

## A FAIT ACCOMPLI

The True-DTAC merger is on track as the government is distracted and the regulator claims it is powerless to block it. **B4**

## TECHNOLOGY

# DTAC-True merger looks set to sail through

Amid an unstable government with its mind elsewhere, the telecom regulator has indicated it cannot stop the mobile mega-merger that is opposed by many consumer advocates, writes **Komsan Tortermvasana**

**D**espite staunch opposition from some consumer advocates and academics, the planned merger of True Corporation and Total Access Communications (DTAC) is expected to pass through legal and administrative checks as the regulator indicates it has no power to block the deal, only to iron out measures to govern it.

Due diligence in the run-up to the consolidation is happening amid government instability and unsettling conditions on the telecom regulator's board.

Shareholders of the two companies are scheduled to consider and approve the amalgamation on April 4, which will pave the way for the establishment of a new company later this year.



LEFT  
Some consumer advocates and academics are concerned about the impact of the merger on the public interest. APICHT JINAKUL

The merger has drawn intense debate among political factions, consumer protection groups and academics as to whether it should be given a green light.

Some academics and consumer advocates said the merger would lead to market dominance and reduce competition, with customers paying the price.

The government has yet to send any clear signals about the issue as it is currently struggling to gain the support of MPs to ensure its political survival, with some pundits predicting a general election is imminent.

Conglomerate Charoen Pokphand Group (CP), the parent of True, is seen as having close ties with all political groups, which could pave the way for a smooth merger, according to observers.

The deal is expected to easily sail through regulatory checks as the relevant agencies only have the authority to use measures to ameliorate the impact of the deal, not to block the merger.

CP and Norway's Telenor, the parent of DTAC, announced the planned amalgamation of True and DTAC in November last year, saying the new merged entity would move into advanced technology such as artificial intelligence, the cloud, the Internet of Things and space tech.

DTAC and True notified the Stock Exchange of Thailand (SET) about their amalgamation plan on Jan 25.

A rule set by the National Broadcasting and Telecommunications Commission (NBTC) stipulates that telecom operators wishing to merge are obliged to notify the regulator at least 90 days before executing the merger.

The timeline suggests all the proceedings involved with the planned merger, including due diligence, could be wrapped up by May or June.

In February, the NBTC approved Finansa as an independent adviser of the merger deal following a proposal by True and DTAC.

#### REGULATORY MEASURES

The NBTC recently set up a subcommittee to follow up on the planned merger and draft measures to ensure the move will not harm the public interest.

The panel consists of representatives from the SET, the Securities and Exchange Commission, the Trade Competition Commission (TCC), and the Office of the Council of State.

The subcommittee must conclude its work and forward its findings to the NBTC within 60 days.

The NBTC also appointed Chulalongkorn University to study the impact of the deal.

A source at the NBTC board who requested anonymity said the university will serve as a neutral party to gauge the impact of the merger, while the subcommittee will have to draft regulatory measures to govern the deal.

The source said the merger process proceeded faster than expected, following early predictions the deal could be concluded after the second quarter.

"The process is likely to be wrapped up by June," the source said.

As the shareholder meetings of True Corp and DTAC are due to take place on April 4 with approval of the merger on the agenda, it is unlikely the subcommittee will determine measures to govern the deal by that time, the source said.

The source questioned how shareholders of both companies could decide whether to approve the merger deal, given that they still do not know what the NBTC's governing measures will be.

#### EXISTING OR NEW BOARD?

On Dec 20, the Senate voted in favour of five of the seven prospective candidates put forth by the selection committee as new NBTC board members.

The five need to receive a royal endorsement before they can start working, which has not happened yet.

It remains uncertain when the new board members will assume office and how long the existing board members have to carry out their duties.

The new selection of another two board members to make the board complete with seven members is ongoing.

The process is expected to be concluded by July or August, as the new parliamentary session is due to begin in May, when a subcommittee needs to be created to vet the qualification of candidates vying for the remaining two positions, the source said.

If all seven new board members are to be royally endorsed together, the earliest this would happen is some time after August, the source said. If that happens, the current board members would be responsible for scrutinising the merger deal.

A telecom veteran who requested anonymity said executives of the merging companies are likely to be more comfortable dealing with the existing board members than new, unfamiliar ones.

