

ISSUE 24 | JULY - SEPTEMBER 2021

# PHILIPPINE COMPETITION BULLETIN

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**PHILIPPINE  
COMPETITION  
COMMISSION**

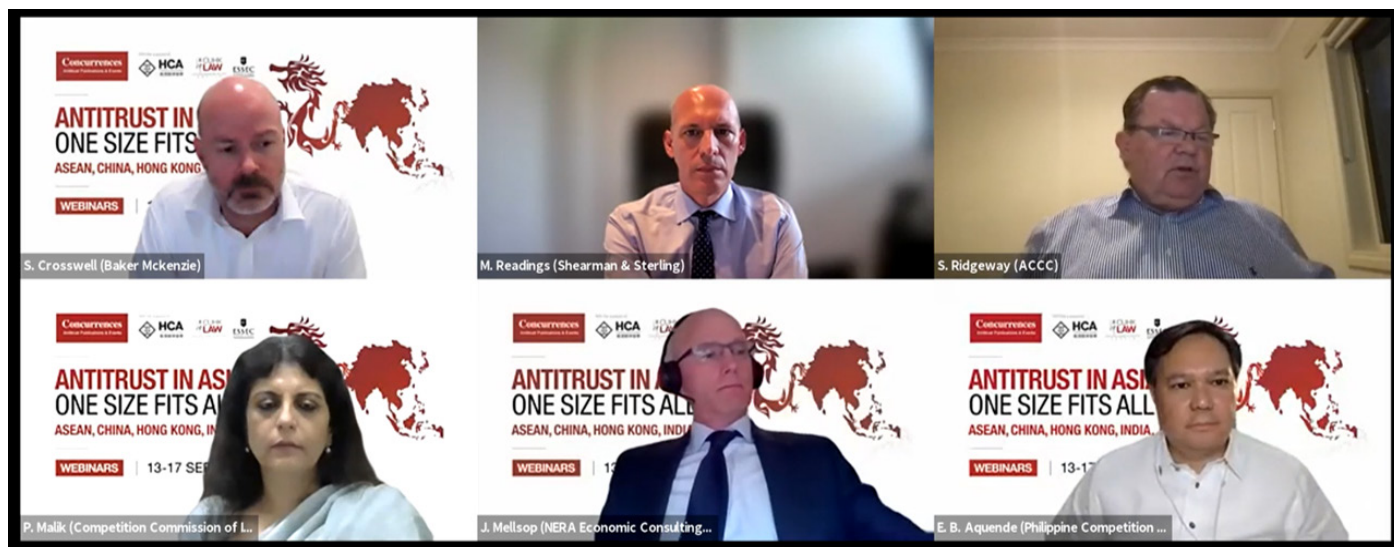
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*Ensuring businesses compete and consumers benefit*

# 7TH ANTITRUST IN ASIA CONFERENCE

## TRENDS IN MERGER REGIMES DURING THE PANDEMIC

by Leanne Croisette N. Gorosin



Philippine Competition Commission (PCC) Commissioner Emerson B. Aquende joined competition officials and experts in a panel that explored new and emerging trends in merger regimes amid the COVID-19 pandemic. The webinar was part of the 7th Annual Antitrust in Asia Conference held last September 13-17.

The webinar tackled various competition-related issues, including the effect of amending competition law provisions in response to a crisis. Joining Aquende in the panel were Stephen Ridgeway (Australian Competition and Consumer Commission), Payal Malik (Competition Commission of India), James Mellsop (NERA Economic Consulting, Auckland), and Matthew Readings (Shearman & Sterling, London). Stephen Crosswell of Baker McKenzie moderated the session.

Aquende shared developments in the Philippines, including amendments in competition policy brought by legislation in response to the COVID-19 pandemic. These include uniformly increasing to Php 50 billion the merger threshold for compulsory notifications, both in terms of size of party (from Php

6 billion) and size of transaction (from Php 2.4 billion). The increased threshold is in effect for two years from September 2020.

Aquende also discussed the adjustments made by the PCC to ease the processes for notifications and merger review. For one, the Commission relaxed the 30-day rule on notifications of agreements; merging parties may now file their notifications any time before consummating the agreement. Another initiative is maximizing digital platforms for PCC online notifications and consultations, interviews, and hearings. The PCC also abridged its procedures on expedited merger review, exemption of solicited public-private partnership (PPP) projects, and early termination of merger review for non-problematic transactions.

