

การส่งเสริมการบังคับใช้พระราชบัญญัติการแข่งขันทางการค้า  
พ.ศ. ๒๕๔๒: กรณีศึกษาการบังคับใช้กฎหมายการป้องกันการผูกขาด  
และการแข่งขันทางการค้าที่เป็นธรรมของประเทศเกาหลีใต้

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ภายใต้อิทธิพลของอำนาจผูกขาดทางเศรษฐกิจจากผู้ประกอบการทางธุรกิจรายใหญ่ที่ได้รับประโยชน์จากนโยบายของรัฐบาล ที่เข้มงวดในการควบคุมราคาสินค้าในตลาด อย่างไรก็ตามในขณะที่กฎหมายการแข่งขันของประเทศไทยประสบปัญหาในการบังคับใช้มาโดยตลอด แต่กฎหมายการป้องกันการผูกขาดและการแข่งขันทางการค้าที่เป็นธรรมของประเทศเกาหลีใต้ เริ่มมีบทบาทสำคัญในการรักษานโยบายระบบตลาดเสรี บทความนี้มีวัตถุประสงค์ในการส่งเสริมการบังคับใช้พระราชบัญญัติการแข่งขันทางการค้า พ.ศ. ๒๕๔๒ โดยการเรียนรู้จากประสบการณ์การบังคับใช้กฎหมายการป้องกันการผูกขาดและการแข่งขันทางการค้าที่เป็นธรรมของประเทศเกาหลีใต้ ๑) การวิเคราะห์เปรียบเทียบการพัฒนา กฎหมาย ป้องกันการผูกขาด ในประเทศเกาหลีใต้และ ประเทศไทย ๒) การขยาย อำนาจ การค้าไทย ของคณะกรรมการสิทธิการ ที่จะรวมถึง การคุ้มครองผู้บริโภค

### Abstract

The development of Korean competition law provides important lessons for Thailand due to the high degree of similarity in their respective national politico-economic structures during the 1960s - 1970s. The two countries' market structures were heavily influenced by monopolies and their governments' use of strict market price controls. In stark contrast to Thailand's unsuccessful competition law of 1979, the Korean competition Act of 1980 began to adjust the rules of game for all competitors in almost every market and continue to play a significant role in maintaining a free and fair market policy. The purpose of this paper is to enhance the implementation of Thai Trade Competition Act of 1999 by learning Korean's experience as a model for Thailand: 1) comparative analysis of the development of anti-monopoly law in Korea and Thailand; toward repealing or preempting statutes conflicting with Thai Trade Competition Act of 1999; 2) expanding the Thai Trade Commission's Authority to include consumer protection.

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**Keywords** Thai Trade Competition Act, Thai Price Control and Antimonopoly Act of 1979, the Monopoly Regulation and Fair Trade Act of 1980, Enforcement of Thai competition law

## **Introduction**

The development of Korean competition law provides important lessons for Thailand due to the high degree of similarity in their respective national politico-economic structures during the 1960s - 1970s. The two countries' market structures were heavily influenced by monopolies and their governments' use of strict market price controls. Coincidentally, while Korea enacted their first competition law in 1975<sup>1</sup>, Thailand passed its first law in 1979.<sup>2</sup> Similarly, both Acts failed to accomplish their putative purposes of reining in unreasonable pricing and creating fair competition in the market.

While Thailand insisted on continuing to enforce its crippled law of 1979 for twenty years, Korea took a major step forward in handling major problems by enacting a revised law in 1980, only five years after the initial enactment of the law. Despite fierce lobbying by monopolies and political pressure against new competition legislation, the Korean Fair Trade Act was promulgated. In stark contrast to Thailand's unsuccessful competition law of 1979, the Korean competition Act of 1980 began to adjust the rules of game for all competitors in almost every market and continue to play a significant role in maintaining a free and fair market policy.

The purpose of this paper is to enhance the implementation of Thai Trade Competition Act of 1999 by examining comparable problems of the enforcement of Korean. This paper also discusses the feasibility of expending the Thai Trade Commission's Authority to include consumer protection regulation, which could

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<sup>1</sup>The Price Stabilization and Fair Trade Act of 1975, See, Korea Fair Trade Commission, **A Journey toward Market Economy: KFTC's 23 years of building transparent and fair market** Gwacheon-shi, Gyeonggi-do, Korea: Fair Trade Commission of Korea, International Organization Division, 2004.

