

PHILIPPINE COMPETITION BULLETIN

WHAT'S INSIDE

- 2 PCC LAUNCHES LENIENCY PROGRAM
- 3 FCDC TURNS TWO: COMPETITION KEY TO IMPROVING ECONOMY, REDUCING POVERTY
- 4 DTI, UP LAW SIGN UP FOR COMPETITION POLICY PUSH
- 7 ADVISORY: THRESHOLDS ADJUSTED FOR COMPULSORY M&A NOTIFICATIONS



**PHILIPPINE
COMPETITION
COMMISSION**

Ensuring businesses compete and consumers benefit

PCC LAUNCHES LENIENCY PROGRAM

by: Ciara Daquis

The Philippine Competition Commission (PCC) launched its Leniency Program on January 19.

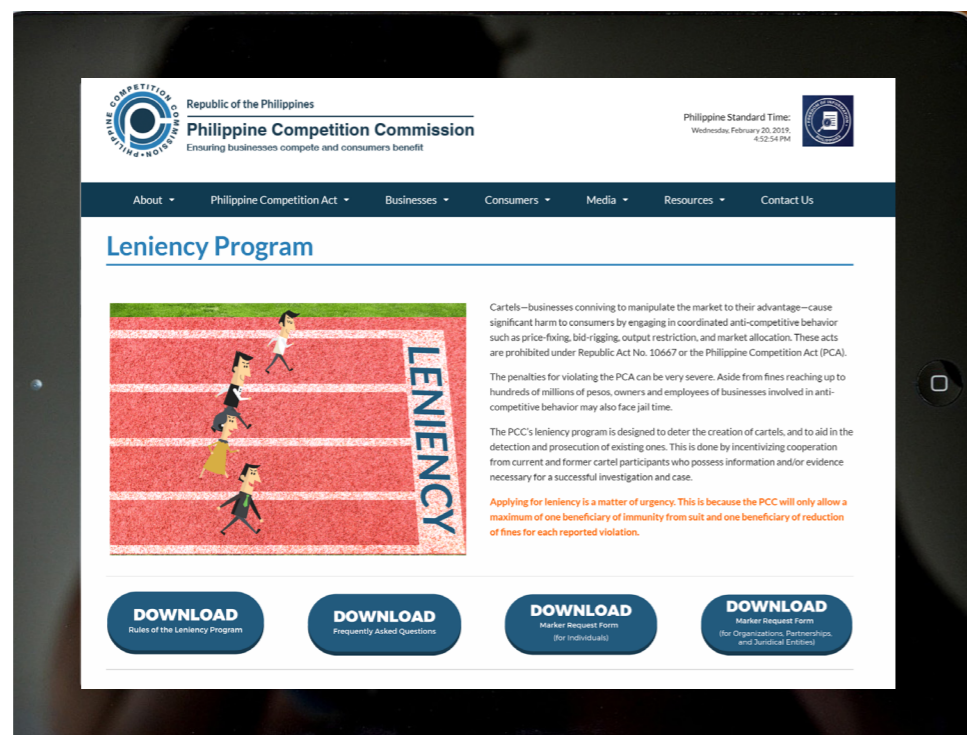
The program is expected to expedite particularly the resolution of cartel-related cases. It offers immunity from suit or reduction of administrative fines to an entity that had participated or continues to participate in agreements involving price fixing, bid rigging, market allocation, or output restriction. Leniency will be granted to the entity in exchange for voluntary disclosure of information on anticompetitive agreements.

Under the rules, an entity applying for leniency may be granted immunity from administrative and criminal liability, as well as immunity from civil actions initiated by the PCC on behalf of affected parties and third parties. The PCC will issue separate guidelines on the amount of reduction of administrative fines and further clarification on procedure for application.

In preparation for the program's rollout, the PCC signed last June a memorandum of agreement with the Department of Justice to harmonize and streamline the implementation of their respective leniency programs. The agreement also provides for mutual recognition of immunity either agency grants.

