

PHILIPPINE COMPETITION BULLETIN

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YEAR IN REVIEW

MERGERS AND ACQUISITIONS

The sectors with the most transactions are:



Reviewed
40 M&A
Transactions

In 2018, the Commission **introduced improvements** to its merger control regime.

Merger notification thresholds were adjusted to better filter notified transactions,



Simplified and streamlined merger review processes:



Guidelines for the **Notification of Joint Ventures**
Clarificatory Note on **Consolidation of Ownership**
Guidelines on **Requests for Noncoverage from Compulsory Notification**

COMPETITION ENFORCEMENT

The Commission ramped up its enforcement activities.

- Received a total of **152** queries and informal complaints on possible anticompetitive agreements and conduct
- Opened **11** preliminary queries
- Continued investigation on the **rice, energy, and fuel markets** 🔍



Memorandum of Agreement with the Department of Justice - Office for Competition (DOJ-OFC) and the Office of the Ombudsman (OMB) to strengthen enforcement capacity



Published the rules of its **Leniency Program** which is expected to improve level of cartel detection

COMPETITION RESEARCH



Commenced **issue papers and studies** on manufacturing, rice, pharmaceuticals, air and land transport, logistics, e-commerce, retail/supermarkets, telecommunications, agricultural credit, poultry and livestock, baked products, milk products, and fertilizers

COMPETITION ADVOCACY AND ENGAGEMENTS WITH OTHER JURISDICTIONS



Conducted

35

advocacy and capacity-building activities for external stakeholders

- Inaugural **Manila Forum** focusing on competition policy in developing countries
- Call for Collaboration** with law schools
- Roadshows, campus tours,** and several **dialogues** with business associations and the judiciary



Provided technical inputs to the **Department of Information and Communications Technology** and the **National Telecommunications Commission** for the selection of the third player in the telecommunications market

Provided substantial comments on key **legislation** that would complement the entry of the third player:



- mobile number portability
- open access in data transmission
- spectrum management reform
- common tower policy



FORUM HIGHLIGHTS COMPETITION LAW AWARENESS IN GOVERNMENT SECTOR

by: Ciara Daquis



Participants during the Seminar on Competition Law and Policy for Sector Regulators held on December 5.

The Philippine Competition Commission (PCC) wrapped up its 2018 advocacy and external capacity-building program with a seminar on competition law and policy (CLP) held on December 5-6 in Quezon City. The seminar was designed for sector regulators, legislative committees, and government owned and controlled corporations (GOCCs). It acquainted the participants with the Philippine Competition Act (PCA), the powers and functions of the PCC, and the context and benefits of CLP.

For sector regulators and legislative committees, the seminar focused on the interface of competition policy with other government policies and regulation. The open forum provided a platform for discussion of the PCC's interface with sector regulators, as well as possible areas for improvement in the law, with the aim of strengthening the overall position of the government toward competition and consumer welfare.

For GOCCs, the sessions introduced the concept of competitive neutrality, its scope, relevance, and efforts to promote it in the Philippines. One of the

concerns raised during the open forum was how government bodies act like monopolies. Director Benjamin Radoc of the PCC Economics Office noted that GOCCs are within the PCC's mandate. He shared that a scoping study on the extent of competitive neutrality in the country is underway, which is meant to identify where competitive neutrality issues lie.

He said the PCC is willing to work closely with other agencies to help them identify elements in their guidelines and procedures that may be limiting competition. He emphasized the need for a dialogue between the PCC and the agencies in order for the Commission to understand their operations.

Atty. Gwen de Vera of the University of the Philippines (UP) College of Law and Dr. Raul Fabella of the UP School of Economics joined the PCC panel as resource speakers during the event. ■



National Scientist Raul Fabella presents his paper on competitive neutrality.



Seminar on competition law and policy for government-owned and controlled corporations.

SEASONED CPA LAWYER NAMED NEW PCC COMMISSIONER

by: Ryan Israel T. Advincula

Atty. Macario R. De Claro, Jr. assumed his new role as Commissioner of the Philippine Competition Commission (PCC) on September 11. He brings to the PCC his knowledge and experience in the fields of manufacturing, mining, telecommunications, real estate and banking and finance.