<sup>2</sup>The Price Control and Antimonopoly Act of 1979, See Chaiyos Hemarajata, Kamatibay Kodmai Wadauy Karn Kamnodrakasinka Lae Karnpongkanakarpookad Bangkok: Faculty of Law, Chulalongkorn University, 1994 [Explanation on the Price Control and Anti-Monopoly Act of 1979] (in Thai).

be tailored to function within Thailand's economic context. Successful implementation of Korean Monopoly Regulation and Fair Trade of 1980 will be analyzed as Korea have made impressive strides in enforcing competition laws in South East Asia and can be considered as a model for Thailand. There are two significant framework for implementing the Korean Competition law in Thailand: 1) comparative analysis of the development of anti-monopoly law in Korea and Thailand: toward repealing or preempting statutes conflicting with Thai Trade Competition Act of 1999; 2) expanding the Thai Trade Commission's Authority to include consumer protection.

#### **A. Thailand and the Urgent Need for Effective Enforcement of the Trade Competition Act of 1999**

Following the economic crisis in 1997, international organizations began to pressure Thailand to reform its economic structure and competition law. Thailand pledged to increase the level of free competition in its market, making commitments to the Asia Pacific Economic Cooperation (APEC), the Japanese Export and Trade Organization (JETO), the Asian Development Bank (ADB), and the World Bank.<sup>3</sup> To fulfill its obligations, the Thai Parliament repealed many

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<sup>3</sup>Under the APEC Economic Committee, the implementation of competition policy and deregulation provides markets with a framework that encourages market discipline, eliminates distortions and promotes economic efficiency. APEC's Competition Policy and Law Group (CPLG) therefore works to promote an understanding of regional competition laws and policies, to examine the impact on trade and investment flows, and to identify areas for technical cooperation and capacity building among member economies. The CPLG, formerly known as Competition Policy and Deregulation Group, was established in 1996, when the Osaka Action Agenda (OAA) work programmers on competition policy and deregulation were combined. In 1999 APEC Ministers endorsed the APEC Principles to Enhance Competition and Regulatory Reform and approved a "road map" which established the basis for subsequent work on strengthening markets in the region. See, Asia-Pacific Economic Cooperation, "APEC Competition Policy & Law Database," [Online], Available URL: <http://www.apecclp.org.tw/> 2013 (Nov., 19).

archaic laws and promulgated several statutes to enhance fair competition in the market. Meanwhile, Free Trade Agreements between Thailand and its trading partners contained provisions concerning competition law and policy such as sections 147 - 150 of the Japan – Thailand Economic Partnership Agreement (JTEPA), and section 12 of the proposed draft of the Thailand – United States Free Trade Agreement.<sup>4</sup>

When the Thai Trade Competition Act became effective in 1999, it provided new hope for Thai citizens and received extensive public attention. Thai society anticipated that the new act would serve as a powerful yardstick to measure competitive levels in domestic markets and provide an effective tool to regulate illicit behavior by monopolies, cartels, and others business entities. However, optimism surrounding the new law quickly vanished after the Trade

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<sup>4</sup>Under the proposal of Thailand – United States Free Trade Agreement Article 12.2 requires that (1) each party to maintain measures to proscribe anticompetitive business conduct (2) establish and maintain an authority responsible for enforcement which does not discriminate on the basis of nationality of the subjects involved. (3) ensure that a person subject to sanction or remedy violation is provided with the opportunity to be heard, present evidence and seek review of such sanction or remedy in a domestic court or independent tribunal. Article 12.3 (1) stipulates that each party shall ensure that any private monopoly that it designates after the date of entry of this agreement and any government monopoly that it designates or has designated (1) does not act anti-competitively or abuse its monopoly position in non-monopolized markets (2) must act solely in accordance with commercial considerations in the purchase and sale of good or service (3) does not discriminate against covered investment, goods or service suppliers of other Party in its purchase or sale of good or service Article 12.3(2) requires that any government enterprises (a government enterprise refers to enterprises in which the government own not less than 20% of equity share both directly and indirectly) (a) act solely in accordance with commercial considerations in its sales and purchase of goods and services with regard to price, quality, availability, marketability and transportation and other terms and conditions of sale. (b) do not enter into agreement or engage in exclusionary practices that restrict competition without efficiency ground. Article 12.7 stipulates that provisions regarding co-operation and consultation are not subject to dispute settlement.

Commission's ruling in the first two cases.<sup>5</sup> The Trade Competition Commission investigated two significant cases during its first year: allegations of unfair trade practices in the cable industry (the UBC case) and allegations of a tying arrangement by liquor companies in their whiskey and beer sales (the Chang Beer case). After six months of investigation, the Trade Competition Commission ruled that although the business practices employed by both defendants violated the spirit of the Trade Competition Act of 1999, they did not technically violate the Act.<sup>6</sup>

This hesitation to enforce sanctions has continued to the present day, as although over a hundred complaints are brought to the Trade Competition Commission every year, there has only been one case in which the defendant was found guilty.<sup>7</sup> In that case, the State Council of Thailand confirmed the Attorney

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<sup>5</sup>Khajon Learsakulpanich, *Legal Measures Against Predatory Pricing Practices in Thailand*, (1995) (unpublished LL.M. thesis, University Chulalongkorn) (in Thai) (on file with Law Library, University of Chulalongkorn); Charalai Bunpiem, *Legal Issues Relating to the Business Combination under the Trade Competition Act B.E. 2542*, (1999) (unpublished LL.M. thesis, University Chulalongkorn) (on file with Law Library, University of Chulalongkorn).

