

# PHILIPPINE COMPETITION BULLETIN

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**PHILIPPINE  
COMPETITION  
COMMISSION**

# PCC, DOJ TO IMPLEMENT, HARMONIZE LENIENCY PROGRAMS

by: Ryan Israel T. Advincola



(Seated from left) DOJ Sec. Menardo I. Guevarra, PCC Chairman Arsenio M. Balisacan  
(Standing from left) PCC Commissioner Stella Luz A. Quimbo, PCC Commissioner Johannes Benjamin R. Bernabe, PCC Commissioner Amabelle C. Asuncion, DOJ Usec. Antonio T. Kho Jr.

**T**he Philippine Competition Commission (PCC) and the Department of Justice (DOJ) signed on June 8 a memorandum of agreement aimed at harmonizing and streamlining the implementation of their respective leniency programs.

Signatories were PCC Chairman Arsenio M. Balisacan and DOJ Secretary Menardo Guevarra. The memorandum also covers collaboration between PCC and DOJ regarding the pursuit of criminal investigations against those engaging in anticompetitive conduct.

Balisacan cited the mutual recognition of immunity granted by the agencies as an example of harmonizing their respective leniency programs. "But we have to make sure that these two are in harmony and consistent.

This partnership would ensure that this would be the case. For example, if we grant immunity, that would be respected by DOJ, and vice versa," he said.

He noted that both PCC and DOJ are finalizing their respective leniency programs. "We'll be posting it (PCC leniency program) on our website for people to comment on before we publish and implement."

## Benefits of leniency

Most competition jurisdictions around the world have some form of leniency program, which is an effective tool in fighting cartels. Leniency is designed to detect, investigate, and punish anticompetitive agreements by offering incentives to secure cooperation of current and former cartel members.

Having limited resources, PCC would benefit from having a leniency program, since with such program in place, it can then deploy resources to cases where evidence is hard to come by. It would be able to expedite the resolution of cartel-related cases using evidence provided by cartel members.

Aside from having better chances of exacting penalty and punishment, a leniency program also contributes to disbanding cartels and preempting new ones from cropping up.

Incentives to cartel members who will avail themselves of the leniency program may include immunity from suit and reduction of fines. ■

# COMPETITION ISSUES IN VISAYAS TACKLED IN BACOLOD

by: Leanne N. Gorosin



(From left) Metro Bacolod Chamber of Commerce representative Frank A. Carbon and NEDA Undersecretary Adoracion M. Navarro join PCC Chairman Arsenio M. Balisacan and Enforcement Office Director Orlando P. Polinar at the first PCC dialogue held at L'Fisher Hotel, Bacolod City on April 10.

The Philippine Competition Commission (PCC) kicked off its 2018 provincial roadshow in Bacolod City on April 10.

This annual roadshow is part of the PCC Communication and Knowledge Management Office's (CKMO) advocacy program. Spearheaded by CKMO's Training and Advocacy Division (TAD), it involves the conduct of seminars and public forums on the Philippine Competition Act (PCA) in at least three urban hubs outside Metro Manila.

The forum in Bacolod City focused on competition policy for regional development. The PCC officials were joined by National Economic and Development Authority (NEDA) Undersecretary Adoracion M. Navarro and Metro Bacolod Chamber of Commerce representative Frank A. Carbon. Forum participants included representatives from trade associations, chambers of commerce, MSMEs, and the Integrated Bar of the Philippines (IBP).

Usec. Navarro, in her keynote, discussed various issues and challenges in the Western, Central, and Eastern Visayas regions, where market competition can play a crucial role. These regions face setbacks that hamper their ability to grow and achieve their full potential.

The Visayas is the most physically fragmented area in the country, a situation that has impeded the mobility of goods and people within and to other regions. Navarro said an efficient transportation system is critical to the growth of the Visayas economy, which is primarily driven by

the agriculture and tourism industries. For instance, the lack of competition in land and sea transportation has led to expensive and poor quality of services. Despite policy pronouncements favoring multiple operators, land transportation in the region is marked by congestion and virtual monopoly in routes.

Navarro also noted that, despite liberalization, the domestic shipping industry remains highly concentrated, with a few shipping lines accounting for a lion's share of the passenger and cargo markets in almost all primary routes. As such, the business community reports that transporting goods to and from other Southeast Asian countries is cheaper than shipping domestically.

Aside from transportation drawbacks, another challenge in the Visayas is high power costs, particularly in Iloilo City. Despite the operation of Panay Energy Development Corp.'s coal-fired plant starting 2010, Navarro cited reports on Iloilo City having the highest electricity rates in the country. Iloilo City has been under the exclusive franchise of Panay Electric Company, which is one of the oldest private power distribution utilities in the country.

