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# PHILIPPINE COMPETITION BULLETIN

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**PHILIPPINE  
COMPETITION  
COMMISSION**

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*Ensuring businesses compete and consumers benefit*

# 2022 MANILA FORUM COMPETITION POLICY: A KEY ELEMENT IN ECONOMIC RECOVERY

by Paul Andrew F. Lucena

Competition policy is not a luxury, but a necessity for economic resilience and recovery. This was the overarching message of Mr. Ori Schwartz, head of the Competition Division of the Organization for Economic Cooperation and Development (OECD), in his keynote speech during the 2022 Manila Forum on Competition in Development Countries held last February 3-4. He also discussed how governments must learn from past crises in shaping recovery policies.

Unfortunately, “governments tend to act very urgently and not necessarily in the right direction, in terms of competition,” Schwartz said, particularly citing actions such as antitrust law suspension, merger control relaxation, and state aid provision.

## Antitrust suspension holds back recovery

At the start of the COVID-19 pandemic, the price of face masks skyrocketed due to insufficient supply to meet public demand. As expected, new suppliers soon entered the market, and prices went down. If antitrust laws were suspended, suppliers would have been allowed to collude and prices would not have gone down, said Schwartz, adding that such suspension “would not serve the purpose of fighting the pandemic.”

He also argued that “letting cartels take place, even in the short term, will have strong implications in the long term,” as this would set up channels for collusion and foster a noncompetitive culture. Suspending the ban on cartels creates communication channels between competitors. These channels would not instantly disappear when the ban on cartels is reinstated. Moreover, allowing cartels would change the economic culture in the long run. Competitors would no longer have the incentive



to reduce prices and innovate, as profits would already be conveniently generated by the cartel.

## Lax merger control impairs resilience

According to Schwartz, when merger control is lax, structural changes take place in the market without proper competitive supervision. Such changes will not go away even after the reenactment of merger control regimes.

On the other hand, not all kinds of cooperation between competitors are forbidden during a crisis. As an example, Schwartz cited two pharmaceutical companies that agreed to cooperate in March 2020, which enabled them to deliver COVID vaccination much faster and more effectively. From an economic perspective, this can be considered and approved, but Schwartz warned that this should be done on a case-by-case basis only.

## State support distorts the playing field

Schwartz called for a more careful look into state support, which is viewed negatively from a competition angle, given its potential to distort markets and create an uneven playing field.

An added risk, Schwartz said, is the support provided to “zombie” firms. This term refers to entities that were already failing financially prior a crisis (pandemic), but received a shot in the arm during the pandemic or a similar extraordinary period of economic hardship. He emphasized that the dynamics of competition include the success of firms offering good prices, good products, and innovative terms. Hence, firms that impose higher prices, lack innovation, and are fraught with inefficiencies would eventually exit the market. In this regard, providing state support to zombie firms is economically inefficient.

To avoid inefficiency in the use of state aid, Schwartz proposed that the support’s purpose, target recipients, length, and other terms must be identified before states decide to support firms.

*Note: Mr. Schwartz also discussed the role of competition agencies in advocating pro-competitive policies and interventions, the value of competitive neutrality, and the ways of exploiting opportunities that arise in times of crisis and recovery. These will be featured in the Philippine Competition Bulletin’s special issue on the 2022 Manila Forum. ■*

## LOCAL ADVOCACY DISCUSSED IN INTERNATIONAL CONFERENCE

by Leanne Croisette N. Gorosin

The experiences of five countries -- Hungary, Kenya, Russia, Spain, and the US -- were highlighted in the session on "Advocating Competition at the Local Level" during the 2022 International Competition Network (ICN) Advocacy Workshop. The Philippine Competition Commission (PCC) co-organized the workshop, which was held virtually on February 9-10.