<sup>6</sup>Nipon Poapongsakorn, "Monopolies under the Thai Capitalism," in **Roo Tan Tasin**, Jirmsak Pinthong ed., (Bangkok: Watch Dog Co., Ltd., 2004), p. 89 (Thai). The Trade Competition Commission ruled that the two allegations were merely inappropriate but could not technically violate the Trade Competition Act of 1999. The Commission gave the reason that on that the cabinet had not yet announced the ministerial notification on the threshold of market dominant; therefore, the Commission could not be enforce section 25 of the Trade Competition Act.

<sup>7</sup>Ministry of Commerce pointed out AP Honda violated unfair trade practice, *Nsaw Na News Peper* (January 3, 2007) (Thai). The only case that the Trade Competition Commission ruled the defendant guilty was the exclusive dealing in the motorcycle industry by the AP Honda, so-called the Honda case, See also, Sumet Nakvarodom, *Authorization on Trade Restrains: A case Study of Exclusive Dealing in Automobile industry*, (2006) (unpublished LL.M. thesis, University Chulalongkorn) (in Thai) (on file with Law Library, University of Chulalongkorn). Indeed, there were fifteen complaints that had been received by the office of the Trade Competition Commission. However, after the preliminary investigation, the officials determined to cease further probe of the allegations and drop all fifteen complaints.

General of State's final order that the investigation by the Trade Commission was illegal due to the lack of due process.<sup>8</sup> The Trade Commission has been compelled by the Attorney General to reinvestigate the case before the statute of limitation expires in July 2013. This case clearly reveals practical problems with the Trade Competition Act of 1999 as well as ineffective implementation by the Trade Competition Commission.<sup>9</sup> Business entities and Thai citizens openly criticize the Trade Commission on a regular basis.<sup>10</sup> As a result, the public has lost faith that the Trade Competition Act of 1999 can effectively handle the chronic problems of monopolies and collusive business practices in Thailand.<sup>11</sup> Meanwhile, many scholars describe enforcement of the competition law by the Trade Competition Commission as opaque, selective, and arbitrary.<sup>12</sup> It is imperative that Thailand overhaul the Trade Competition Act of 1999 in order to transform Thailand's economic structure toward a free and fair market economy and use the law as

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<sup>8</sup>The Office of the Council of State of Thailand pointed out investigation of AP Honda was illegal, **Matichon Thai Daily Newspaper** (May 6, 2009).

<sup>9</sup>The Trade Competition Act of 1999: Paper Tiger Act, **Prachachart Turakit**, January 28, 2008; "Ministry of Commerce in a hurry to reinvestigate the case," June 28, 2012, [Online], Available URL: <http://www.news.plus.co.th/NewsDetailMobile.php?id=47468> 2013 (Nov., 19).

<sup>10</sup>Amorntumrong Waranon, A Comparative Study on Administration and Enforce of Competition Law, (2004) (unpublished LL.M. thesis, University Chulalongkorn) (in Thai) (on file with Law Library, University of Chulalongkorn).

<sup>11</sup>Chitanong Poomipark, Manuswi Intaranont, and Sivinee Thanpase, "Thailand to Overhaul Trade Competition Law," Mayer Brown JSM (2010) [Online], Available URL: [http://www.mayerbrown.com/files/Publication/db6302c0-9b17-48dd-95a2-39346f29e42b/Presentation/PublicationAttachment/a0b88983-a0fa-4ba4-91d1-3f4194cfffcbcd/THAILAND-LAW\\_24FEB2010%20.PDF](http://www.mayerbrown.com/files/Publication/db6302c0-9b17-48dd-95a2-39346f29e42b/Presentation/PublicationAttachment/a0b88983-a0fa-4ba4-91d1-3f4194cfffcbcd/THAILAND-LAW_24FEB2010%20.PDF) 2013 (Nov., 19); Chantong Jareanhirunyud, Market Conditions in Thailand and the Trade Competition Act of 1999, (2000) (unpublished LL.M. thesis, University Thammasart) (in Thai) (on file with Law Library, University of Thammasart); Somkiat Dokmaisrichan, A Case Study on Trade Competition Law: The Behavior of the Dominant Business Position, (2001) (unpublished LL.M. thesis, University Dhurakijpundit) (in Thai) (on file with Law Library, University of Dhurakijpundit).