Eastern Visayas is also hamstrung by high power rates due to lack of competitors in the industry. This, even though the region hosts the Leyte Geothermal Production Field, the world's largest geothermal steam field and the country's top producer of geothermal energy.

Navarro likewise pointed out that the retail trade industry in the Visayas is dominated by local players. Prospective foreign players have reported difficulty

in entering the market due to business registration red tape, lukewarm support from the government, and alleged anticompetitive behavior of existing local players.

Navarro said these problems can be addressed through sound competition policy, noting that market competition leads to better services and more affordable prices, ultimately promoting competitive markets and ensuring consumer welfare.

Among the concerns also discussed during the forum was PCC's relationship with other government agencies in ensuring regional development through competition. According to PCC Chairman Arsenio Balisacan, the Commission is working closely with other sector regulators and agencies in monitoring potential anti-competitive conduct in their respective sectors. Balisacan also mentioned that, as part of its mandate, the PCC issues advisory opinions and guidelines on competition-related matters for the effective enforcement of the PCA. This is in support of its advocacy of the government's pro-competition policies by reviewing economic and administrative regulations that may adversely affect competition in markets. ■



# ASEAN TELECOM, ANTITRUST REGULATORS DISCUSS COMPETITION LAW AND POLICY

by: Paul Jeffrey M. Ballentos

Telecommunications sector regulators engaged ASEAN competition authorities in a workshop in Kuala Lumpur, Malaysia on April 25-26 to enhance understanding and collaboration in promoting effective regulation in Southeast Asia.

In most of the ASEAN, sector regulation and competition policy implementation overlap. Competition regulation deals with the ex post (after the fact) -- for instance, anticompetitive activities by market players. On the other hand, sector regulation addresses ex ante (before the fact) issues, such as telecommunication companies' activities pertaining to data protection and privacy, and taxation, among others.

While most competition laws in the ASEAN cover all industries, competition authorities in Malaysia and Thailand have excluded or carved out some sectors (e.g., network/broadcasting communication, energy, aviation sectors in Malaysia) from the coverage of their competition law. Shanthi Kandiah, SK Chambers Law Firm founder in Malaysia, said, "There is a need for integration and close cooperation between competition and sector regulators."

## Interface between competition policy and sector regulation

During the workshop, competition authorities in the ASEAN shared the status of the telecom industry and regulation in their respective jurisdictions.

In New Zealand, the Commerce Commission (NZCC), established in

1986, serves as both the competition authority and the telecom regulator. However, it is not directly involved in spectrum allocation and assignment. NZCC has monitoring powers, allowing it to better understand how markets perform.

In Indonesia, the Commission for the Supervision of Business Competition (KPPU) collaborates with its sector regulator for monitoring, policy harmonization, and information sharing, among others.

Singapore has the most advanced telecom regulator, having embraced the principles of competition. The telecom sector was among the first to be liberalized, with the enactment of the Telecom Competition Code (TCC) in 2000, ahead of its competition law. The sector was carved out of the jurisdiction of the Competition Commission of Singapore (CCS) as the Info-communications Media Development Authority (IMDA), which has incorporated competition policy in its regulations. IMDA's overarching principle is to promote sustainable competition, with intervention pursued only during cases of market failure. The IMDA works closely with CCS to resolve alignment issues.

In the Philippines, the Philippine Competition Commission (PCC) advocates pro-competitive policies in the telecom industry. Recognizing the pivotal role that the telecommunications sector plays in growth and development, PCC has been vocal in its support of various pieces of legislation that can improve competition dynamics in the sector. Examples are the Open Access and Data Transmission Bill, Mobile

Number Portability Bill, amendments to the Telecommunications Law, and Spectrum Management Bill, among others.

## Fostering competition awareness in ASEAN

Strengthened interface between competition policy and other economic areas is one of the target outcomes of the ASEAN Competition Action Plan (ACAP) 2025. The ACAP aims to ensure a level playing field and to foster a culture of fair business competition for enhanced regional economic performance. Among its strategic goals are: (1) fostering a competition-aware region in order to strengthen interface and platform for exchange to enhance business compliance and the general public's awareness of competition; and (2) moving towards greater harmonization of competition policy and law in the ASEAN in order to highlight similarities and convergence of competition policy among jurisdictions, thus, eliminating contradiction in competition laws across ASEAN member-states.

The ASEAN Secretariat provided updates of the said action plan during the workshop.

The workshop was organized by the ASEAN-New Zealand Free Trade Area (AANZFTA) in partnership with the Australian Competition & Consumer Commission. Atty. Joseph Giancarlo Agdamag and senior economist Philip Amadeus Libre represented the PCC in the workshop and served as resource speakers. ■



PCC Atty. Joseph Giancarlo Agdamag (seated, right most) and senior economist Philip Amadeus Libre (standing, front row, third from right) join the other ASEAN competition and telecom officials.