De Claro started his career as a senior accountant in a mining company and later as a budget systems analyst at San Miguel Corporation. After passing the bar exams, he worked as a litigation and corporate lawyer in various companies. In 1995, he was tapped to serve as technical assistant to the president and chief executive officer of the Philippine National Bank (PNB).

After his retirement from PNB in 2003, De Claro resumed his legal and accounting practice

as a consultant to real estate companies and various startup firms. At one time, he served as a legal consultant to the Department of Environment and Natural Resources.

De Claro earned a Bachelor of Laws degree (magna cum laude) from the Ateneo De Davao Law School. Prior to that, he graduated magna cum laude from the De La Salle College with a Bachelor of Science in Commerce, major in Accounting.

The Philippine Competition Act prescribes that the PCC's chairman and commissioners must have distinguished themselves professionally in public, civic or academic service in any of the following fields: economics, law, finance, commerce or engineering. ■



Commissioner Macario de Claro, Jr.

PCC GETS ISO 9001: 2015 CERTIFICATION

by: Paul Jeffrey M. Ballentos



PCC officials receive the certificate of ISO 9001:2015 from TÜV Rheinland on December 18. In the photo are (from left) Mr. Tristan Lovers, managing director of TÜV Rheinland, Commissioners Amabelle Asuncion and Johannes Bernabe, Chairman Arsenio Balisacan, Commissioner Macario de Claro, Jr., Executive Director Kenneth Tanate, and Director Joseph Melvin Basas. Basas heads the Finance, Planning, and Management Office, which spearheaded the effort to secure ISO certification.

The Philippine Competition Commission (PCC) received the ISO 9001:2015 certification for its commitment to deliver quality service to its stakeholders. The certification is effective from November 21, 2018 to November 20, 2021. It was awarded by TÜV Rheinland, an international certification company based in Germany, on December 18.

The International Organization for Standardization (ISO) 9001:2015 is

the up-to-date standard of ISO 9001 for quality management.

The certification serves as a seal of recognition for organizations that are able to provide effective customer and regulatory services.

"The certification is a testament to PCC's strong commitment to consistently execute its mandate on merger reviews, enforcement cases, and other operations that meet international standards," said PCC Chairman Arsenio M. Balisacan.

"This demonstrates PCC's ability to provide quality and timely regulatory and enforcement requirements."

The PCC Quality Policy states that "the Commission shall continually commit to fulfilling our mandate as a quasi-judicial agency, achieving our mission to prohibit anticompetitive practices, attaining our vision of becoming a world-class competition authority, and improving our systems and processes to ensure the highest level of satisfaction of all our stakeholders." ■

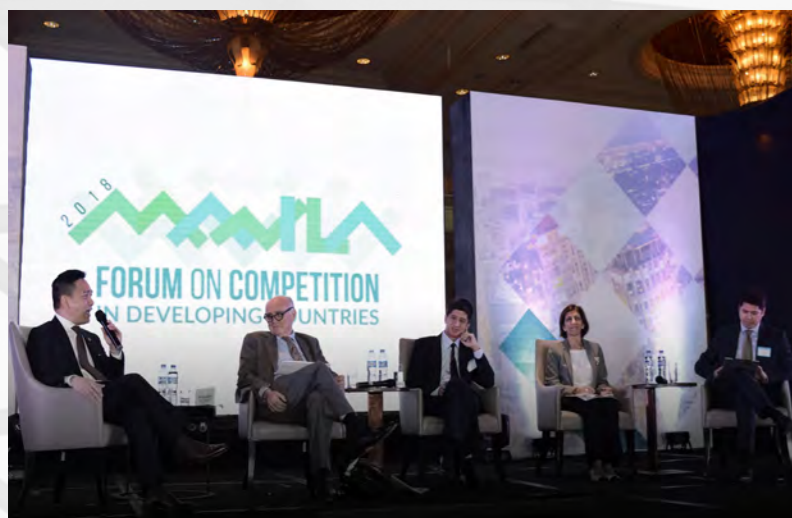
THE YEAR THAT WAS

An agency in action



The PCC signed a memorandum of agreement with the Department of Justice in June, paving the way for the harmonized referral system of complaints and the preliminary investigation of competition law offenses.

