation to copyright, patents, plant varieties, registered designs, and trade marks
- 46 Saving in respect of mergers or takeovers

III: Mergers and Takeovers

- 47 "Merger or takeover proposal" defined
- 48 Certain other terms defined
- 49 Application to building societies

50 Certain merger or takeover proposals require clearance or authorisation

51 Contracts subject to condition of clearance or authorisation

IV: Control of Prices Declaration of Price Control

52 "Controlled goods or services" defined

53 Governor-General may impose price control in circumstances of restricted competition

54 Commission may report to Minister as to price control

Authorised Prices for Controlled Goods or Services

55 Controlled goods or services not to be supplied except in accordance with authorised price

Miscellaneous Provisions

56 Records to be kept for pricing purposes

57 Other Acts relating to price control not affected

V: Authorisations and Clearances Restrictive Trade Practices

58 Commission may grant authorisation for certain restrictive trade practices

59 Authorisation not to be granted in relation to contracts, etc., made before determination by Commission

60 Procedure for applications for authorisation of restrictive trade practices

61 Determination of applications for authorisation of restrictive trade practices

62 Commission to prepare draft determination in relation to restrictive trade practices

63 Commission may grant provisional authorisation

64 Procedure at conference

65 Commission may vary or revoke authorisations

Merger or Takeover Proposals

66 Commission may grant clearances or authorisations for merger or takeover proposals

67 Commission may grant clearance or authorisation of merger or takeover proposal which has been implemented

68 Conferences in relation to merger or takeover proposals

69 Clearances and authorisations of mergers and takeover proposals to be notified to New Zealand Stock Exchange

Authorisation of Prices for Controlled Goods or Services

70 Authorised prices for controlled goods or services to be determined by Commission

71 Commission may authorise provisional price

72 Alternative undertakings as to prices of controlled goods or services

73 Considerations to be observed by Commission

74 Conferences in relation to authorisation of price for controlled goods or services

VI: Enforcement, Remedies, and Appeals Jurisdiction of Courts

75 Jurisdiction of High Court

76 Jurisdiction of District Courts

77 Additional lay members of High Court for purposes of appellate jurisdiction in respect of Commission determinations

78 Lay members of High Court in certain cases

79 Evidence not otherwise admissible

Restrictive Trade Practices

80 Pecuniary penalties

81 Injunctions may be granted by Court for contravention of Part II

82 Actions for damages for contravention or Part II

Mergers and Takeovers

83 Contravention of section 50 an offence

84 Injunctions may be granted by Court for contravention of Part III

85 Court may order divestiture of assets in respect of contravention of Part III

Control of Prices

86 Contravention of section 55 an offence

87 Injunctions may be granted by Court for contravention of Part IV

Injunctions Generally

88 General provisions relating to granting of injunctions

89 Other orders

90 Conduct by servants or agents

Appeals From Determinations of Commission

91 Appeals in relation to determinations by Commission

92 Persons entitled to appeal

93 Determination of appeals

94 Court may refer appeals back for reconsideration

95 Provisions pending determination of appeal

96 Court may order proceedings to be heard in private

97 Appeal to Court of Appeal in certain cases

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- 98 Powers to obtain information, documents, and evidence
- 99 Powers of Commission to take evidence
- 100 Powers of Commission to prohibit disclosure of information, documents, and evidence
- 101 Notices
- 102 Service of notices
- 103 Failure to comply with notices, etc.
- 104 Determinations of Commission
- 105 Delegation by Commission
- 106 Proceedings privileged
- 107 Annual report
- 108 Regulations
- 109 Commission may prescribe forms
- 110 Repeals, revocations, savings, and consequential amendments
- 111 Transitional provisions in respect of certain contracts, arrangements, or understandings
- 112 Transitional provisions in respect of goods and services subject to price control under Commerce Act 1973
- 113 Transitional provisions in respect of goods and services subject to price restraint under regulations made under Commerce Act 1975
- 114 Transitional provisions in respect of milk pricing
- 115 Savings in respect of certain provisions of Commerce Act 1975
- 116 Winding up of Commerce Commission established under Commerce Act 1975
- 117 Members of Commerce Commission established under Commerce Act 1975 deemed to be members of Commission
- 118 Lay members of Administrative Division of High Court appointed pursuant to Commerce Act 1975 deemed to be lay members of Administrative Division of High Court appointed under this Act

