PHILIPPINE COMPETITION COMMISSION

Ensuring businesses compete and consumers benefit

HANDBOOK

How the Philippine Competition Act affects consumers

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.

Contents

Your PCA Handbook	5
Why fair competition is good for Filipinos	6
What happens if businesses competed with one another but on unfair terms?	12
The Philippine Competition Act (PCA)	14
▪ What can be gained from enforcing the PCA?	
▪ Who is covered by the PCA?	
The Philippine Competition Commission (PCC)	18
Prohibited business practices	21
▪ Anti-competitive agreements	
▪ Abuse of dominant position	
▪ Anti-competitive mergers and acquisitions	
▪ Fines and penalties	
Report violations of the PCA	34

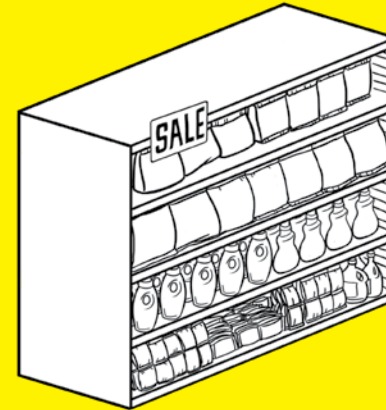
Your
PCA Handbook

You play a big part in building strong and competitive markets in the country. This handbook explains the key priorities of the Philippine Competition Act (PCA), how it works in your best interest as a consumer, and how you can help the Philippine Competition Commission (PCC) enforce it.

Why fair competition is good for Filipinos

Fair competition allows everyone – from those in urban centers to far-flung rural communities – to contribute to and benefit from the Philippines' recent economic growth, thus helping attain sustained and inclusive growth where no one is left behind.

Competition keeps the economy working well for everyone.



When businesses compete, consumers benefit through lower prices, more product choices, and better-quality goods and services.

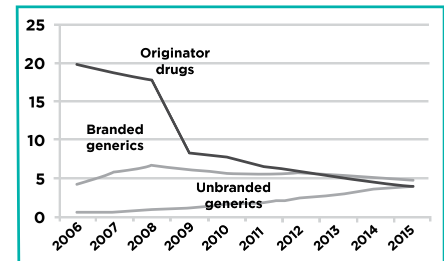
Without competition, there is no motivation for businesses to provide convenient and fast services to consumers, and no reason to innovate products.

Consumers benefit from competition in markets. Thanks to competition, a wide variety of goods and services remain affordable and of good quality.

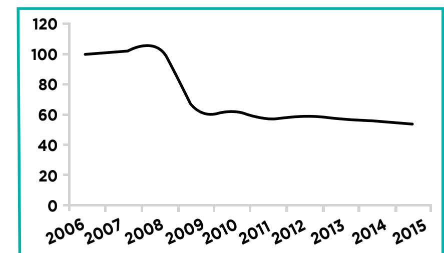
Cheaper medicine for all

In the health sector, strengthening competition in the market for medicines is crucial to lowering prices. Within a year since the passage of the Cheaper Medicines Act of 2008, the medicine price index dropped, easing to 53.18 percent in 2015, according to a 2017 study done by the Philippine Institute for Development Studies.

Average prices of medicines by type of manufacturer, 2006-2015



Medicine Price Index (2006=100)



Source: Clarete, R. and Llanto, G. (2017). Access to medicines in the Philippines: Overcoming the barriers. PIDS Policy Notes. PN No. 2017-23 pp. 5-6.

When businesses compete, consumers benefit through lower prices, more product choices, and better-quality goods and services.

Competition benefits businesses, too. It ensures that they can access, at reasonable cost, supplies and inputs they need for their enterprise, such as raw materials, labor, and financing.

In competitive markets, companies play fair and no one benefits from undue advantage. This makes it easier to start and operate a new business. Competition enables small businesses to compete with bigger businesses on fair terms. With more businesses competing, more employment opportunities are created.

