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# PHILIPPINE COMPETITION BULLETIN

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**PHILIPPINE  
COMPETITION  
COMMISSION**

*Ensuring businesses compete and consumers benefit*

# PCC JOINS 1ST COMPETITION CLINIC FOR ASEAN

by Leanne Croisette N. Gorosin

The Philippine Competition Commission (PCC) joined the Competition Law Implementation Program's (CLIP) first Competition Clinic launched online in March. Led by a distinguished panel of experts, the e-learning module explored advocacy in the context of the COVID-19 pandemic.

Under the aegis of the ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA) Economic Cooperation Support Programme, CLIP works with member-countries of the Association of Southeast East Asian Nations (ASEAN) to build capacity for effective competition law implementation. The CLIP Academy started in 2018 as an e-learning hub hosting tailored training modules for ASEAN competition officials.

For the first clinic, the panel discussed various competition-related issues, including the effect of relaxing competition law provisions as a crisis response, the impact of COVID-19 on the airline industry, and the benefits of engaging stakeholders in competition advocacy. Experts included PCC Commissioner Amabelle Asuncion; Mr. Marcus Bezzi, Executive General Manager of the Australian Competition and Consumer Commission (ACCC); ACCC Directors David Cranston and Aggie Marek; and Dr. Wan Khatina Nawawi, Director of the Malaysian Aviation Commission.

Given the unusual circumstances caused by the COVID-19 pandemic, Cranston noted that competition regulators should reconsider how they assess business conduct, including practices where competitors need to coordinate their behavior (e.g., sharing resources and information), which may



Screenshot of the CLIP Academy – Competition Clinic session. From top left (clockwise): Mr. Marcus Bezzi, Executive General Manager of the Australian Competition and Consumer Commission (ACCC); ACCC Director Aggie Marek; PCC Commissioner Amabelle Asuncion; ACCC Director David Cranston; and Dr. Wan Khatina Nawawi, Director of the Malaysian Aviation Commission.

result in public benefits that outweigh the harm from any loss of competition. In Australia, ACCC has authorized some business practices that may be considered anti-competitive coordination or collaboration in breach of competition law, given that such activities were likely to result in higher efficiency gains amid the current health situation. These interim authorizations were nominated as crucial in keeping people connected and services running well during the pandemic. These proposals are being closely monitored by ACCC to guard stakeholders against any harmful effects, and may be revoked when the crisis is over. Cranston added that these temporary measures, although crucial, must not give rise to long-term structural damage to competition or market concentration.

In the case of Malaysia, Nawawi reported that it is “business as usual” in terms of competition work. With the prevailing business climate, they anticipated the review of several potential mergers, together with various justifications for said possible transactions. She

emphasized that they would continue and strictly assess these claims to ensure that no party abuses the law.

In the case of the Philippines, Asuncion discussed the changes to competition policy brought about by several legislation enacted in response to the pandemic. These changes included increasing the merger threshold of compulsory notifications from Php 6 billion for size of party and from Php 2.4 billion for size of transaction, to Php 50 billion<sup>1</sup>. These increases are effective for two years from the enactment of the Bayanihan to Recover as One Act in September 2020. The *motu proprio* review powers of the PCC was also suspended for one year.

Meanwhile, Marek described how the pandemic affected the Australian airline industry, particularly Virgin Australia, its second largest carrier, which went into voluntary administration. Although it did not offer a bailout, the Australian government provided other financial packages for the airline industry as a whole to ensure

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<sup>1</sup> PCC Memorandum Circular No. 20-003: Mergers and Acquisitions Entered into Prior to the Effectivity of the Bayanihan to Recover as One Act (R.A. No. 11494) (<https://www.phcc.gov.ph/mc-20-003-ma-pre-ra11494/>)

# BIG TECH REGULATION IN DEVELOPING COUNTRIES: THE PHILIPPINE CASE

by Paul Jeffrey M. Ballentos

In a podcast episode of the Oxford Policy Pod, titled “Regulating Big Tech: Policies for the Digital Age,” PCC Commissioner Johannes Benjamin R. Bernabe talked about the role of competition policy and the challenges of regulating digital markets in developing countries.

A bi-weekly podcast produced by students of the Master of Public Policy at the Blavatnik School of Government, the Oxford Policy Pod explores pressing policy issues around the globe and contemporary challenges that policymakers face, tapping into the rich diversity of policy experience and insights of the student body and faculty.