The session, which was moderated by PCC Commissioner Johannes Benjamin R. Bernabe, highlighted the importance of collaboration between competition authorities and local institutions in preventing anticompetitive regulations and policies. Its panel members were Karina Lubell of the US Department of Justice (DOJ) - Competition Policy and Advocacy, Boniface Makongo of the Kenyan Competition Authority - Competition and Consumer Protection, Mark Panczel of the Hungarian Competition Authority (GVH)

Antitrust Unit, Karina Taukenova of the Russian Federal Anti-Monopoly Service (FAS), and Joaquin Lopez Valles of the Spanish National Commission on Markets and Competition (CNMC) - Advocacy Department.

*Spain.* Valles illustrated the impact on market competition of public interventions by local municipalities in Spain, such as regulation, procurement, licensing, grant of subsidies, and other interventions through publicly owned operators. He said the CNMC can address competition barriers by conducting general orientations on regulatory guidelines for the public sector and by issuing advisory opinions. Between 2013 and 2020, the CNMC had issued more than 130 opinions addressed to municipalities in relation to local competition policies.

These advocacy efforts need to be amplified to increase awareness of competition law at the local level, however.

Hence, the CNMC launched a flagship advocacy project to tackle local competition barriers, boost engagements with the municipalities, scale up the agency's outreach capacity, bring competition principles closer to citizens, and build a stronger network with the regional competition authorities in Spain. The project shall also conduct case studies on various industries, including urban mobility, telecommunications, expansion of concession periods, small-amount contracts, water supply and sanitation, and professional services.

*Kenya.* Makongo shared that since the country is divided into several counties, each having its own government and regulations, there are instances where local policies potentially inhibit market competition. Given this, the national authority set forth key advocacy initiatives, which include raising the counties' awareness of the

*Continued on page 7*

## PCC WELCOMES TWO NEW COMMISSIONERS

Two new Commissioners were appointed to the Philippine Competition Commission (PCC) effective March 2022. They are Atty. Marah Victoria S. Querol and Atty. Michael B. Peloton vice Atty. Macario R. De Claro Jr. and Atty. Amabelle C. Asuncion, whose terms of office ended in 2021.

Prior to joining the PCC, Querol was Senior Deputy Executive Secretary. She also had worked in various legal firms in the private sector. She obtained her law and business administration degrees from the Ateneo de Manila University and her economics degree from the University of the Philippines Diliman.

Peloton previously served as board director at the Philippine Reclamation Authority. He also worked as overseer at the Insurance Commission and



*Atty. Marah Victoria S. Querol*

as technical assistant at the Office of the President. He has had 17 years of experience in private law practice; he also taught constitutional law at the Ateneo de Davao University and information technology at the University of Immaculate



*Atty. Michael B. Peloton*

Conception. He obtained his law and computer science degrees from the Ateneo de Davao University.

Querol and Peloton will serve as Commissioners until January 2028. ■

## ADVOCACY ROUNDUP

### PCC, NATIONAL PRIVACY COMMISSION SIGN PARTNERSHIP AGREEMENT

The Philippine Competition Commission (PCC) forged a partnership with the National Privacy Commission (NPC) to strengthen competition enforcement and policy coordination between the two regulators. The virtual signing of the memorandum of agreement (MOA) was held on February 9, led by PCC Chairperson Arsenio M. Balisacan and NPC Chairperson John Henry D. Naga.

The MOA binds the two agencies to work closely on policy implementation and case investigations involving competition and data privacy. Investigation and enforcement support between the agencies include the formation of joint task forces and notification of matters of common concern.

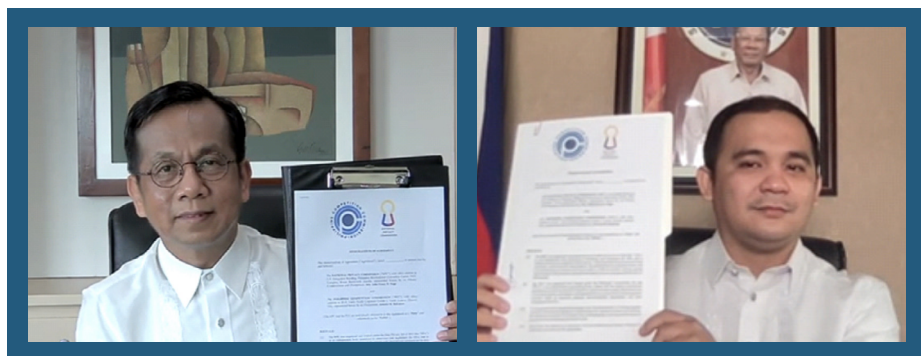
“In today’s digital economy, data play a key role in the business model of many firms. The

synergy we are forming through this agreement is a springboard for a stronger enforcement of our competition and data privacy laws,” Balisacan said.

