



Ensuring businesses compete and consumers benefit

FAQs

on the Philippine Competition Act





Disclaimer:

This document is not a substitute for the Philippine Competition Act (PCA) or its Implementing Rules and Regulations. In explaining the law, generalizations were made, and the examples given do not in any way restrict the enforcement or other powers of the Philippine Competition Commission (PCC). This document should not be taken as legal advice. If you have any doubt as to how you may be affected by the PCA, please consult a lawyer or contact us through queries@phcc.gov.ph.

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Frequently Asked Questions (FAQs)

On the Philippine Competition Act (PCA) and the Philippine Competition Commission (PCC)

1

We know that competition leads to more choices for consumers. Does consumer choice indicate competition?

Not necessarily. Though consumers may have different choices for a product or service, there is no guarantee of competitive prices. If suppliers fix prices or enter into other anti-competitive agreements, then the choices available to the consumer may be priced artificially high. With competition, suppliers have an incentive to price their goods lower and to improve the quality of their products, in order to attract more customers.

Chapter 16 of the Philippine Development Plan (PDP) 2017-2022 laid down possible indicators of competition in the country. Among others, these include business dynamism, product market efficiency, product market regulation, market size expansion, and reduction of the regulatory compliance costs incurred by firms. This marks the first time that the government medium-term plan includes a chapter dedicated to competition policy.

2

Are exclusive distributorship agreements among suppliers and manufacturers covered by the PCA?

Yes. According to Section 3 of the PCA, a person or entity engaged in trade, industry and commerce in the Philippines is covered by the law, which also applies to any foreign business whose operations could have a direct and substantial effect on any other trade, industry, or commerce in the Philippines, now or in the near future.



3

Is there a provision in the law on how the standard of “substantially preventing, restricting, or lessening competition” may be measured or quantified?

The law gives the PCC discretion in determining what is “substantial lessening of competition (SLC)”, depending on the circumstances of each case.

In the context of reviewing mergers, the PCC looks at the impact on competition over time in the relevant market. A merger gives rise to SLC when it has a significant impact on competition, and consequently, on the ability of firms to reduce prices, improve quality, or become more efficient or innovative (Section 4, 2017 Merger Review Guidelines). In its evaluation, the Commission may consider, on a case-by-case basis, the broad range of factors that may arise in different transactions. These may include market structure, market position of the entities concerned, actual or potential competition from entities within or outside of the relevant market, alternatives available to suppliers and users, and their access to suppliers or markets, as well as barriers to entry (Section 4.5, 2017 Merger Review Guidelines).



On anti-competitive agreements

4

The PCC is a quasi-judicial body that implements the provisions of the PCA. What is meant by quasi-judicial?

A quasi-judicial body may refer to a tribunal or adjudicative body that appears to be a court of law, to the extent that it performs functions discharged by regular courts. However, a quasi-judicial body is not a regular court and is not bound by the technical rules of procedure applicable to courts of law.

A quasi-judicial body is created to resolve questions or issues that require knowledge, experience, and expertise on matters that are highly technical or specialized. In the case of the PCC, the law creating the agency designates it to hear and decide on cases involving anti-competitive conduct and agreements, abuse of dominant position, and anti-competitive mergers and acquisitions—matters which require specialized knowledge of competition law and economics.



5

Does the PCC have jurisdiction over government agencies or contractors of government in cases of bid rigging?

Yes. Section 14 of the PCA prohibits anti-competitive agreements among competitors, which include bid rigging and bid rotation. The PCA does not make a distinction between the government and private sector when it comes to applicability of the law. As such, the PCC has enforcement jurisdiction over bids for government projects.