“Competition policy is key in our development strategy, particularly for a developing country, where you see that the economy has traditionally been dominated by large players. There has been a huge concentration of economic power in the hands of a few entities,” Bernabe said. He added that, “Competition policy is key in terms of allowing other participants, especially the micro, small, and medium enterprises, to have a share in this economic growth that we are trying to foster.”

He shared that one of the PCC’s mandates is to monitor and review mergers and acquisitions to determine whether these transactions would substantially lessen competition, thereby, avoiding market concentration that may result in anti-competitive behavior. The decision of the PCC on merger transactions is based on its independent economic and legal review to evaluate *ex ante* the impact of such transactions on the market competition landscape. He noted that some of the merger transactions by Big Tech and digital companies have been subjected to the



PCC’s review.

The US and EU antitrust authorities have been making progress in penalizing Big Tech. Bernabe said that while these developments provide lessons for the PCC, there are several considerations why Big Tech regulation in developed countries may be different from that in developing countries. Dealing with Big Tech is relatively new for developing countries. He noted that “the Philippines is still at its nascent stage in dealing with the digital economy. We are on the e-commerce bandwagon—online payment systems are beginning to proliferate—but it is not at the level of sophistication of the US and EU markets.”

He also explained that in developing countries, technology is perceived as a stepping stone toward the growth and improvement of the economy. “Currently, the Philippines, like many other developing countries, is focused on developing technology as a lever for development,” Bernabe said, adding that the goal for

digitalization was to ensure that consumers can avail themselves of e-commerce to facilitate the flow of goods and services.

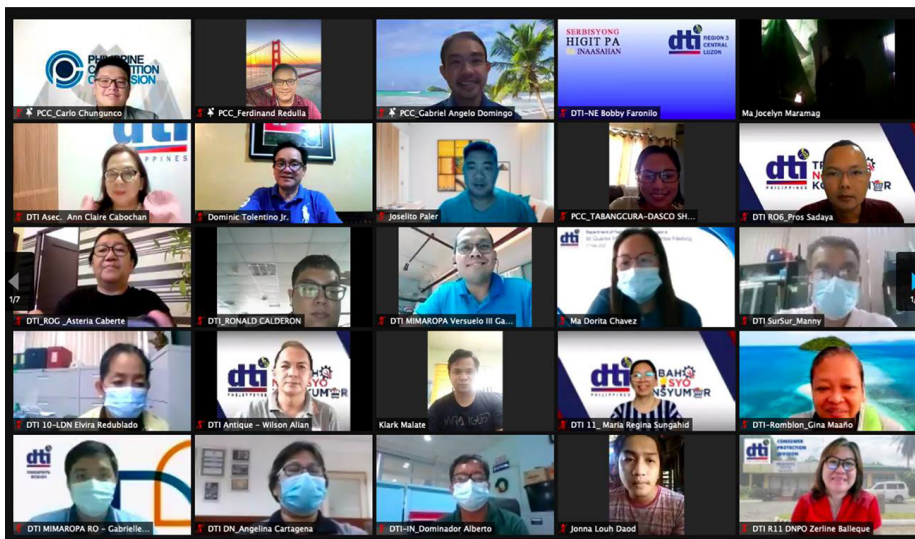
Given these end goals, he said regulators must be careful in their enforcement to ensure that digital companies are provided an opportunity to grow and develop, in order to achieve a digital economy in full-swing. At the same time, regulators must be vigilant of the anti-competitive tendencies of these companies.

Since markets in developing countries are relatively small for Big Tech companies, the incentive to comply with the regulators’ sanctions is low. Bernabe illustrated the relation between the size of market and regulatory compliance thus: Because markets are big in developed countries, Big Tech companies comply with sanctions even if these are huge fines. In contrast, because markets are relatively small in developing countries, when regulators impose the same amount of fines, Big Tech

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## ADVOCACY ROUNDUP

### PCC, DTI HOLD JOINT CAPACITY BUILDING TO REINFORCE PARTNERSHIP



The PCC held the first “Strengthening Partnerships with Other Government Agencies (SPOGA)” virtual seminar last May 28, in partnership with the Department of Trade and Industry - Consumer Policy and Advocacy Bureau (DTI-CPAB).

The SPOGA initiative aims to reinforce PCC’s partnership agreements with other government agencies. PCC Director Ferdinand B. Redulla (Enforcement Office), Atty. Jeanne Marie Vernice V. Castillo

(Mergers and Acquisitions Office), Atty. Carlo S. Chungunco (Legal Services), and Gabriel Angelo B. Domingo (Economics Office) served as resource speakers.