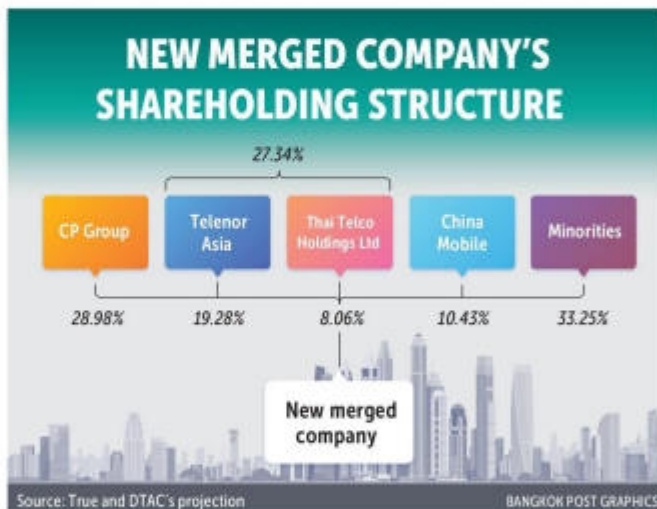


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ABOVE  
Shareholders of True and DTAC are scheduled to consider whether to approve the amalgamation of the two companies on April 4.



**NO PROHIBITION POWER**

Consumer advocates and academics are heaping pressure on the NBTC and TCC to thoroughly scrutinise the merger deal.

Thailand Development Research Institute insisted the deal would reduce market competition and benefit the shareholders of the three major mobile operators, while consumers, partners, mobile shops, taxpayers, startups and the government would all be put at a disadvantage.

Thailand Consumers Council has petitioned the NBTC, TCC and SET to stop the deal.

The TCC indicated the duty to govern the deal falls into the hands of the NBTC, as the two companies are mobile operators governed under a specific law upheld by the telecom regulator.

Sutisak Tantayotin, deputy secretary-general of the NBTC, said the NBTC board has no legal power to either approve or prohibit mergers and acquisitions. It only has the authority to implement measures to prevent practices deemed to cause a monopoly or unfair competition.

A 2010 regulation created by the National Telecommunications Commission (NTC) required merger deals to be approved by the regulator. The NTC was the telecom regulatory body before the NBTC was established.

Such power was abrogated by an NBTC regulation in 2018, Mr Sutisak said. The change was made to support liberalisation of the industry and facilitate business consolidation in line with the digital convergence trend, he said.

In addition, Section 21 of the Telecommunications Business Act only gives power to the telecom regulator to usher in measures to prevent telecom licensees from causing a monopoly or reducing or restricting competition in telecom services.

Licensees who violate the measures prescribed by the NBTC face a jail term of up to three years, or a fine of up to 600,000 baht, or both, based on Section 69 of the act.

Licensees that wish to merge have to report the deal to the NBTC in advance.

"The NBTC will do its best to regulate the deal, backed by the work of neutral adviser Chulalongkorn University and the subcommittee responsible for drafting regulatory measures," said Mr Sutisak.

#### ANOTHER LEGAL INTERPRETATION

However, a telecom industry veteran who requested anonymity said the NBTC may still have the power to prohibit mergers and acquisitions under Section 27 of the NBTC Act, which grants the regulator the power to prescribe measures to prevent an act that would cause a monopoly or unfair competition.

The NBTC may consider whether the merger could create a monopoly or reduce or limit competition, the source said.

If it is found to cause a monopoly or limit competition, the NBTC may order the prohibition of the merger or impose specific measures to prevent the acts, the source said.

"It depends on the interpretation of the laws and the sincerity of the government's management," the source said.

"It is a coincidence that the planned merger is being pushed through while the government is struggling with political instability and the NBTC is in the process of changing its board."

Two scenarios can play out with the merger deal, the source said.

One is the current board becomes responsible for hammering out measures to govern the merger deal.

The other is the new board, once it is royally endorsed, is in charge of devising the measures.

The source said it is likely the merger will be governed by the existing board and no drastic measures will be imposed.

However, if the new board of five comes into office before the measures crafted by the existing board are rolled out, the new board is likely to take some time to adjust, verify and approve them, according to the source.

The source said the new NBTC board may want to amend the Telecommunications Business Act to ensure the regulator has the power to either approve or prohibit the merger. But if it did so, the board risks a legal backlash from those associated with the merger who would say the amendment is an attempt to discriminate against the deal, the source said.

True and DTAC are listed companies and their shareholders have some expectations about stock prices following the announcement of the merger plan, the source said.

Given these pressures, it is unlikely the new board would dare amend the act in such a way, the source said.

The source said the market expects the seven new NBTC board members to be royally endorsed together.