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# PHILIPPINE COMPETITION BULLETIN

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**PHILIPPINE  
COMPETITION  
COMMISSION**

*Ensuring businesses compete and consumers benefit*

# DEMYSTIFYING ECONOMIC TOOLS FOR COMPETITION CASES

In the same way that forensic science is used in criminal cases, economics is key to investigating and prosecuting competition cases.

According to Atty. Nicholas Franczyk of the US Federal Trade Commission (FTC) International Antitrust and Technical Assistance, economic analysis was used to supplement direct evidence in the case of *McWane Inc. v. FTC*, and persuaded the Supreme Court to rule in favor of the government.

McWane was the only full-line supplier of domestic fittings. It had a high market share of 80%, while the market was characterized by high barriers to entry since a new player had to put up millions of dollars and endure a 3-5-year start-up period.

McWane implemented a “Full Support Program” in response to the entry of a potential competitor. The said program was exclusionary since it stated that it would not deal with distributors if they were to sell to the rival manufacturer. But according to the FTC, “a finding of exclusive dealing alone is insufficient to establish liability. There must be evidence that competition, not merely a competitor, has been harmed. The conduct, in other words, must harm the competitive process and thereby harm consumers.”

Further economic analyses revealed that McWane’s Full Support Program had an anti-competitive impact. The program resulted in an exclusionary conduct that limited its only competitor’s sales. Hence, it became uneconomical for the rival, Star, to invest in its business and to become a more efficient competitor capable of constraining McWane’s monopoly prices.

In the FTC’s opinion: “McWane’s exclusive dealing policy significantly impaired the access of McWane’s only rival, Star, to the main channel of distribution, thereby increasing its costs and keeping it below the critical level necessary to pose a real competitive threat, is plainly sufficient to meet the standard of harm to competition set forth in the prevailing case law.”

In a week-long training organized by the Philippine Competition Commission (PCC), competition experts from the FTC presented various economic tools used in competition case analysis.

Dr. Joel Schrag, Assistant Director of the FTC Antitrust Division Bureau of Economics, explained how economists work in investigating competition cases and highlighted some of the tools they used. Economists work with lawyers by requesting data from businesses or consumers, analyzing quantitative and qualitative data from the parties involved, and verifying their claims.

“The ultimate goal is to figure out the truth. To get there, theory and evidence have to be assembled and expressed in a coherent story,” Schrag said. “We don’t think of our job as just making technical calculations.”

## Market power central to analysis

According to Franczyk, the concept of market power is central in competition case analysis. Typically, in markets with less competition, firms can charge relatively higher prices than those in competitive markets. Such ability of firms to set prices higher than the cost per unit output for a given time, is what economists refer to as market power. In the US, the judiciary uses it to describe situations wherein individuals or group of firms have control over price and output.

Market power, when abused by dominant firms to perform illegal activities, becomes a serious concern, not only for competition regulators, but also for consumers, who ultimately suffer from anti-competitive conduct. Franczyk enumerated businesses’ anti-competitive activities as follows: 1) fixing relatively higher prices, 2) restricting output levels, 3) limiting consumer choices, 4) producing relatively inferior quality goods/services, and 5) hampering innovation produce deadweight loss in the society. This means that potential gains of an economy would be lost due to inefficiencies caused by a firm’s anti-competitive conduct.

## Hypothetical monopolist test

Several economic tools are useful to assess the potential exercise of market power. The hypothetical monopolist test (HMT), otherwise known as the small but significant non-transitory increase in price (SSNIP) test, is a tool used to identify a relevant market. Relevant market is a market where a firm or the “hypothetical monopolist” could exercise its market power. This test aims to determine the

smallest relevant market, consisting of product or group of products perceived by consumers as reasonable substitutes, that will remain lucrative even despite the hypothetical monopolist’s price hike. In this test, the price increase is arbitrary, but is usually from 5% to 10%.