<sup>12</sup>Deunden Nikomborirak, "The Political Economy of Competition Law: The Case of Thailand," **Northwestern Journal of International Law & Business** 26, 3 (2006): 597-618.



prophylactic measure to prevent prospective trade issues after ASEAN Economic Community become fully effective in 2015.<sup>13</sup>

## **B. Korean Experience of Enforcing the Monopoly Regulation and Fair Trade Act of 1980**

Based on widespread public support, the Monopoly Regulation and Fair Trade Act (MRFTA) was eventually promulgated in 1980 despite persistent opposition from the business community. Previous attempts to enact the legislation were stymied by domestic monopolies in four separate years: 1966, 1967, 1971 and 1972.<sup>14</sup> The Monopoly Regulation and Fair Trade Act has been the core component of eliminating governmental intervention and preventing anticompetitive conduct by private corporations. The law initiated an economic reform towards a more legally based society from one previously dominated by social influence. As a result, the Korean economic structure was transformed from a costly and ineffective government-led economy into a more market-based system during 1980s – 1990s.<sup>15</sup>

The Monopoly Regulation and Fair Trade Act of 1980 (MRFTA) is the central statute encompassing traditional aspects of competition law such as prohibition of abuses of market dominance and regulations of collusive business

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<sup>13</sup>Surin Pitsuwan, the Secretary-General of ASEAN, mentioned that “Greater governmental efforts may need to be expended to strengthen the capacity of domestic firms to compete but this should be short-term and does not remove the incentive to innovate and cut costs,” ASEAN Secretariat, ASEAN-China Free Trade Area: Not a Zero-Sum Game, ASEAN Secretariat, 7 January 2010, [Online], Available URL:<http://www.aseansec.org/24161.html> 2013 (Nov., 19).

<sup>14</sup>Alan S. Gutterman, “Japan and Korea: Contrast and Comparisons in Regulatory Policies of Cooperative Growth Economics,” *Berkeley Journal of International Law* 8, 2 (1991): 267-371.

<sup>15</sup>Seung Wha Chang, “The Role of Law in Economic Development and Adjustment Process: the Case of Korea,” *The International Lawyer* 34, 1 (Spring 2000): 267-287. In this article Professor Seung pointed out the problem of Korean economic reform resulted from the failure to establish the “rule of law” in the judicial/administrative /legislative system of Korea. He further suggested how to establish new economic reform through fundamental legal reforms to realize the “rule-oriented society” in Korea



practices. The MRFTA covers a variety of unique business practices in Korea such as undue subsidies, debt guarantees, and equity investment among Chaebol affiliates.<sup>16</sup> Since its enactment in 1980, the MRFTA has been amended 21 times in order to respond to changes in the economic structure and socio-political objectives. The new and amiable environment assisted the stable growth of small and medium enterprises, which now serve as the bedrock of the Korean economy and halted the plague of the Chaebol from hampering free market policy.<sup>17</sup> The Korean constitution was amended in 1980 to include an article 120 on “balanced development of the national economy and economic democracy” with widespread approval from Korean citizens. The amendment included provisions that prohibited monopolies and required government commitment to a free market policy. Under section 120 of the newly amended Korean Constitution, the law stipulated that

“[w]hile respecting the freedom and creativity of individuals in the economy, the government shall regulate and control the economy and the damage of monopolies and oligopolies as is deemed necessary in order to fulfill social justice and promote balanced economic growth.”<sup>18</sup>

In the aftermath of the financial crisis of 1997, the Korean government overhauled the MRFTA, identifying the law as playing a vital role in encouraging

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<sup>16</sup>Korea report contribution to World Trade Organization from Working Group on the Interaction between Trade and Competition Policy, document W/56, paragraph 13, A Korea government and Chaebol led economic strategy of Korea brought remarkable growth until 1970s; however, the market changed in 1980s made a first pace of development strategy to dismantle an obstacle to free competition; See also, Korea Fair Trade Commission, **A Journey toward Market Economy: KFTC’s 23 years of building transparent and fair market** Gwacheonshi, Gyeonggi-do, Korea: Fair Trade Commission of Korea, International Organization Division, 2004.

<sup>17</sup>Danny Abir, “Monopoly and Merger Regulation in South Korea and Japan: A Comparative Analysis,” *Berkeley Journal of International Law* 13, 2 (1996): 143-175.