PCC's *motu proprio* powers were also deferred for a year. To afford businesses some measure of predictability, "the PCC nonetheless gives merging entities who are exempted from compulsory notification to opt for voluntary review by submitting notification and undergoing review despite the exemption. The clearance given by the PCC to this voluntary

review will insulate the merging entities from *motu proprio* merger review after the one-year exemption period expires," Aquende explained.

In his interview with Crosswell, Aquende noted that the PCC has continuously and aggressively pursued a multi-pronged initiative to strengthen its measures on merger regulations. "With the robust support of the national government, the PCC was allocated a multi-year budget for the training of its personnel, development of its processes, and acquisition of resources. Relatedly, many of our officials and personnel have been sent for training and advance studies to different institutions overseas to develop their competencies and skills," he said. He added that some staff members were also sent to more established counterpart competition authorities to observe and learn from the experiences of more advanced jurisdictions.

Aquende likewise highlighted that strengthening competition advocacy is part of PCC's strategies. "The PCC has been actively building linkages with different sector regulators to amplify and broaden our capacity to effectively implement

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# ONLINE LEARNING HUB ON COMPETITION LAW AND POLICY LAUNCHED

by Paul Jeffrey M. Ballentos



The Philippine Competition Commission (PCC) officially opened the iCLP: Online Learning Hub for Competition Law and Policy on August 6. The launch was part of this year's National Micro, Small, and Medium Enterprises (MSME) Week, in partnership with the Department of Trade and Industry - MSME Development Council.

The iCLP is a digital platform (<https://iclp.phcc.gov.ph>) that offers free and on-demand public education videos on ensuring fair market competition among businesses. Given the continuing mobility restrictions due to the COVID-19 pandemic, the iCLP serves as an important component of the Commission's continuing efforts to raise awareness of and adherence to competition law and policy.

During the launch, PCC Chairperson Arsenio M. Balisacan emphasized the importance of the “know-what” and “know-how” in safeguarding stakeholders' rights against anticompetitive conduct and abuses. “For our stakeholders in the private sector, our hope is you will learn and appreciate what competition law and policy can do to uphold fairness in the market, especially for MSMEs, which have been hardest hit in this current economic environment,” he said.

MSMEs are the backbone of the Philippine economy, accounting for 99.5% of business enterprises operating in the country<sup>1</sup>. They would highly benefit from the iCLP courses, particularly as the digital learning platform can help them become aware of competition issues detrimental

to their businesses.

Balisacan invited stakeholders to take advantage of this platform. “Using the competition lens, the iCLP can help you gain insights on common practices in your sector that may be violations of the competition law. We also look forward to hearing from you on how we can assist and protect you from anticompetitive conduct that you may be encountering,” he said.

Likewise, PCC Commissioner Johannes R. Bernabe encouraged MSMEs to sign up at the iCLP to learn how antitrust laws can protect them and keep a level playing field in the face of competition posed by larger, more established, or dominant businesses. Under the Philippine Competition Act (PCA), MSMEs,

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1 Philippine Statistics Authority, 2020 List of Establishments

## ADVOCACY ROUNDUP

### PCC UPDATES CHAMBERS ON MARKET COMPETITION, ECONOMIC RECOVERY

The Philippine Competition Commission (PCC) participated in a virtual forum last June 11 to provide important updates and policies in driving market competition and advancing consumer welfare as the country works toward economic recovery. The forum was organized by the Joint Foreign Chambers of the Philippines with the theme “Enhancing Competition for Competitiveness and Economic Recovery”.

In his remarks, PCC Chairperson Arsenio M. Balisacan shared the Commission’s priority sectors for 2021, namely, e-commerce, health and pharmaceuticals, insurance, logistics and shipping, energy and electricity, water supply and distribution, real estate, and food. These are “essential sectors that have become even more relevant due to the ongoing pandemic”, he noted. They were identified based on their impact on consumers, enforcement for public interest, and legislative priorities.

### ASEAN COMPETITION AUTHORITIES TRAIN IN UNILATERAL CONDUCT, ABUSE OF DOMINANCE

Staff of the Philippine Competition Commission (PCC) joined participants from other ASEAN competition authorities in a virtual training course on unilateral conduct and abuse of dominance last August 2-4. The training was hosted by the Japan Fair Trade Commission, in cooperation with the Commission for the Supervision of Business Competition of Indonesia (KPPU) and the ASEAN Secretariat.

