

# PHILIPPINE COMPETITION BULLETIN

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**PHILIPPINE  
COMPETITION  
COMMISSION**

*Ensuring businesses compete and consumers benefit*

# PCC IN 2019 STRONGER COMPETITION ENFORCEMENT FOR A GROWING ECONOMY

In 2019, the Philippine Competition Commission (PCC) sustained its momentum in enforcing the competition law in pursuit of its mandate to prohibit anti-competitive agreements, abuse of market dominance, and anti-competitive mergers and acquisitions.

## JAN

### ***First merger prohibition***

PCC blocked Universal Robina Corporation's proposed acquisition of Central Azucarera Don Pedro as it would substantially lessen competition in the market for sugarcane milling services in Southern Luzon. The prohibition of the transaction prevented the creation of a monopoly that could significantly harm the welfare of sugarcane farmers in Batangas, Laguna, Cavite, and Quezon.

### ***Leniency Program***

In a bid to strengthen its enforcement mechanisms, PCC launched its leniency program, offering either immunity from suit or reduction of administrative fines to an entity that was or is a participant in price-fixing, bid-rigging, market-allocation, or output-restriction agreements, in exchange for the entity's voluntary disclosure of information regarding such agreements.

## JUN

### ***Expedited Merger Review Rules***

In line with government efforts to improve ease of doing business in the country, PCC launched an expedited review process for mergers and acquisitions (M&As) that are less likely to substantially prevent, restrict, or lessen competition in the relevant market. Under the expedited process, review of qualified M&A transactions will take only 15 working days, instead of the 30 calendar-day turnaround time for regular Phase 1 review prescribed by the Philippine Competition Act.

## JUL

### ***Exemption from compulsory notification of solicited PPP projects***

PCC issued the Rules for Solicited Public-Private Partnership (PPP) Projects, under which joint ventures of private entities formed for a solicited PPP project may be exempted from compulsory notification.

## OCT

### ***First abuse of dominance case***

In a landmark development on competition law enforcement in the Philippines, PCC closed its first abuse of dominance case, ordering the termination of the exclusive deal between Urban Deca Homes and its in-house internet service provider (ISP) Fiber to Deca Homes in nine projects across the country.

## NOV

### ***Issuance of the Rule on Administrative Search and Inspection***

The Supreme Court of the Philippines released a resolution approving the Rule on Administrative Search and Inspection under the PCA, effectively adding the conduct of dawn raids to the arsenal of tools PCC can use in investigating violations of the country's antitrust law.

For more details on PCC's accomplishments, the 2019 Year-End Report can be accessed at <https://phcc.gov.ph/press-releases/pcc-year-end-report-2019/>

# SUPREME COURT ADDS DAWN RAIDS TO PCC ARSENAL

by Ryan Israel T. Advincula



PCC, in partnership with the World Bank Group and the Fr. Joaquin G. Bernas SJ Institute for Continuing Legal Education, conducted a half-day seminar on the Rule on Administrative Search and Inspection on December 4 at the Ateneo Professional Schools in Makati. Participants were compliance officers, lawyers, and antitrust law practitioners.

The Supreme Court (SC) of the Philippines released a resolution approving the Rule on Administrative Search and Inspection under the Philippine Competition Act (PCA). The SC action effectively adds the conduct of dawn raids to the arsenal of tools the Philippine Competition Commission (PCC) can use in investigating violations of the country's antitrust law.

PCC dawn raids will be unannounced visits to business operations, aimed at finding information on possible anti-competitive conduct and practices. These may involve searching documents stored online and offline, as well as questioning officials and employees of a business.

While the PCA has a built-in clause on dawn raids, it required an enabling order from the court. The SC resolution activated that clause beginning November 16, 2019.

"The PCC extends its profound thanks to the Supreme Court

for strengthening our armory of investigative tools to detect, investigate, and prosecute anti-competitive agreements and conduct. The rules strike a balance between due process and public interest in enforcing the competition law," said PCC Chair Arsenio Balisacan.

"Cartels operate on clandestine arrangements or so-called gentleman's agreements that ultimately affect prices and hurt consumer welfare. With the rules on dawn raids now in place, PCC can intensify its case building, uncover anti-competitive behavior, and pin down such white-collar crimes covered by the Philippine Competition Act," Balisacan added.

