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EDITORS' NOTE

This special issue of the Philippine Competition Bulletin features key takeaways from the 2022 Manila Forum on Competition in Developing Countries (FCDC) held last February 3-4. Themed “Beyond Recovery: Building Back Better with Competition Policy,” the 2022 Manila Forum explored the role that competition policy played in achieving inclusivity, resilience, and sustainability as countries restarted their economies hit by the COVID-19 pandemic, and its effects on policy responses.

The Forum, through four plenary sessions and two parallel sessions, shed light on the impact of the pandemic on markets and how competition law and policy adjusted and transformed to aid governments not just in the recovery, but also in the building back better of economies.

The sessions are available for streaming at the Philippine Competition Commission’s (PCC) official Facebook page (<https://www.facebook.com/competitionph/videos>). ■

PCC, NEDA HEADS HIGHLIGHT KEY ROLE OF COMPETITION POLICY IN ECONOMIC RECOVERY



The key role of competition policy in the recovery of developing economies was underscored by speakers at the opening of the 2022 Manila Forum on Competition in Developing Countries on February 3.

Themed “Beyond Recovery: Building Back Better with Competition Policy,” this year’s Forum, the fifth in the series, “seeks to discuss key lessons that have emerged from conversations on recovery,” said Chairperson Arsenio M. Balisacan of the Philippine Competition Commission (PCC) in his opening remarks. He added that the Forum will discuss the “major development challenges that were revealed and worsened by the pandemic, and how competition policy must situate itself within the arsenal of tools and policy levers wielded by governments to create a “better normal.”

These lessons and challenges were tackled during the plenary sessions whose topics included: (1) merger control in the crisis and post-crisis economy; (2) emerging trends in cases of cartels and abuses of dominance in the context of strengthened market power; (3) the challenge of ensuring a competitive landscape for struggling micro, small, and medium enterprises or MSMEs; and (4) the direction of regulation in digital markets to meet growing demand and address competition issues. Two parallel sessions were also held: one on competition enforcement and investigations in the “new normal” and another on the challenges and opportunities for evidence-based policy through competition economics research.

In his message, Socioeconomic Planning Secretary Karl Kendrick Chua, concurrent Director-General of the National Economic and Development Authority (NEDA), focused on how competition policy will help strengthen the country’s foundation, helping it achieve upper middle-income country status and sustain growth toward high-income country status in one generation. “By fostering a business-friendly environment and a level playing field that welcomes all players, we can promote more innovation, create more and better jobs, and accelerate our growth,” he said.

He noted that prior to the pandemic, the Philippine government pursued game-changing reforms that improved its global competitiveness ranking, including



the enactment of the Ease of Doing Business and Efficient Government Service Delivery Act, the Philippine Innovation Act, the Rice Tariffication Law, and the implementation of the Build, Build, Build Infrastructure Program.

Amid the pandemic, the country has continued to pursue reforms for improving competition, particularly for product market efficiency, including the Corporate Recovery and Tax Incentives for Enterprises or CREATE Act, and economic liberalization bills in the form of amendments to the Retail Trade Liberalization Act, Foreign Investment Act, and the Public Services Act. These reforms “will open up key sectors to foreign investments such as telecommunications and transportation,” Chua said.

Chua also cited the issuance of Administrative Order (AO) No. 44 on October 20, 2021, directing the adoption and implementation of the National Competition Policy (NCP) across government agencies. AO 44 provides the government with a legal framework for the adoption of pro-competitive interventions to maintain market efficiency and protect consumer welfare, while strengthening the enforcement of the Philippine Competition Act. AO 44 incentivizes government institutions to comply with the NCP as they will be assessed and rewarded on how their respective policies and regulations affect market competition.

“We call on everyone to work together in improving competition and raising our country’s productivity overall. NEDA looks forward to a strengthened partnership with the PCC and all our partners in creating an environment conducive for greater competition to support our sustainable and resilient recovery,” Chua said.

As the 2022 Manila Forum coincided with the PCC’s sixth anniversary, Balisacan shared the Commission’s milestones under his leadership in the past six years, noting that this year’s Forum was his last as PCC Chairperson. Balisacan capped his speech with a message of thanks to PCC’s partners and stakeholders which were instrumental in the growth and development of the agency as an “emerging enforcer” of competition policy and law. ■