A stable and fair playing field is expected to result in greater interest by foreign investors, which, in turn, would lead to market growth and global opportunities for Filipino companies, big or small.

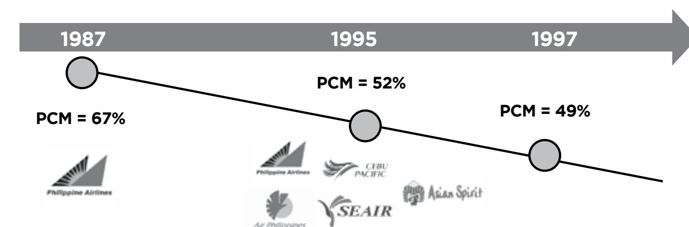
Why is competition important?

In a competitive market, businesses are more attuned to consumer demand. Consumers win when businesses compete.

Fair competition leads to more choices, lower prices, and higher quality of goods and services. Ultimately, competition fosters more rapid economic growth and poverty reduction.

Lower margins in air transport

After the deregulation of the air transport industry in 1995, price cost margins (PCM) in transport services plummeted within a decade, from 67 percent in 1987 to 49 percent in 1997. This enabled new players to enter the market resulting in lower airfares, discounts, and better quality of service, according to a 2005 study done by the Philippine Institute for Development Studies.



Source: Aldaba, R. (2005). The Impact of Market Reforms on Competition, Structure and Performance of the Philippine Economy. PIDS Discussion Papers. DP No. 2005-24 pp. 56-58.

What happens if businesses competed with one another but on unfair terms?

Businesses might band together and agree on practices that would benefit them most at the expense of consumers. For example, they could agree to set a high selling price for their products to maximize profit, putting the squeeze on consumers.

Businesses could deprive consumers of the benefit of fair competition, wherein supply and demand determine market prices.

They might enter into Anti-Competitive Agreements

Markets that are dominated by a monopoly or by a small number of companies are vulnerable to anti-competitive practices.

When only one company supplies a product or a service, it operates as a monopoly.

Abuse of dominance

This refers to instances when businesses, together or alone, restrict or prevent competition in certain industries or segments through their market dominance.

Small enterprises can be forced out of a market when bigger firms abuse their dominant position in the market. This happens when dominant firms are able to create an environment where smaller firms are unable to compete.

For example, when products are withheld or sold under unfair conditions such as unreasonable prices or usurious payment terms, businesses lose profit and may find it difficult to continue altogether.

Fewer choices, higher prices, and lack of quality products and services mean consumers ultimately lose.

The

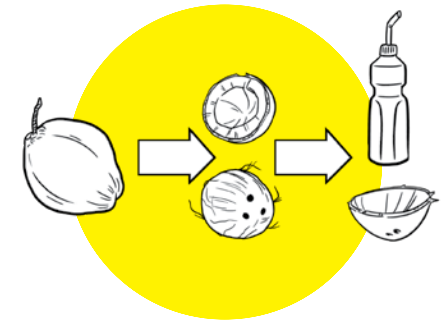
Philippine Competition Act

Republic Act No. 10667 or the Philippine Competition Act (PCA) is the primary law of the Philippines prescribing a policy for promoting and protecting fair market competition. It took effect on August 8, 2015.

The PCA is founded on the belief that past measures to liberalize the economy are not enough. For liberalization to benefit everyone, its gains must be reinforced by ensuring freed-up markets remain competitive.

What can be gained from enforcing the PCA?

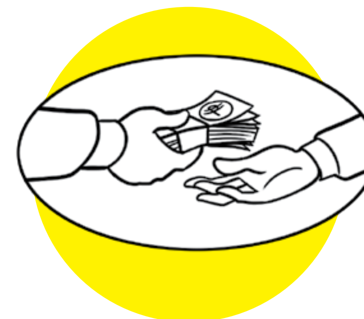
Promote entrepreneurial spirit



Enhance resource productivity

Facilitate technology development and transfer

Allow consumers to exercise their right of choice over goods and services



Encourage private investments

Who is covered by the PCA?