According to the rules, dawn raids are enforceable nationwide, but may be commenced only after the issuance of an inspection order, which is requested at special commercial courts in Quezon City, Manila, Makati, Pasig, Cebu City, Iloilo City, Davao City, and Cagayan de Oro City. Other

special commercial courts shall have concurrent jurisdiction within their respective territorial jurisdictions.

Information subject to inspection includes books, tax records, documents, papers, accounts, letters, photographs, databases (including means of accessing information contained in such databases), and other electronically stored information.

The rules were drafted by an SC special committee composed of Justice (now Chief Justice) Diosdado Peralta (chair), Justice Alexander Gesmundo (vice chair), Justice Ramon Paul Hernando, and Court Administrator Midas Marquez, all of the Supreme Court; and Commissioners Amabelle Asuncion, Johannes Bernabe, and Macario de Claro, Jr., and Attys. Rigor Pascual, Genevieve Jusi, and Gifany Tongohan, all of PCC.

*continued on page 7*

# ADVOCACY ROUNDUP

## PHILIPPINES, CHINA COMPETITION AUTHORITIES INK MOU ON COOPERATION



PCC officials, led by Chair Arsenio M. Balisacan (fifth from left), are joined by top state executives of China's State Administration for Market Regulation headed by Minister Xiao Yaqing (sixth from left) during the signing of the MOU for cooperation between both agencies.

The Philippine Competition Commission (PCC) and the State Administration for Market Regulation (SAMR) of the People's Republic of China signed this November a memorandum of understanding (MoU) on technical cooperation. The agreement is expected to strengthen bilateral ties on competition law enforcement.

PCC Chair Arsenio Balisacan and SAMR Minister Xiao Yaqing led the signing ceremony, agreeing to lay down a general framework for cooperation in competition enforcement, including exchange of information, coordination of enforcement activities, notification of cases of mutual interest, as well as technical cooperation and capacity building.

"Our MoU marks the start of a productive partnership between PCC and SAMR, recognizing that international

cooperation is essential to safeguarding competition in today's increasingly borderless and dynamic markets," said Balisacan.

The move is part of PCC's efforts to work closely with its international counterparts and of its active engagement with the ASEAN Experts Group on Competition, the International Competition Network (ICN), the United Nations Conference on Trade and Development (UNCTAD), and the Organisation for Economic Co-operation and Development (OECD) Competition Division.

Earlier this year, PCC coordinated with the Competition and Consumer Commission of Singapore (CCCS) on the Grab and Uber merger case, carried out exchange programs with the Korea Fair Trade Commission (KFTC) and the Australian Competition and Consumer

Commission (ACCC), and hosted a study visit for the Myanmar Competition Commission (MmCC).

"The PCC considers foreign competition authorities as partners and allies toward our shared commitment to promote and protect competitive markets and combat cross-border cartels," Balisacan said.

The MoU also enables PCC and SAMR to provide a mechanism to conduct joint dialogues on economic issues and developments in their respective competition policies, as well as on other matters of mutual interest.

SAMR is China's consolidated state agency exercising market supervision responsibilities spanning competition, intellectual property, business registration, and product safety and standards, among others.  
– L. Gorosin ■

## BALISACAN HIGHLIGHTS INTEGRATION OF COMPETITION POLICY AND CONSUMER PROTECTION AT NEW YORK ANTITRUST CONFERENCE

Philippine Competition Commission Chairman Arsenio M. Balisacan represented the country at the Antitrust and Developing and Emerging Economies conference held at the New York University School of Law on November 1. This annual high-level event is organized by Concurrences, an independent antitrust law publisher.

In his presentation, Balisacan acknowledged a growing

consensus that competition policy and consumer protection have much in common. He advised caution, however, noting the need to determine what is driving this integration. He said that while competition policy and consumer protection help to prevent deceptive marketing and advertising, putting the two under one agency roof may not be ideal for some developing nations. The panel was moderated by Mr. Frédéric Jenny, Chairman

for the Competition Committee, Organisation for Economic Co-operation and Development.

Founded in 2004, Concurrences is an independent legal publisher dedicated to antitrust law and competition economics. It has offices in Paris, London, and New York.  
– R. Advincula ■

## PCC, VIETNAM COMPETITION AUTHORITY PARTICIPATE IN MARKET STUDIES WORKSHOP

The Australian Competition and Consumer Commission (ACCC) led a three-day workshop titled Market Studies by Competition Agencies on October 28-30. Participants were economists and officials of the Philippine Competition Commission (PCC) and the Vietnam Competition Authority (VCA).