Schedule(s)

- 1 FIRST SCHEDULE: Classes of Merger or Takeover Proposals Requiring Prior Clearance or authorisation by the Commission
- 2 SECOND SCHEDULE: Enactments Amended
- 3 THIRD SCHEDULE: Enactments Repealed
- 4 FOURTH SCHEDULE: Orders and Notices Revoked

Fair Trading Act 1986 121

Commenced: 1 Mar 1987

ANALYSIS

Analysis

Title

- 1 Short Title and commencement
- 2 Interpretation
- 3 Application of Act to conduct outside New Zealand
- 4 Application of Act to the Crown
- 5 Application of Act to Crown corporations
- 6 Functions of Commission in relation to dissemination of information
- 7 Money to be appropriated by Parliament for purposes of this Act
- 8 Annual report

I: Misleading and Deceptive Conduct, False Representations, and Unfair Practices
Misleading and Deceptive Conduct

- 9 Misleading and deceptive conduct generally
- 10 Misleading conduct in relation to goods
- 11 Misleading conduct in relation to services
- 12 Misleading conduct in relation to employment

False Representations

- 13 False representations
- 14 False representations and other misleading conduct in relation to land
- 15 Limited application of sections 9 to 14 of this Act to news media
- 16 Certain conduct in relation to trade marks prohibited

Unfair Practices

- 17 Offering gifts and prizes
- 18 Trading stamp schemes prohibited
- 19 Bait advertising
- 20 Referral selling
- 21 Demanding or accepting payment without intending to supply as ordered
- 22 Misleading representations about certain business activities
- 23 Harassment and coercion
- 24 Pyramid selling schemes
- 25 Provisions of this Part of this Act not limited by reference to other provisions of this Part of this Act
- 26 Importation of goods bearing false trade description or false trade mark prohibited

II: Consumer Information

- 27 Consumer information standards
- 28 Standards may be declared to be consumer information standards

III: Product Safety

- 29 Product safety standards
- 30 Standards may be declared to be product safety standards
- 31 Unsafe goods
- 32 Compulsory product recall
- 33 Importation of certain goods prohibited

IV: Safety of Services

- 34 Meaning of ``services``
- 35 Safety standards in respect of services
- 36 Standards may be declared to be services safety standards

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- 37 Jurisdiction of High Court
- 38 Jurisdiction of District Courts
- 39 Jurisdiction of Small Claims Tribunals

Offences

- 40 Contraventions of provisions of Part I, Part II, Part III, and Part IV an offence

Civil Proceedings

- 41 Injunctions may be granted by Court for contravention of Part I, Part II, Part III, and Part IV
- 42 Order to disclose information or publish advertisement
- 43 Other orders
- 44 Defences
- 45 Conduct by servants or agents
- 46 Finding in proceedings to be evidence

VI: Miscellaneous Provisions

- 47 Powers to obtain documents and inspect goods
- 48 Proceedings privileged
- 49 Repeals and consequential amendments
- 50 Saving of other laws

Schedule(s)

- 1 FIRST SCHEDULE: Enactment Amended
- 2 SECOND SCHEDULE: Enactments Repealed
- 3 THIRD SCHEDULE: Orders and Notices Revoked

Annex III

THAILAND

Tentative Translation

**COMPETITION ACT,
B.E. 2542 (1999)**

Bhumibol Adulyadej, Rex.,
Given on the 22nd Day of March B.E. 2542;
Being the 54th Year of the Present Reign.

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:

Whereas it is expedient to have a law on competition by revising the rules relating to anti-monopoly provided in the law on price fixing and anti-monopoly;

Whereas it is aware that this Act contains certain provisions in relation to the restriction of rights and liberties of persons, in respect of which section 29, in conjunction with section 31, section 35, section 36, section 45, section 48 and section 50 of the Constitution of the Kingdom of Thailand so permit by virtue of the provisions law;

Be it, therefore, enacted by the King, by and with the advice and consent of the National Assembly, as follows:

Section 1. This Act is called the "Competition Act, B.E. 2542 (1999) "

Section 2. This Act shall come into force after thirty days as from the date of its publication in the Government Gazette.**

Section 3. In this Act:

"business" means an undertaking in agriculture, industry, commerce, finance, insurance, and services and shall include other undertakings prescribed by Ministerial Regulations;