The PCA covers any person or entity engaged in trade, industry, and commerce in the Republic of the Philippines.

It also applies to international trade that may impact trade, industry, and commerce in the Philippines.

The PCA does not apply to collective bargaining agreements or arrangements between workers and employers, and other such activities affecting conditions of employment.

The
Philippine Competition Commission

The PCA created the Philippine Competition Commission (PCC), a quasi-judicial agency mandated to promote the well-being and efficiency of competition in the market for the benefit of consumers and businesses.

The PCC's ultimate objective is to enhance consumer welfare and promote economic growth and development.

The PCC has jurisdiction over all competition-related issues and must be consulted by sector regulators on any activity that may impact competition.

While the Philippines was one of the last member states of the Association of Southeast Asian Nations (ASEAN) to pass such a law, it only took six months to establish the PCC from the enactment of the PCA.

The PCA calls for the establishment of a National Competition Policy that will guide not just the PCC, but the entire government in enhancing economic efficiency and promoting free and fair competition.

In pursuit of its mandate, the PCC can deputize any enforcement agency of the government or enlist the support of any private group in the exercise of the Commission's powers and functions.

Prohibited
business practices

1. Anti-competitive agreements
2. Abuse of dominant position
3. Anti-competitive M&As

1 Anti-competitive agreements

An anti-competitive agreement includes any type or form of contract, arrangement, or understanding between or among businesses to fix prices, manipulate bids, allocate markets, or restrict outputs. The agreement may be:

- **Formal or informal**
- **Explicit (written or announced) or tacit**
- **Written or oral (verbal agreement)**

Prohibited business practices

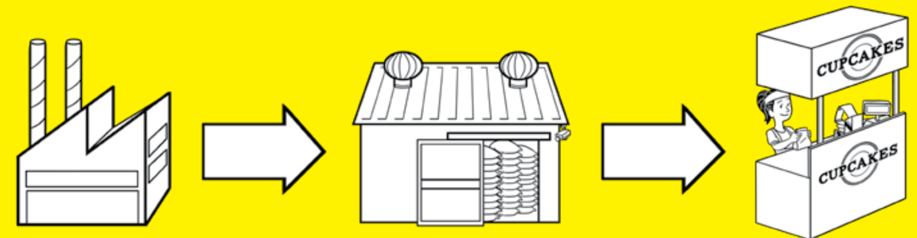
Anti-competitive agreements can be horizontal or vertical

Horizontal agreements are made between businesses in the same stage of the production chain, while vertical agreements are made between players in different stages of the production chain.

HORIZONTAL AGREEMENTS

Three *panaderias* in the same town agree to sell their cupcakes for the same price.

VERTICAL AGREEMENTS



Flour miller colludes with other businesses in the production chain by agreeing on a selling price for each stage of production, from the miller to the retail store.

Prohibited business practices

Examples of anti-competitive agreements

PRICE FIXING

This involves restricting competition as to price, or components thereof, or other terms of trade. This happens when competitors agree on the prices of goods or services, rather than independently setting their respective price points.

MARKET SHARING

This is a collusive agreement by two or more competing businesses to divide or allocate the market. Market sharing not only includes territories, but also customers, volume of sales or purchases, and type of goods or services, among other considerations.

SUPPLY RESTRICTION

This is an agreement by two or more competing businesses to set or limit production levels to create artificial supply shortage, thereby raising prices. Similar forms of anti-competitive agreements include restrictions in markets, technical development, and investment.

BID RIGGING

This involves fixing prices at an auction or any form of bidding, including cover bidding, bid suppression, bid rotation, and market allocation, among others. Bid rigging usually occurs when parties participating in a tender coordinate their bids rather than submit independent proposals.