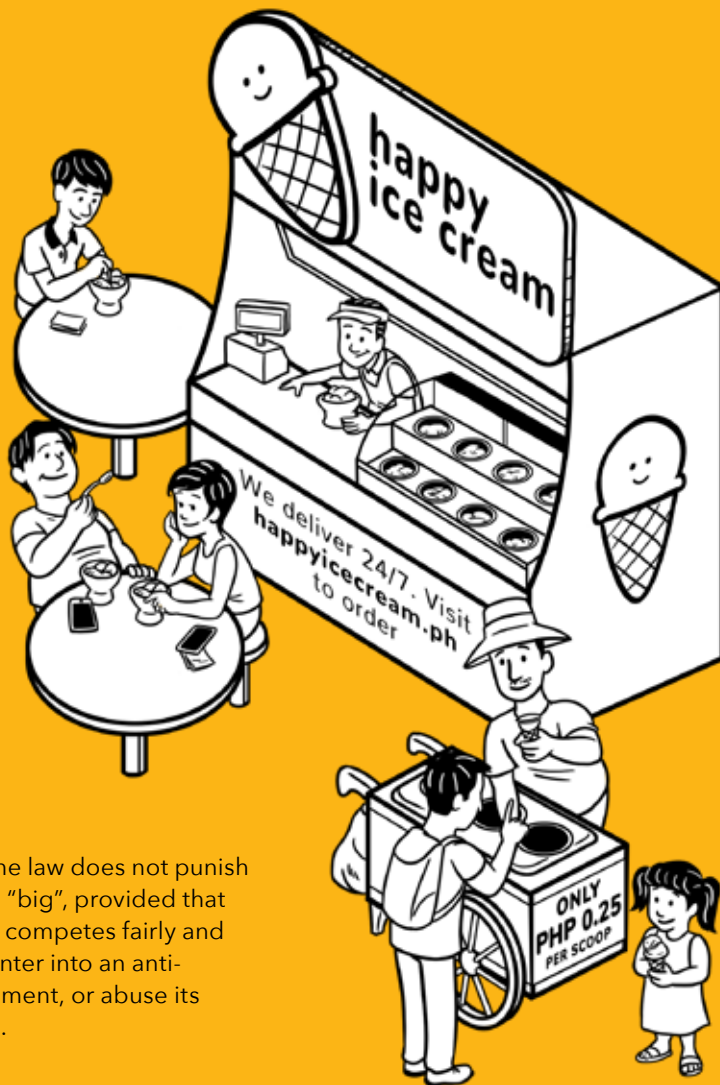
BIDDING IN PROGRESS



On abuse of dominant position

6

Is it illegal for a large business to drive out a smaller rival?



Not necessarily. The law does not punish an entity for being “big”, provided that the large business competes fairly and legally, does not enter into an anti-competitive agreement, or abuse its dominant position.

7

How does the PCC determine market dominance? Does PCC have standards for determining market concentration per sector or industry?

Under Section 4 (g) of the PCA, a dominant position refers to a position of economic strength that an entity holds which enables it to control the relevant market independently from any or a combination of the following: competitors, suppliers, customers, or consumers.

Market dominance is presumed if an entity has a 50% share of the relevant market.



But the law also requires the PCC to look into a number of factors, including the entity’s ability to fix prices unilaterally, existence of barriers to entry, the existence and power of competitors, access of competitors to the entity’s source of inputs, the ability of customers to switch to other goods or services, the entity’s recent conduct, and other criteria established by the PCA.

8

Is it illegal for a trader to grant credit only to farmers willing to sell at very low prices, and then sell the very same farm product to third parties at higher prices?

If the trader is the dominant provider of access to credit and markets, then forcing a marginalized farmer to sell their goods at unfairly low prices may be a violation of the PCA. Under Section 15 (g) of the PCA, buying goods or services at unfairly low prices from marginalized sectors of the society is prohibited.



9

Are exclusive distributorship agreements among suppliers or manufacturers anti-competitive?

Not necessarily. However, if the exclusive distributorship agreements prevent other competitors or other entities in the supply chain from gaining access to a significant number of customers and/or sources of inputs, then such agreements may lead to a substantial lessening of competition and hence, may violate Section 14 of the PCA.

On Mergers and Acquisitions (M&A)

10

Should an M&A done outside the Philippines be cleared first by the PCC?

Yes. The PCC must be notified of the definitive agreement of a merger or acquisition which was executed outside the Philippines if such transaction breaches the relevant threshold for compulsory notification under the PCA's Implementing Rules and Regulations as amended by PCC Memorandum Circular No. 18-001. This circular allows for the annual adjustment of merger notification thresholds based on the nominal Gross Domestic Product growth of the previous year.