In other jurisdictions, regulators scrutinize the accumulation and use of “big data” by dominant market players. Close collaboration between the competition and data privacy authorities is needed to tackle risks of abuses emerging in the areas of data privacy and competition.

“Protection of consumers and data subjects will always be our top priority. We will meet again with PCC to fully harness the benefits of this agreement in order to ensure the protection of the consumers in the digital age,” Naga added.

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### DIGITAL COMPETITION IN SPOTLIGHT

Chairperson Arsenio M. Balisacan of the Philippine Competition Commission (PCC) served as panelist in a special program of the ABS-CBN News Channel (ANC) that premiered on January 26.

Titled “Digital Competition in the Philippines,” the program discussed timely issues on the digitalization of business operations in the country and the role of competition authorities in such undertakings.

Balisacan highlighted PCC’s commitments on regulating

data collection and security, virtual marketplaces and online platforms for goods and services, as well as the challenges that the agency faces in enforcing competition policy in the sector.

“While we pay particular attention to the physical ones, we have to ensure that the e-commerce economy will prosper,” said Balisacan.

He also stressed the significance of having a level playing field

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## IN THE NEWS

### DOH assures full cooperation on pneumonia jab bidding probe

The Department of Health (DOH) assured its cooperation with the Philippine Competition Commission (PCC) regarding an investigation on the alleged monopoly in the procurement process for pneumonia vaccine.

*(Mark Fetalco, PTV News, 24 January 2022)*

### SC sticks to ruling allowing foreign contractors in PHL

The Supreme Court (SC) has denied the appeal of the government to abandon its decision issued in March 2020 allowing foreign construction firms to obtain licenses and engage in private or government projects in the country.

*(Joel R. San Juan, Business Mirror, 7 March 2022)*

### PCC advises companies undertaking M&A deals to voluntarily seek review

The Philippine Competition Commission (PCC) pressed companies undertaking large merger and acquisition (M&A) deals to submit to a competition review voluntarily.

*(Revin Mikhael D. Ochave, Business World, 3 February 2022)*

### With PSA, safeguards vs. abuse in place—PCC

As the amended Public Services Act (PSA) inches closer to enactment, the Philippine Competition Commission (PCC) assured that safeguards are in place to prevent abuse of market dominance and other anticompetitive practices.

*(Jasper Y. Arcalas, Business Mirror, 3 February 2022)*

### PCC flags SRP compliance on resellers

The Philippine Competition Commission (PCC) raised caution on manufacturers using compliance of their suggested retail price (SRP) as basis to supply or deny access to resellers, stressing this may restrict competition and could be in violation of the competition law.

*(Bernie Cahiles-Magkilat, Manila Bulletin, 2 March 2022)*

## PCC OFFICIALS WEIGH IN ON NEW ADB STUDY ON DIGITAL MARKETPLACES

Commissioner Johannes Benjamin R. Bernabe and Director Krystal Lyn T. Uy of the Mergers and Acquisitions Office, both of the Philippine Competition Commission (PCC), joined experts in a webinar on digital marketplaces hosted by the Asian Development Bank (ADB) on February 16.

The webinar was part of the launch event for ADB's book, *Managing the Development of Digital Marketplaces in Asia*. Published in December 2021, the book focuses on critical concerns in the digitalization of businesses and trade operations, which accelerated during the COVID-19 pandemic.

Moderated by Thomas Abell, head of ADB's Digital Technology for Development Unit, the webinar discussed the issues tackled in the book, particularly the constraints of gathering data, inequality of access to digital platforms, and challenges to policymakers and regulators posed by the burgeoning e-commerce sector.

