

PHILIPPINE COMPETITION BULLETIN

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**PHILIPPINE
COMPETITION
COMMISSION**

Ensuring businesses compete and consumers benefit

PCC LAUNCHES DIGITAL SUPPORT PLATFORMS AMID COVID-19 PANDEMIC

by Leanne Croisette Gorosin

The Philippine Competition Commission (PCC) has accelerated its adoption of digital platforms to ensure continued provision of services despite the community quarantines imposed by government to control the spread of COVID-19 in the country.

Foremost of these was the launch last July of PCC's Enforcement Resource Page, a one-stop public information hub highlighting the agency's uninterrupted enforcement of the Philippine Competition Act (PCA) amid the COVID-19 pandemic.

This microsite informs how consumers and businesses can report to the Competition Enforcement Office any anti-competitive practice, especially involving basic goods and services, medical supplies, personal protective equipment, and other essential commodities.

It provides reference materials on different types of conduct that violate the PCA. The webpage also features enforcement advisories, news, and updates to equip stakeholders with information they can use to help keep in check unfair competition.

To appeal to a broader audience, the PCC introduced a series of online comic strips, titled *Pandemic and Competition Comics*. The comic strips feature vignettes of anti-competitive business practices involving products that figured prominently during the pandemic.

With the quarantine restricting mobility and physical contact, the PCC has introduced also stakeholder touchpoints that abide by government's social



distancing guidelines. Online consultations and webinars have been offered to minimize unnecessary in-person interactions among personnel and stakeholders (see *Adapting to the New Normal: Bringing PCC's Advocacy Program Online*, page 3). Similarly, the Information, Communications and Technology Division launched the PCC Client Appointment System (PCAS) in June to enable the public to send requests for appointments and office visits through the PCC website. This system rationalizes office visits so that the number of persons in the office at any given time is kept to a maximum that is consistent with government's social distancing guidelines.

With the government relaxing quarantine restrictions of late, the Commission issued guidelines for the resumption of its regular merger review operations through digital and alternative arrangements. The guidelines give notifying parties the opportunity to request extensions and waivers so they have sufficient time to comply with requirements, given the mobility and administrative challenges brought about by the pandemic.

Similarly, PCC's support offices resumed operations using online technology. In so doing, frontline units are assured of continued back-end assistance in addressing stakeholder concerns. The PCC Bids and Awards Committee (PBAC) is an example. Guided by the Government Procurement and Policy Board's recent issuances on the conduct of procurement activities during the quarantine, the PBAC has been using a hybrid of online and on-site meetings to ensure timely processing of procurement requests. ■



Pandemic & Competition Comics series as seen at the PCC's Facebook page.

ADAPTING TO THE NEW NORMAL: BRINGING PCC'S ADVOCACY PROGRAM ONLINE

by Paul Jeffrey M. Ballentos

As governments both here and abroad have imposed lockdowns to control the spread of COVID-19, the Philippine Competition Commission (PCC) was not spared from the forced suspension of in-person advocacy activities planned for the year, leaving many budgets unused.

The Philippine government's passage of the Bayanihan to Heal as One Act laid the ground for a government-wide effort to economize on unnecessary expenditures in a bid to shift resources toward the battle against the pandemic and its ill effects.

Even as it heeded the call to give up part of its budget for the year, the PCC recognized the high risk of anti-competitive conduct rearing its ugly head, as unscrupulous businesses take advantage of supply restrictions brought about by the lockdown. As the quarantine increased the demand for online channels of communication, the PCC adapted to the "new normal" by taking its advocacy program online.

Reaching out to small businesses, consumers

Micro, small and medium enterprises (MSMEs), cooperatives, and consumers are among the most vulnerable to unfair market practices, especially in a situation where lack of mobility and resource challenges hamper choice.

In August, the Communications and Knowledge Management Office-Capacity Building and Advocacy Division (CKMO-CBAD) of the PCC held an online forum on the Philippine Competition Act (PCA) for MSMEs and cooperatives. Mr. Arnold Roy Tenorio, CKMO director, and Atty.

Ferdinand Redulla, Competition Enforcement Office assistant director, served as resource persons.

Redulla discussed business practices of MSMEs that may fall under the scope of the PCA. One example is members of a particular business building an association or competitors in a similar trade constituting a trade association. "The rules of such trade guilds that bind members may also be an 'agreement' under the Philippine Competition Act. This includes even settlement agreements in these associations," Redulla explained.