<sup>18</sup>The amended to the section 120 of Korean Constitution.

economic reform and adjustment processes.<sup>19</sup> The IMF pressured Korea to complete the amendments after providing the country with a bailout loan. The recovery efforts worked; the Korean economy has rebounded strongly since 1999. Many economists have deemed Korea's economic reform as a desirable model for other developing countries.<sup>20</sup> Obviously, the efficacy of Korea's implementation of their competition law demonstrates a direct and positive relationship between the economic adjustment process and competition law.

Under the MRFTA, the Korean Fair Trade Commission (KFTC) is the central government organization responsible for enforcing the MRFTA and its companion statutes. The agency operates under the umbrella of the Prime Minister and functions as a quasi-judicial administrative body. In its early stages, the KFTC Office operated under the Economic Planning Board and was chaired by the Vice Minister of the Economic Planning Board. The rest of the office was composed of two standing members and two non-standing commissioners. A 1990 amendment to the MRFTA increased the authority of the KFTC Office, shifting the office to the secretariat level. The promotion provided the KFTC with three bureaus, sixteen divisions, and four regional offices. Additionally, the Commission was increased to nine members.<sup>21</sup> Ultimately, the KFTC was elevated to ministerial level and recognized as a central administrative agency tasked with the enforcement of competition policy and laws. Currently, the KFTC is comprised of more than 400 officers with six bureaus and twenty-five divisions.<sup>22</sup>

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<sup>19</sup>Kyu Uck Lee, "Economic Development and Competition Policy in Korea," *Washington University Global Studies Law Review* 1, 1 (2002): 67-76.

<sup>20</sup>Ohseung Kwon, "Applying the Korean Experience with Antitrust Law to the Development of Competition Law in China," *Washington University Global Studies Law Review* 3, 2 (2004): 347-361.

<sup>21</sup>See, Korea Fair Trade Commission, *A Journey toward Market Economy: KFTC's 23 years of building transparent and fair market* Gwacheon-shi, Gyeonggi-do, Korea: Fair Trade Commission of Korea, International Organization Division, 2004.

<sup>22</sup>Youngjin Jung and Seung Wha Chang, "Korea's Competition Law and Policies in Perspective," *Northwestern Journal of International Law & Business* 26, 3 (2006): 687-728.

Currently, the implementation of Korean competition law has succeeded not only in regulating domestic corporations but also curbing foreign corporations that adversely affect the welfare of Korean consumers. In December 2005, the Korean Fair Trade Commission ruled that Microsoft was guilty of abusing its market dominance and levied a fine of approximately USD 30 million, including a series of stringent corrective measures.<sup>23</sup> Therefore, Thailand needs to incorporate the successes of Korea's implementation of competition law in order to improve the enforcement of the Trade Competition Act of 1999. There are two significant measures which could provide amelioration for longstanding flaws in implementation of the Thai competition law: (a) repealing statutes conflicting with the Trade Competition Act of 1999 and (b) expanding the Trade Commission's authority to include consumer protection.

### **C. Implementing the Korean Competition Law Framework in Thailand**

#### **1) Comparative Analysis of the Development of Competition Law in Korea and Thailand: Toward Repealing or Preempting Statutes Conflicting with Thai Competition Law**

One major impediment to Thailand's implementation of the Trade Competition Act of 1999 is the conflict between the competition law and other economic legislation, such as the Price of Goods and Service Act of 1999 and the Sugar Act of 1984.<sup>24</sup> Unlike Korean and other developed countries, which treat their competition law as an economic constitution, Thailand's competition law seems to be less important than other laws and regulations concerning

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<sup>23</sup>Warren S. Grimes, Korea Fair Trade Commission's Microsoft Decision, FTC:WATCH Document Number #668 (January 30, 2006) [Online], Available URL:<http://www.antitrustinstitute.org/files/481.pdf> 2013 (Nov., 19).

<sup>24</sup>Nisit Intamano, "Applying the Korean Experience with Antitrust Law to the Development of Competition Law in Thailand," *Naresuan Law Review* 2, 1 (2009): 93-105.

government intervention policy.<sup>25</sup> Thailand should repeal or preempt statutes conflicting with the Trade Competition Act of 1999. In comparing the respective evolutions of competition law of Thailand and Korea, many persuasive arguments emerge to explain the differing successes of competition law implementation in both countries.<sup>26</sup> Below is an analysis of why Korea's implementation of competition law has been far more successful than Thailand's.

