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PHILIPPINE COMPETITION BULLETIN

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**PHILIPPINE
COMPETITION
COMMISSION**

Ensuring businesses compete and consumers benefit

RCEP IS ASEAN'S MOST IMPORTANT RESPONSE TO PANDEMIC – ADBI DEAN

by Paul Andrew Lucena



Screenshot from FCDC 2021, stock photo from Freepik.com

Mr. Tetsushi Sonobe, Dean and Chief Executive Officer of the Asian Development Bank Institute (ADBI) singled out the ASEAN Regional Comprehensive Economic Partnership (RCEP) as the region's most important response to the pandemic. Occasion was the 2021 Forum on Competition in Developing Countries (FCDC), where he gave the keynote address, tackling the impact of the pandemic, different governments' responses, and the lessons in building more competitive supply chains.

The theme of the virtual 2021 FCDC was *"Enabling Resilient Supply Chains and Innovation Spaces in Southeast Asia's New Normal: The Role of Competition Policy."* Conducted by the Philippine Competition Commission (PCC) last February 22-23, it discussed the challenges that developing countries face in the new normal and the role of dynamic competition policy in designing resilient supply chains.

According to Sonobe, the airline, tourism, hotels, restaurants, and other similar industries were hard-hit by the pandemic. However, larger and richer economies faced lesser risk because they had a greater variety of products. Richer economies had highly productive or high value-adding industries, while more populous and larger economies had diverse industries.

Large variety of goods, services

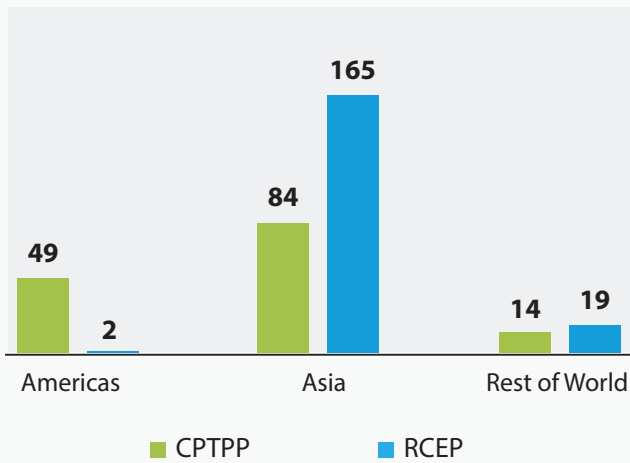
For example, richer economies like Singapore and Hong Kong, while not having many industries, nevertheless handled a large variety of goods and services as port cities. As a result, Singapore and Hong Kong contracted by 6.2% and 5.5% only, respectively, according to the December 2020 Asian Development Outlook Supplement. On the other hand, "having only one or two industries is the riskiest," Sonobe said. This was evident in the huge negative growth rates recorded

in the Maldives (-20.5%) and Fiji (-19.8%) because of their dependence on tourism.

Sonobe said the impact of the pandemic on less developed economies was more random. For instance, Bangladesh, a low-income economy, still recorded positive economic growth (5.2%) in 2020 due to exports and remittances. While remittances are not included in the gross domestic product (GDP), additional income from remittances was spent on food, among other things; hence, the high growth rate.

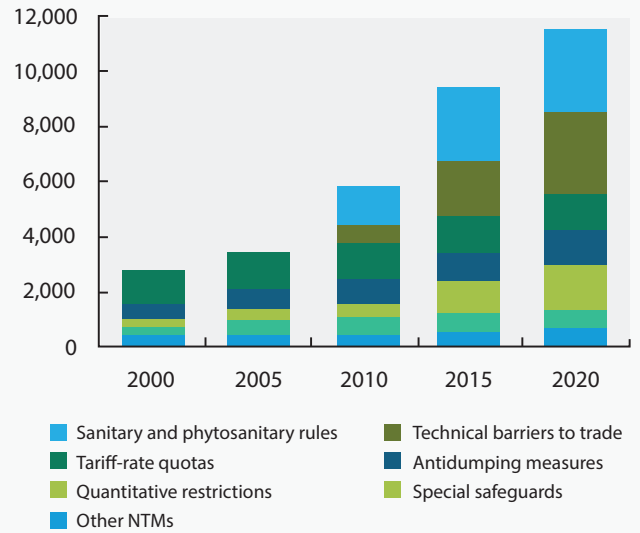
However, industries in low-income economies were highly vulnerable. An ADBI survey of micro, small, and medium enterprise (MSMEs) showed that 78% of firms in Bangladesh experienced cash shortage around April-June 2020, despite the country recording a positive economic growth. Vietnam's economy also grew by 1.8%,