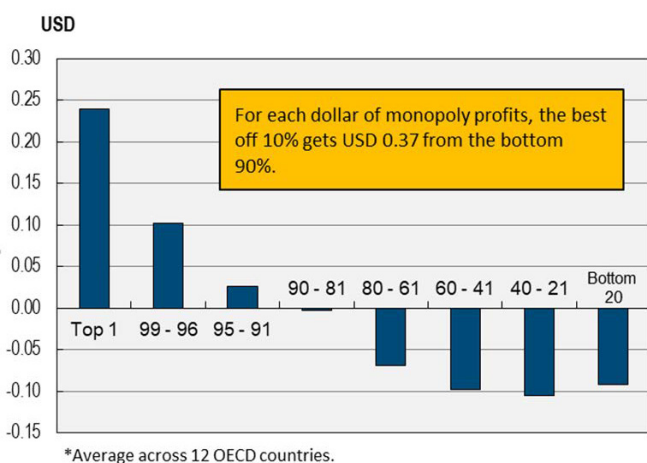
COMPETITION AGENCIES URGED TO PUSH FOR PRO-COMPETITIVE CRISIS AND RECOVERY POLICIES

Mr. Ori Schwartz, head of the Competition Division of the Organisation for Economic Co-operation and Development (OECD), urged competition authorities to play a proactive role in shaping policies on crisis and recovery. Occasion was the opening of the 2022 Manila Forum conducted by the Philippine Competition Commission on February 3, where he was the keynote speaker.

“The first and, perhaps, essential part of shaping crisis and recovery policy is to have a seat on the table, to be heard, and to remind policymakers of the importance of competition during crisis and recovery,” Schwartz said. He encouraged competition authorities to highlight the benefits of competition and consider competition principles in government policies and interventions in their advocacy efforts.

Highlight the benefits of competition

Schwartz emphasized the importance of competition policy in two dimensions—social and economic. On the one hand, competition lowers prices and benefits consumers, particularly the poorest in society. Without competition, the poorest parts of society are further disadvantaged. As shown in the graph, a monopoly profit is a transfer of wealth from the poorest to the wealthiest parts of society. Hence, it worsens inequality.



On the other hand, competition increases productivity, which expands output and improves welfare. Empirical analyses and studies show that countries with effective competition policy and legislation tend to grow more rapidly and steadily.

While these benefits are self-evident and clear within the competition community, the other branches of government, politicians, and concerned parties might be unaware of them. Therefore, Schwartz urged competition agencies to repeatedly highlight these competition benefits when discussing policies with external stakeholders. This is especially because governments



tend to act very urgently but not necessarily in the right direction in terms of competition when a crisis hits the economy. For instance, while governments were concerned about reduction in productivity, unemployment, shortages, and inflation during the pandemic, their responses to these challenges undermined competition policy. Particularly, some countries suspended the ban on cartels and relaxed merger control. According to Schwartz, “the suspension of antitrust laws would not serve the purpose of fighting the pandemic.” Allowing cartels, even in the short-term, would establish channels for collusion and adversely affect competitive culture. Moreover, relaxing merger control allows structural changes to happen in the market without appropriate competitive supervision.

Advocate competition principles

Among the government’s interventions for businesses when the pandemic struck was state support. Schwartz called for a more careful look into state aid, given its potential to distort markets and create an uneven playing field.

To avoid inefficiency in the use of state aid, Schwartz proposed that the support’s purpose, target recipients, duration, and other terms must be identified before states decide to support firms. The government needs to define the goal or objective of the support before giving away money into the market. Moreover, Schwartz said that the government should recognize that sectors were hit differently by the pandemic. Thus, for instance, a tourism company would have to be treated or supported differently from an online shopping company.

Market distortion due to state aid may also be minimized through the claw-back mechanism. This mechanism allows a government to retrieve some or all of the funds it gave to the recipients when the economic situation improves.

On the other hand, state aid generates opportunities that competition authorities should examine and exploit. The government can introduce terms and conditions of the support aimed at improving market competition in

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MERGER CONTROL IN TIMES OF CRISIS

In times of crisis, mergers are seen as solutions, especially for struggling and failing firms. The mergers often impact markets long after the crisis is over. The first plenary session of the 2022 Manila Forum on Competition in Developing Countries discussed the challenges of balancing economic response to the crisis and the risk of increased market concentration post-crisis.

The session's panel was composed of Senator Sherwin Gatchalian of the Philippines; Dr. Chandra Setiawan, commissioner of the Indonesia Competition Commission; Ruben Maximiano, competition expert at the Organisation for Economic Co-operation and Development (OECD); and Atty. Charles Veloso, partner at Quisumbing Torres' Corporate & Commercial Practice Group in the Philippines. The session was moderated by Robert Ian McEwin, an honorary professor at the Australian National University College of Law.

Setting the context for the discussion, McEwin emphasized the importance of merger policy in times of economic downturn such as the impact of the current COVID-19 global pandemic. He pointed out that competition laws among developing countries, which include most of Southeast Asia, have significant differences, such as how anticompetitive effects of mergers are determined and in their procedures (e.g., timetables, thresholds for notifications of mergers).

Merger policy

Maximiano shared that based on empirical evidence, lax merger control in times of crisis does not improve long-term resilience, citing the cases of bank mergers in Japan in the 1990s and 2000s and in the United Kingdom in 2009. "We saw that suspension of antitrust laws can hold back recovery in general," he said.