The PCC also launched a dedicated webpage on Leniency to explain to consumers the program's benefits and to provide businesses vital information on how to avail themselves of the Leniency Program. PCC's Leniency Program rules can be accessed at <https://phcc.gov.ph/rules-leniency-program/>

To report cartels or avail of the Leniency Program, call (02) 771-9777, email leniency@phcc.gov.ph, or access <https://phcc.gov.ph/leniency-application/> ■



PCC Leniency program Webpage



"The Leniency Program is meant to undercut the most damaging forms of anticompetitive behavior such as price-fixing, bid-rigging, output restriction, and market allocation that hurt consumers and sabotage the economy's gains.

After all, at the heart of a cartel lies two things—agreement and code of silence... The aim here is to drive a wedge among cartel members by creating a dilemma that someone can report them at any point to avoid suit or have reduced fines."

Atty. Orlando P. Polinar
Director, PCC Competition
Enforcement Office

FCDC TURNS TWO COMPETITION KEY TO IMPROVING ECONOMY, REDUCING POVERTY

by: Paul Jeffrey Ballentos

Competition is crucial to addressing development issues, but reaping its gains for greater public impact remains a challenge. This key message by Dr. Ndiame Diop, Head of the World Bank (WB) Group's Macroeconomics, Trade, and Investment Global Practice for Southeast Asia and the Pacific, set the tone for the 2019 Forum on Competition in Developing Countries (FCDC) held on February 1 in Quezon City.

Diop said market competition is beneficial to the poor in most cases, even as market competition does not always come naturally. The key issue, however, is how to make market competition a reality on the ground. Below are the salient points of his address:

Competition policy and poverty reduction

Greater market competition tends to benefit the poor proportionally. According to World Bank studies, promoting competition in industries and sectors that significantly affect the poor (e.g., food market) yields the greatest positive impact.

In South Africa, the dismantling of cartels in certain agricultural and pharmaceutical sectors led to greater income gains to the poorest than to those in higher income brackets. In Mexico, fostering greater competition in the corn flour market would benefit the poorest more than other households. In East Asian countries, opening rice markets and weakening the power of middlemen could significantly benefit the poor.

Government intervention: a competition concern

Factors such as high market concentration and restrictive



World Bank's Dr. Ndiame Diop keynotes the 2019 FCDC.

government rules and regulations hamper the smooth implementation of competition policy. When markets have huge sunk costs that only a few can afford, there is oligopoly even if there are many players. These markets are prone to anticompetitive conduct, where competitors may collude and agree on certain practices to the prejudice of consumers.

Previous state interventions restricting entry, establishing dominance, and creating an uneven playing field had contributed to concentrated markets in the Philippines. Government regulatory protection of incumbents, public ownership of firms in competitive sectors, and administrative burdens during start-up are among the main areas of high product market restrictions in the Philippines.

"Market competition is beneficial to the poor in most cases."

On the other hand, government intervention, instead of leveling the playing field for all market players, often serves vested interests. In many countries in East Asia, a sizable percentage of competition problems stems from government laws and regulations.

In sum, market competition facilitates economic growth and makes a dent on poverty. If governments want to effectively boost productivity and reduce poverty, they should focus on market competition. Barriers to the effective implementation of competition policy, however, must be addressed for such policy to contribute to sustaining economic growth and poverty reduction.

The PCC started the FCDC series in 2018. The 2019 sessions focused on market competition issues and challenges arising from technological disruption. They are available for streaming at <https://www.themanilaforum.org/> ■

DTI, UP LAW SIGN UP FOR COMPETITION POLICY PUSH

by: Ryan Israel T. Advincula

One challenge facing the Philippine Competition Commission (PCC) is championing competition policy in an environment where there is limited awareness on the role of competition in development.

To address this concern, the PCC has been building partnerships and linkages to facilitate policy coherence, streamlining of procedures, sharing of information and technical expertise, and investigation and enforcement support. In line with this, the Commission executed separate memoranda of agreement (MoA) with the University of the Philippines (UP) College of Law and the Department of Trade and Industry (DTI).