PCC conducted a series of regional road shows in Cagayan de Oro City, Tacloban City, and San Fernando, La Union in August, pushing for greater competition awareness at the local level. Each roadshow featured a public exhibit on the PCA, a series of discussions on the salient provisions of the law, and a public forum that provided a platform for discourse with the local stakeholders.



In February, the PCC launched its inaugural Manila Forum on Competition in Developing Countries (FCDC), which aims to provide a platform for global discourse on the theory and practice of competition law and policy in developing countries.



PCC visited senior high schools, colleges, and universities, introducing competition concepts to students of economics, business, accountancy, and marketing. PCC campus tours aim to raise awareness and spark interest in competition issues among students.



The PCC embarked on a multimedia campaign that generated educational content for social media and developed informational videos for cinema and billboard placement. As awareness of competition law and policy has yet to reach a critical mass, the PCC continuously taps into various media platforms to bring its advocacy to a wider audience.



Chairman Aresenio M. Balisacan leads the PCC at the first Joint Meeting of the Congressional Oversight Committee on Competition (COCC) in July. The COCC oversees the implementation of the Philippine Competition Act.



Recognizing the need to push for greater competition awareness among the academe, policymakers, and the research community, the PCC has also been actively engaged in economic conferences, such as the Philippine Economic Society (PES) annual meetings.



Highlighting the role businesses play in establishing a culture of competition and compliance in the Philippines, the PCC held a series of dialogues and fora for the business sector last April.

One of PCC's flagship advocacy activities was the *Call for Collaboration: Developing a Syllabus for a Course on Competition Law*. Started in March, the three-part workshop series, organized in partnership with the Philippine Association of Law Schools and with support from the Asian Development Bank, solicited inputs for designing a syllabus on competition law.



ADVOCACY ROUNDUP

BALISACAN TACKLES COMPETITION POLICY, INEQUALITY AT GLOBAL FORUM

PCC Chairman Arsenio M. Balisacan served as one of the speakers at the 17th Global Forum on Competition (GFC) held on November 29-30 in Paris, France.

Organized by the Organisation for Economic Co-operation and Development (OECD), the GFC brings together competition agencies and authorities around the world to discuss competition policies and economic development. The 2018 GFC revolved around the concept of fairness, whether or not it relates to competition, and if so, how.

During the session on competition policy's contribution to fairer societies, Balisacan tackled fairness, inequality, and competition in developing Asia. He emphasized that there is no straightforward answer to the question of competition policy's appropriateness in addressing rising inequality, as countries vary economically and institutionally.

Using the Philippines as illustration, Balisacan noted that the mutually reinforcing effects of policy distortions, market power, and rent-seeking activities, have perpetuated market inefficiencies, undermining consumer welfare and pulling the economy below its potential.



Chairman Arsenio M. Balisacan discusses fairness, inequality, and competition in developing Asia during a session at the 17th Global Forum on Competition. Photo courtesy of OECD.

PCC Commissioner Johannes Benjamin R. Bernabe also represented the Philippines in the forum. The other sessions discussed gender, regional competition agreements, investigative powers, and state-owned enterprises.
— R. Advincola ■



Commissioner Johannes Benjamin R. Bernabe. Photo courtesy of OECD.

JAPAN COMPETITION AUTHORITY SHARES INVESTIGATION TECHNIQUES

The Japan Fair Trade Commission (JFTC) conducted a three-day seminar for the Philippine Competition Commission (PCC) Enforcement Office to help advance its knowledge and skills on investigation.

Held in Quezon City on December 17-19, the seminar had lecture sessions on competition law enforcement in Japan, JFTC techniques in gathering evidence, detection, preliminary investigation, and commitment procedure in Japan, as well as case studies on bid rigging and price fixing. The participants underwent a planning exercise on developing an on-the-spot inspection/search plan.