The seminar was attended by staff members of the DTI offices and bureaus across the country. Aside from reacquainting DTI participants with the Philippine Competition Act (PCA) and its Implementing Rules and Regulations, the event also had a focus group discussion

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### LGA TAPPED IN INTRODUCTORY COMPETITION LAW COURSE FOR LOCAL GOVERNMENTS

As part of its efforts in raising awareness on market competition in the public sector, the PCC participated in an online course conducted by the Local Government Academy (LGA) for local government units (LGUs) last April 27.

With the theme “Building Business-Friendly and Competitive Local Government: Rebuilding Consumer and Business Confidence for New Normal,” the online course was part of the LGA’s Local Economic Development for LGUs (LED4LGUs) Program. The PCC

session served as an introductory course on competition law and policy for LGUs.

PCC Directors Ferdinand Redulla (Enforcement Office) and Arnold Tenorio (Communications Office), as well as Atty. Michael Kris Ben Herrera (Mergers and Acquisitions Office), and Tea Ty (Economics Office) served as resource speakers. They discussed the Philippine Competition Act and the role of the PCC, highlighting the benefits of fair market competition to LGUs.

- L. Gorosin ■

## IN THE NEWS

### PCC probes possible price fixing in shipping rates

The surging freight charges amid shortage of container vessels have triggered an investigation by the Philippine Competition Commission (PCC) on potential price fixing among industry players.

*(Tyrone Jasper C. Piad, Business Mirror, 28 April 2021)*

### Competition watchdog flags high cost of medicine

The need to address concern over the high cost of medicines in the Philippines has been made more urgent by the ongoing coronavirus pandemic, the Philippine Competition Commission (PCC) said.

*(Jenina P. Ibañez, Business World, 14 June 2021)*

### Regulatory safeguards in PSA bill needed — PCC

A competition commissioner is urging lawmakers to include regulatory safeguards against national security issues that some senators fear could arise from a priority bill that would open up the telecommunications and transport sectors to more foreign ownership.

*(Jenina P. Ibañez, Business World, 3 June 2021)*

### Absence of competition keeps PH sugar prices high

In a forum organized by Philippine Competition Commission (PCC), Roehlano Briones, a senior research fellow at the Philippine Institute for Development Studies (PIDS), has called for competition reforms in the local sugar industry, which is highly dominated by local players.

*(Madelaine B. Mirafior, Manila Bulletin, 05 June 2021)*

### PCC bucks extension of suspension of its merger and acquisition review

The Philippine Competition Commission (PCC), the anti-trust authority in the country, has expressed opposition to any extension of the suspension of its motu proprio review power on mergers and acquisitions (M&As).

*(Bernie Cahiles-Magkilat, Manila Bulletin, 12 June 2021)*

## PCC CAMPUS TOURS GO VIRTUAL

The PCC has resumed the conduct of its campus tours – online this time. After suspending the activity in 2020 because of the community quarantine restrictions due to the COVID-19 pandemic, the PCC held its maiden virtual campus tour on competition law and policy in San Beda University (SBU) on May 21, followed by the University of Asia and the Pacific (UA&P) on June 11.

In his opening remarks at the SBU event, PCC Commissioner Emerson B. Aquende highlighted the opportunities for lawyers to specialize in the novel field of antitrust law. “Competition law is an emerging law field in the Philippines. The dearth of

practitioners in competition law leaves a big room for new lawyers and law students to be accommodated in this field. It is a field where economics and law are intertwined with its major components on dealing with cartels and abuses of dominance, aside from merger reviews,” Aquende said.

PCC Directors Ferdinand B. Redulla (Enforcement Office) and Arnold Roy D. Tenorio (Communications Office), as well as Atty. Micaela Lourdes L. De Guzman (Mergers and Acquisitions Office) and Emmanuel M. Garcia (Economics Office) served as resource speakers at the SBU event. PCC Commissioner Johannes Benjamin R. Bernabe headlined

the UA&P event, along with Directors Redulla and Tenorio and Atty. Anna Marie Cindy D. Perez (Mergers and Acquisitions Office).

A total of 900 participants from SBU and 99 from UA&P, joined the virtual activities. They were composed of faculty members, undergraduates, and graduate students.