Figure 1 illustrates the process of HMT in defining relevant markets. Economists start with the product in question as a candidate market; for example, bottled water. When the “hypothetical monopolist” raises its price by, say 5%, economists will assess whether the price increase is profitable. Otherwise, the candidate market is not the relevant market and if so, the candidate market is expanded by adding the next-closest substitute product; for example, soda. With this expanded candidate market comprising bottled water and soda, the hypothetical monopolist raises its price, and if calculations show that the increase is profitable, then the relevant product market has been defined.

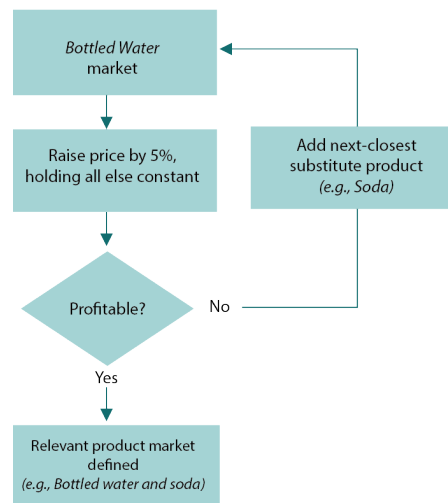


Figure 1. Illustration of hypothetical monopolist test for product markets.

However, the HMT or SSNIP test does not prove a firm to be a monopolist, rather it gives the analyst the scope of the market where harm to competition due to an anti-competitive conduct will likely occur.

## Critical loss

Critical loss (CL) is an alternative to the HMT/SSNIP test in determining the relevant market. CL is the unit sales needed to compensate for the foregone profit arising from the SSNIP or the 5% increase by the hypothetical monopolist.

For instance, a bottled water retailer selling at Php 20 per unit and incurring a cost of Php 5 per unit, is selling 100 units of bottled water; thus earning a profit of Php 1,500. Under the critical loss approach, if the hypothetical monopolist starts charging at Php 21, following a 5% price increase, the firm must sell 93.75 units of bottled water to maintain its initial profit of Php 1,500. Hence, its critical loss is 6.25 units of bottled water.

CL will be evaluated against the predicted loss (PL), which refers to the unit sales that the hypothetical monopolist is predicted to lose due to the price increase. PL is based on the actual demand structure and may be determined through econometric estimates of demand elasticity. For example, in the relevant market for bottled water, consumers tend to decrease their consumption by 0.5% for every one percent increase in price. Hence, bottled water consumption would fall by 2.5 units for a 5% increase in price. CL and PL are graphically summarized in Figure 2.

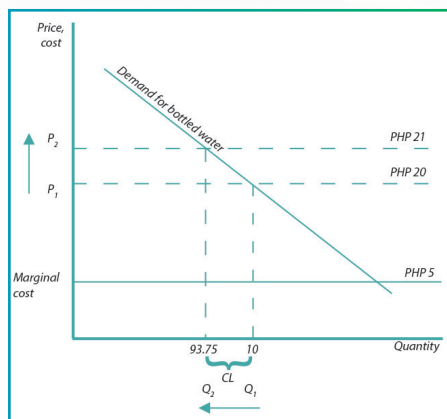


Figure 2. Critical loss (CL) and predicted loss (PL). The firm's CL is 6.25 units of bottled water. Given the consumer demand pattern, PL is 2.5 units. If  $CL > PL$ , then price increase is profitable.

Schrag noted that “the price increase is predicted to raise the hypothetical monopolist’s profit if the predicted loss is less than the critical loss.”

Due to data limitations, such information may be derived from interviews with market participants, investigation hearings, documents (e.g., business and marketing plans, sales reports, internal and third party industry studies, e-mail discussions on pricing and competition), and natural experiments (e.g., effects of past price increases, difference in sales across geographic markets in which prices vary). Other helpful evidence is summarized in Box 1.

