

## Abstract

Business combinations are a strategy or a business activity widely used in economic activities which are dealt with goods and services market. The use of these business combinations has a variety of purposes, e.g. business survival, market share expansion, elimination of competitors, and etc. These business combinations also constitute advantages and disadvantages in an economy. The advantages are such that they would enhance an economic efficiency such as a decrease in the production costs due to a smaller size of the business which might also stimulate a competitive environment in the market as a result of an increased number of business players. On the contrary, the business combinations may reduce or even remove the market competition which would make the market come close to being a single market, create monopoly power, or impede new market entries. Accordingly, each country needs to make a proper control over the business combinations in order to prevent the entire economy system from being significantly affected. Obviously, this is a sensitive matter as on one hand a measure that is too strict may be a hindrance to an economy growth, on the other hand a measure that is too flexible may make such control ineffective and lead the market to be monopolized by big enterprises. However, it is seen that each country employs different measures to control over the business combinations based on the structure of the market, and the economic policy of the country.

For Thailand, there is a Competition Act, B.E. 2542 in which section 26 provides measures of the control on the business combinations. The principle in such section does not absolutely prohibit the combination of the business because the Act aims to only control the combination of big enterprises which would have an impact on the competition and at the same time the Act recognizes advantages of the business combinations as well. Such section lays down a principle that the business combinations which may cause a monopoly condition or unfair competition which have the market share, sale volume, capitals, shares, or assets after the combinations exceeded the minimum amount or number specified in the law shall be prohibited,

unless business operators wishing to combine the business have been obtained the permission by the Competition Commission. Such permission would be granted upon the conditions specified in the law as well as the evidence that the combinations are beneficial to the market. Once the Commission are satisfied, that permission can be granted.

Nevertheless, controlling measures of the business combinations as provided in this law have encountered a number of practical difficulties; for instance, an ambiguity of the definition of the business combinations, vagueness and insufficiency of the substantive criteria in considering the combinations, overlaps between the relevant authorities, independency and impartiality of the Competition Commission, as well as an ambiguity of law enforcement for the transnational business combination which may affect a market and competition in Thailand. Furthermore, since the date that this Act came into force until now, the Competition Commission have neither established any criteria in relation to the market share, sale volume, capitals, shares, or assets, nor passed any forms, rules, procedures, or conditions needed for the business combinations application.

This circumstance makes this Act unenforceable. As such, any business combinations which might have severe impacts on the competition and conditions of the market would go beyond the reach of this Act. Consequently, the conditions of goods and services market would expectedly turn to be a monopoly market and power of the market would be in the hands of only some big businesses. And this situation shall trigger many concerns from related authorities.

Therefore, this thesis has aimed to study various issues regarding problems and difficulties in enforcing the business combinations measures pursuant to section 26 of the Competition Act, B.E. 2542. The study was conducted by analyzing and comparing the measures of Thailand to of the United States, European countries, and Japan. The author has also provided the two following solutions for modifying and amending the provisions in the Act: the application and interpretation solution; and the amendment and enactment of a new provision. These solutions are expected to make

the laws suitable with the current economy conditions and make the control over the business combinations work more efficiently.