

TELECOMMUNICATIONS

Board needs to define NBTC's authority

KOMSAN TORTERMVASANA

The board of the telecom regulator will have to define its authority first as to whether it has the power to approve or reject the planned merger of True Corporation and Total Access Communication (DTAC) at its meeting aimed at considering the deal on Oct 12, a source at the agency said.

Without this step, some commissioners may opt not to give opinions in the meeting or even walk out, the source who requested anonymity said.

The verification of its authority needs to come first before the board can consider remedy measures governing the merger, the source said.

A misstep could put the board at risk of a legal backlash regarding malfeasance based on Section 157 of the Criminal Code, the source said.

According to the source, the merger deal is set as an agenda for consideration by the board of the National Broadcasting and Telecommunications Commission (NBTC) on Oct 12.

The move comes after the Council of State on Sept 20 forwarded its legal view on the NBTC's authority in regulating the deal to the NBTC.

However, the unclear explanation of the issue by the government's legal arm is still causing confusion as to whether the NBTC has the power to consider approving or rejecting the deal. Despite this, the Council of State's legal viewpoint is non-binding.



The verification of its authority needs to come first before the board can consider remedy measures governing the merger.

SOURCE

National Broadcasting and Telecommunications Commission



Logos of True and DTAC are seen at a department store in Bangkok. REUTERS

The source said three out of the five commissioners want to see a clear interpretation of its power in regulating the deal in its upcoming board meeting to preempt any possible legal backlash in the future.

It needs to start by defining its authority and the extent to which it can enforce its power before going into consideration of the proposed measures in governing the deal, the source said.

"These steps must be pursued strictly. If not, some commissioners

may seek not to record their opinions in the meeting's minutes or even walk out of the meeting," the source said.

The board cannot jump into considering remedy measures right away, the source said. Failing to follow through on the optimal procedure could put the board at risk of a legal backlash in the future based on Section 157 of the Criminal Code, the source added.

Previously, a group of True's minority shareholders filed a complaint with the Criminal Court against the NBTC for a delay in making a decision to issue the measures to govern the deal, which they said hampers their benefit and the industry.

A telecom veteran who requested anonymity said it is likely that the deal's opponents will lodge a complaint based on Section 157 if the NBTC delivers only basic measures to govern the deal.

The veteran also said the regulator should not pay much attention to the Council of State's legal views regarding the NBTC's power in governing the deal as it is non-binding.

The veteran gave an example of a

case in which an amendment was made to a satellite concession contract involving Shinawatra Satellite, the former name of Thaicom Plc, in 2003.

In that case, Surapong Suebwonglee, then minister of the Information and Communication Technology Ministry — the former name of the Digital Economy and Society Ministry — followed the legal advice by the Office of the Attorney General that pointed out that he did not need the cabinet's approval for the amendment, which let Shin Corporation Plc reduce its shareholding in Shinawatra Satellite from at least 51% to 40%.

Mr Surapong approved the amendment without seeking a cabinet resolution.

In 2006, he was found guilty of malfeasance based on Section 157 of the Criminal Code for bypassing the cabinet's consideration of the issue and sentenced to one year in prison.