### Market shares analysis

Market shares analysis is another tool to infer market power. Market share refers to that part of a relevant market that a firm has cornered. Market share may be measured in terms of volume of sales, production volume, supply or number of customers. For example, given sufficient data on sale of all the suppliers within a relevant market, the market share of one

- Actual substitution in the past
  - Consider periods with relative price shocks
  - Consider periods with new product inventions
- Statistical measures of substitution
  - Estimates of own and cross-price elasticities
  - Price movements over time
  - Surveys and marketing studies
- Business decisions based on consumer substitution
  - Documentary evidence
  - Deposition testimony
- Interviews with customers
  - What would they do if price went up by 5%, 10%...?
  - Deposition testimony
- Legal or regulatory requirements
  - Example of targeted baby food manufacturers required to use glass containers

Box 1. Factors to consider in defining the relevant market

bottled water supplier is calculated by expressing its value of sales as a percentage of the total value of sales generated by all retailers in the market for bottled water and soda.

Calculated market shares will be evaluated using a market share threshold, which may vary across countries. In Section 4 of the Philippine Competition Act’s (PCA) Implementing Rules and Regulations (IRR), a “rebuttable presumption of market dominant position (exists) if the market share of an entity in the relevant market is at least fifty percent (50%).” This threshold is equal to that of the European Union (EU) but lower than in the US of at least 70% to support a finding of monopoly power. Although market shares imply a presumption of dominance, Franczyk said, “the use of market shares is an imperfect measure of dominance and useful only as a starting point in the analysis.”

While it poses threats to competition, market power gained as a result of playing fairly and fostering market competition by undertaking activities —such as, offering better products or services, providing lower prices, or leading product innovation, among others— is not an antitrust concern. Quoting the decision in the 1966 case of United States v. Grinnell Corp., 384 U.S. 653, Franczyk said that monopoly “as a consequence of superior product, business acumen, or historical accident” is not prohibited. If investigation shows that a business, which has garnered a huge market share because it offered quality products at a lower price, had caused an inefficient company offering inferior products to foreclose, then the courts will not hold the business liable for breaching the competition law.

### Entry, exit event analysis

Some market power investigations may not need to define the relevant market as pre-requisite to competition analysis. Entry and exit event analysis demonstrates a conduct’s competitive effects, even without an identified relevant market. Johnson (2008) explained that this tool studies a firm’s response to a

competitor’s movement in and out of the market, thereby revealing the degree of competition in the market.<sup>1</sup> According to him, a significant drop in price by a firm after a competitor’s entry signifies that the entrant constrains the pricing of that firm, and that the foremost firm had been exercising market power prior to the competitor’s entry.

Schrag recounted the Schering- Plough Corp. et al. case involving a pay-for-delay scheme.<sup>2</sup> Quantitative data showed that the entry of a low-cost generic drug resulted in a substantial decline in the total prescription of the patented drug (see Figure 3).

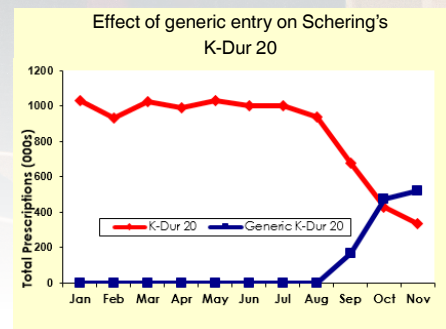


Figure 3. Entry/exit event study analysis, using generics usage vs. Schering’s K-Dur 20

Similar to the entry and exit event analysis, event study is also a tool to assess the changes in prices following interesting events. Schrag compared the difference in price through time after a product recall (see Figure 4).

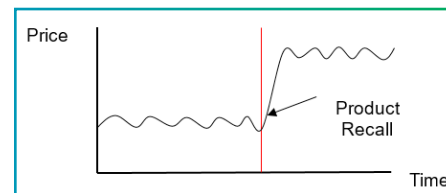


Figure 4. Event study analysis.

### Recent methodologies

Recently, the FTC expanded its armory of economic tools. One of these is the diversion ratio (DR), which is useful not only in assessing competition effects, but also in defining relevant markets. DR measures the number of Company A’s customers who will switch to that of Company B in response to A’s price hike. This tool was used in the blocked merger case of FTC v. Swedish Match.