11

Why does the PCA's Implementing Rules and Regulations include size of party (SoP) and size of transaction (SoT) tests in determining the threshold?

Section 12 (b) and Section 19 of the PCA grant the Commission authority to determine thresholds for notification and to adopt the transaction value threshold. Learning from the practice and experiences of more mature competition authorities in jurisdictions such as the US and Canada, the framers of the PCA's Implementing Rules and Regulations saw it fit to adopt SoP and SoT in defining transaction value, which, in turn, shall be used for setting the thresholds for notification.

The SoP and SoT tests ensure that only transactions that have a significant impact on the relevant market will be notified to the Commission.



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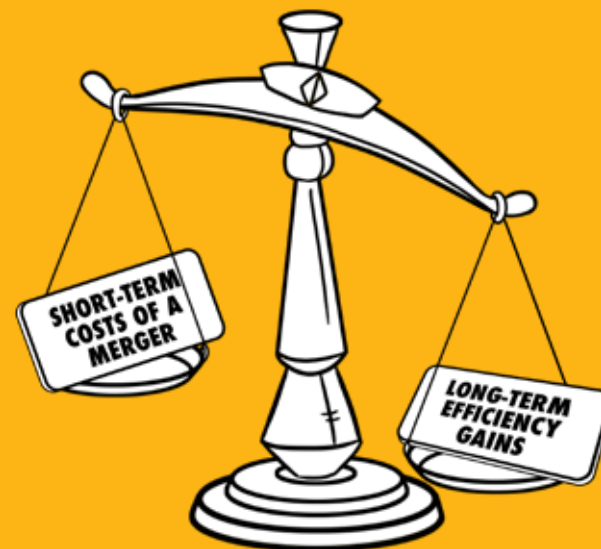
When reviewing M&As, does the PCC take into consideration long-term efficiency gains?

Yes. Especially for M&A transactions that are assessed to have anti-competitive effects, long-term efficiency gains that benefit consumers must be substantiated thoroughly and proven to be likely by merging firms.

Chapter IV, Section 21 (a) of the PCA and Rule 4, Section 10 of the Implementing Rules and Regulations provides that otherwise anti-competitive mergers may nonetheless be allowed when the parties establish that the merger has brought about, or is likely to bring about, gains in efficiencies that are greater than the effects of any limitation on competition that result, or are likely to result, from the merger or acquisition (Section 9.1, 2017 Merger Review Guidelines).

The burden is on the merging firms to substantiate efficiency claims so that the Commission can verify by reasonable means the likelihood and magnitude of each asserted efficiency, and how and when each would be achieved, among other things (Section 9.5, 2017 Merger Review Guidelines).

The efficiencies must be demonstrable, with detailed and verifiable evidence of anticipated price reductions or other benefits. Moreover, the efficiency gains must be merger specific and consumers will not be worse off as a result of the merger. For that purpose, efficiencies should be substantial and timely, and should, in principle, benefit consumers in those relevant markets where it is otherwise likely that competition concerns would occur (Section 9.6, 2017 Merger Review Guidelines).



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Does the Commission publish all M&A notifications?

No. The Commission only publishes its decisions, and not the notifications received from merging entities.

14

Can somebody file an opposition to an application for a merger while the PCC's review is ongoing?

The PCC may investigate any merger that the agency has reasonable grounds to believe is likely to substantially prevent, restrict, or lessen competition in the market (Section 13.1, PCC Rules on Merger Procedure). Complaints from businesses and consumers will be considered as inputs in deciding on whether or not PCC will open an investigation (Section 13.4, PCC Rules on Merger Procedure).

PCC will consider each complaint on its merits to determine if an investigation is warranted (Section 13.7, PCC Rules on Merger Procedure). In deciding on whether or not to consider a complaint, the PCC shall take into account the following:

- PCC's jurisdiction;
- public interest;
- resource allocation;
- strength of supporting evidence; or
- overall effect of the merger on the market (Section 13.8, PCC Rules on Merger Procedure).