"finance" means commercial banking under the law on commercial banking, finance and credit financier businesses under the law on operation of finance, securities and credit financier businesses, and securities business under the law on securities and securities exchange;

** Published in Government Gazette, Vol. 116, Part 22b, dated 31st March 1999.

"business operator" means a distributor, producer for distribution order or importer into the Kingdom for distribution or purchaser for production or redistribution of goods or a service provider in the course of business;

"goods" means an article capable of utilisation or consumption, including a document of title to an article;

"service" means the procurement of work by way of Commission, the granting of any right or the giving of permission to use or to have benefits in any property or any undertaking in return for monetary remuneration or other benefit but shall not include the hire of service;

"price" means a price of goods and shall also include remuneration for the performance of a service;

"business operator with market domination" means one or more business operators in the market of any goods or service who have the market share and sales volume above that prescribed by the Commission with the approval of the Council of Ministers and published in the Government Gazette, having regard to the market competition;

"Commission" means the Competition Commission;

"member" means a member of the Competition Commission;

"Secretary-General" means the Secretary-General of the Competition Commission;

"competent official" means a Government official appointed by the Minister to perform activities under this Act;

"Minister" means the Minister having charge and control of the execution of this Act.

Section 4. This Act shall not apply to the act of:

- (1) Central administration, provincial administration or local administration;
- (2) State enterprises under the law on budgetary procedure;
- (3) Farmers' groups, co-operatives or co-operative societies recognised by law and having as their object the operation of businesses for the benefit of the occupation of farmers;
- (4) businesses prescribed by the Ministerial Regulation, which may provide for exemption from the application of this Act in whole or only in respect of any particular provision thereof.

Section 5. The Minister of Commerce shall have charge and control of the execution of this Act, provided that in respect of financial undertakings, the Minister of Commerce and the Minister of Finance shall jointly have charge and control, and shall have the power to appoint competent officials, issue Ministerial Regulations for the execution of this Act and issue Notifications hereunder.

Such Ministerial Regulations and Notifications shall come into force upon their publication in the Government Gazette.

CHAPTER I

Competition Commission

Section 6. There shall be the Competition Commission consisting of the Minister of Commerce as Chairman, Permanent-Secretary for the Ministry of Commerce as Vice-Chairman, Permanent-Secretary for the Ministry of Finance and not less than eight, but not more than twelve, qualified persons with knowledge and experience in law, economics, commerce, business administration or public administration appointed by the Council of Ministers, provided that at least one-half of whom must be appointed from qualified members in the private sector, as members and the Secretary-General shall be a member and secretary.

The appointment of the qualified persons under paragraph one shall be in accordance with the rules and procedure prescribed in the Ministerial Regulation.

Section 7. A qualified person appointed as member must not be a political official, holder of a political position, executive member or holder of a position with the responsibility in the administration of a political party.

Section 8. The Commission shall have the powers and duties as follows:

(1) to make recommendations to the Minister with regard to the issuance of Ministerial Regulation under this Act;

(2) to issue Notifications prescribing market share and sales volume of any business by reference to which a business operator is deemed to have market domination;

(3) to consider complaints under section 18 (5);

(4) to prescribe rules concerning, the collection and the taking of goods as samples for the purposes of examination or analysis under section 19 (3);

(5) to issue Notifications prescribing the market share, sales volume, amount of capital, number of shares, or amount of assets under section 26 paragraph two;

(6) to give orders under section 30 and section 31 for the suspension, cessation, correction or variation of activities by business operators;

(7) to issue Notifications prescribing the form, rules, procedure and conditions for the application for permission to merge businesses or initiate the joint reduction or restriction of competition under section 35;

(8) to consider an application for permission to merge businesses or initiate the joint reduction or restriction of competition submitted under section 35;

(9) to invite any particular person to give facts, explanations, advice or opinions;

(10) to monitor and accelerate an inquiry sub-committee's conduct of an inquiry of offences under this Act.

(11) to prescribe rules for the performance of work of the competent officials for the purpose of the execution of this Act;

(12) to perform other acts provided by the law to be the powers and duties of the Commission;

(13) to consider taking criminal proceedings as requested in the complaint lodged by the injured person under section 55.

Section 9. The qualified member under section 6 shall hold office for a term of two years.