Potential Benefits of Regional Trade Agreements-Real Income Increases in 2030
(\$ billion)



Note: Estimates include income effects to non-members of CPTPP and RCEP. Asia is based on ADB's definition. Americas and rest of the world are based on Petri and Plummer (2020).
Source: Petri and Plummer

Number of nontariff measures imposed on Asia
(cumulative as of each year)



NTM = nontariff measures.
Note: Data cover NTMs in force until December 2020.
Source: ADB staff calculations using World Trade Organization. Integrated Trade Intelligence Portal (accessed September 2020).

Source: Tetsushi Sonobe, *Rebuilding and Rethinking Supply Chains*, 2021 Manila Forum
Note: CPTPP refers to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership.

but 80% of the firms laid off temporary employees, while 64% cut permanent jobs during the first half of 2020. This was in contrast to India, whose economy contracted by 8.0%, and had a lower percentage of firms that laid off temporary (60% of respondents) and permanent (49%) workers.

Ensuring supply chains function

Due to the pandemic, trade plummeted in early 2020. However, it quickly rebounded, especially in the case of Emerging Asia.¹ Sonobe explained that many good responses by governments and firms to the difficulties brought by the pandemic were behind this resilience, capacity to rebound, and recovery in trade. “The most important response by the ASEAN region is the RCEP,” he noted.

The RCEP is a free trade agreement among the ASEAN countries, China, South Korea, Japan, Australia, and New Zealand. Signed in November

2020, it “ensures markets remain open and the regional supply chains function,” Sonobe said.

The trade agreement establishes common rules for e-commerce, trade, and intellectual property. Its common rule of origin allows companies to export goods and services from the RCEP signatories without worrying about specific rules in each country or for each manufacturing step. Given the high cost of paperwork for complying with the rules of origin, this is very important, especially for small enterprises.

With these rules, together with the elimination of 90% of tariffs on imports among the signatories, the RCEP is expected to boost growth, not only in Asia, but also for the rest of the world. Citing ADB’s Asian Economic Integration Report (AER) 2021, Sonobe said that by 2030, the RCEP is estimated to increase real income in Asia by \$165 billion, while adding \$2 billion in the Americas and \$19 billion to the rest of the world.

However, Sonobe warned that non-tariff measures (e.g., certification and quarantine requirements) are on the rise. Even before the onset of the COVID-19 pandemic, the number of non-tariff measures imposed across Asia was escalating over the years. The pandemic worsened this trend, as economies resorted to export prohibitions to ensure stable local supply, particularly of agricultural products. According to AER 2021, 54.7% of the COVID-19-related trade measures in Asia were trade restrictive. As such, ADB recommended international cooperation to ensure undisrupted supply of key products during the pandemic.

Note: Mr. Sonobe also discussed the lessons from the pandemic and the long-lasting impacts of the pandemic on regional supply chains. These will be featured in the special issue of the *Philippine Competition Bulletin on the 2021 Manila Forum*. ■

¹ Emerging Asia, excluding China, refers to India, Indonesia, Malaysia, Pakistan, Philippines, Thailand.

OECD FLAGS COMPETITION ISSUES IN PHILIPPINES' LOGISTICS SECTOR

by Leanne Croisette Gorosin



Stock photo from Pexels

The Philippine Competition Commission (PCC) and the Organisation for Economic Co-operation and Development (OECD) launched last January 29 two reports on OECD's key findings and recommendations in boosting the country's logistics sector and leveling the playing field between private and state-owned firms in this industry.

The reports studied 96 relevant laws and regulations and presented pro-competition recommendations to help firms, regulators, and stakeholders operate more efficiently, productively, and competitively in the Philippine logistics sector. The reviews were conducted under OECD's Fostering Competition in ASEAN Project, which assesses regulatory constraints on competition in the logistics sector in all 10 ASEAN member countries. The project identified regulations that hinder the efficient functioning of markets and create unfair competition among businesses.