The seminar also served as a platform for PCC staff to consult with their Japanese counterparts, as the Enforcement Office is gearing up for the launch of PCC's Leniency Program.

The JFTC enforces Japan's Anti-Monopoly Act and its related laws. It conducts investigations when a



The PCC participants and JFTC resource persons at the closing of the seminar (seated, from left): Director Orlando Polinar of the PCC Enforcement Office; Commissioner Johannes Benjamin Bernabe; Hideyuki Shimozu of the JFTC International Affairs Division; Sadaaki Suwazono, JFTC Deputy Secretary General for International Affairs; and Commissioner Macario de Claro, Jr.

violation of the law is suspected. When illegal acts are recognized, it orders violators to cease and desist such acts and take necessary measures to eliminate the violations.

In 2006, the JFTC was given the authority to conduct criminal investigations, which facilitated its investigation of vicious and serious cases (i.e., repeated violations that can no longer be prevented by administrative measures). Once a criminal investigation establishes violations of the law, the JFTC files a case with the prosecutor general.

The seminar's resource persons were Masashi Sato from the Investigation Bureau and Hideyuki Shimozu, Shinichiro Obata, Toshiki Murata, and Sadaaki Suwazono from the International Affairs Division, all of JFTC. — C. Daquis ■



One of the lecture sessions on competition law enforcement in Japan.

CLIP HOLDS WORKSHOP ON INVESTIGATING ABUSE OF DOMINANCE



PCC delegates join the representatives of competition authorities from Indonesia, Thailand, Malaysia, and Vietnam at the Competition Law Implementation Program's (CLIP) Module Four Workshop held on November 6-8 in Hanoi, Vietnam. Photo courtesy of AANZFTA.

Investigating firms' abuse of market dominance is among the broad powers granted to competition authorities. Given the complexity of markets, business models, and data and information requirements in such analysis, antitrust watchdogs must keep abreast of tools, practices, and methodologies in investigation.

In this regard, the Australian Competition and Consumer Commission and Vietnam Competition and Consumer Authority (VCCA) organized the Competition Law Implementation Program's (CLIP) Module Four Workshop, which was

held on November 6-8 in Hanoi, Vietnam.

Five competition authorities in Southeast Asia participated in the workshop, namely, Indonesia's Commission for the Supervision of Business Competition, Thailand's Office of Trade Competition Commission, the Malaysian Competition Commission, the Philippine Competition Commission (PCC), and VCCA. Commissioners Johannes Benjamin R. Bernabe and Amabelle C. Asuncion led the PCC delegation.

According to Asuncion, the workshop endeavored to translate theory into concrete investigation strategies that can be employed to get things done. "It instilled

the need for the discipline of meticulous planning that could spell the difference between a successful and a failed investigation," she added. CLIP is part of the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) Economic Cooperation Support Program.

— P. Ballentos ■

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DIGITALIZATION, GLOBALIZATION TACKLED AT 15TH INTERNATIONAL COMPETITION NETWORK MERGER WORKSHOP

The 15th International Competition Network (ICN) Merger Workshop was held in Tokyo, Japan last November 7-8, focused on how digitalization and globalization impact merger review.

The workshop discussed new business models such as platform-type businesses and cross-border mergers brought by the expansion of information and communications technology and digitalization. UK Competition & Markets Authority (CMA) Markets and Mergers Director Andrea Gomes da Silva explained that merger reviews in the digital economy start to face issues and challenges due to the emergence of these business models.

Especially in digital mergers, Silva emphasized that it is important to understand the role of data in competitive assessment, posing questions such as, 'Does combining data sets help merging parties overcome entry barriers or give them non-replicable advantage?' Silva explained that, in looking for evidence in reviewing digital mergers, case teams should be able to ask acquirers about the rationale

of the transaction, information on valuation models, equity research, product development, and acquirer's potential increase in accessing more personal data or in weakening existing privacy policies or control systems on data use.

Given the recent globalization and increase in cross-border mergers, it is crucial for competition authorities to re-evaluate their respective merger control tools and determine if these are still suitable in analyzing digital mergers. Likewise, assessing efficiencies in vertical mergers should include balancing of potential anti-competitive effects, such as potential input and customer foreclosure, with pro-competitive effects.