Bernabe raised three competition issues concerning digital platforms: control of data by the incumbent market dominants; ways and means

of government and regulatory intervention at the local level; and the timing of intervention in a nascent industry.

Uy focused on approaches to mergers and acquisitions in the digital marketplace, emphasizing the importance of having unified and cohesive responses from regulators for mergers in digital platforms. She also pointed to the need to map out the digital economy, identify key competition issues, and review current thresholds.

Jose Ramon Albert of the Philippine Institute for Development Studies (PIDS) and Maureen Anne Rosellon,

former PIDS researcher, provided perspectives on data usage and security and the digital divide, respectively.

*Managing the Development of Digital Marketplaces in Asia* was edited by Cyn-Young Park, James Villafuerte, and Josef T. Yap.

The recording of the webinar is available at ADB's Asia Regional Integration Center (ARIC) web site. The book is available for download at <https://aric.adb.org/digitalmarket>.

-L. Diño ■



(Clockwise) PCC Commissioner Johannes Benjamin R. Bernabe, PIDS Senior Research Fellow Jose Ramon Albert, PCC MAO Director Krystal Lyn T. Uy, ADB Chief of Digital Technology for Development Unit Thomas Abell, and Maureen Anne Rosellon, former PIDS researcher.

## WEBINAR ON COMPETITION HELD FOR PHILIPPINE RETAILERS ASSOCIATION

The Philippine Retailers Association was the first private-sector partner for this year's round of competition seminars for trade associations mounted by the Philippine Competition Commission (PCC). Held on February 23, the webinar discussed the fundamentals of antitrust in relation to the retail trade sector.

PRA President Rosemarie B. Ong and PCC Executive Director Kenneth V. Tanate delivered the welcome messages. PCC personnel served as resource speakers.



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## PCC TURNS 6

The Philippine Competition Commission (PCC) celebrated its sixth founding anniversary on February 1. The country's antitrust authority was established in 2016 through the enactment of Republic Act No. 10667 or the Philippine Competition Act (PCA) of 2015.

As part of its annual commemoration, the PCC held the Manila Forum on Competition in Developing Countries, its flagship advocacy event, on February 3-4. The conference was conducted in a virtual format for the second straight year due to the ongoing COVID-19 pandemic.

In his opening remarks, PCC Chairperson Arsenio M. Balisacan

recalled the milestones of the agency. These include the immediate approval of the PCA Implementing Rules and Regulations, landmark cases on mergers and abuse of dominance, initiatives for capacity-building, advocacy, partnerships with local and international institutions, and, recently, the adoption and implementation of the National Competition Policy across government agencies through Administrative Order No. 44.

Balisacan thanked PCC's stakeholders and partners for their support to the young agency through the years.  
-L. Diño ■

## ARTA RECOGNIZES PCC EFFORTS IN STREAMLINING TELCO SECTOR REGULATION

The Anti-Red Tape Authority (ARTA) recognized the Philippine Competition Commission's (PCC) active participation and contributions to the telecommunication sector's initiatives, particularly the National Effort for the Harmonization of Efficient Measures of Interrelated Agencies (NEHEMIA). ARTA's flagship program, NEHEMIA is a sector-based streamlining effort that targets to reduce

the processes, requirements, and processing time in sectors of economic and social significance.

PCC Executive Director Kenneth Tanate received the plaque of recognition from ARTA Director-General Jeremiah Belgica during the culminating activity of the Zero Backlog Policy Campaign on March 7.  
-C. Daquis ■

*PCC...continued from page 4*

The MOA with the NPC -- PCC's first institutional partnership for 2022 -- is significant in that the PCC is building its capacity to tackle issues in the digital economy. As part of the agency's capacity building, PCC enforcers attended training programs and workshops on competition in digital markets, the evolving nature of merger control in digital markets, and barriers to entry in digital markets, among others, in 2021.

-P. Ballentos ■

*Digital...continued from page 4*

in digital markets in promoting productivity and innovation.