Although Korea's economy currently dwarfs Thailand's, the early economic development of the two countries was identical. In the early 1960s, both Thailand and Korea launched five-year economic development plans in collaboration with the United States. Both programs provided substantial financial support and tax incentives for their country's export-oriented industries. Korea's and Thailand's use of government-led economic policies created considerable economic growth at the price of entrenching monopolistic and oligopolistic market structures and intensifying the lopsided expansion of monopolies into various industries.<sup>27</sup> Anticipating the growth of heavy industry as a result of rebuilding its infrastructure, Korea primarily promoted domestic growth by supporting its family-owned industrial conglomerates and limiting foreign

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<sup>25</sup>Although Thailand abolished the Price Control and Anti-Monopoly Act of 1979, the price control regulation is current in effect as the Act of 1979 was split into two bills: the Price of Goods and Services Act of 1999 and the Trade Competition Act of 1999. In contrast different, after Korea repeal the Price Stabilization and Fair Trade Act of 1975.

<sup>26</sup>As if a case of *déjà vu*, Thailand and Korea were similarly situated during the 1970s; however, again Thailand lagged behind, insisting on enforcing their crippled law with its loopholes and refusing to amend or adopt enforcement procedures. In contrast, Korea continually improved their substantive provision, published instructive guidelines and introduced innovative enforcement measures. See also, Joseph Seon Hur, "Extraterritorial Application of Korean Competition Law," *Regent Journal of International Law* 6, 1 (2008): 171-190; Sakda Thanikul, *Explanation and Case Study of the Trade Competition Act of 1999* Bangkok: Wiyuchon Publication House, 2010.

<sup>27</sup>Wichitwong Na pomphet, *Thailand's Economy* Bangkok: Watchira, 2010 (in Thai); Nipon Poapongsakorn, "Monopolies under the Thai Capitalism," in *Roo Tan Taksin*, Jirmsak Pinthong ed., (Bangkok: Watch Dog Co., Ltd., 2004), p. 89 (Thai); Pasuk Phongpaichit and Sungsidh Piriyarangsarn, *Corruption and Democracy in Thailand* Bangkok: Political Economy Centre, Chulalongkorn University, 1994.

investment in them.<sup>28</sup> These corporations, including global giants such as Samsung, Hyundai, LG and SK, became known as “Chaebol” Thailand invested, instead, in its agricultural sectors, allowing the corporations of foreign nations, particularly Japan, to invest in and influence heavy industries, which grew substantially.

Throughout the 1970s, both Korea and Thailand enjoyed an unprecedented rate of economic growth, which coincided with the solidification of their monopolistic and oligopolistic market structures. Eventually, Thailand and Korea encountered similar problems, for instance chronic supply shortages and extremely high prices imposed by price-fixing cartels and monopoly problems.<sup>29</sup> In response to these problems, both countries proposed the establishment of government agencies to strictly regulate prices and facilitate the free flow of products to the market.

While there were four attempts to enact Korean competition law in 1966, 1968, 1971, and 1972—these efforts failed because the Korean businesses lobby successfully argued that a competition law was premature.<sup>30</sup> Eventually, severe price instabilities led to the successful enactment, in 1975, of the Price Stabilization and Fair Trade Act, which introduced price control mechanisms and promoted fair trade policy; however, the primary goals of the new enactment was never fulfilled. Similar to Korea, Thailand enacted a “Price Stabilization and Fair Trade Act” in 1979, which also failed to accomplish its goals of stabilizing product prices and creating fair markets. The divergence of Korea and Thailand in terms of the success of their competition law implementation began when Korea acted decisively by enacting the Monopoly Regulation and Fair Trade Act after only five years of failing to enforce its first competition law effectively. Meanwhile, Thailand

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<sup>28</sup>Alan S. Gutterman, “Japan and Korea: Contrast and Comparisons in Regulatory Policies of Cooperative Growth Economics,” *Berkeley Journal of International Law* 8, 2 (1991): 267-371; Youngjin Jung, and Seung Wha Chang, “Korea’s Competition Law and Policies in Perspective,” *Northwestern Journal of International Law & Business* 26, 3 (2006): 687-728.

<sup>29</sup>Kyu Uck Lee, “Economic Development and Competition Policy in Korea,” *Washington University Global Studies Law Review* 1, 1 (2002): 67-76. In 1963, the “Three powder scandal” stirred up public fury against monopolies in various industries including the cement, flour, and sugar markets. The scandal involved manipulation of supplies, leading to excessive prices of the goods.