The three-day course involved sessions on analytical framework for unilateral conduct,

The forum included a discussion of legal points on enforcement of the Philippine Competition Act (PCA) from the viewpoint of the private sector. Atty. Michael Macapagal of Quisumbing Torres Law emphasized the need for businesses to voluntarily understand and comply with competition laws, notwithstanding the nuances of implementation in different countries, including the Philippines. “One key way to ensure or raise the level of compliance for businesses – voluntarily, within their own spheres – is to come up with an internal compliance program: regulate themselves, train their employees to be more familiar with what are anticompetitive practices, be able to implement them in the field, have a systematic way of monitoring whether their businesses comply, and have a mechanism to improve or keep up with the competition regulation,” Macapagal said.

–L.Gorosin ■

assessment of dominance or substantial market power, designing and implementing remedies, and corresponding case studies. Atty. Genevieve Jusi of the PCC Competition Enforcement Office served as speaker in one of the case study sessions. She discussed provisions on market dominance under the Philippine Competition Act and shared how PCC assesses dominance.

The training course is part of the Japan-ASEAN Integration Fund (JAIF) project.

–C.Daquis ■

## IN THE NEWS

### PCC resumes *motu proprio* review of M&As

The Philippine Competition Commission (PCC) is set to resume review of potentially problematic mergers and acquisitions (M&As) as the one-year moratorium under the Bayanihan to Recover as One Act (Bayanihan 2) expired Thursday, Sept. 15, 2021.

*(Bernie Cahiles-Magkilat, Manila Bulletin, 15 September 2021)*

### PCC probes internet exclusive in property developments

The Philippine Competition Commission (PCC) has set up a task force to look into cases of residents being limited to avail of internet service from an exclusive provider in property developments.

*(Louella Desiderio, The Philippine Star, 19 July 2021)*

### PCC moves to probe errant power firms

The Philippine Competition Commission has started data gathering in preparation for an investigation into the possible violations of power companies as raised by the Department of Energy (DOE).

*(Alena Mae S. Flores, Manila Standard, 18 July 2021)*

### House panels OK substitute bill enhancing PCC’s mandate

The House Committee on Economic Affairs and House Committee on Trade and Industry jointly approved a bill strengthening the Philippine Competition Commission (PCC).

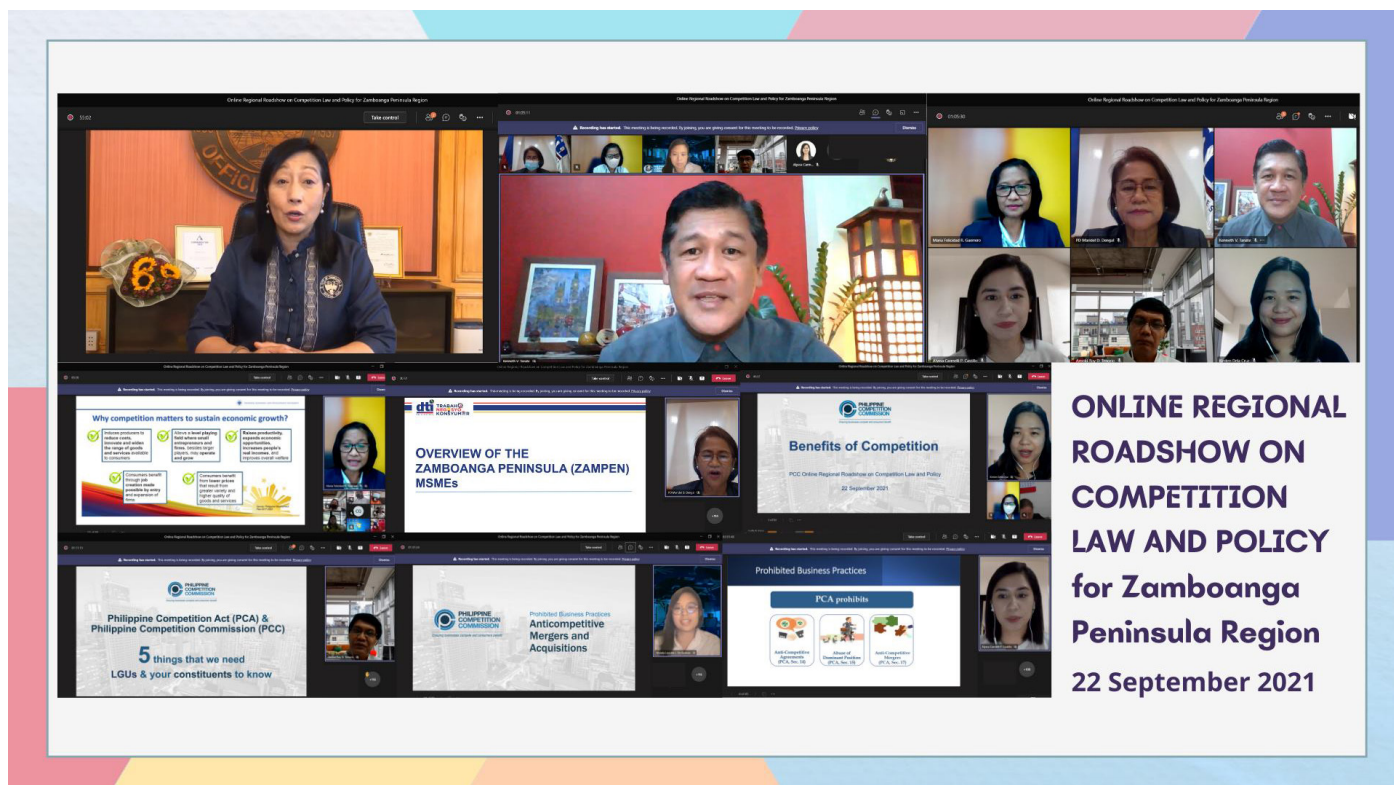
*(Jovee Marie De La Cruz, Business Mirror, 21 July 2021)*