In the Philippines, the merger notification threshold was increased to PHP50 billion (USD1 billion) in 2020 and the Philippine Competition Commission's motu proprio review power was suspended for a year from September

2020. Veloso noted that this government action was in contrast with other jurisdictions, where merger control was strictly implemented amid the pandemic.

Gatchalian, who was in the business sector before joining government, said businesses will try to maximize a crisis by looking at opportunities. Thus, as regards merger review, he highlighted the need for authorities to consider the economic environment in balancing employment and the interests of consumers.

Setiawan shared that in Indonesia, while there was no change in the powers of the competition authority, the pandemic's impact was considered in decision-making. Indonesia's competition authority uses a post-notification approach, while the concept of pre-notifications is voluntary and carried out through consultations. Noting the increased number of notifications during the pandemic, the Indonesia government amended its merger regulations to include a simplified assessment method. Moreover, the period of notification of merger transactions was relaxed from 30 to 60 days.

Role of advocacy in merger control

Maximiano also highlighted the important role of advocacy in merger control in times of crisis. "It's not just about advising governments that competition is important—that definitely is key—but also advising governments when they may be sponsoring certain mergers that can have long-term impacts," he said. Advocacy, he explained, includes providing advice on alternatives or remedies to reduce or eliminate competition concerns. For instance, when governments are using merger policy as part of industrial policy, they should be alerted to its harms, and ways of reducing these eventual harms.

Setiawan shared that the Indonesian competition authority actively conducts public education on the objectives and benefits of merger control, as part of their efforts to promote a culture of fair competition.



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KEEPING WATCH OVER CARTELS, BIG PLAYERS CRUCIAL DURING CRISIS



Times of crises and disasters lead to the formation of cartels and enable certain businesses to gain a dominant foothold in the market. Governments play a significant role in addressing these complications and ensuring through appropriate regulations that markets continue to be healthy and function well.

The second plenary session of the 2022 Manila Forum on Competition in Developing Countries focused on industry and regulatory responses to cartel activities and abuses of dominant positions that sprang during the pandemic. The panelists were Kentaro Doi, deputy director, International Affairs Division, Japan Fair Trade Commission (JFTC); Jesusa Joyce Cirunay, director, Center for Drug Regulation and Research, Food and Drug Administration of the Philippines (FDA); Yuli Wahyuningtyas, associate professor, Faculty of Law, Atma Jaya Catholic University; and Teodoro Padilla, executive director, Pharmaceutical and Healthcare Association of the Philippines (PHAP). Former PCC commissioner El Cid Butuyan moderated the session.

Impact of the pandemic on the market, competition enforcement, and regulation

Setting the context, Butuyan talked about government responses to the public health crisis, mainly how policies enforced by competition regulators have affected the formation and breakup of cartels as these agencies can grant immunity from investigation, implement leniency programs, and provide incentives to keep issues among businesses at bay.

In the case of the health and pharmaceutical industries in the Philippines where competition is fierce, Padilla noted that the pandemic caused a higher demand for life-saving medicines. However, challenges in logistics due to restrictions in mobility complicated the production and distribution of medicine and other pharmaceutical products. In addition, unethical practices, such as the

production of counterfeit medicines and black-market activity, arose during the crisis.

Wahyuningtyas shared that the pandemic has shifted the enforcement priority of Indonesia's competition law to the health industry and its supply chain. The move was not because of anticompetitive concerns but because of the sector's necessity in ensuring the population's survival. The relaxation of competition regulation was considered, but certain risks such as increased cartel activity and incidence of abuse of dominance should be mitigated.

Important roles of competition, regulation authorities

Doi stressed the significant role of competition authorities like the JFTC in times of public crises: first, to keep monitoring for anticompetitive conduct that may emerge during emergencies, and second, to promptly respond to such by supplying information to enterprises about possible violations of antitrust laws. Padilla echoed the need for campaigns to educate consumers about health products and the state of supplies to prevent hoarding.

Cirunay shared that the Philippines' FDA issued multiple Emergency Use Authorizations for vaccines to address the pressing necessity for immunization against COVID-19. She also spoke about the FDA's public information campaigns on changes in prices of popular medical products. The agency also regulated clinical trials for the vaccines to ensure that they follow protocols and standards.

When asked how responses of government agencies are protected from abuse, Wahyuningtyas and Doi emphasized the importance of setting time limits as relaxation of laws and policies cannot be carried out forever. Such setting of durations must be complemented

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COMPETITION POLICY AND MSMEs: ENSURING INCLUSIVE RECOVERY

Mobility restrictions due to the COVID-19 pandemic have forced many micro, small, and medium enterprises (MSMEs) to reduce operations or cease altogether. While stimulus programs have been made available to mitigate the economic impact of the pandemic, access to them has been skewed toward bigger businesses. A level playing field grants MSMEs market access on fair terms and creates incentives for innovation. This supports the MSMEs' role of facilitating market access and providing employment to those who are most vulnerable to the long-term socioeconomic effects of the pandemic.