A dedicated competition law program

The MoA with the UP College of Law, signed on January 24, is designed to institutionalize the Program in Competition Law and Policy (CLP). This program was established in the UP Law Center as a multidisciplinary platform to support the legal and institutional framework for CLP in the country through research and extension activities involving various stakeholders.

The two institutions also previously collaborated in launching a dedicated competition law program for research, policy development, and academic engagement in the premier state university.

Last year, the PCC also initiated a three-part Call for Collaboration workshop for the design of a competition law syllabus for law schools. The workshop participants included experts from the Law Department of the European University Institute, the United States Federal Trade Commission, and the United States Department of Justice.



PCC signs a partnership agreement with the UP College of Law. Representing UP Law were (from left) Professor Gwen de Vera and Dean Fides Cordero-Tan, while signing for PCC were Chairman Arsenio M. Balisacan and Commissioners Amabelle C. Asuncion and Johannes R. Bernabe.

“Both PCC and UP mutually understand the need for advancing the study and practice of competition law and policy in the country. The UP Law Center’s Program in Competition Law and Policy is an important step in our long-term objective of building and sustaining a local stream of competition experts and fostering a culture of competition in the country,” PCC Chairman Arsenio M. Balisacan said.

Toward increased consumer welfare

To boost fair competition in Philippine markets and promote consumer welfare, the PCC and

DTI signed a MoA on February 15 to institutionalize mechanisms for information sharing and coordination between them.

Specifically, the agreement aims to facilitate information sharing on operational matters through a notification process. “Where one party receives or otherwise becomes aware of any matter that falls within the jurisdiction of the other party or the regulatory mandate of both parties, as the

continued on page 7



DTI Secretary Ramon M. Lopez and Chairman Arsenio M. Balisacan sign partnership agreement toward improving consumer welfare. Photo courtesy of DTI

ADVOCACY ROUNDUP

BUSINESSES ASSURED OF ROBUST COMPETITION FRAMEWORK



Chairman Balisacan updates ECCP members of PCC efforts to ease the entry of foreign investments in the Philippines.

PCC Chairman Arsenio M. Balisacan discussed foreign investment restrictions in the country as guest speaker during the European Chamber of Commerce of the Philippines (ECCP) membership luncheon meeting held on February 18 in Makati City.

He pointed out that markets in the country are subject to an increased level of restrictiveness to competition due to misinformed, state-enabled regulations and policies. The Commission’s assessment shows that these restrictions contribute to stifling market competition and, in the long run, to hampering economic growth.

Balisacan assured businesses that the PCC is implementing a robust competition framework, with the goal of fostering a culture of competition in the Philippines. The agency launched its Leniency Program at the start of the year, encouraging whistleblowers to report to the PCC cartel-like behavior and other anticompetitive activities.

The antitrust chief shared PCC’s initiatives in forging partnerships

with various government agencies to strengthen its enforcement operations. These include partnerships with the Department of Justice - Office of Competition, Office of the Ombudsman, and the Department of Trade and Industry.

In terms of merger review, Balisacan cited that voluntary compliance from the business community is deemed to be the “most cost-efficient and effective way” in ensuring a pro-competitive environment among businesses. To improve its merger regime, the PCC will continually adjust its notification thresholds, simplify notification processes, and monitor merger transactions.

The ECCP meeting was attended by EU Ambassador Franz Jessen, chamber president Nabil Francis, executive director Florian Gottein, as well as various members of the business, diplomatic, and legal communities. — L. Gorosin ■

continued on page 6

IN THE NEWS

Philippines becoming a regional leader in antitrust enforcement

“The Philippines is gaining headway in the region in monitoring mergers and enforcing antitrust laws, a news report said. According to findings of 2019 “Global Trends Monitor” report published by competition news and analysis company PaRR, the Philippines climbed three notches to 5th place in 2018 out of 10 Asia-Pacific economies in terms of antitrust enforcement and policy developments.”(Ian Nicolas Cigaral, *The Philippine Star*, February 20, 2019) ■

Cartel whistleblower program set in motion

“The Philippine Competition Commission (PCC) will start enforcing today (Jan. 19) its Leniency Program, a mechanism that allows cartel insiders to come forward in exchange for immunity from prosecution and lighter penalties under the competition law.”(Czeriza Valencia, *The Philippine Star*, January 19, 2019) ■

PCC pushes for pro-competitive pricing in chicken

“The Philippine Competition Commission (PCC) is pushing for pro-competitive pricing in poultry and chicken farm gate amid the Department of Agriculture’s suggestion to poultry raisers to collectively set a farm gate price to address falling prices.”