Another tool, the upward pricing pressure (UPP) was introduced in the 2010 FTC’s horizontal merger guidelines. UPP is used to assess whether merging firms had incentive to raise prices post-merger and pass it on to consumers. This tool also makes use of DR data. ■

<sup>1</sup> Johnson, P. (2008). Entry and exit event analysis probative of competition effects in mergers. Issues in Competition Law and Policy, Bates White LLC. Retrieved November 29, 2017, from: <https://www.bateswhite.com/media/pnc/1/media.251.pdf>  
<sup>2</sup> US FTC. 2003. Commission Rules Schering-Plough, Upsher, and AHP Illegally Delayed Entry of Lower-Cost Generic Drug. Retrieved November 29, 2017, from: <https://www.ftc.gov/news-events/press-releases/2003/12/commission-rules-schering-plough-upsher-and-ahp-illegally-delayed>



PCC-CKMO Assistant Division Chief Paul Andrew Lucena (2nd from the left) and Training Specialist Aislyn Fajbiola Mantel (5th from the right) and other delegates

## ACAP 2025

# DEVELOPING A COMPETITION COMPLIANCE TOOLKIT FOR BUSINESSES

The Association of Southeast Asian Nations (ASEAN) Economic Community (AEC) Blueprint 2025 envisions a more competition-aware region with strengthened capacities and regional arrangements on competition. Building on this, the ASEAN Competition Action Plan 2016-2025 (ACAP 2025) was developed to guide integration efforts and pave the way for a more robust enforcement of competition policy and law in the region.

Among the specific strategies of the ACAP 2025 to foster a competition-aware region is by developing an ASEAN Competition Compliance Toolkit for Businesses. Sarah Firdaus, senior officer of the Competition, Consumer Protection and Intellectual Property Rights Division of the AEC Department/ASEAN Secretariat, said among the main objectives of developing an ASEAN competition compliance toolkit for businesses is to guide and assist enterprises in developing a credible competition compliance program. It would also complement the advocacy efforts of competition agencies when raising stakeholders' awareness on the importance of the law.

A brainstorming meeting on the development of the said toolkit was held on September 12-13 in Singapore to identify the key elements of an effective competition compliance program (CCP), and to exchange strategies for developing and disseminating the toolkit, drawing from international best practices.

### What CCP entails

Dr. Felix Schraner, lead facilitator of the meeting, explained that the components of a CCP may include auditing, monitoring, guiding, and training. However, there is no one-size-fits-all model, as CCP needs to be tailored to the needs and structure of the businesses. This was seconded by Teo Wee Guan, director of International and Strategic Planning Division of the

### What is a competition compliance program?

A CCP can be defined as a commitment of a company to put in place a framework to ensure compliance with the provisions of the Competition Act. The CCP of the Competition Commission of India (CCI), for instance, involves the efforts of an enterprise to comply with the provisions of the Act. The Australian Competition and Consumer Commission (ACCC), on the other hand, defines competition compliance as an internal system or process employed by a business that is designed to identify and reduce the risk of breaching the Competition and Consumer Act (CCA), remedy any breach that may occur, and create a culture of compliance within the organization. ■

#### Sources:

- Competition Commission of India. (nd). *Competition Act 2002 – Competition Compliance Programme*. Retrieved on December 12, 2017 from [http://www.cci.gov.in/sites/default/files/advocacy\\_booklet\\_document/CCP.pdf](http://www.cci.gov.in/sites/default/files/advocacy_booklet_document/CCP.pdf)
- *Implementing a compliance program*. (nd). Retrieved on December 12, 2017 from <https://www.accc.gov.au/business/business-rights-protections/implementing-a-compliance-program>

Competition Commission of Singapore (CCS), as ASEAN member states are at varying stages of developing and implementing their respective competition policy, with differing needs in each jurisdiction.

In Singapore, for example, the elements of a CCP may include training to raise awareness of the law, checklists to ensure compliance by individual staff, recording systems to document permitted contact with competitors, and independent reviews of agreements, behavior and staff to monitor ongoing compliance.<sup>1</sup>

### What the benefits are

The primary beneficiary of the CCP are businesses since a successful program will protect their reputation and operations from unethical employee behavior. The CCP will also help the company avoid the consequences of violating the competition law. This is because there are times when junior staff may breach the competition law, unknown to the senior management.