At the expiration of the term under paragraph one, if a new qualified member is not yet appointed, the qualified member who vacates office at the expiration of the term shall continue to hold office for the purpose of the performance of work until a newly appointed qualified member takes office.

The qualified member who vacates office at the expiration of the term may be re-appointed but may not serve for more than two consecutive terms.

Section 10. The provisions of section 75, section 76, section 77, section 78, section 79, section 80, section 81, section 82 and 83 of the Administrative Procedure Act, B.E. 2539 (1996) shall apply to the appointment of a qualified member, the vacation of office of a qualified member and a meeting of qualified members *mutatis mutandis*, and a qualified member shall also vacate office upon being under the prohibitions under section 7.

Section 11. The Commission may appoint a sub-committee to consider and make recommendations on any matter or perform any act as entrusted and prepare a report thereon for submission to the Commission.

Section 12. The Commission shall appoint one or more specialised sub-committees consisting of, for each sub-committee, not less than four and not more than six persons qualified in the matter concerned and having knowledge and experience in various fields such as law, science, engineering, pharmacology, agriculture, economics, commerce, accountancy, or business administration as members, with the representative of the Department of Internal Trade as a member and secretary.

The specialised sub-committee shall elect one member as Chairman.

Section 13. The specialised sub-committee has the duty to consider and give opinions to the Commission on the following matters, as entrusted by the Commission:

(1) the matter concerning the conduct indicative of market domination, a merger of businesses, the reduction or restriction of competition under section 25, section 26, section 27, section 28 and section 29;

(2) the consideration of an application for permission to merge businesses or initiate the reduction or restriction of competition under section 37;

(3) other matters to be considered at the request of the Commission and other acts to be performed as entrusted by the Commission.

For the purpose of this Act, a specialised sub-committee may submit opinions or recommendations to the Commission with regard to the execution of this Act.

In carrying out the acts under paragraph one, the specialised sub-committee shall have the power to issue a written summons requiring the persons concerned to give statements or furnish documents or any other evidence for supplementing its consideration.

Section 14. The Commission shall appoint one or more inquiry sub-committees consisting of, for each sub-committee, one person possessing knowledge and experience in criminal cases who is appointed from police officials, public prosecutors and, in addition, not more than four persons possessing knowledge and experience in economics, law, commerce, agriculture, or accountancy, as members, with the representative of the Department of Internal Trade as a member and secretary.

The inquiry sub-committee shall have the power and duty to conduct an investigation and inquiry in connection with the commission of offences under this Act and, upon completion thereof, submit opinions to the Commission for further consideration.

The inquiry sub-committee shall elect one member as Chairman.

Section 15. In the performance of the duties under this Act, a member of the Commission and a member of an inquiry sub-committee under section 14 shall have the same powers and duties as an inquiry official under the Criminal Procedure Code.

Section 16. In the case where the Commission submits to the public prosecutor the opinion for prosecution, an objection to the public prosecutor's non-prosecution order under the Criminal Procedure Code shall be the power to be exercised by the Chairman of the Commission in place of the Commissioner-General of the Royal Thai Police Force or the *Changwad* Governor as the case may be.

Section 17. The provisions of section 9 and section 10 shall apply *mutatis mutandis* to the sub-committee, specialised sub-committee and inquiry sub-committee.

CHAPTER II

Office of the Competition Commission

Section 18. There shall be established the Office of the Competition Commission in the Department of Internal Trade, Ministry of Commerce, with the Director-General of the Department of Internal Trade as the Secretary-General, who shall be the superior official responsible for the official affairs of the Office, with the powers and duties as follows:

(1) to carry out administrative tasks of the Commission, the Appellate Committee and sub-committees appointed by the Commission;

(2) to prescribe regulations for the purpose of the work performance of the Office of the Competition Commission;

(3) to monitor the movement and oversee the conduct of business operators and report the same to the Commission;

(4) to conduct studies, analyses and research in relation to goods, services, and business conduct and make recommendations and give opinions to the Commission on the prevention of market domination, merger of businesses and reduction and restriction of competition in the operation of businesses;

(5) to receive complaints by which it is alleged by any person that violation of this Act has occurred and to carry out its preliminary consideration for submission to the Commission, in accordance with the regulations prescribed and published in the Government Gazette by the Commission;