The workshop allowed PCC, VCA, and panelists from ACCC and the Organisation for Economic Co-operation and Development to exchange

experiences and practices in administering market studies. It delved on specific stages of planning and execution of market studies, such as evidence-gathering, stakeholder engagement, and adopting analytical techniques.

The workshop was carried out under the Competition Law Implementation Program (CLIP), a multi-phase capacity-building and technical assistance project on competition law enforcement and regulation, catering to

ASEAN member-states. CLIP is supported by the ASEAN-Australia-New Zealand Free Trade Area Economic Cooperation Support Program (AECSP). The AECSP was established by the governments of the ASEAN member-states, Australia, and New Zealand as the vehicle to implement the economic cooperation chapter of the ASEAN-Australia and New Zealand Free Trade Agreement.

- L. Gorosin ■

## FRIEDRICH NAUMANN FOUNDATION PHILIPPINES HONORS PCC WITH FREEDOM FLAME AWARD

The Friedrich Naumann Foundation (FNF) Philippines bestowed a Freedom Flame Award on the Philippine Competition Commission (PCC) for its role in promoting free markets and competitive enterprise in the Philippines.

FNF Philippines is a German non-government organization that promotes liberal democracy, economic freedom, respect for human rights, and rule of law. It gives the Freedom

Flame Award annually to personalities and institutions in the Philippines who have played significant roles in achieving remarkable milestones, allowing Filipinos to better experience freedom in the country.

This year, FNF Philippines recognized PCC for its efforts in crafting policies that promote a competitive market for business owners and consumers. Aside from PCC, the other recipients included Senator Wigberto

Tañada, for his contributions in upholding liberal democracy in positions on national issues while he was a member of the Philippine Senate and Congress; the Philippine Educational Theater Association (PETA), for providing a platform for civic education through theater and the arts; and Mr. John Nery, for his published works and current initiatives on countering disinformation in the Philippines. - L. Gorosin ■

## PCC BAGS OUTSTANDING ACCOUNTING OFFICE AWARD



Dr. Kenneth Tanate, PCC Executive Director (third from left), and Atty. Joseph Melvin Basas, PCC Finance, Planning, and Management Office Director (fourth from left), receive the Outstanding Accounting Office Award during the 2019 AGAP Annual Convention-Seminar.

The Association of Government Accountants of the Philippines, Inc. (AGAP) conferred on the Philippine Competition Commission (PCC) the Outstanding Accounting Office Award during the 2019 AGAP Annual Convention-Seminar held in Atrium Limketkai Center, Cagayan de Oro City on October 23.

The award was given to PCC “for having exemplarily met the criteria of accuracy, timeliness, reliability and compliance with accounting rules and regulations set by the Committee on Awards” in 2018.

- P. Ballentos ■

## PCC RECOGNIZED FOR QUALITY MANAGEMENT



PCC Executive Director Kenneth V. Tanate (center) received GQMC's plaque of recognition on behalf of the Philippine Competition Commission during the 7th Recognition Ceremony and Public Sector Quality and Productivity Improvement Forum at the Philippine International Convention Center, Pasay City on October 24.

The Government Quality Management Committee (GQMC) has recognized the Philippine Competition Commission's efforts to improve frontline service and customer satisfaction and to promote

continual improvement by obtaining an International Organization for Standardization (ISO) 9001:2015 certification.

The recognition was given during the Seventh GQMC

Recognition Ceremony and Public Sector Quality and Productivity Improvement Forum held on October 24 at the Philippine International Convention Center in Pasay City.

The GQMC is composed of Acting Secretary Wendel E. Avisado of the Department of Budget and Management, Secretary Ramon M. Lopez of the Department of Trade and Industry, Secretary Eduardo M. Año Department of Interior and Local Government, Deputy Executive Secretary Alberto A. Bernardo of the Office of the President-Internal Audit Service, and President and Chief Executive Officer Engelbert C. Caronan, Jr. of the Development Academy of the Philippines.  
- P. Ballentos ■

## ADB FUNDS PCC PROJECT ON CAPACITY BUILDING TO FOSTER COMPETITION



PCC Chair Arsenio M. Balisacan (left) and ADB Vice President Ahmed M. Saeed exchange pleasantries at the ceremonial signing of loan agreements with the Asian Development Bank held in Manila on December 13.