In jurisdictions such as Singapore, the company is liable for its employee's actions.<sup>2</sup> With the help of the CCP, the risk of violating the competition law will be minimized, and any potential violation detected at an early stage. This will allow the company to implement remedial action; hence, reduce its exposure to liabilities as a result of violations.

Aside from businesses, competition authorities also benefit from CCP, and with it the economy as a whole. In explaining the importance to competition authorities of having an effective CCP, Guan said that deterrence is just as important as enforcement. Jurisdictions that encourage their business community to put in place effective CCP will likely benefit from resource savings as well as prevention of the harm to the economy stemming from a reduction in antitrust transgressions.

### Best practices in advocacy

One of the objectives of the brainstorming meeting was to learn from the best practices of different competition authorities in advocating competition compliance and share experiences in implementing their respective advocacy programs.

Rasul Butt, senior executive director of the Hong Kong Competition Commission, reported that they have already undertaken several outreach activities, including briefings and meetings with businesses, particularly small and medium enterprises (SMEs), business chambers, and other relevant stakeholders. The HKCC has already published several brochures, guidelines, policy documents, among other materials. Butt added that they have also employed a publicity campaign on multiple platforms, including the TV broadcast of 10 episodes on anti-competitive conduct.

Nguyen Thuy Ngoc of the Competition Policy Division of the Viet Nam Competition and Consumer Authority (VCCA) also shared the various

<sup>1</sup> <https://www.ccs.gov.sg/tools-and-resources/conducting-a-compliance-programme>

<sup>2</sup> Competition Commission of Singapore (CCS). nd. *Better business with competition compliance programme: how competition compliance can help your business*. Retrieved on November 27, 2017 from: <https://www.ccs.gov.sg/~media/custom/ccs/files/education%20and%20compliance/conducting%20a%20compliance%20programme%20better%20business%20with%20competition%20compliance%20programme%20english.ashx>

programs that they have undertaken to promote competition in their country, including the conduct of workshops and dissemination of publications through their website. Among the challenges they have experienced in delivering effective advocacy programs include the lack of skilled human resources, low deterrence for companies not to commit anti-competitive practices, and other enforcement challenges stemming from the limitation of VCCA not being an independent authority.

### Disclosure of information

According to Paul Andrew Lucena of the Philippine Competition Commission (PCC), challenges include the resistance from businesses to provide or disclose information and the poor understanding on the benefits of competition law.

These challenges provide more push for the PCC to continue using multimedia platforms to engage the public, particularly in educating them on the provisions of the Philippine Competition Act (PCA) and the functions of the PCC. Moving forward, the PCC's advocacy activities will be guided by the Philippine Development Plan 2017-2022, the medium-term socioeconomic plan of the Philippines, and its Strategic Operational Business Plan 2017-2019, which lays out the appropriate sets of activities and educational materials for specific audiences.

Ayuda Sari Ismail, director of Strategic Planning and International Affairs Division of the Malaysia Competition Commission (MyCC), shared their Strategic Plan for Competition Advocacy Phases I and II (2012-2014 and 2015-2017), which identified priority sectors and targeted stakeholders.

Among the activities they have conducted is the baseline study on competition policy awareness, which showed only 6.6% of the public was aware of the competition law at the start of its implementation. Nevertheless, this eventually rose to

56.5% in 2016. The other programs MyCC introduced include the research grant for studies on competition issues, competition compliance checklist to assist businesses to establish competition law compliance programs, e-learning system on CCP, and collaboration with the Malaysian Bar Council in delivering training activities.

Ayuda raised the importance of reaching out to the SMEs, as they account for 97.3% of the business establishments in Malaysia. She added that the lack of awareness by SMEs of the competition law has resulted in price fixing infringements in their jurisdiction.

