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Competition Law Newsletter
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Food delivery platforms agree to reduce commissions during June

The Trade Competition Commission (the **OTCC**) has issued a release relating to its discussions with food delivery platforms in Thailand (Grab, Foodpanda, Lineman, Robinhood and Gojek) on how best to support restaurants (and in particular small-medium enterprises), given the impact of the COVID-19 pandemic. The OTCC's concerns centered primarily around the government prohibitions on eat-in dining and the resulting overreliance by restaurants on the major food delivery platforms for sales to consumers. Accordingly, each of the major food delivery platforms has agreed to reduce commissions charged to restaurants from 30% to 25% during June 2021, although each has applied varying conditions to the reductions. Robinhood is the only food delivery platform to continue to charge no commission.

The OTCC has indicated it may request the food delivery platforms to continue the reduction in commission if the COVID-19 pandemic situation persists; and it will continue to closely monitor and supervise commissions and other fees (such as advertising fees) in the future, in order to avoid unfair trade practices.

Concern over online shopping platforms in Thailand

The OTCC has voiced its concern over the inability of Thai online platforms to compete with large international competitors and has recently submitted this concern to the Secretary General of ASEAN for raising as a key agenda item at an official ASEAN meeting. The intention is to raise awareness and foster cooperation amongst the ASEAN nations, in order to develop appropriate avenues to address this concern and prevent the increasing dominance of international online platform businesses. The OTCC's concern also reflects its very close monitoring of international online platforms.

Latest updates on enforcement of competition law

The OTCC has published two decisions concerning anti-competitive behavior. The first case involved price discrimination by two food delivery platforms, whereby each of the food delivery platforms charged different rates to different restaurants. The OTCC found that this practice was due to an intentional consideration of the order sizes received from the restaurants, the number of branches of each restaurant, and the benefits to the platform of having the restaurant on its application. The OTCC considered that these constituted legitimate business, marketing and economic reasons for the price discrimination and therefore not an unfair trade practice, particularly as the food delivery platforms had entered into written contracts with each restaurant in advance specifying the price.

The second case involved a franchisor and various franchisees in the convenience store business. Whilst the case included a number of claims by several franchisees, there are two claims of particular note. The first claim related to the franchisor changing the nature of the franchise agreements with its franchisees to that of service agreements, so that the franchisor becomes the owner of the stores whilst the franchisees provide operation and management services. The OTCC took the view that the changes were due to business necessity; and that the relevant claimants had consented to the change in contract type, rather than the change being a unilateral decision imposed on the claimants. Importantly, there was no discrimination between the claimants and it appears that all counterparties under the franchise agreements were subject to the change. Accordingly, the change in the contract type was held not to be an unfair trade practice.

The second claim related to the franchisor's practice of "marking down" the prices of goods of a particular nature in the stores operated by the franchisees. The claimants argued that they suffered economic loss due to reduced revenue as a result of the mark-downs, without sufficient compensation from the franchisor. The OTCC found that the mark-downs were a usual and mutually beneficial business practice designed to ensure that old or unpopular products were sold promptly, in order to increase shelf space for other products. Moreover, the OTCC considered that the franchisor's mark-down policy and the relevant conditions attached to the policy had been sufficiently communicated to the franchisees through a number of seminars (prior to and after the signing of the original franchise agreement). As such, the OTCC held that the mark-down policy was not an unfair trade practice.

New OTCC guidelines relating to trade financing with SMEs

The OTCC has issued new guidelines regulating credit terms in transactions between business operators and small and medium sized enterprises (**SMEs**) (the **Guidelines**), effective from 15 December 2021. The Guidelines seek to prevent unduly lengthy credit periods for payments to SMEs, as a means of enhancing liquidity for SMEs.

Accordingly, the Guidelines cover instances where SMEs sell goods or provide services (including, consignment services) to other business operators, and state that credit periods not exceeding 45 days (or 30 days for agricultural goods and services) are indicators of fair trade practices. Deviations to longer credit periods terms are allowed but will require legitimate business, economic or marketing justifications. The Guidelines also impose a requirement for business operators trading with SMEs to have clear processes for payments (whilst SMEs will be required to provide sufficient evidence of their status as SMEs under the Guidelines).

Anticipated movements by the OTCC

In addition to food delivery, online shopping platforms and franchise businesses, the OTCC has revealed that it will closely supervise the exchange of fruit between farmers and business groups.
We understand that OTCC will in the future also focus its attention on online hotel booking platforms.
The OTCC is also considering revisions to the draft guidelines it issued under Section 57 of the Trade Competition Act, relating to unfair trade practices. This process should open for public hearing very shortly.

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