<sup>30</sup>*Id.*, The Korean government proposed a draft competition law to the National Assembly; nevertheless, the draft was rejected as a result of strong opposition from fierce business lobbying.

continued to enforce its malfunctioning act for twenty years, leaving consumer welfare at the mercy of monopolies.<sup>31</sup> Indeed, the Thai government continues to refuse to amend the Trade Competition Act despite the failure of its implementation for over two decades. In contrast to Thailand, Korean competition law has been amended—including the expansion of the authority of the Korean Fair Trade Commission—almost twenty times in response to new challenges. Thai market mechanisms are not properly functioning due to frequent price regulation by the government under the Price of Goods and Service Act. In contrast, Korean market mechanisms have dramatically improved the level of competitiveness in its domestic economy, paralleling rates of developed countries.<sup>32</sup> Moreover, whereas

<sup>31</sup>Chitanong Poomipark, Manuswi Intaranont, and Sivinee Thanpase, “Thailand to Overhaul Trade Competition Law,” Mayer Brown JSM (2010) [Online], Available URL: [http://www.mayerbrown.com/files/Publication/db6302c0-9b17-48dd-95a2-39346f29e42b/Presentation/PublicationAttachment/a0b88983-a0fa-4ba4-91d1-3f4194cfcdbd/THAILAND-LAW\\_24FEB2010%20.PDF](http://www.mayerbrown.com/files/Publication/db6302c0-9b17-48dd-95a2-39346f29e42b/Presentation/PublicationAttachment/a0b88983-a0fa-4ba4-91d1-3f4194cfcdbd/THAILAND-LAW_24FEB2010%20.PDF) 2013 (Nov., 19).

<sup>32</sup>Sanghyn Lee, “Using Action in Damages to Improve Criminal Penalties Against Cartels: Comparative Analysis of Competition Law of United States and South Korea,” *International Trade Law Journal* 16, 2 (Winter 2007): 55-69; Ohseung Kwon, “Applying the Korean Experience with Antitrust Law to the Development of Competition Law in China,” *Washington University Global Studies Law Review* 3, 2 (2004): 347-361. Article 63 Consultation on Enactment of Acts which Restrain Competition: (1) The chief-officer of the competent administrative authority shall seek, in advance, consultation with the Fair Trade Commission, where he wishes to propose legislation or amend enactments containing anticompetitive regulations such as restrictions on the fixing of prices or improper concerted acts, prohibited practices of an enterpriser or an enterpriser organization, etc. and where he wishes to approve or make other measures involving anti-competitive factors against an enterpriser or an enterprisers organization. the terms of transaction, entry to markets, business practices, (2) The chief-officer of the competent administrative authority shall give, in advance, notice to the Fair Trade Commission when he intends to enact or amend any rules or regulations involving anti-competitive factors. (3) With regard to approvals or other measures involving anti-competitive factors under paragraph one, the chief-officer of the competent administrative authority shall give notice to the Fair Trade Commission regarding the contents of the approval concerned or other measures. (4) In relation to notice under paragraph two, where it is recognized that rules or regulations to be enacted or amended contain anti-competitive provisions, the Fair Trade Commission may give advice to the chief officer of the competent administrative authority as to the modification of such anti-competitive provisions. This paragraph shall also apply to enactments made or amended without to the Fair Trade Commission as prescribed by paragraph (1), Acts and subordinate statutes enacted or amended without notice, approvals or other measures given without notice.

in Thailand government price-control regimes are still extant, the Korean government abolished price controls and now requires administrative authorities to give the Korean Fair Trade Commission advance notice when proposing legislation or amending provisions containing any anti-competitive regulations.

## **2) Expanding the Thai Trade Commission's Authority to Include Consumer Protection under the Current Law**

Korea's effective enforcement of its competition law could be attributed to increased collaboration with consumer groups. Unlike Thailand, the Korean Commission has been receptive to assistance from scholars, the media, and private citizens. The Korean Commission enhances its public support through two significant strategies: establishment of a Consumer Protection Bureau and expansion of the Trade Commission's authority by adding major consumer protection laws to its jurisdiction.

Initially, the Korean Trade Commission was not extensively involved with consumer protection policy, as decision-making power was vested with the retail division of the Economic Planning Board. In 1996, the competition law established the Consumer Protection Bureau as a subsidiary of the Fair Trade Commission. The bureau was primarily in charge of adhesion contracts, labeling issues, and the advertising of products and services. Whereas the Fair Trade Bureau focuses on monitoring monopolies and preventing anticompetitive conduct, the Consumer Protection Bureau protects the rights of consumers and promotes public awareness of the importance of a free and fair market policy. Increasing of the role of the consumer continues to be crucial to shifting Korea's market structure from a government-controlled economy to a more market-based one. Furthermore, the Korean Trade Commission encourages collaboration from consumers through the "Consumer Policy Consultation Board" and designation a "Fair Trade Monitoring Program."<sup>33</sup>

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<sup>33</sup>The Korean Consumer Board is comprised of nineteen members from several consumer groups, consumer protection experts, and business representatives, and makes suggestions improving competition laws. Meanwhile, the Korean Fair Trade Monitoring Program encourages consumers, employees, entrepreneurs, and even housewives to report any price-fixing, unfair trade practices, or other violations of Korean competition law to the Trade Commission. According to a survey of public satisfaction with civil services, the Korean Trade Commission offers the best services to the public. survey on the public's satisfaction on civil services announced in 1997 and 1999 by the Office of Government Policy Coordination, the Korean Trade Commission has been recognized as government ministry offering the best services to the public.