Following this forum, CBAD held a *PCA 101 for Consumers* webinar. Speaking during the event, Executive Director Kenneth V. Tanate emphasized the importance of mainstreaming competition concepts. "The public should be made aware of the important provisions of the PCA to ensure that businesses will not engage in any anti-competitive practices or agreements, or gravely abuse their dominance," he said.

Raising awareness in priority sectors

The PCC also brought its advocacy to industries crucial during the pandemic, starting with a webinar on the PCA for the Pharmaceutical and Healthcare Association of the Philippines (PHAP). Pharmaceuticals, a major frontline industry in the fight against the pandemic, is one of PCC's priority sectors for the year.

Out-of-pocket expenditures, largely for medicines, remain a huge portion of health spending in the country. "While the availability, prescription, and use of generics have generally

been increasing, and medicine prices have been declining over time, for many Filipinos, these basic social services with their accompanying products remain inaccessible and unaffordable," PCC Chairperson Arsenio Balisacan told members of PHAP.

PCC's resource persons from the Commission's various units

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ADVOCACY ROUNDUP

PCC CHAIR WARNS OF UNCHECKED CONSOLIDATION

PCC Chairperson Arsenio Balisacan highlighted the need to apply a competition lens to government policy responses to the ongoing COVID-19 crisis, during a keynote speech before business leaders and managers in the country.

The occasion was the 2nd Online General Membership Meeting of the Management Association of the Philippines' (MAP) held last May 20.

"History has proven, time and time again, that unchecked consolidation leads to coordinated conduct and a rise in market power. As this crisis is hoped to be temporary, a sharp rise in concentration within industries may create greater harm to consumers in the long run," Balisacan explained. Noting the expected increase in the consolidation of firms, he said the PCC is maintaining a proactive stance with respect to merger control.

As anti-competitive behaviors are more likely during times of crisis, he assured his audience that the PCC continues to



"Given the expected increase in the consolidation of firms, PCC maintains its proactive stance with respect to merger control. History has proven, time and time again, that unchecked consolidation leads to coordinated conduct and a rise in market power. As this crisis is hoped to be temporary, a sharp rise in concentration within industries may create greater harm to consumers in the long run."

Arsenio M. Balisacan, PhD
Chairperson, Philippine Competition Commission
Management Association of the Philippines (MAP)
Online General Membership Meeting
20 May 2020

strictly enforce the Philippine Competition Act and remains vigilant in market monitoring, enforcement, and evidence-based advocacy.

The online forum was a project of the MAP Ease of Doing Business (EODB) Committee.
- C. Daquis ■

PCA NOW PART OF PHILIPPINE BAR EXAMINATIONS

The Philippine Competition Act (PCA) is now part of the Bar Examinations administered by the Supreme Court (SC). This is a welcome development toward the mainstreaming of competition law in the country. Passing the bar examinations is a prerequisite to admission to the bar, which in turn is a requirement for legal practice in the Philippines.

The *Bar Bulletin* issued by the SC for the 2020 Bar Examinations* indicates that the PCA is included in the coverage of the Commercial Law examination. PCA coverage includes definition and scope of application, powers and functions of the Philippine Competition Commission (PCC), prohibited acts, covered transactions, determining the

relevant market, determining control or dominance of market, determining existence of anti-competitive conduct, and forbearance by the PCC.

Those preparing to take the bar may visit PCC's official website, www.phcc.gov.ph, for various resources on the PCA.
- P. Ballentos ■

* The 2020 Bar Examinations were postponed by the SC due to COVID-19. Per Bar Bulletin No. 13 s 2020, the next Bar Examinations will be in November 2021.

COMPETITION POLICY AN IMPORTANT TOOL FOR INCLUSIVE RECOVERY FROM PANDEMIC

Philippine Competition Commission (PCC) Chairperson Arsenio Balisacan joined colleagues at the Ateneo de Manila University Department of Economics in a wide-ranging online discussion last July 8 on the impact of the pandemic on entrenched inequalities and how competition should be among government's tools to address these.

He shared his perspective on the role of competition policy

enforcement toward an inclusive economic recovery amid the pandemic. He emphasized the dangers of clipping competition policy enforcement amid the public health crisis, given its effects on consumers, the poor, and small and medium enterprises (SMEs).

Moreover, Balisacan stressed that competition policy enforcement remains relevant during the pandemic, especially for the country's recovery and

in building a resilient economy. He also pointed out that the design of policy responses to the crisis—mitigation, stimulus, resiliency—needs to be mindful of risks and pro-competitive solutions.

