

PHILIPPINE COMPETITION BULLETIN

WHAT'S INSIDE

- 2** COOPERATION WITH LEGISLATURE, SECTOR REGULATORS
KEY TO EFFECTIVE COMPETITION POLICY
- 3** PCC, PSA INK COOPERATION ON BIG DATA
- 4** RULE LAUNCHED GIVING PCC 'DAWN RAID' POWERS
- 5** LEGAL EDUCATION BOARD'S FORMER HEAD IS NEW PCC COMMISSIONER
- 7** THRESHOLDS ADJUSTED FOR COMPULSORY M&A NOTIFICATIONS



**PHILIPPINE
COMPETITION
COMMISSION**

Ensuring businesses compete and consumers benefit



William Kovacic, Global Competition Professor of Law and Policy at the George Washington University, served as keynote speaker at the 2020 Manila Forum held last January 30-31 at Sofitel Philippine Plaza Manila, Philippines.

COOPERATION WITH LEGISLATURE, SECTOR REGULATORS KEY TO EFFECTIVE COMPETITION POLICY

by Paul Andrew Lucena

The Philippine Competition Commission (PCC) held in February the second Manila Forum on Competition in Developing Countries. With the theme “Towards Dynamic Competition Policy, Regulation and Legislation in Rapidly Rising Asia”, the 2020 Manila Forum explored the complex interplay among regulation, legislation, and competition policy.

Mr. William Kovacic, Global Competition Professor of Law and Policy at the George Washington University, USA, in his keynote address, discussed the challenges of having a more effective competitive framework and offered some recommendations on how these can be addressed.

In laying out these challenges and solutions, Kovacic distinguished the difference between competition law and competition policy. The former refers to a set of restrictions that a nation establishes on certain types of business practices; the latter pertains to a set of strategies and tactics that make competition an integral element of decision-making. Moreover, competition policy involves engaging the

energies of the larger body of public administration in a nation. This means that building a more effective competitive framework cannot be attained by the competition authority alone. It will “require partnerships with other public institutions,” Kovacic added.

Engaging other public decision-makers in the process of promoting pro-competitive policies entails some challenges, however.



First, there is social ambivalence about competition. Consumers think competition is a good thing because it may lead to lower prices, better quality of products or services, and more choices. However, the same people may also be harmed by the disruption caused by competition. While competition may foster innovation in industries, this may also result in displacement of workers

due to the introduction of new commodities and more advanced technology. Consequently, legislators’ stance on competition may be swayed by their constituents’ sentiments.

Second, competition agencies are up against the fast-changing and dynamic character of industries. Taking the smart phone as an example, Kovacic described how it transformed over time, including its functionality. This commercial dynamism and change is extremely disruptive, making it hard for a competition agency to anticipate how markets change. Therefore, competition agencies must build the basic knowledge to understand what needs to be done. Kovacic said competition agencies cannot do this on their own because it requires drawing upon the full resources of public agencies and partners, including academic institutions.

Third, the new economy and its large technology giants pose enormous challenges to competition agencies to be smart enough in coming up

with effective interventions. Although there is no consensus on the steps to address this, Kovacic explained that public institutions need to understand modern developments amid extraordinary complexities, come up with accurate diagnosis, formulate appropriate interventions, and implement them effectively. More importantly, part of the task is applying the right policy—that is, beyond measuring the agencies’ performance through cases filed and fines imposed, attention must be given to knowing if such interventions work effectively. At the center of these is the demand for broader collaboration among public institutions. Otherwise, “if the institutions were in isolation, they will not solve this problem. They will be habitually behind... never quite catching up,” Kovacic said.

Fourth, the public has a skeptical view of public administration, particularly about its capacity to work loyally, truthfully, and effectively on behalf of the citizens. The doubts associated with whether institutions are going to deliver results generate a challenge for competition agencies to deliver and cast these doubts away. For instance, Kovacic noted that although the PCC is off to a good start, it is swimming upstream against a current of suspicion and distrust about public administration. Hence, beyond delivering good cases, doing investigations, and writing good reports, he said the PCC needs to build a brand that dominantly commands respect and approval within the larger society.