More importantly, the Korean Trade Commission is vested with the power to administrate several companion statutes governing specific areas of competition law and policy as a means to improve market mechanisms and protect consumer rights. There are eight major pieces of legislation expanding the Trade Commission's Authority: (1) the Fair Subcontract Transaction Act<sup>34</sup>, (2) the Adhesion Contract Act<sup>35</sup>, (3) the Fair Labeling and Advertising Act<sup>36</sup>, (4) the Door to Door Sales Act<sup>37</sup>, (5) the Installment Transactions Act<sup>38</sup>, (6) the Fair Franchise Transactions Act<sup>39</sup>, (7) the Consumer Protection in Electronic Commerce Act<sup>40</sup>, (8) the Omnibus Cartel

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<sup>34</sup>The Fair Subcontract Transaction Act aims to prohibit large companies from unduly reducing their payments to subcontractors in order to create a fair competitive environment for small and medium size subcontractors.

<sup>35</sup>The Adhesion Contract Act was enacted to abolish inequitable contracts employed by businesses which preclude the consumers' right to choose the terms of a reasonable transaction. The law invalidates clauses that unduly infringe on consumers' rights.

<sup>36</sup>The Fair Labeling and Advertising Act vests the Commission with the power to prohibit firms from publishing false representations and misleading advertisements unduly influencing the consumers' decision. The law forces businesses to disclose material information concerning consumer choices.

<sup>37</sup>The Door to Door Sales Act aims to protect consumers by regulating door to door sales as well as pyramid schemes. The Act forces parent corporations who seek to form subsidiaries to procure consumer compensation insurance and allow consumers to unconditionally and unilaterally terminate contracts within fourteen days of purchase.

<sup>38</sup>The Installment Transactions Act allows consumers to rescind contracts purchasing a product under an installment plan within seven days and invalidates contracts clauses that are blatantly unfair to consumers.

<sup>39</sup>The Fair Franchise Transactions Act bars several forms of unfair transactions in franchise business and provides basic rules to balance the mutual benefits between franchisors and franchisees.

<sup>40</sup>The Consumer Protection in Electronic Commerce Act recognizes the vulnerable status of consumers when purchasing products on the internet. The Act provides various safety measures to protect consumer interests including an unconditional seven day contract withdrawal period and mandatory purchasing of consumer compensation insurance policy by internet sellers.

Repeal Act.<sup>41</sup> These laws cover a wide variety of subjects, including subcontracting competition, false representations, and door-to-door sales. The Commission has complete authority over the enforcement of all eight acts.

## **Conclusion**

While Thai government has continued to enforce the impotent Trade Competition Act of 1999 for thirteen years without amendment, the Korean competition law has been amended almost twenty times in order to cope up with new challenges presented by globalization. Imperative lessons can be drawn from Korea's experience of developing their competition law. Thailand should consider revising their current competition law, repealing statutes in conflict with the Trade Competition Act, and expanding the Trade Commission's authority to include consumer protection.

The ultimate purpose of competition law aims to create a level playing field for transnational business corporations and domestic entities. In addition, this will make certain that consumers in the members' countries can enjoy a variety of products and services with reasonable prices as a result of a free market and fair competition. Furthermore, this regional approach by directly collaboration is important to harmonize domestic competition and policy in the future. Instituting the ASEAN International Cooperative Framework on Competition Policies and Law will draw a closer relationship among ASEAN countries. This more close knit relationship will also assist the greater development for economic integration.

In light of the discussion above, Thailand's government must propose an inaugural amendment to the Trade Competition Act of 1999 providing legislative treatment for current implementation problems and prophylactic solutions to

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<sup>41</sup>The Omnibus Cartel Repeal Act aims to cope with collusive price-fixing cartels. This Act was promulgated to conform with the recommendations of the OECD against hard-core cartels in 1998. After the promulgation of the Act, the formation of cartels in certified professions such as lawyers, accountants, and architects were abolished. Interestingly, after the abrogation of the price setting standard, price competition began to take effect and professional fees have decreased to more appropriate levels.

forthcoming obstacles. As Thailand's economy continues to form more connections with the international market, its government must respond to the fast-paced and cyclical changes of globalization. This reaction should allow competition law and policies to override archaic government intervention policies. The proposal must include: 1) a revision of the substantive provisions and enactment of companion statutes; 2) a reformation of the structure of the Trade Competition Commission to redefine its mission; and 3) an improvement of Trade Competition Act enforcement procedures through the adoption and refinement of legal mechanisms from other jurisdictions.

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