The PCC started conducting campus tours in schools and universities across the country in 2017 to raise the academic community's awareness of the Philippine Competition Act and the PCC's role in enforcing the law. - P. Ballentos ■

## COMPETITION IN DIGITAL ECONOMY HIGHLIGHTED IN SENATE FORUM

The fourth Capacity Improvement on Competition Advocacy for Legislative Staff (CICALS) was conducted online last March 25, in coordination with the Senate Committee on Finance and the Organisation for Economic Co-operation and Development (OECD).

The CICALS for the Senate was a four-part panel discussion on “Competition in the Digital Economy.” The speakers—from OECD and sector representatives of the Philippines—shared their expertise on respective issues concerning e-commerce and other forms of digital economies.

In the first panel, Ms. Mary Grace Mirandilla-Santos, lead convenor of the Better Broadband Alliance, and Dr. Verena Weber, head of OECD's Communication Infrastructure and Services Policy Unit, discussed internet access, telecommunication networks, and how open access data transmission works.

The second panel discussion focused on digital services (e.g., digital payments, online banking) and information structure in the Philippines. Dr. Ramonette Serafica of the Philippine Institute of Development Studies and Atty. JJ Disini of Disini & Disini Law served as panelists.

In the third panel, Atty. Ruben Maximiano, senior competition expert of OECD, and Dr. Moritz Jakob of the Federal Competition Office of Germany shared their experiences and policies on competition cases in digital industries.

Lastly, Nick Malyshev and Miguel Amaral, head and senior policy analyst, respectively, of OECD's Policy Division, talked about government laws and policies for digital businesses. Director Antonio Edward Padre of the Department of Information and Communications Technology discussed the

various government programs aimed at keeping up with the growing digital economy in the Philippines.

The PCC, through its Legislative Liaison Office (LLO), launched the CICALS program in December 2019, with the aim of providing the country's legislative staff with a deeper grasp of the competition law and policy. It forms part of PCC's broader aim to foster a culture of competition in the public sector. - K. Capati ■

## WOMEN'S MONTH: WOMEN ENTREPRENEURS TACKLE COMPETITION POLICY

As part of the National Women's Month celebration this year, the PCC, in partnership with the Women's Business Council of the Philippines, Inc. (WomenBizPh), gathered women entrepreneurs from different sectors last March 24 for an online forum. The meeting discussed how the Philippine Competition Act (PCA) ensures fair market competition and how the PCC carries out the law's provisions.

Atty. Jasmine Rose Maquiling (Enforcement Office) and

Marinella Gilda Gamboa (Economics Office) discussed the economic benefits of competition to consumers and businesses, the coverage of the PCA, and the functions of the PCC as the primary PCA enforcer.

Women business leaders shared the current situation of women entrepreneurship. Maria Aileen Abiva and Monette Iturralde-Hamlin, president and chairperson of WomenBizPh, respectively, provided an

overview of the status of women entrepreneurs across the globe and the numerous challenges confronting women in business, as well as those who want to start their own business.

The forum's full video recording can be accessed through the PCC Facebook page at <https://www.facebook.com/competitionph/videos/vb.1087859964611855/192474562315894>.

- K. Capati ■

## NEW STUDIES LOOK INTO CARGO, REFINED PETROLEUM

The PCC recently released the results of two commissioned studies: one on the cargo services sector and the other on the refined petroleum industry. It also published a discussion paper on fuel prices by the PCC Economics Office.

The cargo services study, conducted by Gilberto M. Llanto and Francis Mark A. Quimba, shows that the transport and logistics sector is highly concentrated. "There is a lack of competition in the transport and logistics industry, particularly in the cargo services sector, which is a critical segment of the industry. Innovations and new technologies and the regulatory framework impact firm behavior and market structure. Inadequate and inefficient infrastructure is a significant factor behind poor cargo services performance. These factors tend

to give rise to competition issues in the cargo services sector," the authors noted.

The issues paper on the refined petroleum industry looks into the dynamics of the Philippine downstream petroleum industry, specifically gasoline, diesel, and kerosene markets, as well as into issues impacting competition. The study was done by a research team led by Peter L. U. The authors noted that "pricing remains the most prominent competition issue," and that "competition in the industry also takes on other forms," such as customer loyalty programs and better facilities and amenities. Apart from describing the industry's demand and supply structures and identifying actual and potential competition issues, the study also presented a case study on the Baguio City market.

The discussion paper on the Department of Energy (DOE) and fuel prices explores the role of the DOE price monitoring scheme in the antitrust work of the PCC by applying Metro Manila price data in a preliminary cartel screen. It was written by Gabriel Domingo and Tea Ty of the PCC Economics Office.

