



Joint Foreign Chambers of Commerce in Thailand

BY FAX 02 290 5204; EMAIL thares.p@nbt.go.th AND HAND DELIVERY

Air Chief Marshal Thares Punsri
Chairman
National Broadcasting & Telecommunications Commission
87 Phaholyotin Rd. Soi 8
Phayatai
Bangkok 10400

18 June 2012

and cc: NBTC Telecoms Commissioners

Dear Chairman:

Foreign Dominance Notification; Proposed revised Version

The Joint Foreign Chambers of Commerce in Thailand (JFCCT) has taken a keen interest in the telecoms sector for over a decade and, via the best expertise of our members has made consistent and continuing efforts during that time to offer what we believe to be are constructive recommendations for an industry which has been tied to outdated structures, and which has not had the opportunity to evolve so as to contribute to the overall Thai economy in the many ways that we believe it should.

We have welcomed the arrival of the NBTC as a major milestone in development of the telecoms and broadcasting sectors. The NBTC's step taken to review the Foreign Dominance Notification is commendable.

We were and are grateful of the opportunity to provide a perspective on the Notification via our letter and Memorandum to yourself dated 18 November 2011 and to have participated in the public hearing of 2 December 2011. Noting the recent press reports about a revised version, we wrote to yourself on 14 May 2012 concerning the impact of the proposed revised version.

We understand the key changes to be per the attached table. We do appreciate the consideration given by the NBTC to the matter but we continue to recommend that the Notification not be used, and ultimately be revoked.

On the basis of our understanding of what the proposed revised Notification will do, we remain most concerned about the introduction of such legislation and offer these concerns:

- i) ***The revised wording concerning goes well beyond existing laws and does raise an issue concerning WTO compliance.*** "shares with voting right being able to control at least half of the votes or power to appoint or remove at least half the directors in a company". If the Notification seeks to be compliant, then we consider that in its own terms it should be, but cannot be with this language. Trading partners have noted various problems in terms of international obligations.
- ii) ***Impede the competitive functioning of the sector*** through restrictions on the deployment of skilled professionals and leaders.



- iii) **Cause uncertainty and confusion among present and prospective investors in the sector and many other sectors** due to its vague criteria and because it conflicts with other legislation (eg it signals a major departure from the FBA standard) and standard valid global investment practices whereby non passive investment in the telecoms sector is the norm.

- iv) **Send a message that Thailand is protectionist** and does not welcome solid investment in the telecoms sector; in an AEC context, this will surely not help Thailand to strengthen its position.

We consider that the Notification is not in the best interests of Thailand's telecoms industry, nor the wider economy which that industry serves.

As the criteria continue to be subjective, (in addition to being substantively wrong and non compliant in our view) – implementing it will raise additional issues regarding how it is to be administered. We thus suggest that it would be unsafe to attempt implementation of the Notification as is. At a time when attracting investment (especially recognising new spectrum auctions planned) and strengthening the economy are important, we would recommend not using any regulation of this kind and recommend that this Notification ultimately be revoked.

We would be pleased to meet with you in order to clarify any points, and would be happy to provide further information, should you consider that useful.

With our sincere respects and best regards,

Nandor von der Luehe
Chairman, JFCCT



Joint Foreign Chambers of Commerce in Thailand

Our understanding of the proposed revised Notification : select points of comparison

Topic	Notification	Proposed Revised version
<i>“Dominance”</i>	Essentially means influence in a wide range of activities, and ‘other action’, any of which may affect the business operation	More detailed definition - based on shares with voting rights, being able to control at least half the votes or power to appoint or remove at least half the directors – goes beyond existing laws and causes compliance problems.
<i>Respect for existing obligations</i>	Refers to existing commitments	No change in stated intent. However express reliance on matters outside the FBA (see “Dominance” definition) crystallises that extra FBA reliance
<i>Scope</i>	Primarily Category 2 and Category 3 licensees, then secondarily various business partners, suppliers etc.	No change
<i>Reference to other agencies</i>	A prima facie determination is referred (clause 9) to get an opinion from 5 or more other agencies, for possible national security issues or breaches of other laws.	Removed; NBTC makes the determination (clause 11)
<i>Consequences of failure to comply with certain requirements</i>	NBTC can refuse application, suspend/withdraw licence etc (clause 12)	Action to be taken per the TBA (clause 12).
<i>Rectification periods</i>	12, 6 or 3 months (clause 11)	12 or 3 months – depending on self-reporting (clause 11)
<i>Exemption</i>	Clause 3 allows an exemption in some cases	No exemption
<i>List of Foreign Dominance behaviours</i>	10 of which #3 is anti avoidance, #4 is about influencing management and #10 is a catch-all.	8 of which # 3 now expanded to include influence in setting policy and wide enough implicitly to cover the old #10. Possibly slightly narrower overall but not obviously so. These do not seem to be limited to the bounds of the new “Dominance” (see above).