

Notification of National Broadcasting and Telecommunications Commission
Re: Stipulation of Prohibitions on Actions in the Nature of Foreign Dominance B.E. 2555

As deemed appropriate to amend the Notification of National Broadcasting and Telecommunications Commission Re: Stipulation of Prohibitions on Actions in the Nature of Foreign Dominance B.E. 2554 to be in line with the current situation.

By virtue of section 27 (6) and section 24, in conjunction with section 81 of the Act on Organization to Assign Radio Frequency and to Regulate the Broadcasting and Telecommunications Services B.E. 2553 (2010), which contain provisions that place certain limitations on individual rights and liberties that section 29, in conjunction with section 35, section 36, section 41, section 43, section 45, section 46, section 47, section 61, and section 64 of the Constitution of the Kingdom of Thailand so permit by virtue of law, and under section 8, section 15, section 21, section 22, and section 80 paragraph two of the Telecommunications Business Act B.E. 2544 (2001), amended by the Telecommunications Business Act (2nd Amendment) B.E. 2549 (2006), which contain provisions that place certain limitations on individual rights and liberties that section 29 in conjunction with section 35, section 36, section 41, section 43, and section 45 of the Constitution of the Kingdom of Thailand so permit by virtue of law. The National Broadcasting and Telecommunications Commission, therefore, issues the prescription of prohibition on foreign dominance behaviors as follows:

Article 1. This Notification shall be named “Notification of National Broadcasting and Telecommunications Commission Re: Stipulation of Prohibitions on Actions in the Nature of Foreign Dominance B.E. ...”

Article 2. This Notification shall be enforced from the day following the date of its publication in the Government Gazette onwards.

Article 3. Notification of National Broadcasting and Telecommunications Commission Re: Stipulation of Prohibitions on Actions in the Nature of Foreign Dominance B.E. 2554 shall be terminated.

Article 4. In this Notification and Schedule of Prohibitions annexed to this Notification,

"Commission" means the National Broadcasting and Telecommunications Commission.

"Secretary-General" means the Secretary-General of the National Broadcasting and Telecommunications Commission.

“Office” means the Office of the National Broadcasting and Telecommunications Commission.

“Foreigner” means foreigner under the Foreign Business Act B.E. 2542 (1999).

“License” means the license to operate telecommunications business under the Telecommunications Business Act B.E. 2544 (2001).

“Prohibitions” means the prohibitions on actions in the nature of Foreign Dominance according to the guideline specified in the Schedule annexed hereto.

"Applicant for License" means an applicant for telecommunications business license of type two who has his own network, and an applicant for telecommunications business license of type three.

"Licensee" means a telecommunications business licensee of type two who has his own network, and a telecommunications business licensee of type three, and it shall also mean to include any person who has been granted permission, concession, or contract from CAT Telecom Public Company Limited, or from the TOT Public Company Limited, who also has the rights and duties and liabilities in the same manner as that of the licensee to operate telecommunications business of type three under the Telecommunications Business Act B.E. 2544 (2001) *mutatis mutandis*.

"Dominance" means the power to control or to influence, either directly or indirectly, by Foreigner in prescribing policy, management, operations, appointment of directors, or appointment of high-level executives, which may affect the management of the business or the operation of telecommunications business of the Applicant for License or the Licensee by means of holding voting shares of at least one-half of all the voting rights, having controlling power over the majority vote of the shareholders meeting, or appointing or removing one-half of all directors or more.

Article 5. This Notification shall be enforced on the business operation of the Applicant for Licensee or the Licensee to operate telecommunications business under the enforcement of the provisions of the law on organization to assign radio frequency and to regulate the broadcasting and telecommunications services, the law on telecommunications business, or other relevant laws. The foregoing to the extent that this Notification is not contradictory to or inconsistent with any agreements or conventions to which Thailand is a member or has obligations thereunder.

Article 6. In [the process of] filing an application for License, the Applicant for License shall stipulate the Prohibitions by submitting [the Prohibitions] to the Commission together with a certification signed by the authorized persons of the juristic person that it shall not proceed in any way which is in violation of any clause of such Prohibitions, however, according to the rules and procedures as prescribed herein. And the Applicant for License who stipulates the said

Prohibitions shall be considered as the person who possesses the qualifications in accordance with Section 8 of the Telecommunications Business Act B.E. 2544 (2001), amended by the Telecommunications Business Act (2nd Amendment) B.E. 2549 (2006).

Article 7. Within 30 days from the date of annual general meeting of shareholders, the Licensee shall stipulate or review the Prohibitions and submit [the Prohibitions] to the Commission, together with a certification signed by the authorized persons of the juristic person that it shall not proceed in any way that is in violation of any clause of such Prohibitions, however, according to the rules, conditions, and procedures as prescribed herein.

The Prohibitions under paragraph one must be approved by the general meeting of shareholders of the Licensee as well.

The Licensee must not proceed in any way, or allow any person to proceed in any way, which is in violation of the Prohibitions under paragraph one.

In each year, the Licensee has the duty to report the actions and the status of having business Control Power by Foreigner to the Commission for information within the specified period under paragraph one. However, if there are any actions which are of a high risk that may lead to a violation of the Prohibitions under paragraph one, the Licensee shall report immediately to the Commission and shall also propose preventative or rectification measures therefore.