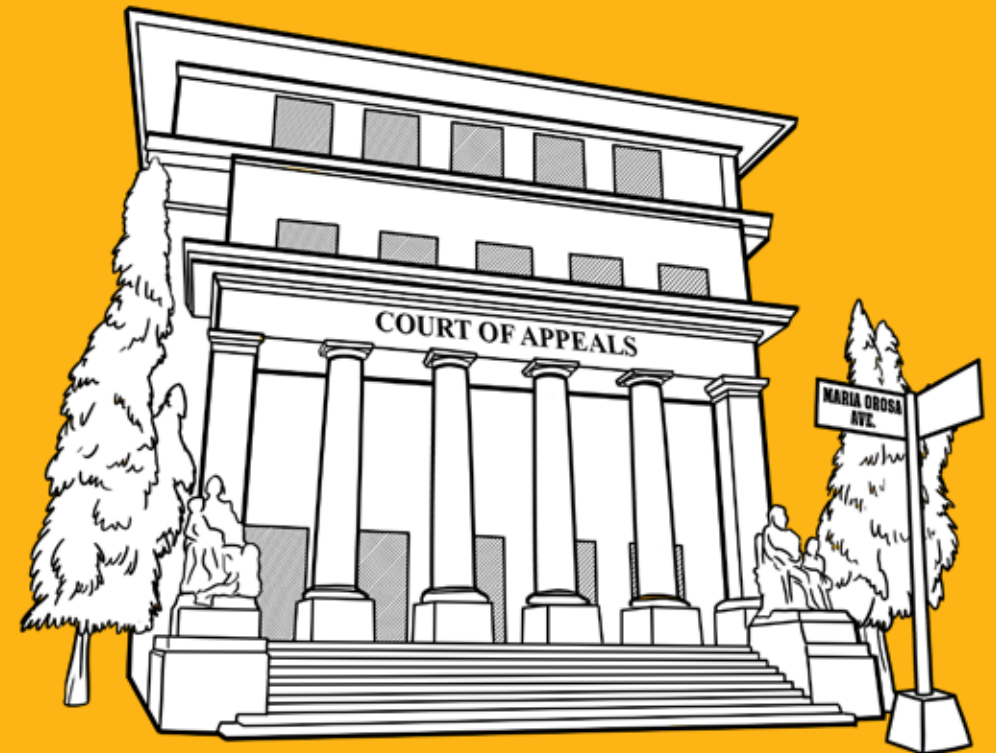


A complainant has no standing to take part in the investigation. However, the complainant will be informed of PCC's action on the complaint. The PCC may also decide to communicate or consult with the complainant at any stage of the proceedings in line with its power to gather information. In addition, the complainant is entitled to a copy of the non-confidential version of the decision on the merger (Section 13.9, PCC Rules on Merger Procedure).

15

If the PCC clears a merger transaction as compliant, can this decision be appealed?

Under Section 39 of the PCA, the decisions of the PCC can be questioned before the Court of Appeals. But under Section 23 of the PCA, merger or acquisition agreements that have received a favorable ruling from the Commission, except when such ruling was obtained through fraud or false material information, may not be challenged in court.



On Enforcement

16 Apart from imposing fines, what else can the PCC do to ensure that violators are held accountable?

The PCC may impose behavioral and structural remedies, such as injunctions and divestiture. The PCC may file before the Department of Justice (DOJ) a criminal complaint for any violation of the law. If the court upholds the complaint, the guilty party can face imprisonment of two to seven years (Section 30, PCA).

Under Section 17 of the PCA, a merger or acquisition consummated in violation of the requirement to notify the Commission shall be considered void. In addition, the parties will be slapped an administrative fine of one (1) to five (5) percent of the value of the transaction.

The Commission also may hold in contempt any entity guilty of the list of misconduct laid down in Section 38 of the PCA.



17 How far has the PCC gone in working with sector regulators to come up with rules and regulations to promote competition?

