

## TOUGH RULES ON MERGER EXPECTED

The telecom regulator is likely to use tough measures to govern the merger of True Corporation and DTAC, says a source. B4

# Tough rules on DTAC, True merger expected



A group representing the Thailand Consumers Council express opposition to the planned merger of True Corporation and DTAC at the office of the NBTC on May 26, 2022.

## Source says NBTC to adopt firm approach

### KOMSAN TORTERMSASANA

The telecom regulator is likely to impose tough measures to govern the planned merger of True Corporation and Total Access Communication (DTAC) instead of considering whether it has the authority to approve the deal, in order to ward off future legal consequences, according to a source close to the agency's board.

Debates are mounting as to whether the National Broadcasting and Telecommunications Commission (NBTC) has the power to approve or block the deal.

True and DTAC have insisted the regulator has no such power, while their rival Advanced Info Service (AIS), consumer advocates, and some academics think otherwise.

The source, who requested anonymity, said there were still disagreements among NBTC board members about whether they have the authority to approve or block the deal.

The five commissioners have unof-

ficially voted on the issue, and three of them — Air Marshal Thanapant Rajcharoen, Pirongrong Ramasoota, and Suphat Suphachalasai — believe the NBTC has the power to approve or block the deal.

Another two commissioners — Torpong Selanon and NBTC chairman Dr Sarana Boonbaichaiyapruk — believe the board has the power to only impose specific measures to govern the deal.

Despite believing they have the power to approve or reject the deal, this does not mean the trio agree or disagree with the merger, the source said.

The source said that if the board opts for a vote to resolve whether it has the power to approve or reject the deal, it will spark a critical conflict.

True and DTAC have stressed that the NBTC has the authority to only prescribe specific measures to govern the deal by law.

If the regulator eventually blocks the deal, the two firms said a petition would be filed at the Central Administrative Court against such a resolution, though they do not want it to come to that.

"Imposing strictly specific measures to govern the deal is likely to be the most appropriate way," the source said.

But the merging companies may find it difficult to comply with the harsh

measures imposed, the source noted.

However, this approach would help the NBTC board and management avoid a future legal backlash.

"Imposing specific measures is the basic authority for the NBTC based on the two regulations governing the industry that were enforced in 2006 and 2018," the source said.

The source was referring to the notification of the National Telecommunications Commission (NTC) regarding measures for the prevention of monopoly or unfair competition in telecommunications business in 2006, and the notification of the NBTC regarding measures to regulate mergers in the telecom business in 2018. The NTC was Thailand's telecom regulatory body prior to the establishment of the NBTC.

The source said the 2006 regulation is seen as allowing more intensive regulatory conditions than the 2018 regulation, as the earlier rule set out the power of the regulator to impose measures against licensees' practices deemed to cause monopoly or a reduction in competition.

### STRICT MEASURES

According to the source, the NBTC can impose some strict conditions, such as ordering the new merged firm to hold a

limited combined portfolio of spectrum range in line with the NBTC's regulation on spectrum cap.

The spectrum cap rule is meant to prevent operators and their affiliated parties from holding too much bandwidth in each range that could cause unfair competition.

AIS earlier indicated that the spectrum cap rule increases costs for its operations, as it had to seek other spectrum ranges through auctions or partnership agreements to complement its spectrum portfolio with higher costs.

"If the measures imposed require two merging parties to comply with strict conditions before the merger, or 'pre-condition of approval' this would cause some inconveniences for the merger," the source said.

There are some overseas cases where the regulator put conditions in place for merging parties to comply with before a union took place.

If True and DTAC disagree with the NBTC's measures, they can file a petition to the Administrative Court against the conditions, the source said.

#### **MAJORITY VOTE**

Apart from legal debates as to whether the NBTC has the power to approve or reject the merger deal, resolutions by the five incumbent members may also be questioned in terms of legality.

Some majority votes, such as three out of five, could be legally challenged because the board is supposed to have seven members and a majority vote is required for resolutions.

Whether three votes would be treated as a majority remains questionable.

The amended NBTC legislation indicates that the NBTC members must come from seven fields, and the committee responsible for selecting the candidates for the positions is obliged to fulfil this task.

The selection of another two commissioners is now underway.

The source said that three votes risked falling short of the majority if considering a full board of seven members.

"Legal challenges could be undertaken against the resolutions that come from three votes in the future and what the NBTC or the government can do about it if that happens," the source said.

Some commissioners acknowledge the point and believe all the important resolutions may need at least four votes to play it safe, the source added.