Moreover, he underscored the role of government regulators such as the PCC in supporting micro, small, and medium enterprises and in helping startups enter and grow in digital platforms. "As we enter 2022 and prepare for post-pandemic recovery," he said, "e-commerce remains a priority sector for PCC. PCC is committed to helping the e-commerce [industry] grow into a significant contributor to a healthy and fair economy."

The special program can be viewed at the ANC 24/7 YouTube page: <https://youtu.be/lrFZlhidNs0>.  
--L. Diño ■

*Webinar...continued from page 5*

This new seminar series is designed for trade associations and aims to promote pro-competitive business activities amid the pandemic. The PCC encourages retailers and companies to clarify or seek non-binding advice on current business practices affecting competition. Aside from retailers, the PCC will also offer this seminar series to other industry organizations.

The PRA is a national organization of retailers. It has over 400 member-companies, representing 80 percent of the country's retail industry.  
-P. Ballentos ■



provisions of competition law, issuance of advisory opinions on county-level legislations related to competition, and implementation of a competition regulatory impact assessment framework in the counties. The framework provides the local counties with a general approach in screening and identifying laws and regulations that are likely to impede competition, as well as in developing less restrictive alternatives so that they can still achieve the intentions of government policies.

*Hungary.* The session also underscored the interplay between competition enforcement and advocacy. Panczel said advocacy enhances the effectiveness of competition enforcement, serving as a critical input in GVH's interventions. At the regional level, the GVH ensures that municipalities in Hungary have regulatory competencies, which are essential in drafting local policies that preserve the structure of competition in local markets. These efforts recognize the importance of establishing a pro-competitive approach among municipalities, which incidentally participate in public tenders where cartel risks are evident. To boost this initiative, the GVH and the Association of Major Municipalities in Hungary entered into a cooperation agreement with the goal of maintaining fair competition in public procurement procedures. Similarly, this collaboration leads to increased awareness among local governments, which builds their capacities in spotting incidence of cartel activity in procurements. Moreover, the GVH released special publications for municipalities so that stakeholders can learn how to design public proceedings that limit cartel-related risks, detect cartels, and approach the GVH in cases of suspected violations of competition law.

*Russia.* In terms of implementing anti-monopoly policies, the FAS distinguishes the significance of developing preventive measures from competition advocacy in curbing anticompetitive practices, Taukenova

explained. These include the issuance of legal and other regulatory guidelines, direct and sustained collaboration with the business sector, and promotion of public awareness of competition through various media platforms. The Russian government has started to implement the National Competition Development Plan, which directs regional authorities and local FAS units to work together in drafting road maps that consider each region's economic policies and detail various strategic plans for the development of regional economies until 2025.

*United States.* The current US government effected an Executive Order on Competition, which orders a whole-of-government approach among agencies in addressing anticompetitive regulations and maintaining competitive markets, Lubell said. The government acknowledges that the best way of building healthy markets is by combining pro-competitive regulation and antitrust enforcement. The US DOJ Antitrust Division is taking steps to participate in this through drafting an action plan -- which identifies relevant agencies and industry regulators with whom the division can collaborate in promoting competition across American markets, forging new agency relationships, embarking on technical assistance programs, promoting pro-competitive rule-making efforts, filing comments on mergers and acquisitions, implementing whistleblower protection, and establishing a Procurement Collusion Strike Force.

The 2022 ICN Advocacy Workshop enabled ICN members and non-governmental advisors (NGAs) to share experiences on topics such as the role of competition advocacy in economic recovery, the value of competition beyond market efficiency, the challenges posed by digitalization, and the impact of competition policies on labor markets.

In November 2021, the PCC was chosen to co-chair the

ICN Advocacy Working Group, together with the Hong Kong Competition Commission and Colombia's Superintendency of Industry and Commerce. The team is dedicated to developing practical tools and resources to guide ICN members in effectively raising public awareness of competition principles and in fostering a competition culture across different jurisdictions. ■

**M&A**  
**DASHBOARD**

Notifications received from  
January to March 2022:

**2**

Notifications received since  
2016:

**255**

## OTHER PUBLICATIONS



Electronic publications are available at the PCC website:  
[www.phcc.gov.ph](http://www.phcc.gov.ph)



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