The third plenary session of the 2022 Manila Forum on Competition in Developing Countries tackled how competition stakeholders can ensure that the recovery ecosystem is built to help the MSMEs overcome perennial gaps and challenges as developing economies emerge from the pandemic. The session's speakers were Dr. Michael Schaper, former deputy chairperson of the Australian Competition and Consumer Commission and chairperson of the Australian Government's Shadow Economy Advisory Forum; George Barcelon, president of the Philippine Chamber of Commerce and Industry (PCCI); Looi Teck Kheong, head of Competition, Consumer Protection, and Intellectual Property Regulations Division (CCPID) of the ASEAN Secretariat; and Thuta Aung, Commissioner of the Myanmar Competition Commission. Atty. Amabelle Asuncion, former PCC Commissioner and professor at the University of the Philippines College of Law, served as moderator.

Understanding MSMEs

Schaper said MSMEs are the most diverse sector in the economy. There are approximately 71 million MSMEs providing employment to roughly 200 million people across Southeast Asia. MSMEs typically have few markets and limited range of products or services and operate on very thin profit margins; hence, they are somehow less

resilient to unfair competition. However, despite their vulnerability, MSMEs are the last group to assert their rights in accordance with antitrust laws when faced with anticompetitive conduct and abuses. Schaper attributed this to the MSMEs' limited knowledge of competition law, as well as limited legal and professional services available to them.

As regards MSMEs in the Philippines, Barcelon shared that around 99.6% of establishments in the country are MSMEs, employing 60% of the labor force; they are usually brick-and-mortar businesses. When the Philippines implemented community quarantines and mobility restrictions, MSMEs encountered constraints in their supply chains. To survive, they needed to quickly adapt to digitalization and shift to e-platforms.

Barcelon saw 2022 as the year of recovery for the economy and MSMEs. The mobility restrictions and preventive measures in 2020 resulted in physical closures of businesses. In 2021, small and large firms alike tried to keep their businesses afloat even as physical shops were kept closed for more than a year. This year, as a result of the government's mitigation measures of COVID-19, the growth of daily cases has been on the decline. At this rate, policymakers would have more confidence in opening the economy, which would benefit MSMEs.

Impact of COVID-19 on MSMEs

Schaper said the impact may be seen at both the micro and macro levels. At the micro level, lockdowns and mobility restrictions reduced customers' physical access in various sectors, especially in fields requiring face-to-face interaction (e.g., retail, tourism, transport). Some businesses responded through digitalization. Some operated their business online, resulting in an enlarged market; others did not (not all businesses may easily be transformed to a digital platform).



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THE COMPETITION LANDSCAPE AND DIRECTION OF REGULATION IN DIGITAL MARKETS



The online-to-offline delivery of goods and services, including remote access to education and employment opportunities, has depended on digital platforms during the height of the pandemic and well into the era of recovery. Although access to digital products is broadening, it is still unequal. Competition advocates therefore strive to uphold consumer welfare and the competitive process as digital developments reshaped markets. In view of the cross-border presence and effects of digital transformation and innovation, collaboration among competition authorities, some of which have enacted specialized legislation and guidelines, may prove crucial in ensuring effective and consistent enforcement. Developing markets make up vast markets both on the demand side and at the cutting edge of digital innovation supply. As such, the fourth plenary session of the 2022 Manila Forum on Competition in Developing Countries explored how competition enforcement in digital markets can be tailored to their specific context and needs. It was moderated by Commissioner Johannes Bernabe of the Philippine Competition Commission (PCC).

Lim Chong Yah Professor of Economics Julian Wright of the National University of Singapore discussed the role of network effects and big data in building digital markets. He said network effects become evident in markets where product value increases with the number of users. Platforms such as Meta, which now includes Facebook, Instagram, and WhatsApp, serve as networks that continuously expand and improve as more users use them and create more valuable interactions. For example, in Facebook Marketplace, more buyers and sellers get

connected to each other, which means more value is created and more benefits are gained for both parties as they engage in successful transactions.

Wright also highlighted user data as a critical factor for establishing and expanding networks. Although it may exponentially benefit platforms because of enhanced network effects, high concentration of data and capacity to operationalize certain algorithm measures and tools—which may or may not be replicable—among market players may pose economic risks such as accumulating too much market power and potentially excluding new competitors from the market.

In terms of regulatory reforms, Herbert Fung, senior director of the Business & Economics Division, Competition and Consumer Commission of Singapore, discussed how digital platforms have changed competition assessment and, in turn, the enforcement of competition law. He said that, in keeping with the new business environment built on digital markets, competition authorities must modernize their economic analyses to come up with accurate explanations on how these online platforms accumulate market power and arrive at sound recommendations for legal enforcement.