# LAW SCHOOLS, PCC WORK ON COMPETITION LAW SYLLABUS

by: Paul Jeffrey M. Ballentos



(Left photo) PCC Commissioner Amabelle C. Asuncion recaps Modules 1 and 2 at the Ateneo Professional School on June 7-8. (Right photo) Participants get busy during the session on anti-competition agreements.



The Philippine Competition Commission (PCC) held the second and third sessions of the “Call for Collaboration: Developing a Syllabus for a Course on Competition Law” on May 17-18 and June 7-8, respectively, in Makati City. Competition law experts from the PCC, United States Federal Trade Commission (US FTC), and University of Southern Queensland and Deakin University in Australia facilitated the sessions. Law professors from schools in and outside Metro Manila discussed possible competition law modules covering topics in abuse of dominance and anticompetitive agreements.

These workshops were part of a three-session series for the design of a syllabus on competition law. Held in partnership with the Philippine Association for Law Schools (PALS), the workshop series featured lectures and case studies designed to provide participants a better understanding of competition concepts within the framework of the Philippine Competition Act.

The PCC has been at the forefront of mainstreaming competition law in the Philippine legal education system. Legal Education Board (LEB) Chairman Emerson Aquende affirmed that the PCC, through the Office of Commissioner Amabelle C. Asuncion, has already requested the addition of a stand-alone course on competition law in law school curricula.

Professor Rachel Burgess, a competition and consumer law expert at the University of Southern Queensland,

shared how competition law subjects were taught in other countries.

In Australia, competition law was introduced early in universities to determine the correct approach to certain issues concerning competition. An annual three-day workshop is conducted, with 10 minutes presentation on an issue, followed by an exchange of ideas. Only a small group comprised of academics, judges, lawyers, and economists are present.

Competition law was first introduced as a subject at the master’s level; eventually it was included as an undergraduate subject. On the other hand, it was introduced as a stand-alone subject in law schools. Corporate law firms expect students to grasp competition law alongside corporation and taxation laws. Moreover, the University of Melbourne offers an online master’s program called “Competition and Consumer Law.”

In the United Kingdom, competition law was initially incorporated as a lecture in a subject dealing with the European Economic Community. Similar to Australia, competition law was first introduced as a master’s level subject before it was offered as an undergraduate subject. It is offered as an elective only in law schools. Also, a Master of Competition Law is offered in selected universities such as University College London, London School of Economics, and King’s College London. ■



Participants break into groups during the session on abuse of dominance during the workshop held at City Garden Grand Hotel, Makati City on May 17-18.



## PUBLIC FORUM ON THE PHILIPPINE COMPETITION ACT



The PCC panel composed of (from left) Atty. Juan Antonio E. Arcilla, Janine P. De Vera, Enforcement Director Orlando P. Polinar, Atty. Alyssa Carmelli P. Castillo, and Amos Mikhail S. Adriano answer questions from the business sector during a two-day public forum on the PCA held in Makati City on April 26-27.

The Philippine Competition Commission (PCC) conducted a two-day public forum on the Philippine Competition Act (PCA) in Makati City on April 26-27. Attended mostly by representatives from micro, small and medium enterprises (MSMEs) and multinational firms, the forum highlighted the role businesses play in establishing a culture of competition and compliance in the Philippines by becoming allies and champions of competition.

In his message, PCC Chairman Arsenio M. Balisacan emphasized that market competition benefits consumers, businesses, and the economy by ensuring a level playing field for all. The forum also discussed the PCA provisions, benefits of competition,

anticompetitive agreements and abuses of dominant position, mergers and acquisitions, non-adversarial remedies, and reporting of other anticompetitive practices to the PCC.

Commonly raised questions include clarifications on the PCC's jurisdiction over various business sectors, including firms that provide professional services such as accounting and law, identification of processes in case stakeholders would like to report potentially anticompetitive activities, PCC's relationship with other government agencies, and interpretations of the definition of geographical markets as used in assessing competition-related concerns.

— L. Gorosin ■

## INCORPORATING COMPETITION POLICY IN FREE TRADE AGREEMENTS

Free trade agreements (FTAs) are international instruments used to increase trade of goods and services by means of reducing trade barriers, import quotas, and tariffs. While such arrangements create a more dynamic business climate and direct foreign investments, FTAs tend to crowd out domestic, traditional economies such as that of the Philippines.