(6) to co-ordinate with Government agencies or agencies concerned, for the purpose of the performance of duties under this Act;

(7) to perform the acts in, the implementation of Notifications, regulations and resolutions of the Commission and perform such acts as entrusted by the Commission, the Appellate Committee or the sub-committee appointed by the Commission

Section 19. In the execution of this Act, the competent official shall have the following powers;

(1) to issue a written summons requiring any person to give statements, facts or written explanations or furnish accounts, records, documents or any evidence for examination or supplementing his consideration,

(2) to enter the place of business, place of production, place of distribution, place of purchase, warehouse or place of service of the business operator or of any person or other place reasonably suspected to have therein a violation of the provisions of this Act, for the purpose of examining the conformity with this Act or for searching and seizing evidence or property which may be confiscated under this Act or arresting the offender under this Act without a warrant of search in the following cases:

(a) where a flagrant offence is evidently being committed in the place;

(b) where a person having committed a flagrant offence has, while being pursued, taken refuge, or there are serious grounds for suspecting that such person is concealing, in the place;

(c) where there are reasonable grounds for suspecting that the evidence or property which may be confiscated under this Act is found in the place and there are reasonable grounds to believe that by reason of delay in obtaining a warrant of search the evidence or property is likely to be removed, concealed, destroyed or transformed from its original state;

(d) where the person to be arrested is the owner of the place and there is a warrant for such arrest or such arrest may be made without a warrant;

Provided that, for these purposes, the competent official has the power to inquire into facts or summon accounts, records, documents or other evidence from the business operator or from the person concerned or order such persons who are in such place to perform necessary acts;

(3) to collect or take goods, in a reasonable quantity, as samples for an examination or analysis without payment of the prices of such goods, in accordance with the rules prescribed by the Commission in the Government Gazette;

(4) to attach documents, accounts, records or evidence for the purpose of examination and taking legal proceedings under this Act.

Section 20. In the performance of duties of the competent official, a person concerned shall render reasonable assistance.

Section 21. In the performance of duties, the competent official shall produce an identification card to the persons concerned.

The identification card shall be in accordance with the form prescribed by the Minister in the Government Gazette.

Section 22. The competent official shall procure service of the written summons under section 13 paragraph 3, section 19 (1) or section 44 (3) by directing it at the domicile or the place of business of the person named in the summons between sunrise and sunset or during working hours of such person or may send it by registered post requiring acknowledgement of receipt thereof.

In the case where the competent official serves the summons under paragraph one but the person named in the summons refuses to accept it without reasonable cause, the competent official shall request the administrative or police official to accompany the competent official for the purpose of leaving the summon on the spot. If the competent official does not meet the person named in the summons at his or her domicile or place of business, the summons may be served on any *sui juris* person who is living or working in that dwelling-place or place of

business. If nobody is met or nobody agrees to accept the summons on behalf of the person named therein, such summons shall be posted in a conspicuous place at the domicile or the place of business in the presence of the administrative or police official who accompanies as witness.

When the competent official has carried out the act under paragraph one or paragraph two, it shall be deemed that the person named in the summons has received it. In the case of the posting of the summons, it shall be deemed that such summons is received upon the lapse of five days as from the date of its posting. If the service is made by a registered post requiring acknowledgement of its receipt, it shall be deemed that the summons is received upon the lapse of five days as from the date of its receipt.

Section 23. In the execution of this Act, members, members of the Appellate Committee or of the sub-committee, Secretary-General, and competent officials shall be the officials under the Penal Code.

Section 24. For the purpose of arresting offenders under this Act, the competent official shall have the same powers as the administrative or police officer under the Criminal Procedure Code.

An arrest of the offender may be made without a warrant of arrest when a flagrant offence is evidently being committed or when there is any other circumstance under which the Criminal Procedure Code permits administrative or police official to make an arrest without a warrant of arrest.

CHAPTER III **Anti-Monopoly**

Section 25. A business operator having market domination shall not act in any of the following manners:

(1) unreasonably fixing or maintaining purchasing or selling prices of goods or fees for services;

(2) unreasonably fixing compulsory conditions, directly or indirectly, requiring other business operators who are his or her customers to restrict services, production, purchase or distribution of goods, or restrict opportunities in purchasing or selling goods, receiving or providing services or obtaining credits from other business operators;

(3) suspending, reducing or restricting services, production, purchase, distribution, deliveries or importation without justifiable reasons, or destroying or causing damage to goods in order to reduce the quantity to be lower than the market demand;

(4) intervening in the operation of business of other persons without justifiable reasons.