"The PCC supports the pro-competition initiatives of government to modernize and simplify its processes and eliminate red tape. A competitive logistics industry is vital to recovery and key to increasing consumer welfare in the new normal, especially with the

rise of digital commerce in bridging supply and demand in our markets," PCC Chairperson Arsenio M. Balisacan said.

The first report, *OECD Competition Assessment Review of the Logistics Sector in the Philippines*, reviewed regulatory constraints on competition in road and maritime freight transports, freight forwarding, and value-added services. The second report, *Competitive Neutrality Reviews: Small-Package Delivery Services in the Philippines*, focused on small-package delivery services to demonstrate the application of competitive neutrality, in this case between private firms and the state-owned Philippine Postal Corporation (PHLPost). The reports recognized the crucial role in Philippine economic development of the logistics sector, with its market size of USD 11 billion, accounting for approximately 4% of the country's gross domestic product (GDP).

According to the reports, the cost of logistics to sales remained high in the Philippines, at approximately 27% more than in other ASEAN countries. The country ranked 60th in the World Bank's Logistics Performance Index (LPI) in 2018, with timeliness and customs being the two most challenging areas. Low scores were likewise received

for infrastructure and logistics competence – areas which the *Build! Build! Build!* (BBB) program is expected to improve.

Three competition issues in the logistics sector were flagged by the reports: 1) rules that may limit market entry; 2) exemptions from competition law; and 3) rules granting preferential treatment to certain companies, resulting in uneven competition in the market.

"Ultimately, the policy recommendations in the reviews are about investment, jobs and growth. There is a need to reduce unnecessary legal and regulatory restrictions to competition, thus bringing prices down and improving the quality of goods and services and increasing innovation," Antonio Gomes, OECD Deputy Director for Financial and Enterprise Affairs, said.

The Fostering Competition in ASEAN Project is undertaken in partnership with ASEAN and funded by the UK Prosperity Fund (UK Government). "The UK government fully supports the goals and initiatives under the ASEAN Competition Action Plan 2016-2025 to help member countries build a fair and competitive environment where innovation, entrepreneurship, investments, and trade and industry could thrive," Daniel Pruce, UK Ambassador to the Philippines, said.

The reports can be downloaded from <https://www.oecd.org/fr/pays/philippines/fostering-competition-in-the-philippines.htm>. The video of the launch event can be viewed at PCC's Facebook page (https://web.facebook.com/1087859964611855/videos/120305216637277?_rdc=1&_rdr). ■

PCC CHARGES CONDO DEVELOPER, ISP WITH EXCLUSIONARY CONDUCT

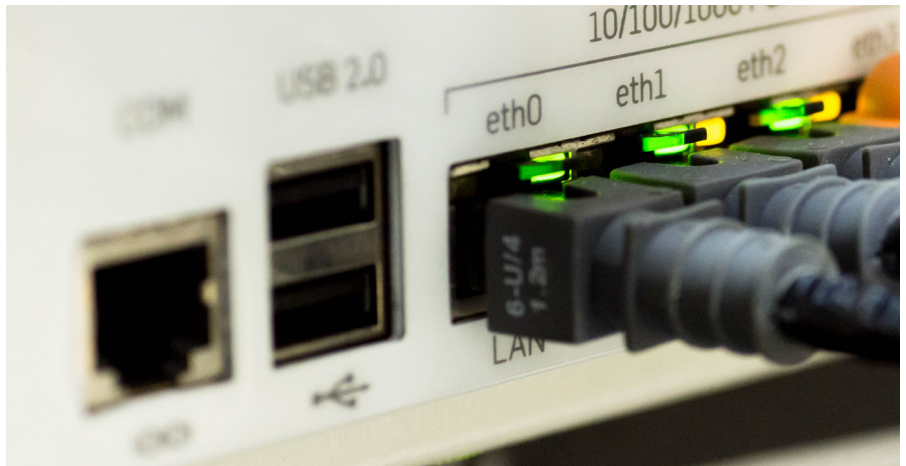
by Paul Jeffrey Ballentos

The Philippine Competition Commission (PCC) filed a complaint against a condominium developer and its wholly-owned internet service provider (ISP) for abuse of dominance in the market for fixed-line internet.