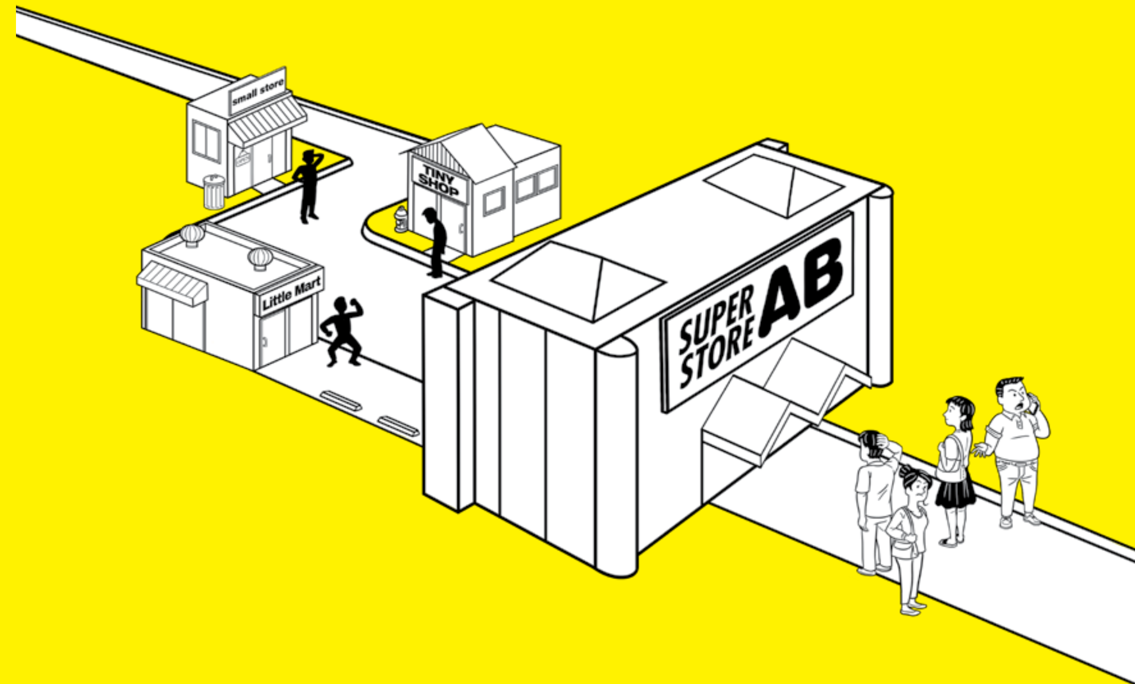
What is a cartel?

A cartel involves businesses in the same industry colluding with one another to substantially prevent, restrict, or lessen competition by entering into agreements to fix prices, rig bids, restrict output, and allocate markets, among others.

Prohibited business practices

2 Abuse of dominant position

A business may become dominant in a certain industry by gaining a significant share in the market and becoming the industry leader by virtue of years in operation. Being a market leader is not prohibited but abusing one's dominant market position to limit or reduce competition may violate the PCA.



Examples of abuse of dominance

PREDATORY PRICING

Selling goods or services below cost to drive competitors out of a market.

PRICE DISCRIMINATION

Setting prices or terms that unreasonably exclude some sellers or customers of the same goods or services.

RESTRICTING OR REFUSING TO SUPPLY

When the dominant business undermines its competitor's operations by refusing to provide them goods or services.

EXPLOITATIVE BEHAVIOR TOWARD CUSTOMERS OR COMPETITORS

Dominant companies use this position to exploit consumers and competitors by charging excessive or unfair purchase or sales prices, or by setting unfair trading conditions.

BLOCKING COMPETITORS' ACCESS TO GOODS AND RESOURCES

A dominant business may purchase goods and resources that its competitor needs. By removing this access to much-needed materials, a dominant business can force its competitors out of the market.