Section 26. A business operator shall not carry out a business merger which may result in monopoly or unfair competition as prescribed and published in the Government Gazette by the Commission unless the Commission's permission is obtained.

The publication by the Commission under paragraph one shall specify the minimum amount or number of market share, sale volume, capital, shares or assets in respect of which the merger of business is governed thereby.

The merger of business under paragraph one shall include:

(1) a merger made by a producer with another producer, by a distributor with another distributor, by a producer with a distributor, or by a service provider with another service provider, which has the effect of maintaining the status of one business and terminating the status of the other business or creating a new business;

(2) a purchase of the whole or part of assets of another business with a view to controlling business administration policies, administration and management;

(3) a purchase of the whole or part of shares of another business with a view to controlling business administration policies, administration and management.

The application by a business operator for the permission under paragraph one shall be submitted to the Commission under section 35.

Section 27. Any business operator shall not enter into an agreement with another business operator to do any act amounting to monopoly, reduction of competition or restriction of competition in the market of any particular goods or any particular service in any of the following manners:

(1) fixing selling prices of goods or services as a single price or as agreed or restricting the sale volume of goods or services;

(2) fixing buying prices of goods or services as a single price or as agreed or restricting the purchase volume of goods or services;

(3) entering into an agreement with a view to having market domination or market control;

(4) fixing an agreement or condition in a collusive manner in order to enable one party to win a bid or a tender for the goods or services or in order to prevent one party from participating in a bid or a tender for the goods or services;

(5) fixing geographical areas in which each business operator may distribute or restrict the distribution of goods or services, or fixing customers to whom each business operator may sell goods or provide services to the exclusion of other business operators from competing in the distribution of such goods or services;

(6) fixing geographical areas in which each business operator may purchase goods or services or fixing persons from whom business operators may purchase goods or services;

(7) fixing the quantity of goods or services in which each business operator may produce, distribute, or provide with a view to restricting the quantity to be lower than the market demand;

(8) reducing the quality of goods or services to a level lower than that in the previous production, distribution or provision, whether the distribution is made at the same or at a higher price;

(9) appointing or entrusting any person as a sole distributor or provider of the same goods or services or the same kind of goods or services;

(10) fixing conditions or practice with regard to the purchase or distribution of goods or the provision of services in order to achieve the uniform or agreed practice.

In the case where it is commercially necessary that the acts under (5), (6), (7), (8), (9) or (10) be undertaken within a particular period of time, the business operator shall submit an application for permission to the Commission under section 35.

Section 28. A business operator who has business relation with business operators outside the Kingdom, whether it is on a contractual basis or through policies, partnership, shareholding or any other similar form, shall not carry out any act in order that a person residing in the Kingdom and intending to purchase goods or services for personal consumption will have restricted opportunities to purchase goods or services directly from business operators outside the Kingdom.

Section 29. A business operator shall not carry out any act which is not free and fair competition and has the effect of destroying, impairing, obstructing, impeding or restricting business operation of other business operators or preventing other persons from carrying out business or causing their cessation of business.

Section 30. The Commission shall have the power to issue a written order requiring a business operator who has market domination, with the market share of more than seventy five percent, to suspend, cease or vary the market share. For this purpose, the Commission may prescribe rules, procedure, conditions and time limit for compliance therewith.

Section 31. In the case where the Commission considers that a business operator violates section 25, section 26, section 27, section 28 or section 29, the Commission shall have the power to issue a written order requiring the business operator to suspend, cease, rectify or vary such act. For this purpose, the Commission may prescribe rules, procedure, conditions and time limit for compliance therewith.

The business operator who receives the order under paragraph one and disagrees therewith shall have the right to appeal under section 46.

The business operator may not claim compensation from the Commission by reason that the Commission has issued the order under paragraph one.

Section 32. In the consideration of the case under section 31, the Commission must afford the business operator, members of the specialised sub-committee, members of the inquiry sub-committee or competent officials concerned reasonable opportunities to give explanations and present supporting evidence.

In issuing an order under section 31, the Commission must specify reasons for such order both in questions of fact and in questions of law, and signatures of the members considering the case shall be entered.