### PLDT: Pursuit of fair competition boosting efforts to improve connectivity

PLDT group said on Sunday the government’s pursuit of fair competition in the telecommunications industry, including its initiative to investigate cases and complaints involving exclusive partnerships for alleged “abuse of dominance,” is bolstering its efforts to improve connectivity.

*(Arjay L. Balinbin, Business World, 2 August 2021)*

## PCC BRINGS REGIONAL COMPETITION AWARENESS ROADSHOW ONLINE



**ONLINE REGIONAL ROADSHOW ON COMPETITION LAW AND POLICY for Zamboanga Peninsula Region**  
22 September 2021

The Philippine Competition Commission (PCC) conducted this year’s Regional Roadshow on Competition Law and Policy online, starting with the Luzon leg in July. This advocacy series aims to improve the public’s understanding of competition law and policy. It was done in partnership with various local government units and regional offices of the National Economic

and Development Authority and the Department of Trade and Industry.

The roadshow also serves as a platform for PCC to engage with its stakeholders. The most cited issue during the discussions was the high cost of doing business, which hampers both market competition and business competitiveness at

the grassroots level. Among the identified reasons were inadequacy of public services and utilities; lack of access to financial services, especially in far flung areas; inefficiency of government regulatory environment (e.g., registration, licensing, collection of revenues); and limited capacity of micro, small, and medium enterprises

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## BALANCING HEALTH, ECONOMY DISCUSSED AT NAST ANNUAL SCIENTIFIC MEETING

Philippine Competition Commission (PCC) Chairperson Arsenio M. Balisacan served as one of the speakers at the 43rd Annual Scientific Meeting (ASM) of the National Academy of Science and Technology (NAST) last July 14.

Speaking at the panel discussion entitled “Balancing Health and Economy towards Sustainable and Inclusive Recovery”, Balisacan stressed that the road to sustained and inclusive recovery requires a strategic and timely deployment of policy tools to strengthen the public health system and protect livelihoods

and the vulnerable population groups. “Economic recovery is and will be conditional on solving the health crisis,” he noted.

Further, in addressing economic challenges amid the pandemic, Balisacan said that deploying policy levers should be considered in mitigating the impact of lockdowns on the economy. This includes providing sufficient economic aid, accompanied by good governance. He underscored that economic assistance and stimulus programs must be well-targeted, transparent,

fair, efficiently administered, and time-bound. Moreover, he said that policy measures for recovery need to contain further economic scarring, which erodes longer-term potential for growth and sustainable development. He added that beyond recovery, the nation must build back better so that the health-economy system can withstand future shocks.

The NAST ASM serves as the leading forum for the presentation of scientific and policy research in the country.  
–L.Gorosin ■

## PCA ORIENTATION HELD FOR IEMOP

The Philippine Competition Commission (PCC), through its Legal Services Division, held an online capacity-building event for the Independent Electricity Market Operator of the Philippines (IEMOP) last July 7. The event provided participants an overview of the Philippine Competition Act (PCA) and the PCC. It also laid the initial foundation for a committed and robust partnership between the PCC and IEMOP.