Article 8. If the Commission is of an opinion that the Prohibitions stipulated by the Applicant for License or the Licensee are not in line with the rules prescribed herein, the Commission may summon the Applicant for License or the Licensee to make a clarification, to send additional documents, to revise or rectify the Prohibitions, or to proceed anything as the Commission may deem appropriate.

Article 9. Upon submission of the report on actions under Article 7, paragraph four, or upon appearance of evidences with reasonable cause that the Licensee may violate the Prohibitions as prescribed herein, the Secretary-General shall conduct an investigation into such matter and report its opinion to the Commission for consideration within 60 days.

For the benefit of investigation, the Licensee under paragraph one shall have the duty to make a clarification, to provide information, to send documents, or to render cooperation, on any matter as the Secretary-General may notify to take action.

Article 10. In the event that the Commission is of an opinion that the actions or the evidences under Article 9 are not in violation of the Prohibitions, according to the rules prescribed herein.

- (1) If it is a case where the Licensee is the one who files such report to the Commission, the Commission shall notify the results of its consideration to the Licensee. In this respect, the Commission may prescribe any conditions or rules to the Licensee to comply with additionally.
- (2) In other cases, the Commission may order that the case be terminated, or it may proceed according to (1).

Article 11. In the event that the Commission considers that the actions or the evidences under Article 9 are in violation of the Prohibitions as prescribed herein.

- (1) If it is a case where the Licensee is the one who reports to the Commission of a risk that may lead to violation of the Prohibitions as prescribed in the annex of this Notification, or as prescribed in addition to the Prohibitions in the annex of this Notification, the Commission shall order the Licensee to proceed with a rectification within a specified period of not more than one year from the date of receipt of the notice.
- (2) In other cases where the Applicant for License or the Licensee did not report to the Commission of a risk that may lead to violation of other Prohibitions, the Commission shall order the Licensee to proceed with the rectification within a specified period of not more than three months from the date of receipt of notice.

Article 12. In case where any Applicant for License or Licensee fails to proceed with the rectification under Article 6, Article 7, Article 8, Article 10, or Article 11, [the Commission] shall repeal [reject?] the application or proceed according to the law on telecommunications business, as the case may be.

Article 13. In case the Applicant for License or the Licensee stipulated the Prohibitions and submitted them to the Commission under the Notification of National Broadcasting and Telecommunications Commission Re: Stipulation of Prohibitions on Actions Regarded as Foreign Dominance B.E. 2554 B.E. 2554, it shall be considered as a stipulation of Prohibitions as prescribed under this Notification.

In the case the Applicant for License or the Licensee has requested to extend the period of time to stipulate the Prohibitions to the Commission already, also including the Licensee who has not stipulated the Prohibition submitting to the Commission, under the Notification of National Broadcasting and Telecommunications Commission Re: Stipulation of Prohibitions on Actions in the Nature of Foreign Dominance B.E. 2554, shall proceed with prescribing the Prohibitions and submit them to the Commission as prescribed under this Notification.

Article 14. Within the month of March of every year, the Secretary-General shall prepare a report on the Foreign Dominance and submit [the report] to the Commission.

Issued on the date of 18 July, B.E. 2555 (AD 2012)

Air Chief Marshall Tares Punsri

Chairman of National Broadcasting and Telecommunications Commission

Schedule of Prohibitions of Foreign Dominance Behaviors

- (1) Foreign dominance by means of having Foreigner, its agent, or nominee hold shares, either directly or indirectly, with the result of avoiding this Notification.
- (2) Foreign dominance by means of shareholding by the Foreigner itself or shareholding through its representatives or agents, whereby such shares have special preferential rights in casting votes at a shareholders meeting greater than the proportion of shares actually held, or the shares have special preferential rights over the shares held by Thai nationals.
- (3) Foreign dominance by means of Foreigner having control power or influence, either directly or indirectly, in setting policy, management, operation, or appointment of the board of directors or high-level executives.

High-level executives shall mean chairman, managing director, manager, administrator, chief purchasing officer, chief financial officer, or any other person who has control power or influence in the management of the business or telecommunications business operation of the Applicant for License or of the Licensee.

- (4) Foreign dominance by means of any legal relations with sources of investment funds and loans from Foreigner or its affiliate, e.g. guarantee of loan, lending money at an interest rate lower than market rates, guarantee of business risk, or granting of credit, as in a preferential manner.
- (5) Foreign dominance by means of entering any contract concerning intellectual property, franchise agreement, or exclusive contract to Foreigner or its affiliate, and such contract results in the transfer of expenses and returns to the Foreigner.
- (6) Foreign dominance by means of conducting any procurement contract, or management contract with Foreigner or its affiliate, or employee or staff of the Foreigner or of its affiliate, and such contracts result in the transfer of expenses and returns to the Foreigner.
- (7) Foreign dominance by means of joint business operation with Foreigner or its affiliate by allocating or sharing investment capital in the business operation in a manner that results in the transfer of expenses and returns to Foreigner.
- (8) Foreign dominance by means of the execution of transactions in a manner of transfer pricing or price collusion with Foreigner or its affiliate.