Moreover, antitrust agencies should consider investigating platforms that seem to be causing harm to consumers despite having insignificant market power, such as those that implement wide price parity practices. Fung added that such business conduct may potentially

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COMPETITION AGENCIES STEP UP, SHAPE UP DURING PANDEMIC

With the global health crisis affecting both suppliers and consumers the past two years, competition regulators needed to adapt to the times by adjusting parts of their processes and operations for competition to thrive.

In the first parallel session of the 2022 Manila Forum on Competition in Developing Countries, titled Competition Enforcement and Investigations in the New Normal, representatives from ASEAN competition authorities shared their respective agencies' responses to the challenges brought about by pandemic-related restrictions.

The session's panel was composed of Chomkwan Ide, director of the Fact-Finding Division, Trade Competition Commission of Thailand (TCCT); Mohd Hasbullah Mohamad Faudzi, senior assistant director of the Investigation and Enforcement Division, Malaysia Competition Commission (MyCC); and Kenneth V. Tanate, Executive Director of the Philippine Competition Commission (PCC). Atty. Orlando P. Polinar of the PCC Competition Enforcement Office moderated the session.

Challenges to enforcement authorities

The COVID-19 pandemic brought changes and challenges to the PCC, said Tanate; Ide and Faudzi shared the same sentiment, as their respective agencies also had to tweak their processes to meet the demands that sprang from the situation.

Restricted mobility due to quarantine orders posed a challenge to the operations of the antitrust agencies. Fieldwork, information gathering, and investigations have to be reduced or delayed. Faudzi shared that since other government offices also had to close shop, getting pertinent documents became complicated.

The competition agencies observed an increase in anticompetitive activities and, consequently, an increase in complaints filed. Ide shared that in Thailand, the pandemic led to predatory pricing among low-cost airline services, price-fixing of vaccines, and exclusive dealings with a popular food delivery platform. In the Philippines, balancing enforcement action with recovery of businesses became a tough act, said Tanate. Faudzi shared that in the case of Malaysia, plans had to be revised according to changes in the public health situation. As such, making statements and tracking individuals became a challenge for the MyCC.

Lessons learned

Enforcement activities have to be adjusted to address anticompetitive behavior worsened by the public health crisis. For TCCT, this meant applying a short-term crisis cartel approach to the regulation of enterprises. The agency also crafted and released guidelines for food delivery service providers to promote fair trade practices among restaurant operators and delivery services.

In the case of the PCC, cases and investigations for internet service providers in residential buildings were



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COMPETITION ECONOMICS FOR DEVELOPING COUNTRIES: CHALLENGES AND OPPORTUNITIES



Competition economics is the application of the principles of economic theory in the field of antitrust. It is used in conducting policy research and market studies. The second parallel session of the 2022 Manila Forum on Competition for Developing Countries focused on competition economics. During the session, competition authorities from Thailand, Malaysia, Indonesia, and the Philippines shared best practices and innovative solutions among practitioners who regularly deal with unique challenges in economic research in developing countries.

The session's panel was composed of Ismail Faruqi Abdullah, acting head of the Business and Economics Division, Malaysia Competition Commission (MyCC); Theerawat Thipparat, director of Merger Review Division, Trade Competition Commission of Thailand; and Deswin Nur, head of Public Relations and Cooperation, Indonesia Competition Commission (KPPU). Tristan A. Canare, chief of the Economic Investigation Division, Economics Office, Philippine Competition Commission (PCC), served as moderator.

Challenges encountered by competition authorities

Complexity of economic research in digital markets.

In the age of digital economy, online platform-based markets remain uncharted seas because of their novel and complicated business models.

Abdullah of the MyCC said their agency faced the challenge of performing market studies in the digital economy, as well as identifying emerging issues resulting

from technical innovation or public policy interventions. "This has been a challenge for a competition authority like us to understand the potential competition concerns that could arise and to determine the appropriate course of action to address them when the digital economy started to materialize," Abdullah said.

PCC's Canare shared about the Philippines' difficulty in searching for reliable data. The PCC requests data from external parties; however, they would usually give data in the rawest format, which have to be converted to a workable statistical or data format, prior to analysis.

MyCC's experience was similar to that of the Philippines. "The main challenge was getting information and documents either from private parties or respective ministries," Abdullah said. He added that if these entities refused to cooperate, the competition authority would have no further recourse, noting that the entities were under "no such obligation... to submit any information that we requested."

Like the Philippines, Indonesia also experienced difficulty in accessing data ready for competition analysis. Nur narrated how KPPU changed its economic analysis methodology due to inconsistencies in secondary data obtained from various agencies. "Data needed for competition analysis are quite unique—they are very specific," Nur said. Unavailability of existing data also caused delays in investigations of antitrust enforcement cases.