The notification of the order under paragraph two shall be carried out within seven days as from the date of the Commission's order, and section 22 shall apply *mutatis mutandis*.

Section 33. The person receiving the order under section 31 must comply with such order unless the Court or the Appellate Committee passes a judgment or issues an order suspending the execution thereof or revoking the order of the Commission.

Section 34. In the case where the Court passes a judgment that any business operator is guilty of an offence under section 25, section 26, section 27, section 28 or section 29, the Court shall issue an order requiring the business operator to suspend, cease, rectify or vary such act.

CHAPTER IV **Application for Permission and Consideration of the Application**

Section 35. Any business operator wishing to apply for permission to carry out the act under section 26 or section 27 (5), (6), (7), (8), (9) or (10) shall submit an application in accordance with the form, rules, procedure and conditions prescribed and published in the Government Gazette by the Commission.

The application must at least:

- (1) contain adequate reasons and specify necessity for the act;
- (2) specify the intended procedures therefore;
- (3) specify the duration therefore.

Section 36. The Commission shall complete the consideration of the application under section 35 within ninety days as from the date of its receipt; provided that the business operator, members of the specialised sub-committee or competent officials concerned must be afforded reasonable opportunities to give explanations and present supporting evidence.

In the case where the consideration cannot be completed within the time specified in paragraph one by reason of necessity, the Commission may grant an extension of time for not more than fifteen days, but the reasons and necessity for the extension shall also be recorded in the consideration and decision proceedings.

Section 37. When the Commission has made an inquiry and is of the opinion that the application under section 35 submitted by the business operator is reasonably necessary in the business, beneficial to business promotion, has no serious harm to the economy and has no effect on material and due interests of general consumers, the Commission shall issue a written order granting permission in favour of such business operator. But if the Commission issues an order rejecting permission, the order shall be notified in writing to the business operator without delay.

In granting permission under paragraph one, the Commission may fix the time or any condition for compliance by the business operator to whom permission is granted, and, if it is of the opinion that economic situations, facts or conduct relied on by the Commission in its consideration have changed, the Commission may amend, make addition to, or revoke such time or conditions at any time.

The business operator who receives the order of the Commission and disagrees with such order shall have the right to appeal under section 46.

Section 38. The Commission must specify reasons for the order granting or rejecting permission under section 37 both in questions of fact and in questions of law and the order shall contain signatures of the members considering the application, and the provisions of section 32 paragraph three shall apply *mutatis mutandis*.

Section 39. The business operator to whom permission is granted under section 37 must carry out the business within the scope, duration and conditions permitted by the Commission.

In the case where there is a violation of or failure to comply with paragraph one, the Commission shall have power to revoke the permission order under section 37 in whole or in part and may also fix the time within which compliance is required.

CHAPTER V

Initiation of an Action for Compensation

Section 40. The person suffering an injury in consequence of the violation of section 25, section 26, section 27, section 28 or section 29 may initiate an action for claiming compensation from the violator.

In initiating an action for claiming compensation under paragraph one, the Consumer Protection Commission or an association under the law on consumer protection has the power to initiate an action for claiming compensation on behalf of consumers or members of the association, as the case may be.

Section 41. If the action for claiming compensation under section 40 is not submitted to the Court within one year as from the date the person suffering the injury has or ought to have had the knowledge of the ground thereof, the right to submit the action to the Court shall lapse.

CHAPTER VI **The Appeal**

Section 42. There shall be an Appellate Committee consisting of not more than seven qualified persons with knowledge and experience in law, economics, business administration or public administration appointed by the Council of Ministers as members.

The members of the Appellate Committee shall elect one member among themselves as Chairman.

The Director-General of the Department of Internal Trade shall appoint Government officials of the Department of Internal Trade to act as secretary and assistant secretaries.

Section 43. The person appointed as member of the Appellate Committee must not be under the prohibitions under section 7 and shall not be a member of the Commission.

Section 44. The Appellate Committee shall have the following powers and duties:

- (1) to prescribe the rules and procedure for the appeal under section 47 paragraph one;
- (2) to consider and decide on the appeal against an order of the Commission under section 31 or section 37;
- (3) to issue a written summons requiring the persons concerned to give statements or furnish documents or evidence for the purpose of the consideration of the appeal;
- (4) to issue an order suspending the execution of the order of the Commission under section 31 or section 37.