(Louella Desiderio, *The Philippine Star*, January 13, 2019) ■

More competition in services sectors to add P26.8 billion to PHL’s GDP—World Bank

“If the government can encourage greater competition in the services sectors, the economy could see an addition of at least 0.2 percentage points to GDP growth annually, according to a World Bank study. Using 2015 GDP estimates, that 0.2 percentage point is equivalent to adding P26.8 billion, or \$600 million, to the economy annually, said the study titled “Fostering Competition in the Philippines: The Challenge of Restrictive Regulation.” World Bank Markets and Competition Policy Team Senior Economist and lead author of the report Graciela Miralles Murciago said this was just a minimum and the gains could be larger if the government would address competition issues in other sectors.”(Cai Ordinario, *Business Mirror*, March 5, 2019) ■

COMPETITION CONCERNS IN LAND TRANSPORT TACKLED IN SEMINAR

Competition issues, poor quality of service, and legal restraints were some of the public transportation concerns discussed during a multi-stakeholder seminar on the sector organized by the Philippine Competition Commission (PCC) and the Philippine Institute for Development Studies (PIDS).

The public seminar, held on February 6 at the PCC headquarters in Quezon City, presented the results of a PCC-commissioned study on competition issues in the public transportation sector in Metro Manila. According to PIDS' Dr. Enrico L. Basilio, "the current

land-based public transportation system in Metro Manila remains highly fragmented and regulated." During the consultation, Director Zona Russet M. Tamayo of the Land Transportation Franchising and Regulatory Board (LTFRB) National Capital Region noted that price competition among operators is not yet possible given the current legal restriction, since it is LTFRB that sets the prices. "Under the law, undercharging or overcharging constitutes a violation of the terms of their franchise," she explained.

The PCC-commissioned study also serves as a springboard for an in-depth look at the sector.

Present at the seminar were representatives of sector regulators and government agencies, including the Public-Private Partnership Center, Department of Transportation, Department of Public Works and Highways, and the Metro Manila Development Authority, as well as research institutions, trade associations, and private transportation-related groups. — P. Ballentos ■

SMALL FARMERS, LIVESTOCK WORKERS SEEN LOSING UNDER AGRI CREDIT REGIME

Imperfect competition in the market for agricultural credit could expose some of the most vulnerable members of society—especially the small farmers and livestock workers—to several problems, including high costs, low quality of offers, and possible outright exploitation.

This concern was raised by Dr. Marites M. Tiongco, dean of De La Salle University's School of Economics,

during a public consultation on the country's agricultural credit market and its competitive landscape held last February 22.

She shared how creditors, unwittingly or otherwise, create barriers to entry, which in turn provide them with monopolistic and/or monopsonistic tendencies. She discussed inaccessibility of financial assistance for small farmers and livestock workers

due to constraints such as differences in preference between creditors and debtors (e.g., interest rates charged) and complexity of paperwork requirements.

Inputs gleaned from the public consultation will be used to refine the study. The study is intended to aid the Philippine Competition Commission in understanding the agricultural credit market.

— R. Advincula ■

PCC STAFF UNDERGO MCPAT TRAINING



Mr. Roberto Martin Galang, World Bank senior private sector specialist, discusses MCPAT.

Lawyers and economists from the Philippine Competition Commission (PCC) recently participated in a three-part workshop on advocacy and competition analysis of legislation.