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the long run. For example, an incumbent legacy aviation firm usually has the best slots in airports, which makes it harder for new and small aviation firms to enter the market. Schwartz said that if support will be given to this legacy aviation firm, the government can ask the firm to release some of its slots, and then reallocate these to new players. This way, the state support keeps the firm alive, while improving competition in that sector. Hence, “in the post-pandemic world, we build back better,” said Schwartz.

Competitive neutrality is another principle that competition authorities must advocate as economic

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Their activities include giving awards to government sectors, regions, or provinces that comply with or support competition in their areas.

Innovation, sustainability, and resilience

The global pandemic has also spotlighted innovation and sustainability. Veloso noted that organizations with a culture of compliance are more innovative and resilient. He emphasized the importance of competition authorities considering the impact of sustainability on merger assessment.

Citing an OECD discussion paper on sustainability and competition, Veloso highlighted that the traditional application of competition law can lead to increases in sustainability. This is attributed to the significant overlap between the concept of sustainability and efficiency in consumer welfare. He said that competition law should not be seen as limiting the pursuit of sustainability as a goal by market participants.

Setiawan noted that resilient and sustainable companies can contribute to the creation of resilient and sustainable economies. Similarly, Maximiano’s take on innovation focused on its impact on resilience. “By not allowing

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by market monitoring, said Doi. In the case of Japan, however, there was no significant change in the competition law and its enforcement, but rather on the transparency of the enforcement activities.

Collaboration, not overregulation

Padilla pointed to collaboration as a key means of surviving the pandemic, instead of overregulation. Collaboration means manufacturers of medical products working hand-in-hand with relevant government agencies to ensure that competition thrives despite the public health crises. Padilla argued that a competitive environment in the health market, rather than price regulation, will lead to affordable medicines, attract investments that generate employment, and help set the country’s path to economic recovery.

policies are being shaped with respect to crisis and recovery. This principle indicates that all enterprises are provided a level playing field, with respect to state ownership, regulation, or activity in the market. According to Schwartz, competitive neutrality should be considered in two main aspects: first, between foreign and domestic firms since governments tend to be more supportive of the latter, and second, between state-owned enterprises and private firms. This principle addresses the inclination of governments to prefer their own firms or their friends’ firms. ■

excessive market power and by not allowing reduced competition between innovators or companies that are playing a big role in deploying that innovation throughout the economy, we can ensure that competition is driving long-term productivity throughout the economy,” he explained.

Supporting recovery efforts

The pandemic’s impact on markets includes an increased level of market power and concentration in many jurisdictions. Maximiano said competition authorities should pivot from asking if prices will increase within the next years to focusing on how mergers will alter the incentives to compete.

Citing an OECD paper, Veloso shared that competition authorities can contribute to recovery efforts by strategically redirecting enforcement resources to essential markets and industries such as healthcare, supply chain, and digital platforms.

He emphasized the importance of continuing to strictly enforce merger control in the context of a crisis, noting that such mergers may create or strengthen a firm whose market power may become systemic. ■

Wahyuningtyas also mentioned the need for partnership between the government and micro, small, and medium enterprises (MSMEs) to counter anticompetitive conduct and to optimize efforts on recovery, flexibility, and collaboration. In addition, proper regulation should be pushed to prevent abuses of dominant position among large companies and MSMEs. She stressed that the ultimate beneficiary of competition should be the consumer.

Doi likewise pointed to the collaboration between the JFTC and other competition authorities in enforcing competition law and policy based on global standards. He emphasized the need to create an environment for markets that are conducive to innovation and to eliminate obstacles to free and fair competition as a means for economic growth. ■

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Moreover, disruptions in the supply chains and procurement activities within and among countries were experienced because of the lockdowns. Lastly, there were labor shortages in some countries, as businesses started to jumpstart the flow of goods and services.

At the macro level, several concerns posed risks to fostering competition in the market. First was the risk of price gouging, or the act of raising prices of scarce goods to maximize profits, to the detriment of consumers. Schaper noted that different countries have varying appreciation of price gouging, whether it violates competition law or not. In some countries like Malaysia and the Philippines, competition law covers price gouging; but in other countries, their antitrust law is silent on this matter. Second was the risk of crisis cartels. According to Schaper, these cartels “spring up at short notice” during crises. They sometimes emerge unchecked because these cartels ostensibly operate for the benefit of the public. Third was an increased appetite for mergers. Schaper said the likelihood of mergers increases because of the “failing firm” rationale. Add to that, small businesses would no longer enjoy a level playing field because of high market concentrations due to mergers. And fourth, some governments, aiming to provide fiscal stimulus packages to businesses, were more likely to give incentives to big businesses, rather than to MSMEs. Schaper observed that government support is often granted to big firms, rather than the small firms, resulting in further market distortion and imbalances, thereby affecting the MSMEs’ ability to compete in the market.