Lastly, policy making is fragmented across different institutions, which may be due to different government agencies having overlapping mandates and jurisdictions. The main difficulty in this aspect lies in finding ways to overcome the tendency of agencies to create a policy archipelago, where the

continued on page 6



(from left) Dr. Jeff Ducanes (ADMU), Dr. Gilberto Llanto (RESPOND), Dr. Enrico Basilio (RESPOND), PCC Chairman Arsenio Balisacan, Usec. Claire Dennis Mapa (PSA), Dr. Mario Lamberte (RESPOND), Dr. Karl Jandoc (UP), Adrian Mendoza (UP), and PCC Economics Office Director Benjamin Radoc.

PCC, PSA INK COOPERATION ON BIG DATA

by Leanne Croisette Gorosin

The Philippine Competition Commission (PCC) and Philippine Statistics Authority (PSA) signed a Memorandum of Agreement (MoA) on January 22 to jointly pursue a research portfolio on pro-competition policies and regulatory reforms.

The research mainly aims to analyze decades-long data on Philippine trade, firms, and households, and come up with actionable inputs to competition policies and interventions. This undertaking renews PCC’s ties with PSA, a partnership that began in 2017.

The partnership also brings to the fold the University of the Philippines Public Administration Research and Extension Services Foundation, Inc. (UP PAF) and forms part of the five-year Regulatory Reform Support Program for National Development (RESPOND), an initiative supported by the United States Agency for International Development (USAID).

RESPOND was created to contribute to the implementation of programs and policies under the government’s Ambisyon Natin 2040, the Philippine Development Plan

(2017 -2022), and the 0-10 Socio-Economic Agenda. It aims to employ big data analytics toward data-driven economic development policies that increase competition and improve ease of doing business transactions in the country.

The collaboration mainly supports PCC’s role in promoting economic efficiency in the Philippines by ensuring fair market competition. It is meant to strengthen regulatory capacity and governance and promote citizen engagement and advocacy. Data generated from the project shall also be shared with universities.

During the signing ceremony to roll out the project, PCC Chairman Arsenio Balisacan and PSA Undersecretary Claire Dennis Mapa were joined by public policy experts, namely: Dr. Enrico Basilio, Dr. Mario Lamberte, and Dr. Gilberto Llanto of RESPOND; Dr. Maria Fe Mendoza of UP PAF; John Avila of USAID; Assistant Secretary Rosalinda Bautista and Assistant National Statistician Divina Gracia Del Prado of PSA; Dr. Jeff Ducanes of the Ateneo De Manila University (ADMU); and Dr. Karl Jandoc and Adrian Mendoza of UP. ■

ADVOCACY ROUNDUP

MOTORCYCLE TAXIS, MULTI-HOMING SERVICE GET PCC SUPPORT

The Inter-Agency Technical Working Group (TWG) on motorcycle taxis met with officials of the Philippine Competition Commission (PCC) last January 15 to discuss competition aspects and the viability of motorcycles as a form of public transportation.

Not only did the PCC express support for motorcycle taxis, it also advocated for the pro-competitiveness of multi-

homing, a system allowing drivers to choose various platforms to offer their services.

“Multi-homing incentivizes platforms to continuously innovate and compete to keep both drivers and passengers safe and satisfied. Preventing multi-homing among drivers may lead to inefficiencies that will ultimately be detrimental to the riding public,” the PCC said in a press statement.

The PCC also pledged “advisory support to the TWG, the Land Transportation Franchising and Regulatory Board (LTFRB), and the Department of Transportation (DOTr) in the formulation of policies that meet the dual objectives of promoting healthy market competition and protecting the welfare of the stakeholders” in the transportation sector.

– R. Advincula ■

RULE LAUNCHED GIVING PCC ‘DAWN RAID’ POWERS

The Rule on Administrative Search and Inspection under the Philippine Competition Act (PCA) was jointly launched by the Supreme Court (SC) of the Philippines and the Philippine Competition Commission (PCC) last January 21.

The public launch coincided with the start of the series of seminar-workshops by the Philippine Judicial Academy for commercial court judges and their pairing court counterparts from across the country.

The rule—which became effective in November 2019 by virtue of Administrative Matter No. 19-08-06-SC—governs the application, issuance, and enforcement of an inspection order for investigations of alleged violations of the PCA and its implementing rules and regulations, also known as “dawn raids”.

During the launch, Chief Justice Diosdado Peralta emphasized the importance of the rules to respond to the needs of the PCC as enforcer. The Chief

Justice, who headed the special committee that drafted the rule, said the dawn raid rule also ensures that the results of court processes are in accordance with the principles of justice and legitimacy.

