

# Opponents of merger turn to NACC

## Regulator poised to face legal challenges

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Opponents of the planned merger of True Corporation and Total Access Communication (DTAC) are likely to petition the National Anti-Corruption Commission (NACC) to scrutinise the telecom regulator if it fails to consider approving or rejecting the deal in accordance with its power, according to an industry source.

Additionally, the National Broadcasting and Telecommunications Commission (NBTC) is also expected to be hit with legal challenges if it irons out measures deemed not harsh enough to govern the deal.

So far, four parties have lodged petitions against the merger with the NBTC.

They comprise political activist Srisuwan Janya; Napat Winitchaikul, a member of the committee monitoring the NBTC work performance; the Thailand Consumers Council; and Advanced Info Service (AIS), the country's mobile market leader in terms of subscriber base.

A telecom source who requested anonymity said some opponents are studying all legal angles regarding the deal, including the NBTC's related laws, and are stressing that the NBTC must not ignore its responsibilities.

"After the Songkran festival, we may see some movement from these opponents," the source noted.

Debate has been mounting as to whether the NBTC has the authority to approve the merger.

NBTC management indicated earlier that the regulator has the power only to prescribe measures to govern the deal, but the merger's opponents have claimed the NBTC has the authority to approve or reject the deal.

The source said the opponents have become uncomfortable with the attitude of the NBTC's board and management, especially Singapore's Singtel, a major shareholder of AIS, the direct competitor of the new merged firm.

Singtel has allowed its management to express their views and stance to the regulator with facts and related

regulations governing the merger, the source said.

AIS chief executive Somchai Lertsutiwong declined to elaborate what the company would do in response to the planned merger but the firm's legal team is monitoring updated information from the merger and the regulator.

The source further pointed out the merger's opponents agreed the NBTC has the authority to approve or reject the deal, based on a 2006 regulation created by the National Telecommunications Commission (NTC) for measures to prevent acts deemed to cause a monopoly or unfair competition in the telecom business.

The NTC was the former telecom regulatory body before the NBTC was established.

Based on the regulation, with the practice of holding a business in the same type of service that may result in a monopoly or limit competition, the NBTC has the power to ban such a business holding or impose specific measures to govern it.

The source said NBTC management has indicated it has no legal power to prohibit mergers and acquisitions but only to devise measures to prevent practices deemed to cause a monopoly or unfair competition.

Management indicated the 2010 Telecom Business Act gave the NBTC power to allow or reject the deal but such power was abrogated by the amended act, which came into effect in 2018.

Section 21 of the amended act indicates the regulator has the authority only to impose specific measures to prevent licences from causing monopoly or reducing or limiting competition.

The source, however, stressed the amendment was carried out without a public hearing, which could also bring the NBTC management into trouble.

"The amendment was made merely based on the operators' opinions without a public hearing," the source said.

NBTC management and board cannot cite the amended act, which involves the improper amendment process.

"The amended act also fails to comply with the constitution in terms of prohibition of the process that leads to monopoly," the source added.