The Ateneo Economics Department, through a series of webinars, engages scholars, experts, and key government officials to shed light on issues affecting the Philippine economy. - L. Gorosin ■

NEW INDUSTRY STUDIES OUT: PHARMACEUTICALS AND DIGITAL COMMERCE

The PCC recently released the results of two commissioned industry studies: one on the pharmaceutical sector and the other on the digital commerce market.

In June, the PCC published the results of a scoping study of the pharmaceutical industry by Celia M. Reyes and Audrey D. Tabuga, both from the Philippine Institute of Development Studies (PIDS). This issues paper and its accompanying policy note tackled challenges in the industry, with emphasis on the dimensions of competition, prices, and regulation. The study showed evidence of concentration, consolidation and integration in the industry.

“The presence of concentration, consolidation, and integration in the industry suggests that there is a need to examine more deeply any policy, process, or phenomenon that inhibits greater competition. Furthermore, the significant reduction in the number of local manufacturers indicates the inability of some companies to compete under the

current policy and regulatory environment,” Reyes and Tabuga said in their policy note.

The issues paper on digital commerce was published in July. It was written by Ramonette B. Serafica, Marie Antoinette L. Rosete, Peter Jeff C. Camaro, and Arjan Paulo S. Salvanera, all from PIDS. Apart from presenting the policy, regulatory, and institutional framework for the development of e-commerce in the country, the paper also identified key players and possible bottlenecks or constraints to competition in the market. It noted important issues for further analysis and action by the PCC.

PCC Issues Papers aim to examine the structure, conduct, and performance of select industries to better inform and guide PCC's advocacy and enforcement initiatives. These papers, along with other information, education, and communication materials on competition may be downloaded from the resources section at www.phcc.gov.ph. - C. Daquis ■



IN THE NEWS

Pandemic risks 'distorting' market competition: antitrust watchdog

The Philippine Competition Commission said that the COVID-19 pandemic highlighted the need for policies that protect small businesses.

(ABS-CBN News, 28 May 2020)

Value of M&A deals doubled in 2019

The Philippine Competition Commission (PCC) received a total of P812 billion worth of merger and acquisition transactions last year, doubling the value of M&As filed with the antitrust body from 2018.

(Elijah Felice Rosales, Business Mirror, 2 July 2020)

Justice department issues rules on criminal prosecutions for Competition Act violators

The Department of Justice (DOJ) issued a circular approving the rules implementing the criminal provisions of Republic Act No. 10667 or the Philippine Competition Act (PCA).

(Vann Marlo M. Villegas, Business World, 2 July 2020)

PCC to unlock 'protected' sectors

The Philippine Competition Commission (PCC) is focusing its work on seven sectors to unlock their full potential long protected by regulation.

(Malaya Business Insight, 3 July 2020)

PCC flags anti-competition provisions in stimulus bills

Philippine Competition Commission (PCC) Chairman Arsenio Balisacan has identified some provisions in the stimulus package bills that may restrict the enforcement of the Philippine Competition Act (PCA) to preserve fair and healthy market competition.

(Kris Crismundo, Philippine News Agency, 8 July 2020)

Adapting to the New Normal... continued from page 3

discussed with the sector's key players the core competition concepts -- enforcement, advocacy, merger review, and comprehensive economic research.

PHAP expressed its support to the PCC as the country's primary competition watchdog. It noted the importance of government support in fostering development of the industry. "Moving toward a sustainable future, we hope the government, through the PCC, can help the research-based pharmaceutical industry with a business environment conducive to innovation. Building capabilities for advanced research and development, formulating policies that support and incentivize innovation, forging public-private partnerships for pharmaceutical security, and improving access to medicines are necessary steps to achieve this," PHAP president Beaver Tamesis said.

Enjoining the public sector in mainstreaming competition principles

The public sector is a key stakeholder of the PCC, especially the legislative branch and government-owned and controlled corporations (GOCCs), whose laws, policies, and operations influence the state of competition in the market.

In May, the PCC through its Legislative Liaison Office (LLO) held a *Capacity Improvement on Competition Advocacy for Legislative Staff (CICALS)* webinar for the House of Representatives. CICALS is a series of capacity-building and advocacy seminars for the legislative branch, aimed at mainstreaming competition principles in economic legislation. Its first leg was held for the Senate in December 2019.

"Mainstreaming sound competition principles has taken on a greater sense of urgency in a COVID-19-disrupted world, where the economy's swift recovery matters more than ever," said Balisacan. He added that the PCC, through the LLO, continues to actively communicate its position and inputs on the effects on competition of various bills or legislation affecting trade, industry, and commerce.