The Competition Enforcement Office (CEO), the investigative and prosecutorial arm of the PCC, issued a Statement of Objections² (SO) on December 29, 2020 against Greenfield Development Corporation and Leopard Connectivity Business Solutions, Inc. Greenfield, which owns Leopard, developed Twin Oaks Place (TOP), where Leopard provides fixed-line internet service.

The said parties allegedly prevented the entry of a competitor ISP to supply fixed-line internet to residential units of TOP, a Greenfield condominium in Mandaluyong City. As a result, TOP residents had no choice but to settle for the highly-priced, poor-quality (slow and unreliable) internet connection supplied by Leopard. Residents complained to PCC investigators about their lack of access to an alternative ISP. Leopard was charging P2,699/month for 20 Mbps and P3,500/month for 40 Mbps. At these rates, other ISPs could have provided 50-75 Mbps and 100-150 Mbps, respectively. According to the PCC Enforcement Office, there was substantial evidence to hold Greenfield and Leopard liable for violating Section 15(b) and (i) of the Philippine Competition Act (PCA).

“As more Filipinos shift to working and learning from home under the new normal, property developers competing for the market of digital connectivity should not resort to unduly foreclosing competition and restricting choices for consumers, but compete on fair terms,” PCC CEO Director Orlando P. Polinar said.



Stock photo from Pexels

“The competition law does not prevent condominiums from offering their own ISPs, provided other options are made available to residents,” he added.

“Abuse of dominance cases are evaluated with the end view of dismantling exploitative and exclusionary practices in business and ultimately empowering consumer choice. Under the Philippine Competition Act, an entity found to have abused its dominance in the market could face a fine of up to P110 million,” PCC Chairperson Arsenio M. Balisacan said.

Under the 2017 Rules of Procedure of the PCC (Commission Resolution No. 20-2017), the case will proceed to adjudication. Under Section 4.14 of Article III of the Rules, “adjudication is commenced upon the filling by the Enforcement Office of the SO with the Commission.” The purpose of adjudication is to “determine whether there exists substantial evidence of a violation of the Act, its implementing rules, or other

competition laws, and to justify the imposition of appropriate penalties and remedies relative thereto” (Sec. 4.2 of Rule IV).

In 2019, the PCC successfully resolved its first abuse of dominance case by imposing a P27-million fine and a cease-and-desist order against a condominium developer that imposed an exclusive internet setup on its tenants. The case stemmed from the complaints of said condominium residents who claimed to have been prevented from availing themselves of the services of other ISPs even if the in-house provider was slow, expensive, and unreliable.

For more information, the executive summary of the PCC-CEO’s Statement of Objections can be accessed at <https://www.phcc.gov.ph/press-releases/soo-exec-summary-enforcement-greenfield-leopard/>. ■

² A Statement of Objections refers to a document charging the entity under investigation for any violation of the Philippine Competition Act, its implementing rules, or other existing competition laws. An SO is the official complaint of the Enforcement Office as the complainant for administrative cases filed before the PCC, which, as a quasi-judicial body, makes a final determination on the complaint.

IN THE NEWS

Competition policy vital to inclusive digital economy

As the coronavirus disease 2019 (Covid-19) pandemic accelerated the digital shifts, competition policy shall remain in place to ensure an inclusive digital economy, Philippine Competition Commission (PCC) Chairperson Arsenio Balisacan said.

(Kris Crismundo, Philippine News Agency, 13 January 2021)

PCC: Competition analysis to focus on key sectors

E-commerce, health and pharmaceuticals, insurance, logistics and shipping, energy and electricity, water supply and distribution, real estate, and food would be the focus of competition analysis and enforcement this year, according to the Philippine Competition Commission (PCC).
(Anna Leah E. Gonzales, The Manila Times, 7 January 2021)

PCC favors opening of 'last mile' logistics to foreign capital

The Philippine Competition Commission (PCC), the country's anti-trust watchdog, has favored the opening of last mile logistics (delivery services), a sector that is primarily dominated by small Filipino ventures in the country's bustling logistics industry.
(Bernie Cahiles-Magkilat, Manila Bulletin, 22 February 2021)