The ICN conference was hosted by the Japan Fair Trade Commission. PCC delegates to the workshop were mergers and acquisitions lawyer Akemi Aida and economist Paulo Tejano, who shared key learnings during a knowledge sharing session conducted last December 12 at PCC.

— L. Gorosin ■



Paolo Tejano and Atty. Akemi Aida share key learning from the 15th ICN Merger Workshop during a knowledge sharing session conducted last December 12 at the PCC.

IN THE NEWS

Fair competition

The PCC has primary responsibility in enforcing the policy prohibiting anticompetitive practices in the marketplace. It is PCC's duty to promote and protect the efficiency of the market, not necessarily that of individual firms... In prioritizing the use of their limited resources, the PCC focuses on the application of competition policy well-suited for markets having artificial monopolies (i.e., monopolies created, enhanced, or protected by laws, regulatory issuances or other structural barriers) and those having a few, dominant players. *(Boo Chanco, The Philippine Star - October 17, 2018)* ■

Chances and choices: Lotto and 'siling labuyo'

What competition policy seeks to do is ensure that consumers will benefit from multiple choices at affordable prices, and suppliers will compete fairly. Where the relevant market is less competitive, competition policy guards against monopolistic or abusive behavior of suppliers enjoying market power. *(Atty. Amabelle C. Asuncion, Business Mirror, October 10, 2018)* ■

Christmas bargains, bundling and competition

Tying and bundling are common commercial practices that may redound to the benefit of consumers. The economic logic is that tying and bundling reduce costs and allow economies of scale and scope for producers, which lead to higher sales and lower prices. But these can raise competition concerns because of potential foreclosure of competitors and extraction of consumer surplus. *(Atty. Amabelle C. Asuncion, Business Mirror, December 5, 2018)* ■

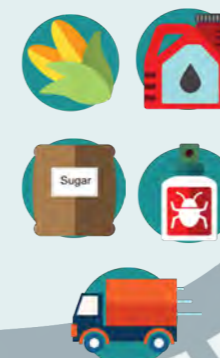
The PCC and the third telco

For its part, the Philippine Competition Commission (PCC) sought to fine-tune and tighten the disciplines affecting competition under the terms of reference for selection. For instance, the Commission expanded the scope of what would be covered as "related party" to a dominant player, so that it would include those who are under the common control of the ultimate parent entity of a dominant player, or those who are not able to act or decide independently of other entities related to the ultimate parent entity. This revision made the TOR more consistent with the Philippine Competition Act (PCA). *(Atty. Johannes Benjamin R. Bernabe, Business Mirror, October 31, 2018)* ■

2019: FORGING AHEAD AMIDST CONTINUING AND NEW CHALLENGES

PRIORITY SECTORS:

logistics supply chain, corn milling and trading, refined petroleum manufacturing and trading, sugar, and pesticides



LENIENCY PROGRAM

to improve PCC's ability to detect and investigate cartels

RULES OF FORBEARANCE allow an entity or group of entities to be exempted from certain provisions of the PCA under very specific circumstances and stringent conditions

RULES ON INSPECTION ORDERS ("dawn raids") to be endorsed to the Supreme Court



Adopt a tripartite action plan and constitute a joint task force to investigate bid-rigging in public procurement with the Office of the Ombudsman and the Commission on Audit as key partners



Adopt a more simplified notification process to further expedite the review of non-problematic merger cases

Continue efforts in proactively monitoring non-notified transactions and evaluating the merging parties' compliance with their voluntary undertakings



Implement a multi-year work plan to review laws, bills, and regulations that hamper competition

Establishment of a long-term research program to assess the impact of the Commission's interventions and encourage knowledge creation in the field of competition law and economics



M&A

DASHBOARD

Notifications received from January to end-December 2018:

47

Notifications received since February 2016:

189

OTHER PUBLICATIONS





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




Clara R. Daquis
Editorial Coordinator

Aiko R. Shimizu
Layout Artist

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