This dilemma was discussed during a Workshop on Developing the Capacity to Negotiate Competition Policy Provisions in Free Trade Agreements held in Indonesia on April 18-19. The workshop was part of the Japan-ASEAN Integration Fund (JAIF) Program. It was co-organized by Indonesia's Commission for the Supervision of Business Competition (KPPU) and Japan Fair Trade Commission.

Experts from various competition agencies and the academe showed how competition relates to certain elements of FTAs such as institutional provision, consumer protection, public

enterprises, subsidies, and intellectual property rights.

"The full benefits of free trade can be enjoyed only if state-constructed trade barriers are not substituted by other forms of private restrictive practices, such as market-sharing or price-fixing agreements," said Dr. Poppy S. Winanti of Universitas Gadjah Mada's Department of International Relations. She added that competition policies within FTAs should improve regulation and administrative procedures by government bodies, as well as focus on business behavior of all entities that perform commercial functions.

The seminar also tackled the evolution of international economic cooperation agreements and the strengthening of international cooperation on competition policy. It likewise discussed techniques for effective participation in and monitoring of the negotiation process, and evaluation of the implementation of the agreement.

— R. Advincula ■

## Fair competition for fair and free markets

Competition policies serve as instruments to encourage industrial efficiency, optimal allocation of resources, technical progress, and the flexibility to adjust to a changing environment. Even during its infant years, the PCC has already achieved significant accomplishments, such as its release of the implementing rules and regulations of RA 10667, in cooperation with the NEDA, in fulfilling the objectives and strategies of the Philippine Development Plan, and its publication of the rules and guidelines on merger reviews. (Ariel Nepomuceno, *Business Mirror*, 18 April 2018) ■

## PH antitrust body 'doing a good job,' European trade group says

European Chamber of Commerce in the Philippines president Guenter Taus commends PCC's efforts in breaking monopolies in the country. He added that the PCC must impose stricter fines against antitrust law violators. (ABS-CBN News, 06 June 2018) ■

## Gov't to craft national competition policy

This year, the National Economic and Development Authority (NEDA), with the assistance of the PCC, shall come out with the national competition policy which will level the playing field for all market players and establish a culture of competition in the country. PCC Chairman Arsenio M. Balisacan said in a separate statement that the national competition policy "will complement the Philippine Competition Act and the pro-competition strategies identified in the PDP 2017-2022. (Ben de Vera, *Inquirer*, 12 April 2018) ■

## Guess who now fights for Big Business in the Senate

It will be interesting to see how the PCC will view the coming merger of two technology-propelled transport groups Uber and Grab. In Singapore, the competition body there has just issued restrictions on the deal while it continues its investigation on its possible effects. Competition can be expected to help avert unfair business practices on pricing and supply stability. It also stimulates innovation, now seen as an important element in boosting the economy's efficiency and potential. (Jose Galang, *ABS-CBN News*, 02 April 2018) ■

## PCC HOLDS DIALOGUE WITH LOCAL, FOREIGN BUSINESS GROUPS

Various business associations had a dialogue with the Philippine Competition Commission (PCC) in Pasig City on April 25.

During the meeting, the business groups expressed their views on the work of the PCC, identified areas of improvement, and laid out recommendations to advance the country's business environment. The Commission welcomed the private sector's interest in collaborating with the government, alongside facilitating discussions on the PCC's policies, advocacies, and expectations from the business community.

The business sector participants represented the following: Philippine Chamber of Commerce and Industry, European Chamber of Commerce of the Philippines, Makati Business Club, Philippine LGBT Chamber of

Commerce, Filipino-Chinese Chamber of Commerce and Industry, Philippine Food Processors and Exporters, Inc., Australian-New Zealand Chamber of Commerce of the Philippines, British Chamber of Commerce Philippines, Canadian Chamber of the Philippines, American Chamber of Commerce, Le Club, Philippine Constructors Association, Federation of Philippine Industries, Inc., Philippine Pharmaceutical Manufacturers Association, Philippine Retailers Association, Direct Selling Association of the Philippines, Packaging Institute of the Philippines, Automobile Association of the Philippines, and Bankers Association of the Philippines.

The PCC was represented by Chairman Arsenio M. Balisacan and Commissioners Amabelle C. Asuncion, Johannes Benjamin R. Bernabe, and Stella Luz A. Quimbo. – *L. Gorosin* ■

*PCC officials with representatives from various local and foreign business chambers and associations during the business dialogue in Pasig City on April 25.*



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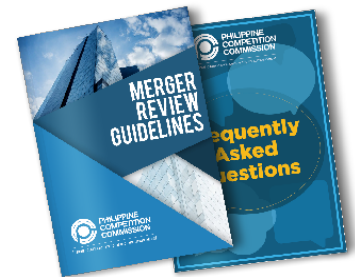
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