International competition authorities’ response to COVID-19

Teck Kheong said the ASEAN, in a joint statement issued in response to the pandemic, stressed that its members will not hesitate to act against any business taking advantage of the current crisis. The statement emphasized that fair competition in an economy will enhance economic efficiency, stimulate innovation and economic growth, and increase consumer welfare. As such, it will greatly contribute to the region’s efforts in overcoming the pandemic’s adverse impact.

He cited several strategies in the ASEAN Comprehensive Recovery Framework (ACRF). These include enhancing health systems to contribute to the short- and long-term goals of the ASEAN health sector; strengthening human security by developing a recovery framework that puts welfare of people at the core; maximizing the potential of intra-Asian trade and investment and broader economic integration, which helps establish the ASEAN as a competitive market; and accelerating inclusive digital transformation by implementing the “ASEAN Investigation Manual on Competition Policy and Law” for the digital economy, conducting business surveys to measure the perceived adequacy of existing competition policy and law in e-commerce focusing on MSMEs, and adding digital economy elements in its technical assistance activities.

In the case of Myanmar, Aung shared how the government collaborated with the private sector in drafting a comprehensive document used by policymakers

in making effective financial assistance packages for MSMEs. The National Enlightenment Institute, a civil society organization in Myanmar, collaborated with the government and donors of nongovernment organizations to develop an extensive profile of each state of Myanmar. The whole-state profile of Myanmar was beneficial to decision-makers in formulating economic stimulus packages, especially for MSMEs. Aung noted that the document aided decision-makers in developing targeted assistance toward MSMEs.

Strategies for mitigating COVID-19’s impact to aid in MSMEs’ recovery

Lifting mobility restrictions. Barcelon recommended the gradual reopening of the economy or a more lenient lockdown. He noted that in the last quarter of 2021, the Philippines’ gross domestic product grew by 7.7% because of the lifting of some mobility restrictions. More lenient lockdowns may aid in reactivating the supply chains, which would facilitate the in- and out-flows of goods and services.

Multifaceted government support. Barcelon suggested that the support should be holistic—should be more than just trade and commerce—to address other issues faced by MSMEs, and that it should not be confined only to government financial assistance per se. He said that these may include providing affordable COVID-19 testing kits or conducting random testing, preferably at the barangay level. The government should likewise provide quality education to the youth, especially to owners of MSMEs. He underscored the importance of quality education for Filipinos, especially in science and technology, in the face of globalization.

Accelerated digital transformation. Teck Kheong recommended several related strategies to ease the burden on MSMEs and further aid to their recovery. Referring to the ACRF, he emphasized the need to accelerate the digital transformation of businesses. MSMEs may need to shift from traditional to digital ways of doing business. Since MSMEs by themselves may not build digital platforms, the government can help in building them. Also, the government may consider developing safety regulations and security standards for digital industries.

Less stringent competition enforcement. Teck Kheong said competition authorities may consider a less stringent regulation of competition law for the purposes of easing the burden and stresses on MSMEs during the crisis. He recommended moratoriums in enforcement, if relentless enforcement results in worsening unemployment and bankruptcies during the pandemic. He also raised the possibility of reducing penalties for MSMEs to improve their liquidity or availability of assets. Lastly, he recommended the suspension of compliance with regulatory directives to ease the administrative burden and costs to MSMEs during the crisis. He cited as example the suspension of some procedural aspects in merger processes, such as notification evaluation for sufficiency of notification, interruption of periods on compliance to filing of pleadings, or payment of fines. ■

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influence other competitors to adopt similar policies without explicit collusion or existence of single-firm dominance, in turn, causing market-wide effects. He also warned about algorithm pricing, which may be used as a tool to carry out tacit collusion among competitors.

In the case of micro, small, and medium enterprises (MSMEs), Pierre Horna, Legal Affairs Officer of the Competition and Consumer Policies Branch, United Nations Conference on Trade and Development (UNCTAD), shed light on the development account project of the UN Department of Economic and Social Affairs. This project, entitled Global Initiative towards Post-COVID 19 Resurgence of MSME's, particularly relates to said sector's access to the digital marketplace. He shared that the UNCTAD Secretariat issued a background note underscoring that digital platforms are essential elements in the post-pandemic economy

and thus must entail collaboration not only among competition authorities, but also among governments worldwide as such initiative recognizes a multidisciplinary approach. It also provides a comparative analysis of recent initiatives taken by governments worldwide, including recommendations on how developing countries may deal with competition issues relevant to digital markets.

Additionally, Horna noted that various member states reported several unfair trade practices in the digital sector and advocated the conduct of regulatory reforms of competition laws. These concerns encompass the need for digitalization in both public and private sectors to combat e-commerce challenges, of amending the legitimate base for digital markets, and of establishing interagency collaboration. ■

Competition agencies... continued from page 9

prioritized due to the nationwide demand for fast internet service for online education and work-from-home arrangements. The agency also had a temporary restructuring; it established a Cartel Division and an Abuse of Dominance Division.

