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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE****Global Forum on Competition****COMPETITION FOR-THE-MARKET – Contribution from Thailand****- Session IV -****6 December 2019**

This contribution is submitted by Thailand under Session IV of the Global Forum on Competition to be held on 5-6 December 2019.

More documentation related to this discussion can be found at: [oe.cd/cmkt](http://oe.cd/cmkt).

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## *Competition for-the-market*

### **- Contribution from Thailand\* -**

1. According to the Public-Private Partnership Act (PPP Act) promulgated in March 2019, the private sector partner shall be authorized by the cabinet to enter into partnership in which investment in a PPP project may be given a concession or licensed. The business sectors that may fall under the Act include the following:

- Roads, highways, express ways or transport by road;
- Railways, mass transit or transport by rail;
- Airports or transport by air;
- Ports or transport by water;
- Water management, irrigation, waterworks or water treatment;
- Energies;
- Telecommunications or communications;
- Hospitals or public health;
- Schools or education;
- Residences or facilities for low-income or middle-income people, the elderly, underprivileged people or people of disabilities;
- Exhibition centers and conference centers;
- Other businesses which are in accordance with the decrees.

2. Some of the above projects may not be financially feasible, nor technically possible without the Government's participation and partnership. However, they are important and socially beneficial to the population at large. Their business models, delivery of services, and prices may have direct impacts on social welfare and consumer welfare.

3. On the other hand, Governments may encounter financial constraints to invest in public infrastructures projects. Furthermore, there are budgetary constraints on the utilization of national budget. Thus, the projects would require full, and unmitigated commitment from the central government to proceed with, and ensure sufficient funding and financing of the project.

4. Public-Private Partnership (PPP) is a joint operation in which the government allows the private sector to involve in the national development by operating projects concerning public services. This joint operation aims to focus on providing effective services that are more cost effective than the operations operated by the government. Also, this operation requires the investment from the private sector to invest in government projects. As a result, it is incumbent upon the government to ensure the integrity of the project implementation, as well as the transparency and integrity of the grant of concessions. The regulator may have to

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ensure that market access and due competition among the private sectors, as well as transparency of the concession procedures be abided by.

5. In considering giving concessions to the private sector, the regulator may be required to consider as follows:

- The analysis of project feasibility along with the valuation of the projects
- The process of selecting the private sector must be efficient, transparent, verifiable, and lead to the free and fair competition in the market.
- The contract should be drafted in accordance with the PPP Act of 2019.

6. There are some specific markets or sectors that do not in the PPP, or the permission of concession such as border management, marine security, and arms industry. These activities reserved for the government, and are exempted from the Trade Competition Act of 2017.

7. Additionally, **Government Procurement** is another significant issue which government should focus on. According to the WTO State Procurement Agreement by the State of 1994 and amended in 2012 (WTO Agreement on Government Procurement or Government Procurement Agreement: GPA), parties shall enhance free, fair, transparent, and open markets for both public and private sectors. Also, Thailand has joined the Committee on Government procurement as an observer on 3 June 2015 with a view to developing and improving the government procurement system, ensuring accessibility of procurement information to the related stakeholders, and supporting private sectors, particularly the SMEs to be able to access government procurement projects.

8. Government procurement shall consist of the following:

- **Transparency:** The procurement process should be transparent and verifiable starting from the dissemination of information, including procurement laws or regulations to the contractors. Also, there shall be clear rules and procedures for procurement to limit the discretion of government officials, and to prevent corruption and discrimination among government and private sectors.
- **Competition:** The government must ensure that the bidding shall be conducted with contestability by inviting all interested participants to enter the bidding, as well as avoiding the discrimination.
- **Objectivity:** Government Procurement shall prescribe techniques, qualities, specific features of products or services. Also, such procurement shall not specify names, brands, trademarks, sources of production, and manufacturers.

9. The OTCC has recently been established as a government agency which aims to regulate anti-competitive issues among the business operators in order to create level-playing field, as well as to enhance free and fair competition in the market. Although, section 4 of Trade Competition Act (B.E. 2560) prescribes that the Act shall not apply to the operation of (1) central, regional, or local administrations and (2) state-owned enterprises, public organizations, or other government agencies provided that they conduct their undertakings according to the law or resolutions of the Cabinet which are necessary for the benefit of maintaining national security, public interest, the interests of society, or the provision of public utilities.

10. The OTCC shall have the powers to give recommendations to government agencies on competition rules, regulations, or orders which may have unfair trade competition, price fixing, limiting the quantity of goods or services, bid-rigging, and allocating areas for specific stakeholders causing obstruction. Consequently, the OTCC enforces its legal mandate and may prescribe appropriate remedies concerning the conditions of concessions, as well as the anti-competitive behaviour of business operators after receiving exclusive rights of such concessions.