PCC Chairman Arsenio Balisacan emphasized how unannounced inspections or dawn raids have served competition authorities worldwide as an effective tool in obtaining evidence for cartel and other anticompetitive cases

– R. Advincula ■

ANTITRUST, DATA PRIVACY BODIES DISCUSS COLLABORATION

PCC Chairman Arsenio Balisacan and Commissioner Raymund Liboro and Deputy Commissioner Atty. John Henry Naga, both of the National Privacy Commission (NPC), met on February 21 at the PCC headquarters to discuss potential areas of cooperation between their agencies.

They shared experiences in promoting their respective agencies’ mandates and in encouraging stakeholder compliance. They also exchanged views on the interface between data privacy

and competition, particularly in digital markets.

Director Orlando Polinar of the Enforcement Office, Atty. Rigel Villanueva of the Legal Division, and Atty. Leeanne Czarina Gali of the Adjudication Division, all of the PCC, also attended the meeting.

Established in 2016, the NPC is an independent body mandated to promote data protection by implementing Republic Act No. 10173 or the Data Privacy Act of 2012. – P. Ballentos ■



PCC Chair Arsenio Balisacan and NPC Commissioner Raymund Liboro



Newly appointed Commissioner Emerson Aquende (right) with Chairman Arsenio Balisacan

LEGAL EDUCATION BOARD’S FORMER HEAD IS NEW PCC COMMISSIONER

The Philippines Competition Commission (PCC) completes its roster of Commissioners with the appointment of Atty. Emerson Aquende, former chairman of the Legal Education Board (LEB), in March.

“We are pleased to welcome a distinguished government official with valuable experience in legal practice and education,

to provide another perspective and enrich the Commission’s collegial decision-making process,” said PCC Chairman Arsenio Balisacan.

As the chief regulator of legal education in the country, Atty. Aquende led the supervision of law schools across the country, which included setting standards for accreditation

and law school admission, and prescribing the basic curricula for the course of study aligned with the requirements for admission to the Bar.

Atty. Aquende will be assuming the Commissioner post vacated by Dr. Stella Luz Quimbo, who won a congressional seat in May 2019. ■

LATVIAN COMPETITION COUNCIL CHIEF DROPS IN



Competition Council of Latvia Chairperson Skaidrite Abrama (middle) poses with PCC Chair Arsenio Balisacan (second from right) on February 11. With them are (from left) PCC Commissioners Macario de Claro, Jr., Johannes Benjamin Bernabe, and PCC Executive Director Kenneth Tanate.

Philippine Competition Commission officials led by Chairman Arsenio Balisacan welcomed Chairperson Skaidrite Ābrama of the Competition Council of Latvia (CCL) during her visit to the PCC last February 11.

Ābrama has served the CCL as chairperson for two terms since 2012. Prior to her appointment as head of the agency, she served as a CCL board member and later as its chief economist.

During the courtesy call, Balisacan shared PCC’s milestones as a young competition authority. PCC Commissioners Johannes Benjamin Bernabe and Macario de Claro, Jr. and Executive Director Kenneth Tanate joined the discussions. – P. Ballentos ■

2020 Manila Forum... continued from page 2

inhabitants of each island do not visit or welcome others. Kovacic highlighted that the power to form effective competition policy in the Philippines is not just a choice of the PCC. He stressed that “the PCC needs allies in the legislature, in the sector regulators, and in ministerial departments.” It also needs the assistance of non-agency institutions, such as the academe, to support the system. Moreover, all of these stakeholders need to be engaged since isolated efforts will not solve the big problems, especially those that involve key decisions that transcend the walls of the competition authority.

The big solution to overcome these challenges, Kovacic said, is to build a comprehensive competition policy. That is, make competition fuel the economy. Even as macroeconomic policy analysis is done across different agencies in the Philippine government, Kovacic recognized that the PCC is the platform that provides the best capability to do this work over time. However, accomplishing this

requires alliances with various institutions. Given that the PCC has no ability to direct other sector regulators on what should be done, particularly in pursuing pro-competition policies, the competition agency must operate by persuasion. This will involve establishing the goals that regulators want to pursue in the status quo, aligning the methods chosen with the said goals, evaluating their effectiveness, and finding alternatives to achieve the intended outcome.