Gas transmission pipelines not considered 'public utility'

The Philippine Competition Commission (PCC) has indicated that 'gas transmission pipelines' shall not be considered as 'public utility', hence, these investments will not be needing franchise from Congress.
(Myrna M. Velasco, Manila Bulletin, 6 January 2021)

AO on competition policy pending at Malacanang

The National Competition Policy (NCP), which has been adopted by the National Economic Development Authority (NEDA), is just awaiting approval by Malacanang for its implementation via an administrative order.
(Bernie Cahiles-Magkilat, Manila Bulletin, 8 January 2021)

ADVOCACY ROUNDUP

UP LAW FIRESIDE CHAT FEATURES PCC

Top officials of the Philippine Competition Commission (PCC) headlined a virtual fireside chat organized by the University of the Philippines (UP) College of Law last January 25.

PCC Chairperson Arsenio M. Balisacan and Commissioners Johannes R. Bernabe and Emerson B. Aquende shared the latest developments on

competition law and policy during the UP Law's "Competition Law and Policy Program (CLPP) Fireside Chat". Balisacan reported on PCC's accomplishments in 2020 and its priority sectors in 2021. Bernabe shared how the PCC met the challenges brought about by the pandemic in 2020 and the foreseen merger and enforcement issues in 2021.

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OXFORD U EXPERT DISCUSSES COMPETITION LAW AND DIGITALIZATION

Ariel Ezrachi, director of the Centre for Competition Law and Policy at the University of Oxford, discussed competition dynamics unique to a digital economy and their aggregated effects on a marketplace during a webinar hosted by the Philippine Competition Commission (PCC) last February 5.

The webinar highlighted network effects, use of data as critical inputs, application of advanced analytics or algorithms, asymmetry of information and analytical power, rise of gate keepers, data harvesting, and emergence of platform economy.

Ezrachi underscored the power of platform business models as efficient, valuable, and significant to the operation of markets. He shared how regulators assess these markets and analyze whether anti-competitive conduct exists in these economies. In online markets, these activities may include digitalized collusion through use of algorithms and, potentially, of artificial intelligence in pricing, and building controlled ecosystems through data tracking and manipulation.

continued on page 7

PCC TURNS FIVE

The Philippine Competition Commission celebrated its fifth founding anniversary last February 1. In his message, Chairperson Arsenio M. Balisacan thanked the agency's stakeholders and partners for their support to PCC's aim of creating a culture of competition in the country.

"In the midst of the pandemic's challenges, we in PCC remain committed to our mandate and will continue to work tirelessly for policy and institutional reforms required to have a pro-competitive environment in the country. As we look ahead, we continue to enjoy

your partnership in our quest to uphold the competition law and ensure fair business practice in the country," Balisacan said.

Similar to previous years, the PCC marked its anniversary with the hosting of the 2021 Manila Forum on Competition in Developing Countries (FCDC). This flagship advocacy event was held virtual this year in view of the ongoing pandemic.

The PCC was established on February 1, 2016, following the enactment of Republic Act No. 10667 or the Philippine Competition Act of 2015.
- C. Daquis ■

NEW AGRI INDUSTRY STUDIES OUT

The PCC published three issues papers this first quarter of the year. These papers studied three industries within the agriculture sector: corn, fertilizer, and milk products.

The corn issues paper was written by Artemio M. Salazar, Cenon D. Elca, Geny F. Lapiña, and Francis Joshua D. Salazar (all from the Asian Social Project Services, Inc.). It looked into possible competition issues in the supply chain and reviewed policies and regulations relevant to these issues. The authors recommended that “given the consolidation of the significant players in GM³ seeds at the global level and other inputs (i.e., Monsanto and Bayer), there is a need for closer market monitoring especially in determining input prices, sales volume, and market shares. This will ensure that the mergers do not translate to market dominance unfavorable to farmers as primary consumers of their products and other end-

[UP Law Fireside Chat... continued from page 6](#)

Aquende discussed PCC’s implementation of its mandate amid the regulatory relief of Bayanihan II, as well as policy formulation and advocacy directions in 2021.