Prohibited business practices

3 Anti-competitive M&As

Mergers are the joining of two or more entities into an existing entity or to form a new entity. Acquisitions are the purchase or transfer of a company's assets or securities which results in the change of control over the acquired company or a part of it.

Mergers can be beneficial for consumers, particularly when these allow businesses to operate at a larger scale, which results in lower prices due to lower cost of producing goods or supplying services.

However, there are mergers and acquisitions that could substantially prevent, restrict, or lessen competition in a market, thereby leaving consumers vulnerable to higher prices and fewer choices. These mergers are prohibited under the Philippine Competition Act.

To ensure that markets are protected against anti-competitive mergers and acquisitions, parties to a merger or acquisition agreement where the size of transaction and the size of party exceed the thresholds set annually by the PCC, are required to notify the Commission of such agreement.

In line with PCC Memorandum Circular No. 18-001 released in 2018, the thresholds for compulsory notification of M&As will be adjusted annually based on the nominal gross domestic product (GDP) of the previous year. For more information, visit *https://phcc.gov.ph/pcc-policy-statement-18-01-adjustment-thresholds-compulsory-notification-mergers-acquisitions/*

The PCC conducts a merger review to determine if the merger will substantially lessen competition. If it finds that a deal between companies will result in consumer harm, the PCC can block the merger or impose behavioral or structural remedies on the merging parties.

Even mergers and acquisitions worth less than the amount of the thresholds may be subject to review by the Commission if the transaction may result in substantial lessening of competition.

Moreover, consumer groups, potential competitors, or any other entity can ask the PCC to review the transaction.

Fines and penalties

The PCC is empowered to impose significant fines and penalties on businesses which have been found to violate the prohibited acts covered by the PCA, to be in contempt, or fail to comply with orders, or supply misleading or false information to the PCC. Only the Court of Appeals and the Supreme Court may issue a temporary restraining order or injunction against the PCC in the exercise of its duties and functions.

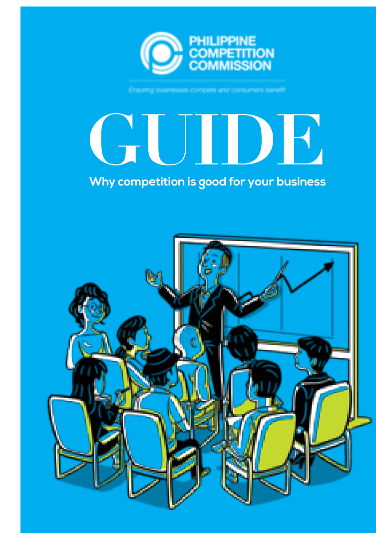
Dominant businesses found guilty of abusive conduct may be penalized with fines worth up to PhP100 million in the first instance, and higher penalties later on.

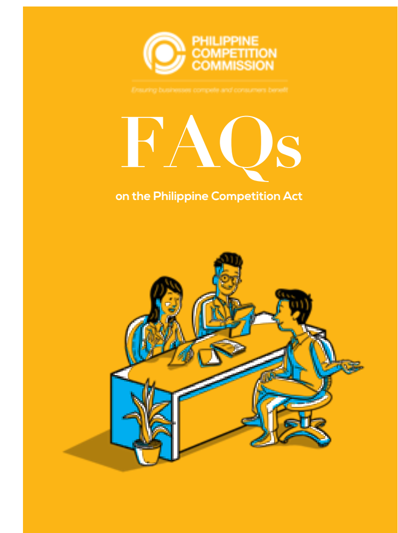
Report violations

of the PCA

If you know of any business that is behaving in an anti-competitive manner, report to PCC by calling **87719 722** or by emailing **queries@phcc.gov.ph**. You may also come to our office at 25/F Vertis North Corporate Center 1, North Avenue, Quezon City 1105.

Do you want to learn more about competition policy and law? You may download other publications from www.phcc.gov.ph.





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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