Effective cooperation with other regulators takes time and requires trust, such that sector regulators see the competition agency not as a threat, but as a colleague. Using the United Kingdom Competition Network (UKCN) as an example to achieve this, Kovacic explained that the Competition and Markets Authority spearheaded the creation of the UKCN to serve as an alliance among regulators that have specific roles to support and enable competition within their sectors. Through UKCN, officials and staff of sector regulators have established mechanisms to know and interact with their counterparts

in coming up with better and effective interventions. Although difficult to achieve, Kovacic said that cooperation, especially among public institutions, is worth pursuing because it is a source of better economic performance, greater satisfaction and well-being of the citizens, and the basis of the public to believe that their taxes are being spent well.

The 2020 Manila Forum also featured insights delivered by representatives of the Philippine legislature, the national government, international experts, and the academe. It drew at least 300 participants from the government, business sector, legal community, academe, and development partners. The 2020 Manila Forum sessions are available for streaming at <https://www.themanilaforum.org/>.

The PCC started the Manila Forum series in 2018. In 2019, a smaller forum was conducted to localize the previous year's discussions to Philippine and regional contexts; the sessions focused on market competition issues and challenges arising from technological disruption. ■



(from left) PCC Commissioner Amabelle Asuncion, Senior Deputy Executive Secretary Michael Ong, Commissioner Macario de Claro, Jr., William Kovacic, PCC Chairman Arsenio Balisacan, and Commissioner Johannes Bernabe.

IN THE NEWS

PCC pushes for national competition policy

PCC continues to expand alliances with regulators in the industry and Congress, in line with its mandate to push for pro-competitive government policies. The competition authority has formed a legislative liaison office to continue the formation of competition lens and has started projects with development partners to perform a market analysis of sector regulations. (Bernie Cahiles-Magkilat, Manila Bulletin, 3 February 2020)

Antitrust body to ease rules for unsolicited PPP joint ventures

PCC has drafted a circular that exempts from compulsory notification the joint ventures (JVs) of private entities formed for an unsolicited public-private partnership (PPP) project. The antitrust body said that the draft circular “aims to establish and institute a framework to exempt joint ventures of private entities formed for an unsolicited PPP project, consistent with the mandate of the PCC and the objectives of the Build-Operate-and-Transfer (BOT) Law.” (Arjay Balinbin, BusinessWorld, 17 January 2020)

2020: Toward a more robust competition regime

Having gained significant experience in the past three years, the PCC confidently flexed its enforcement muscle by deciding on several landmark cases and imposing stiff fines on competition law violators. Its strong position reflects the Commission's commitment to fostering efficient markets and advancing consumer welfare. (Arsenio Balisacan, PhD, Business Mirror, 15 January 2020)

Innovative regulation: Keeping the speed bumps just right

Regulation must be suitable to the governed sector and consciously infused with overarching principles and policies aimed at serving the public good. This is where competition policy becomes relevant. Regulation must be innovative and inclusive. (Atty. Amabelle Asuncion, Business Mirror, 5 February 2020)

THRESHOLDS ADJUSTED FOR COMPULSORY M&A NOTIFICATIONS

The Philippine Competition Commission (PCC) has adjusted the thresholds for compulsory notifications of mergers and acquisitions (M&As).

Effective March 1, the threshold for the SoP test has been raised to PhP 6.0 billion from PhP 5.6 billion. That of the SoT has been increased to PhP 2.4 billion from PhP 2.2 billion.

The Size of Person (SoP) refers to the value of assets or revenues of the Ultimate Parent Entity of at least one of the parties, while Size of Transaction (SoT) refers to the value of the assets or revenues of the acquired entity.

These adjustments are in line with PCC Memorandum Circular No. 18-001 released in 2018, which provides that thresholds will automatically be adjusted annually based on the nominal gross domestic product (GDP) of the previous year.

For details, you may access <https://phcc.gov.ph/commreso-022020-thresholds-adj-mar2020/>.

M&A

DASHBOARD

Notifications received from January to March 2020:

8

Notifications received since February 2016:

238

OTHER PUBLICATIONS



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



Ciara R. Daquis
Editorial Coordinator

Michael Lew C. Madrid
Layout Artist

www.facebook.com/CompetitionPH

www.twitter.com/CompetitionPH

www.phcc.gov.ph