The Philippine Competition Commission (PCC) has secured from the Asian Development Bank (ADB) a USD 23.3-million loan assistance for a six-year Capacity Building to Foster Competition project. Aimed at supporting the effective enforcement of the Philippine Competition Act, the project will enable PCC and other

government agencies involved in competition-related work to build staff capacity, strengthen the institutional capability of PCC, and help develop an academic center of excellence in competition law and policy at the University of the Philippines.

The assistance was one of the three loan agreements that the

Department of Finance (DOF) and ADB signed this December. The two other loan agreements will provide USD 400 million for a youth employment facilitation program and USD 200 million in additional funding for infrastructure preparation and innovation facility - C. Daquis ■

## IN THE NEWS

### Leveling the playing field

The PCC's landmark decision on the country's first abuse of dominance case is aimed at stopping an anticompetitive practice, restoring competition, and setting an example to discourage other firms from seeking similar exclusive deals that effectively lead to a monopoly. (*Dean Nilo Divina, Daily Tribune, October 11, 2019*)

### Competition Commission: Hitting the ground running

With only four years since its inception, the PCC has certainly struck the ground, making significant progress towards its formation, and there is no doubt that its activities have sent a strong message to all firms, both locally and globally, that it is serious in carrying out its mandate. (*Francis Lim, Rappler, October 21, 2019*)

### Watchdog gears for dawn raids in fight vs cartels

After the Supreme Court upheld the Philippine Competition Commission's (PCC) inspection powers through a court order, deputy agents in the Philippines can now inspect business premises uninvited. (*Jenina Ibañez, Business World, October 29, 2019*)

### MSMEs told: Gain knowledge of competition law, policy

The Philippine Competition Commission (PCC) advises micro, small and medium-sized enterprises (MSMEs) to be aware of competition law and policy, as it ensures fair market competition. PCC Chairman Arsenio Balisacan expects that such information would promote MSMEs' voluntary compliance with the Philippine Competition Act (PCA) and would be able to detect and report potential violations of the law to the PCC. (*Business Mirror, November 20, 2019*)

*SC adds... continued from page 3*

### Valid enforcement tool

Dawn raids are effective investigative tools because they provide direct and clear access to information that would otherwise be safe-locked in companies' premises<sup>1</sup>.

It is regularly used in Europe, with each competition authority averaging about 10 dawn raids per year. This number excludes inspections delegated by the European Union to national authorities. Similarly, the South African Competition Commission had conducted 12 dawn raids from 2015 to 2018.

From 2016 to 2019, the Hong Kong Competition Commission tallied 200 open cases initiated through compulsory powers, such as extensive document requests and dawn raids. In September 2019, the Japan Fair Trade Commission initiated a dawn raid of carmaker BMW Japan Corporation for allegedly imposing unreasonable sales quotas on its distributors.

### No surprises

After the issuance of the Rule on Administrative Search and Inspection, PCC organized on December 4 a seminar to familiarize compliance officers, lawyers, and antitrust law practitioners with dawn raids. The seminar's resource persons included Supreme Court Associate Justice Ramon Paul L. Hernando, who was a member of the SC Special Committee that drafted the set of rules, and Mr. Guy Launder, Enforcement Director at the Australian Competition and Consumer Commission.

Justice Hernando reiterated the importance of the PCA. "The Rule on Administrative Search and Inspection under the Philippine Competition Act is the only rule that was passed by

the Supreme Court in so short a time. IP (indigenous people) and cybercrime rules took years to approve. The reason is because this law, the Philippine Competition Act, is vital to the Philippine economy," he explained.

Launder, on the other hand, shared practical tips on how firms and their representatives should behave when faced with on-site inspections by PCC. He underscored the importance of PCC's IT head liaising with the IT leader of the firm being inspected when searching for data and documents at the firm's information infrastructure. He reminded the PCC staff that firm employees are entitled to have private discussions within the business while the search is underway.

During the seminar, PCC Commissioner Amabelle Asuncion assured firms that the activation of PCC's authority to conduct dawn raids does not automatically equate to a hostile relationship between PCC and businesses. "I know that this may be daunting—like how will you protect your client and your company? The objective of this forum is to reassure you that PCC will exercise its power of inspection judiciously and we will abide by the rules and observe due process."

# M&A

## DASHBOARD

Notifications received from  
October to December 2019:

# 9

Notifications received since  
February 2016:

# 230

<sup>1</sup> Annabel, Cedric and Jorge. (2019). Safe-raids? Meaningful judicial review of dawn raids on business premises. Retrieved from <https://eulawenforcement.com/?p=1495>

## OTHER PUBLICATIONS



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



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