Commissioners Johannes Benjamin Bernabe, Amabelle Asuncion, and Macario De Claro, Jr., former PCC commissioner and now Representative Stella Luz A. Quimbo, as well as World Bank senior economist Graciela Miralles Murciego served as resource speakers.

Likewise, the PCC has continued to provide in-depth seminars to government agencies. In August, CBAD organized a five-session symposium on *Merger Review for the Governance Commission for GOCCs* and a three-session symposium also on merger review for the Philippine Reclamation Authority (PRA). Representatives of PCC's Mergers and Acquisitions Office (MAO) took the online podium to discuss PCC's merger control regime.

Upcoming webinars

As the government continues to impose social restrictions to safeguard public health, the PCC carries on with its advocacy program by reaching out to its stakeholders online, empowering them to understand, comply, and help in identifying possible anti-competitive conduct in today's markets.

Those interested in joining PCC's webinars may check its Facebook page for event announcements or inquire from the CBAD team (trainings@phcc.gov.ph). ■

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In the News...
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Report anti-competitive firms benefiting from crisis – PCC

The Philippine Competition Commission (PCC) is urging the public to report companies' anti-competitive behavior to reduce the risk of businesses taking advantage of the crisis through price fixing.

(Jenina P. Ibañez, Business World, 22 July 2020)

Antitrust body to 'carefully' watch competition concerns after ABS-CBN shutdown

The Philippine Competition Commission said it would "carefully" watch the development in the free TV industry following the government shutdown of ABS-CBN and Congress' rejection of its bid for a fresh 25-year franchise.

(ABS-CBN News, 21 July 2020)

M&A transactions to proceed quickly with Bayanihan 2 bill provision

A provision in the Bayanihan 2 bill, which exempts mergers and acquisitions (M&As) worth below P50 billion from review by the Philippine Competition Commission (PCC), is expected to enable transactions to proceed quickly.

(Louella Desiderio, The Philippine Star, 31 August 2020)

PCC pushes transition period for lower capital requirement for foreign retail investors

The competition regulation body is proposing a grace period for the lowering of the capitalization requirement for foreign retail investors.

(Jenina P. Ibañez, Business World, 11 September 2020)

SC decision levels playing field for contractors – PCC

The Philippine Competition Commission (PCC) has lauded the decision of the Supreme Court (SC) to declare as unconstitutional the nationality requirement in licensing rules for contractors, saying this would level the playing field for local and foreign firms in construction projects.

(Louella Desiderio, The Philippine Star, 16 September 2020)

NEW NOTIFICATION RULES FOR PUBLIC-PRIVATE VENTURES, UNSOLICITED PPP PROJECTS

Joint ventures (JVs) between private entities and the government, and unsolicited public-private partnership (PPP) projects may be exempted from compulsory notification, following the PCC's issuance of two memorandum circulars last June.

PCC Memorandum Circular (MC) No. 2020-001 provides the guidelines on the process for exemption from compulsory notification of JV agreements, pursuant to the National Economic and Development Authority (NEDA) guidelines on JVs between government and private entities. Under the process, the implementing government agencies may file for project exemption from compulsory notification in behalf of the project proponents or prospective bidders.

For projects under the competitive selection process, the application for project exemption should be filed prior to the issuance of the Invitation to Apply for Eligibility and to Submit a Proposal. For negotiated JVs, it should be prior to the issuance of the Certification of Successful Negotiation or Conferment of Original Proponent Status.

Subsequently, the PCC issued MC No. 2020-002, which provides the guidelines on the process for exemption from compulsory notification of unsolicited PPP projects, pursuant to the Build-Operate-Transfer (BOT) Law. Applications for exemptions may be filed by implementing government agencies in behalf of the original proponent and prospective bidders, any time from the commencement of the negotiations with the original proponent but before the issuance of a Certificate of Successful Negotiation under Section 10.8 of the BOT Implementing Rules and Regulations.

Under the two new rules, the PCC will review the application and, if needed, shall render an advisory opinion and require an undertaking to address any identified competition concern.

These efforts form part of PCC's continued streamlining of its merger review processes, in line with the government's goal of improving ease of doing business in the country. In 2019, the PCC launched an expedited review process for mergers and acquisitions, and issued rules for exemption from compulsory notification for solicited PPP projects.

For more information on these processes, the MCs can be accessed at www.phcc.gov.ph/category/resources/memorandum-circulars/. ■

M&A

DASHBOARD

Notifications received from
January to September 2020:

17

Notifications received since
February 2016:

237

OTHER PUBLICATIONS



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www.phcc.gov.ph



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