Moreover, the PCC resource

*Trends... continued from page 2*

merger control review with the cooperation of sector regulators," he said. Partnerships with foreign competition authorities are also established to strengthen PCC's law enforcement capability for cross-border transactions, as well as knowledge-exchange and sharing of best practices and policies. "In the short term, it is to be expected that cross-border cooperation initiatives

*PCC... continued from page 5*

(MSMEs) to comply with statutory requirements.

The regional activity also provides PCC the opportunity to reach out to MSMEs, not only to improve their basic understanding of the mandate and functions of the PCC, but more importantly, to raise their awareness of their rights and privileges under the Philippine Competition Act.

This year's series ran from July 22 to September 22, covering the Cordillera Administrative Region, Cagayan Valley, Calabarzon (Cavite, Laguna, Batangas, Rizal, and Quezon), Central Luzon, Eastern Visayas, and Zamboanga Peninsula.

–P.Ballentos ■

speakers discussed the legal bases and steps in conducting a competition impact assessment. Attorney Marco Carlo S. Sana, Senior Investigation Agent of the Competition Enforcement Office, explained the key prohibitions on cartels and abuses of dominance. On the other hand, Attorney Katherine Ann C. Baldos of the Mergers and Acquisitions Office expounded on the review process of merger transactions, as well as the effect of Bayanihan 2, an economic stimulus legislation due to the

COVID-19 pandemic, on the merger notification thresholds.

IEMOP is a non-stock, non-profit corporation that facilitates electricity trade in the Philippine electric power industry as an independent market operator of the Wholesale Electricity Spot Market (WESM). It also acts as the central registration body for the retail electricity market via the retail competition and open-access mechanism.

–P.Ballentos ■

may be few as the PCC and its counterpart agency find the cooperation framework that works for both of them. However, the PCC is determined to continue growing its linkages with counterpart competition authorities, especially among its close trading partners, as a long-term strategy to strengthen and expand its reach in law enforcement and merger control," Aquende said.

The 7th Antitrust in Asia Conference, held as a series of four webinars, was organized by Concurrences, in partnership with The Chinese University of Hong Kong, the Hong Kong Competition Association, and ESSEC Business School. Details on the conference are available at <https://events.concurrences.com/fr/antitrust-in-asia-2021?lang=fr>. ■



# PILOT COURSES FOR MSMES



## Courses

Understanding Competition and Its Benefits



## Modules

- What is Competition?
- Benefits of Competition
- The Role of Competition Law and Policy in Philippine Development



## Resource Person

**Mr. Emmanuel M. Garcia**  
*Economist IV*  
PCC Economics Office

Overview on the Philippine Competition Act and the Philippine Competition Commission

- Historical Context of the Philippine Competition Act
- The Philippine Competition Commission: Its Functions and Powers
- Does the PCA apply to my business?

**Atty. Johannes Benjamin R. Bernabe**  
*Commissioner*  
PCC

Competition Enforcement

- Definition of Relevant Terms
- Anticompetitive Agreements
- Abuse of Dominance

**Atty. Christian Loren B. De Los Santos**  
*Investigation Agent V*  
PCC Competition Enforcement Office

Understanding Mergers and Acquisitions

- Overview on Mergers and Acquisitions
- Merger Analysis
- PCC's Merger Review and Control

**Atty. Juan Antonio E. Arcilla**  
*Attorney V*  
PCC Mergers and Acquisitions Office

along with other marginalized service providers and producers, are afforded the right to protection against abuses by dominant firms<sup>2</sup>. "MSMEs must be able to start, operate, and compete on their own merits, without having the existing large and dominant competitors forestall the new products and services and innovations that

they can bring to the market. With genuine open-market competition, both consumers and businesses benefit," Bernabe said.

The introductory courses in the iCLP include understanding competition and its benefits, overview of the PCA and the PCC, competition enforcement,

and mergers and acquisitions. Upcoming courses this year are on basic economics in competition law, enforcement and defenses, and merger review and control. The virtual launch's full recording, which also features a virtual guide on using iCLP, can be accessed through the [PCC Facebook page](#). ■

2 Philippine Competition Act, Sec.15 (g)

# M&A

## DASHBOARD

Notifications received from  
July to September 2021:

**0**

Notifications received since  
2016:

**253**

## OTHER PUBLICATIONS



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



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