

THESIS TITLE	: THE APPLICATION OF COMPETITION LAW TO STATE ENTERPRISES IN THAILAND
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ABSTRACT

In this dissertation, the author has placed emphasis on studies and analyses on the Competitions Bill as reviewed by the Office of the Council of State. The Bill essentially provides for an amendment of subsection (2) in Section 4 of the Competitions Act B.E. 2542 (1999), but excludes the application of this Act to the conduct of state enterprises under the law on budgetary procedures, with the exception of state enterprises incorporated as public limited companies and engaging in certain types of business activities in the ordinary course of trade in competition with the private sector. The rules, procedures and conditions for the scope of application will be prescribed by ministerial regulation issued by the advice of the Commission, who will determine the suitability and feasibility of the law's application as a measure for free and fair competition of Thailand's state enterprises. Comparative studies have been undertaken on measures for controlling state enterprises under the competition laws of Singapore and the European Union. Findings have indicated that there are enforcement problems and the application of certain provisions to control Thailand's state enterprise in pursuit of the aims and objectives might not be possible, as follows:

1. The issuance of a ministerial regulation to prescribe rules and procedures to determine the business types and conducts of state enterprises which constitute direct competition with the private sector is problematic and enforcement remains unclear.

2. The application of the Competitions Act B.E. 2542 (1999) to only state enterprises incorporated as public limited companies engaged in business activities in the normal course

of trade in competition with the private sector is inappropriate and may cause inequality between state enterprises having the form of public limited companies and other state enterprises.

3. The application of the Competitions Act B.E. 2542 (1999) to state enterprises which are already subject to supervision under other laws could cause overlapping legal provisions and unfairness to such state enterprises.

4. The application of Chapter 3: Prevention of Monopolies and Chapter 4: Permits and Permit Considerations under the Competitions Act B.E. 2542 (1999) to state enterprises having the form of public limited companies could prejudice the tasks or objectives behind the establishment of such state enterprises.

5. There could be overlapping legal provisions, i.e., provisions of the Competitions Act B.E. 2542 (1999) and Liabilities for Negligent Acts of State Officials Act B.E. 2539 (1996) on damages, prescription period and jurisdictions of the Courts of Justice and Administrative Courts.

The author has made the following proposals and approaches for resolving the aforesaid problems to achieve the greatest benefits for the nation and the people:

1. Prescribe the rules and procedures for determining business types and conducts of state enterprises which are deemed to be in direct competition with the private sector in the primary legislation. Once clear rules are in place, subordinate legislation would then be issued to prescribe the types or behavior of state enterprises that would be subject to the Competitions Act B.E. 2542 (1999).

2. Prescribe all “behaviors” of state enterprises having the characteristics of distorting or mounting trade barriers to become subject to the Competitions Act B.E. 2542 (1999).

3. Prescribe that state enterprises already subject to competitions supervision under specific laws are exempt from application of the Competitions Act B.E. 2542 (1999).

4. When applying Chapter 3: Prevention of Monopolies and Chapter 4: Permits and Permit Considerations to state enterprises, the Competitions Commission should advise the Minister on the issuance of a ministerial regulation to prescribe rules and regulations in a manner which is suitable to and consistent with the operations of the respective state enterprises.

5. Specify the provisions in entire sections, or certain paragraphs thereof, or the Chapters or Parts of the Competitions Act B.E. 2542 (1999) which would apply to state enterprise conducts in the primary legislation for clarity. Such explicit provisions would also enable state enterprises, subject to the Competitions Act B.E. 2542 (1999), to carry out proper preparations for compliance with such law.