The PCC has forged memoranda of agreement (MOAs) with a growing number of sector regulators and government agencies. To date, the PCC has forged partnerships with the following:



These MOAs contain, among others, a provision on information sharing, which grant the parties access to information and documents in their custody, and which are relevant and necessary to the effective enforcement of the PCA, and other competition laws.

On Public Engagements

18

How does the PCC monitor competition concerns at the local level?

The Commission has been looking into the possibility of setting up an office outside Metro Manila. For now, the PCC is exploring all possible means so that people from outside Metro Manila can report their competition concerns. They may report through the following communication channels:



queries@phcc.gov.ph



(+632) 8771-9PCC (+632 8771-9722)



Philippine Competition Commission



@CompetitionPH

The PCC is also in close coordination with various sector regulators and other government agencies at the local level, particularly those with which it has forged MOAs.

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What can the PCC do to ensure that all businesses—whether big or small, be they based in Makati or Divisoria—are aware of the law?

The PCC adopts a multi-stakeholder approach in competition policy advocacy. The agency has reached out not only to businesses, but also to the media, legal community, academe, and other government agencies, among others.

The PCC has organized public seminars and consultations, as well as roadshows and campus tours on competition law and policy. The PCC also publishes information, education and communication (IEC) materials, which are disseminated through all media channels.



For enforcement-related complaints, an individual may file a verified complaint, which is a sworn statement supported by documentary evidence. The complaint may be filed in person at this address: 25th Floor, Vertis North Corporate Center 1, North Avenue, Quezon City. Alternatively, the complainant may call +632 8771 9708, or email the Competition Enforcement Office (enforcement@phcc.gov.ph).

For merger concerns, anyone who wishes to file a complaint on the grounds that a merger or acquisition is likely to substantially prevent, restrict or lessen competition in the market may do so by submitting one (1) original copy of the complaint, with its attachments, and an electronic version of the complaint and all attachments, in a secure electronic storage device, with each attachment saved as a separate file, and each file name referring to the identifying appendix number. The electronic version of the complaint and all attachments must be saved in PDF, Word, or in a spreadsheet format, in two (2) versions, protected and non-protected (Section 13.5, PCC Rules on Merger Procedure).



The complaint should include the following information:

- a. Information regarding the complainant, including its ultimate parent entity, if any; a concise overview of the lines of business it is engaged in or its affiliated organizations, if any; and a contact person for future correspondence;
- b. Information on the merger party or parties complained of, including its ultimate parent entity, if known, and the lines of business it is engaged in;
- c. Relationship of the complainant vis-à-vis the entity complained of (such as being a customer or a competitor);
- d. Acts constituting the violation of Section 17 or 20 of the PCA;
- e. Relevant documents and other supporting materials;
- f. If possible, indicate the goods, services or intellectual property rights, affected by the merger and explain the commercial relationships between or among these goods or services, and include the relative market positions of the entities concerned;
- g. Names and addresses of persons that the PCC may approach and interview for additional information;
- h. Remedy sought by the complainant;
- i. Statement under oath that the complainant has read the complaint and that the allegations therein are true and correct of their personal knowledge or based on authentic records.



The verification shall be made by a general partner of a partnership, an officer, director, or trustee of a corporation with evidence of their authority, or if the entity is a natural person, by the person themselves (Section 13.6, PCC Rules on Merger Procedure).

The questions above are based on queries made during the series of advocacy activities that the PCC has undertaken as part of its mandate to educate businesses, consumers, and other stakeholders about market competition.

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- House of Representatives (HoR)
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- Cebu City Government
- Philippine Exporters Confederation, Inc. (PHILEXPORT) Cebu
- Philippine Plastics Industry Association (PPIA)
- Small Enterprises Research and Development Foundation (SERDEF)
- University of San Carlos (USC)
- University of Southeastern Philippines (USEP) School of Applied Economics



For more information, visit www.phcc.gov.ph. If you have additional questions, email queries@phcc.gov.ph or call (02) 8771-9PCC (9722).

Contact Us

The Philippine Competition Commission is open Mondays through Fridays, from 8:00 a.m. to 5:00 p.m.

Submissions of notifications and complaints are accepted during these hours.



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