Digitalization of processes and documents became a vital step in getting over the hurdles caused by the COVID-19 crisis. For the MyCC, this involved digitalizing physical evidence so that information is accessible under remote work settings. The PCC set up a COVID-19 portal in its website to continue enforcement activities online. For both these agencies, videoconferencing became a useful technology in carrying out activities.

Best practices to sustain

Beyond making adjustments, competition authorities sought to identify pandemic-induced practices that can be carried on to the so-called "new normal."

In the case of TCCT, Ide cited the food delivery platform guidelines as a useful enforcement mechanism to be

retained as these can serve as basis for regulating Thailand's digital economy. Noting that the increase in government intervention in the market has resulted in decreased competition, she stressed that any intervention should have time limits.

Both the MyCC and the PCC said they would continue to implement initiatives for digitalization of documents and processes related to investigations. The MyCC will establish online data sources and references to aid in the conduct of investigations.

Tanate emphasized the potential of establishing investigation stations outside the capital for better coordination with stakeholders in the area and in the neighboring regions. The PCC set up its first investigation station in Baguio City in 2021. It also plans to continue adopting non-adversarial remedies and alternative enforcement mechanisms to ensure the immediate resolution of competition concerns. ■

Competition economics... continued from page 10

Competition economics is a relatively new field in the Philippines. Filipino economists are learning from more advanced international practitioners in developed countries. Also, there is a lack of technical capacity for presenting data more effectively so that these can be easily understood by high-level decision-makers. Canare noted that economists commonly write long, technically sound research papers with significant policy implications, but that these would end up unread because of their esoteric language.

In terms of practitioners, there are only a few competition economists. Nur said the KPPU has approximately 100 economists only out of the total 400 staff complement. Because of their relatively low proportion in the agency, these economists have to perform recurring critical roles in conducting market studies, policy research, and economic analysis for investigations, among others.

Limitations in cooperation with sector regulators on competition cases. Sector regulators have the competence and technical expertise on their respective sectors. Since there are overlaps between competition and sector regulation, there will always be interface between the two. However, the relationship between the two regulators is not always frictionless.

Thipparat of the TCCT said that in the case of Thailand, the memorandum of understanding (MOU) with the state or state regulator provides that the TCCT may not assume jurisdiction on businesses under the control of the sector regulator. Despite this prohibition, the TCCT proactively looks for entry points where competition law may be considered. The MOU also requires the TCCT to clearly pinpoint competition-related activities involving businesses under the jurisdiction of sector regulators.

In Malaysia, the interface between the MyCC and sector regulator is not an issue; both agencies are comfortable working with each other. Abdullah shared that the MyCC has been working closely with sector regulators for the past few years, especially in gray areas where joint effort is required from both agencies.

Improving competition economic research

With all the challenges identified in the conduct of economic research, the panel members recommended solutions to improve the quality and streamline the conduct of competition economics.

Strengthening competition law's power to compel data submission. Introducing revisions to the law in some jurisdictions may help competition authorities in securing

data and document requests from external parties. Abdullah recommended amending the competition law by strengthening provisions on antitrust authorities' ability to request information from private firms for the purpose of economic research.

Collaborating with government agencies, sector regulators, competition authorities, and academe. The interface between competition authorities and sector regulators may be problematic in some aspects; however, it is not bereft of ways to streamline collaboration between them.

Abdullah recommended the development of a platform for discussions among agencies with overlapping functions. In Malaysia, the MyCC and government agencies conduct a special committee meeting involving several agencies, including some sector regulators that have competition-related mandates. The committee meeting serves as a venue for discussing areas where cooperation from both agencies will be required.

Nur added that engaging and involving the sector and its regulator at the early stages of project implementation lessens the friction. Competition authorities may consider the formalization of cooperation through joint studies, joint data collections, and regular meetings to discuss certain issues.

Thipparat said that mutual understanding of the roles of competition authorities is important for a smoother interface with the other agencies. The TCCT advocates competition law and policy with government agencies, the private sector, and universities.

Further, competition authorities must strengthen their relationship with national and international partners for mutual reinforcement of knowledge and expertise. Abdullah said that competition authorities may avail of expert placement programs with the Japan Fair Trade Commission and Australian Competition and Consumer Commission, which are heavily involved in providing technical assistance in carrying out economic research. Abdullah and Nur likewise recognized the importance of forming partnerships with the academe. Abdullah said that by developing strategic partnerships with academics, competition authorities can hone their expertise.

Nur recommended capacity building of economists from the academe or research agencies as they may be tapped to provide assistance to competition authorities' analytical needs. In parallel, antitrust watchdogs must also equip their in-house competition economists to ensure quality of research activities. ■



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