The PCC Issues Papers examines the structure, conduct, and performance of industries to better inform and guide the Commission's advocacy and enforcement initiatives. On the other hand, the PCC Discussion Papers report preliminary results of original studies. These can be downloaded, along with other information, education, and communication materials on competition, from the resources section at <https://phcc.gov.ph/>.  
- C. Daquis ■

### *PCC, DTI... continued from page 4*

on enforcement and capacity-building concerns.

The PCC and DTI signed a memorandum of agreement in 2019 to institutionalize mechanisms for information

sharing and coordination, recognizing that the agencies have common interests in protecting consumer welfare and advancing domestic and international trade. In particular, the agreement aims to facilitate

enforcement support and investigation assistance, as well as information sharing on operational matters through a notification process.

- P. Ballentos ■

## *PCC... continued from page 2*

that sector's continued provision of essential services in keeping Australian states connected. Following several structural changes, including Virgin's transfer of ownership to Bain Capital and the possible entry of another market player, the Australian government issued a directive to ACCC, through its Airline Task Force, to closely monitor prices, costs, and profits related to the supply of domestic air passenger transport services, with the goal of protecting competition in the sector.

"At ACCC, we are watching the market closely and we are engaging with stakeholders on a regular basis," Marek said. "In particular, we are looking out for any early signs that competition is not effective, including watching closely what Virgin is doing, and to what extent it reduces or changes its service offerings. We are also looking out for any behavior by the airlines that may have longer-term consequences by entrenching the position of the incumbents... and any behavior that raises barriers to future entry and expansion. And if we do find concerns that competition has diminished and the market is

no longer operating effectively, we will consider making policy recommendations to government."

Panel experts also delved into competition advocacy. Asuncion shared her assessments regarding the PCC's strategies in boosting advocacy efforts to raise awareness among stakeholders. She emphasized that it was critical for the PCC to strengthen its enforcement arm to establish credibility as a competition authority. "The PCC as a young agency is now at a point where it needs to intensify its efforts in making decision-makers and business truly understand and appreciate the relevance of competition law and policy. It has come to that moment where advocacy in the form of mere words would no longer suffice. I think it is time for us to really build our enforcement track record because, in the end, enforcement is the best form of advocacy," she said.

"In the sense perhaps of a silver lining to the Bayanihan 2, it now allows us to really focus our resources on enforcement and arrest of anti-competitive

activities, which are already happening and harming the market and consumers. This is going to be our priority in the next two years and, hopefully, we will get the message across even stronger in terms of showing how competition remains relevant or should be relevant in times like these," Asuncion explained.

Nawawi highlighted the necessity of engaging external stakeholders when advocating for competition law and policy. These include consumer and industry associations, policymakers, sector regulators, and the academe. She said members of the academic community must have the technical knowledge and expertise in competition economics, law, and policy to effectively advocate competition to the public. Additionally, establishing alliances with industry associations is also significant as they may serve as champions for competition compliance.

The Competition Clinic is available on CLIP Academy and can be accessed at <https://learning.accc.gov.au/>. ■

## *Big tech... continued from page 3*

companies are least likely to comply because the business most likely comprises a small share of their global ventures.

"The US and EU have the leverage to impose those fines because their markets are so big that these Big Tech companies have no other choice but to continue functioning in those markets. They'll have to pay the fines that are imposed on them," said Bernabe. "But in a country like the Philippines, which is a small market for these Big Tech companies, and given the relative youth of our competition agencies, if we impose a fine of similar magnitude as the EU, will these Big Tech companies

actually pay up? What is the cost to them if they're not able to do business in the Philippines? It may not be much," Bernabe explained.

He said the potential non-compliance by Big Tech companies would negatively affect the credibility of the regulator both in the local and international communities. "As a young competition agency, this is a careful 'balancing act' that we have to manage and make sure that while we are keen on sanctioning anti-competitive acts and behavior, this does not cost us credibility in terms of the business community and our peers in the international

competition community," he concluded.

In this episode of the Oxford Policy Pod, Bernabe was interviewed by student correspondent and former PCC Senior Economist Paolo Tejano. The episode may be accessed at <https://oxfordpolicypod.captive.fm/episode/regulating-big-tech-policies-for-the-digital-age>. ■

# M&A

## DASHBOARD

Notifications received from  
April to June 2021:

**2**

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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