The PCC officials were joined by UP Law Dean Fides Cordero-Tan and UP Law CLPP Chair Gwen Grecia-de Vera. In 2018, the PCC and the UP signed an academic partnership through the College of Law toward the establishment of a Center of Academic Excellence in Competition.

The fireside chat’s video recording is available at <https://www.facebook.com/uplawofficial/videos/250770713100585/>.
- P. Ballentos ■

consumers, such as the feeds and livestock industries.”

The fertilizer issues paper was written by Roehlano M. Briones, with a contribution from Peter S. Turingan. It likewise examined the competitive landscape of the industry. Briones found that policies and regulations do not pose significant barriers to entry in the industry. Rather, “the key barrier to entry of small players is the ability to mobilize large amounts of working capital and achieve high volume of sales so as to earn enough despite low margins,” he noted.

The issues paper on the milk products industry was written by Francis Mark A. Quimba and Kirsten J. Dela Cruz. Using the Structure-Conduct-Performance (SCP) paradigm, the paper provided a detailed description of the industry, covering the variety of products available in the market, the manufacturers and suppliers,

[Oxford U Expert Discusses... continued from page 6](#)

Ezrachi said companies add to their market power by retaining users and harvesting their information. Doing so enabled these players to serve as gatekeepers, leading to the rise of super platforms and potential abuse of their dominant positions. In addition, these super platforms controlled such ecosystems, possibly by setting rules and taxation, allocating wealth, and requiring users’ sensitive information. Amid these developments, regulators had proposed to update competition laws and made improvements in their approaches to monitor potential anti-competitive activities in digital markets.

Webinar participants included representatives of the Philippine Department of Justice, National Economic and Development

and the production value chains. The study found that the small dairy farms/manufacturers provided limited competition to large, established milk manufacturers. To increase sources of competition, the authors recommended that “small dairy farms and manufacturers are given assistance. The PCC should alert the Department of Agriculture and the National Dairy Authority on the critical role of small dairy farmers in supplying milk in their respective markets.”

The PCC Issues Papers aim to examine the structure, conduct, and performance of industries to better inform and guide PCC’s advocacy and enforcement initiatives. 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 ■

Authority, Office of the Solicitor General, and members of the academic and legal communities. - L. Gorosin ■

M&A DASHBOARD

Notifications received from
January to March 2021:

6

Notifications received since
February 2016:

252

³ Genetically modified (GM). Most existing GM crops have been developed to improve yield through the introduction of resistance to plant diseases or of increased tolerance of herbicides. (Source: World Health Organization, https://www.who.int/health-topics/food-genetically-modified#tab=tab_1)

ADVISORY

FINES FOR PCA VIOLATIONS INCREASED

The Philippine Competition Commission (PCC) released Memorandum Circular No. 21-001 last January 25, announcing a 10-percent increase in fines for violations under the Philippine Competition Act (PCA), particularly anti-competitive agreements, abuses of dominance, anti-competitive mergers, and offenses under compulsory merger notification. A review of the schedule of administrative fines is required every five years to ensure the amounts maintain their real value from the time the PCA was enacted.

The maximum administrative fine for the first offense for cartels, abuses of dominance, and prohibited mergers increased from P100 million to P110 million. For late merger notification, it increased from P2 million to P2.2 million.

Fines for providing false or misleading data, noncompliance with the Commission's orders, and other violations committed during PCC's competition enforcement and merger review have been likewise adjusted.

"Along with effective detection and prosecution

of infringements, increasing PCC's fines is meant to deter cartelistic and abusive business practices that take advantage of consumers amid the pandemic," PCC Chairperson Arsenio M. Balisacan said.

The increase in fines, which took effect last February 9 (15 days after publication of the circular), only applies to violations committed from this date onward. While the circular recalibrates the range of fines, the computation of actual fines is determined by several factors, such as the gravity and duration of the infringement, profits derived from the illegal conduct, and consumer harm.

For more information, the PCC Memorandum Circular 21-001 can be accessed at <https://www.phcc.gov.ph/pcc-mc21-001-adjust-fines/>. ■

OTHER PUBLICATIONS



Electronic publications are available at the PCC website.
www.phcc.gov.ph



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