Will the AP Honda Investigation Finally Come to an End?

After a disappointing history, Thailand’s Trade Competition Commission’s (‘TCC’) attempt to prosecute AP Honda for its alleged violation of the Trade Competition Act (‘TCA’) may finally come to an end next year.

This case originated in 2001 when Kawasaki Motor Enterprises, Thai Suzuki Motor and Thai Yamaha Motor complained to the TCC that AP Honda had coerced its distributors to only sell AP Honda’s bikes and exclude other brands. According to some reports, AP Honda had 70% of the relevant market at that time.

On April 30, 2003, the TCC determined that AP Honda had violated Article 29 of the TCA based on these practices. The TCC filed the case with the public prosecutors who refused to prosecute the matter and referred it back to the TCC. The TCC formed a new sub-committee to continue the investigation and, on March 31, 2010, re-affirmed its 2003 decision. The TCC again requested that AP Honda be prosecuted in court. However, for the second time, the Office of the Attorney General refused to prosecute AP Honda and again referred the matter back to the TCC.

Where there is a violation of Article 29, the TCA provides for a potential penalty of imprisonment of not more than 3 years or a fine of not more than THB 6 million or both. As the TCA contemplates imprisonment, the prescription period under Thailand’s Criminal Code is applicable; this limitation period is determined based on the maximum period of imprisonment for which the relevant offence is punishable. Therefore, Section 95(3) of the Criminal Code applies as it provides that, if an offense is punishable with imprisonment for a period over one year and up to seven years, prosecution shall be precluded if the offender is not brought to court within 10 years from the date of the offence.

The Bangkok Post recently quoted Mr. Santichai Santawanpas, deputy director-general of the Internal Trade Department, as stating that the limitation period “will expire for this case in mid-2013”. This suggests that the current investigation is based on conduct up until mid-2003 and therefore, unless action is taken quickly, the TCC’s first major case will have a somewhat unsatisfactory conclusion next year.