

COMMUNICATION FROM THAILAND

The following is the final text of a paper received from the Permanent Mission of Thailand which was circulated as an advance copy for the Working Group's meeting of 23-24 April 2002.

TECHNICAL ASSISTANCE ON COMPETITION POLICY

Past Experiences

1. The Trade Competition Act B.E. 2542 (A.D. 1999) was passed in late 1999 and came into effect on April 2000, along with the Prices of Goods and Services Act B.E. 2542. These two laws replaced the former Price Fixing and Anti-Monopoly Act B.E. 2522 (A.D. 1979), which contained limited substantive provisions against anti-competitive practices. Fifteen commissioners were appointed. The Office of Trade Competition Commission currently resides within the Department of Internal Trade, the Ministry of Commerce. As a relatively nascent body with an unfamiliar mandate, the Commission has yet to develop proper working procedures to ensure transparent and fair process.
2. Since its inauguration, the Commission has considered two competition cases. These include the case on excessive pricing of a cable television monopoly and a tied-sale case, whereby a near-monopoly whisky producer was alleged of tying the sale of beer with that of whisky. No charges were taken either case. In the case of the cable monopoly, since cable charges are subject to approval by the Mass Communication Organization of Thailand (MCOT), the state-owned enterprise responsible for granting cable television concessions, the Commission had requested the MCOT to review the charges. As for the tied-sale case, the Commission found that there are evidences of abuse of dominance. However, since the definition of "market dominance" has not yet been established, it is not possible to enforce section 25 of the law, which deals with abuse of dominance.
3. The Department of Internal Trade, being the Office of Trade Competition, is faced with numerous limitations and challenges, be they institutional, procedural, legal or financial. The Department also faces severe shortages of skilled personnel in terms of both technical knowledge and practical know-how. The existing staff is more familiar with price control mechanisms rather than those aimed at preventing and regulating anti-competitive practices that require not only technical knowledge, but also investigative skills.
4. On the legal front, the definition for "abuse of dominance" has yet to be determined so that section 25 of the law, which deals with abuse of dominance, can become functional. The World Bank has provided technical assistance in drawing up a draft implementing rules and regulations that has already been translated into the local language. The draft serves as a basis from which proper rules and regulations that are consistent with the local legal, institutional and economic environment can be developed.

5. The Office is also deprived of much-needed funds for staff re-training, public relations and investigative activities that require intensive data collection and analysis. As a small part of the Department of Internal Trade that is responsible for multiple tasks, including agricultural trade, its importance is often overlooked. So far, the Office has had to rely mainly on foreign assistance for training.

6. Fortunately, the Office is endowed with a highly enthusiastic group of staff which is ready to embrace the competition law and see its full effects come into force. Several staff have had "on-the-job training" overseas through bilateral channels. Several training sessions have also been made available locally by the World Bank and through bilateral technical assistance, such as that from the Canadian International Development Agency. However, a tremendous amount of technical assistance and capacity building will still be required over the next several years.

Capacity building and technical assistance needs:

7. The Department of Internal Trade has been in co-operation with various competition authorities in sending operational staff for training and participating in seminars. The Department also co-operated with Japan in organizing the APEC/PFP Training Program on Competition Policy during the year 1997-2001.

8. While bilateral and regional technical assistance and capacity building have been most useful in obtaining specific skills and specialized knowledge in competition policy, we believe that future technical assistance and capacity building programs should:

- (a) involve **long term commitments** – i.e. two to five years in order to be able to be sufficiently involved in the "implementation" process, where major hurdles are likely to emerge. One-shot programs that last several days are normally ineffective since they present major concepts or ideas that are not easily practiced in a different environment with different constraints;
- (b) be specifically tailored to **local needs and the local environment in local language**. It is best that foreign donors seek partnership with qualified local institutions in designing and organizing the programs. Essential documents should be translated into local language for future references when funding is available;
- (c) be **sufficiently flexible** to allow the targeted recipient to design its own programs. A "competition fund"¹ may be established to finance locally initiated projects that help advocate competition (research on competition issues, design and set up of a local competition website, publication and dissemination of competition-related literature, etc.);
- (d) focus more on building **institutional knowledge**, which involves the transfer of know-how in training - i.e. "training the trainers" - and in building an efficient documentation system;
- (e) include transfers of **practical know-how**, such as investigative techniques.

9. The area that is in most urgent need of overseas technical assistance is the design of **transparent and fair procedures**, which constitute one of the key elements of the core principles that the WTO hopes to establish. Since the Trade Competition Act is relatively silent on these crucial matters, the Committee and the Office need to voluntarily establish their own rules and guidelines for

¹ The local government may also help contribute to the fund to show its genuine commitment to promote competition policy.

both rule-making and adjudicative procedures to ensure a transparent and fair process. At the minimum, rules and guidelines regarding classification and disclosure of documents, conflict-of-interests, public hearing, opinions soliciting, information gathering and notification to concerned parties should be addressed.

10. To ensure consistency in the competition regime across different sectors of the economy, we believe that technical assistance and capacity building programs should extend also to **sector-specific regulatory bodies**. These include, for example, the Bank of Thailand, the National Telecommunications Commission and the National Broadcasting Commission.

11. While assistance in technical and practical skills related to the enforcement of the competition and policy is undeniably essential, we also believe that assistance in building "**public awareness**" on this relatively complex subject is equivalently important. That is, future programs should target at a wider and diversified constituency as elaborated below.

12. In this connection, capacity building programs need to be decentralized in terms of geography. In the past, activities are normally concentrated exclusively in the capital city, where most people are already relatively informed and where competition flourishes due to the sheer size of the market. Little efforts have been placed in raising public awareness among **provincial business and consumers communities** that are more prone to anti-competitive abuses.

13. Furthermore, assistance programs and activities should aim at building a competition constituency not only at the government level, but also at the grass root level. It is necessary to have training and capacity building programs that target **civil organizations**, in particular consumer organizations as well as the media. It is imperative that these organizations recognize that competition policy **is** about consumer protection and that it is in the country's interest to enforce the law. Financial assistance should be made directly to these organizations when possible or through a reputable and qualified local non-government, not-for-profit or academic institutions. One should not forget that ultimately, it is the people - not a few public officials - that will dictate the fate of competition policy in the WTO. Indeed, building such a wide constituency may require significantly greater resources, time and effort, but it can assure a smoother passage towards establishing multilateral cooperation in competition policy.