Hosted by the World Bank in partnership with the PCC and the National Economic and Development Authority (NEDA), the workshop

discussed various economic theories, as well as methods and tools used in economic assessment and investigations. In particular, the workshop introduced the use of Markets and Competition Policy Assessment Tool (MCPAT) in analyzing economic data and drafting sound policy recommendations.

The World Bank's MCPAT is designed to lay the ground for policy recommendations, helping policymakers use competition instruments to improve market outcomes. By providing a diagnostic assessment, the tool can guide the development of policy options, as well as setting priorities and adoption of pro-competition reforms.

— L. Gorosin ■

WORLD BANK ISSUES REPORT ON PHILIPPINE COMPETITION LANDSCAPE



Chairman Arsenio M. Balisacan delivers his message at the launch of the World Bank study on competition.

The World Bank Group launched *Fostering Competition in the Philippines: The Challenge of Restrictive Regulations*, a report identifying existing regulatory restraints to competition in the country.

Restrictive government regulations are a major concern in implementing competition policy in the Philippines, contributing to the challenges that the Philippine Competition Commission (PCC) faces. During the report launch held in Makati City on March 4, Dr. Graciella Miralles Murciego, World Bank senior economist, explained that restrictive regulations, which make it difficult for new firms to enter and operate, limit market competition.

"Ensuring that government policies and regulations do not generate barriers to entry or distort the level playing field is necessary to enhance private sector participation and unlock investment opportunities," she emphasized.

The report is authored by Murciego, Roberto Martin Nolan Galang, Sara Nyman, Tilsa Guillermina Ore Monago, and Leandro Deambrosio Zipitria — all from the World Bank Group. It received support from the governments of Australia and Canada. The launch was co-organized by the Philippine Competition Commission.

— P. Ballentos ■

DTI... continued from page 4

case may be, such party shall promptly inform the other party of such matter," the MoA read.

Subject to the requirements and regulations of the Data Privacy Act and rules on confidentiality, easier transfer of data and information between the two agencies is expected.

The agreement also allows for the creation of joint task forces on implementing coordination and cooperation efforts between the two agencies. Mechanisms

for consultative meetings shall be created for matters of common concern, as well as support for investigations and enforcement with respect to the limitations in the agencies' respective legal mandates.

"We really have to work together. We want to be assured that there is a good number of players, companies because it is competition that will assure competitive prices and benefit consumers," DTI Secretary Ramon M. Lopez said in a press briefing after the MoA signing. ■

ADVISORY: THRESHOLDS ADJUSTED FOR COMPULSORY M&A NOTIFICATIONS

The Philippine Competition Commission (PCC) adjusted the thresholds for compulsory notifications of mergers and acquisitions (M&As) on March 1.

The threshold for the size of person (SoP) test was raised from five billion pesos to 5.6 billion pesos. That for the size of transaction (SoT) was increased from two billion pesos to 2.2 billion pesos.

These adjustments are in line with PCC Memorandum Circular No. 18-001 released in 2018. The thresholds will automatically be adjusted annually based on the nominal gross domestic product (GDP) of the previous year. For more details, please access PCC Advisory 2019-001: Adjustment of the Thresholds for Compulsory Notification of Mergers and Notifications at <https://phcc.gov.ph/pcc-advisory-2019-001-adjustment-of-the-thresholds-for-compulsory-notification-of-mergers-and-notifications/> ■

M&A

DASHBOARD

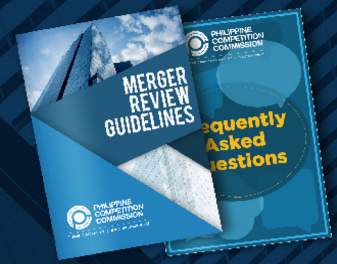
Notifications received from January to end-March 2019:

11

Notifications received since February 2016:

200

OTHER PUBLICATIONS



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



Ciara R. Daquis
Editorial Coordinator

Aiko R. Shimizu
Layout Artist

 www.facebook.com/CompetitionPH

 www.twitter.com/CompetitionPH

 www.phcc.gov.ph