Section 45. A member of the Appellate Committee shall hold office for a term of four years.

In the initial period, at the expiration of two years, three members of the Appellate Committee shall vacate office by drawing lots and such vacation of office by drawing lots shall be deemed to be the vacation of office at the expiration of the term.

The provisions of section 9 paragraph three and section 10 shall apply to the Appellate Committee *mutatis mutandis*.

Section 46. The appeal against the order of the Commission under section 31 and section 37 shall be submitted to the Appellate Committee by the person receiving the order within thirty days as from the date of the knowledge of the Commission's order.

Section 47. The rules and procedure for the appeal shall be as prescribed and published in the Government Gazette by the Appellate Committee.

The Appellate Committee shall consider and decide on the appeal within ninety days as from the date of the receipt thereof and notify the decision in writing to the appellant, and the provisions of section 36 and section 38 shall apply *mutatis mutandis*.

The decision of the Appellate Committee shall be final.

When the Appellate Committee has decided upon the appeal, the Commission and business operators shall comply with such decision.

CHAPTER VII

Penalties

Section 48. Any person who fails to comply with the written summons issued by the specialised sub-committee, competent official or the Appellate Committee under section 13 paragraph three, section 19 (1) or section 44 (3), as the case may be, shall be liable to imprisonment for a term not exceeding three months or to a fine not exceeding five thousand Baht or to both.

Section 49. Any person who obstructs the performance of duties by the competent official under section 19 (2), (3) or (4) or section 22 shall be liable to imprisonment for a term not exceeding one year or to a fine not exceeding twenty thousand Baht or to both.

Section 50. Any person who fails to render assistance to the competent official under section 20 shall be liable to imprisonment for a term not exceeding one month or to a fine not exceeding two thousand Baht or to both.

Section 51. Any person who violates section 25, section 26, section 27, section 28 or section 29 or fails to comply with section 39 shall be liable to imprisonment for a term not exceeding three years or to a fine not exceeding six million Baht or to both, and, in the case of the repeated commission of the offence, shall be liable to the double penalty.

Section 52. Any person who fails to comply with the order of the Commission under section 30 or section 31 or with the decision of the Appellate Committee under section 47 shall be liable to imprisonment for a term of one to three years or to a fine of two to six million Baht, and to a daily fine not exceeding fifty thousand Baht throughout the occurrence of such violation.

Section 53. Any person who discloses information concerning the business or the operation of a business operator which, according to the ordinary course of dealing of the business operator, is the restrictive and confidential information and which such person has acquired or knew on account of the performance under this Act shall be liable to imprisonment for a term not exceeding one year, or to a fine not exceeding one hundred thousand Baht or to

both, unless it is the disclosure in the performance of Government service or for the purpose of an inquiry or trial.

Any person who acquires or has the knowledge of any fact from the person under paragraph one and discloses such information in the manner likely to cause an injury to any person shall be liable to the same penalty.

Section 54. In the case where the person who commits an offence punishable under this Act is a juristic person, then, the managing director, the managing partner or the person responsible for the operation of the business of the juristic person in such matter shall also be liable to the penalty provided by the law for such offence unless it is proved that such act has been committed without his or her knowledge or consent or he or she has already taken reasonable action for preventing the commission of such offence from occurring

Section 55. The injured person in the offences under section 51 and section 54 may not institute a criminal action on his or her own motion but has the right to lodge a complaint with the Commission for consideration under this Act.

Section 56. All offences under this Act which are punishable by fine or imprisonment for a term not exceeding one year shall be under the power of the Commission to settle the cases. In exercising such power, the Commission may entrust a sub-committee, the Secretary-General or a competent official to act on its behalf.

When the offender has paid the fine in the fixed amount within the specified time, the case shall be deemed settled in accordance with the provisions of the Criminal Procedure Code.

Transitory Provision

Section 57. In the case where a business operator is under necessity and has carried out the acts specified in section 27 (5), (6), (7), (8), (9) or (10) on the day this Act comes into force, such person shall submit an application within ninety days as from the date of the entry into force of this Act, and when the application has been submitted, such business operator may continue to carry out the acts under section 27 (5), (6), (7), (8), (9) or (10) until the notification of the result of the consideration of the application is received

Countersigned by: Chuan Leekpai
Prime Minister