### Elements of ASEAN toolkit

With the foregoing advocacy activities and challenges shared by representatives of the ASEAN member states, the group recognized that there is no one-size-fits-all approach in developing a CCP. Competition agencies should, therefore, develop their respective CCP guidelines that are attuned to the size and needs of the businesses and specific stakeholders, using the ASEAN Business Compliance Toolkit as a general guide. Specific tools shall be developed that are tailored to the needs of the SMEs, considering that developing CCP might be resource intensive for companies, since mechanisms need to be in place to ensure effective compliance.

Recognizing that advocacy activities are necessary, not only to raise awareness and understanding on the importance of competition law, but also for effective enforcement, competition agencies were encouraged to develop a method to regularly gauge the level of awareness on competition policy among businesses and the public at large. Moreover, the value of using various platforms (e.g. publications, videos, and social media) was also encouraged in advocating competition policy, depending on the audience landscape of each jurisdiction. The meeting will become inputs to the ASEAN Competition Compliance Toolkit

for Businesses, which will comprise sections on the general rationale of a CCP, building awareness and understanding, promoting competition compliance, and other reference materials for businesses.

The draft toolkit was scheduled for presentation at the 20th meeting of the ASEAN Experts Group on Competition (AEGC) in November. Once endorsed, the toolkit can be disseminated to businesses and relevant stakeholders in 2018. ■

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*The AEGC brainstorming meeting on developing an ASEAN Competition Compliance Toolkit for Businesses was attended by Khiev Channaroth and Sok Thida of the Cambodia's Ministry of Commerce; Kikeo Vorlavongsa and Vilayvanh Vongxay of the Lao People's Democratic Republic's Ministry of Industry and Commerce and National Chamber of Commerce and Industry, respectively; Sapae Kyi Maung and Wai Yee Kyaw of the Myanmar's Ministry of Commerce; Lucena and Aislynn Fabiola Manuel of the PCC; Guan and Long Weng Loong, Yvette Yoong, and Eugene Chen of CCS; Pham Thi Thuy Nga of the Vietnam Competition Authority and Consumer Protection and Ngoc of Vietnam Competition Authority Policy Board; Firdaus of the ASEAN Secretariat; and Zimpel and Yutirsa Yunus of GIZ. Butt of HKCC and Ismail of MyCC made their presentations via Skype. Schraner, attorney-at-law of the Agon Partner, served as the lead facilitator of the meeting and consultant for developing the toolkit.*

### Draft outline of the ASEAN Competition Compliance Toolkit

- A. General rationale.** The first part of the Toolkit is proposed to feature the importance of business compliance, particularly the benefits of competition, and of the compliance program, as well as the consequences or risks of non-compliance. It will also provide brief discussions on the common anti-competitive practices (e.g. price fixing, bid rigging, abuse of dominant position, etc.), and the role of competition authorities.
- B. Building awareness and understanding.** The Toolkit will also present strategies on how to build awareness and correct understanding of the competition law, such as instruments for outreach or information dissemination (e.g. seminars, workshops, collaterals, social media, and mass media). Competition authorities will also be given some tips on how they may gauge or assess the businesses' level of understanding on competition law (e.g. surveys and self-assessment checklist).
- C. Promoting competition compliance.** This part will include discussions on how to motivate or incentivize businesses to adopt and implement their own CCP by working with industry champions, providing leniency programs or recognizing companies with remarkable CCP. The minimum requirements for a CCP will also be included in this part, particularly the core commitment (e.g. corporate policy and integrity pact), code of conduct, assignment of compliance officers, and processes (e.g. on-boarding, training).
- D. Specific documents for businesses.** As some CAs have already developed various documents to guide businesses' compliance on competition law, these documents may be featured in this part, such as legal and procedural guidebooks, frequently asked questions (FAQs), do's and don'ts, checklists, case studies, illustrations, etc. ■

# INTERNATIONAL BEST PRACTICES IN GOING AFTER BID-RIGGING CARTELS

Competitive procurement is a key process that ensures that governments get the best value for their people's money. However, bid rigging, an anti-competitive practice deemed illegal under competition laws in many countries<sup>1</sup>, distorts competition in public procurement markets, invites corruption, and leads to inefficiencies. The Organisation for Economic Cooperation and Development (OECD) estimates that procurement prices could be reduced by 20% or more when bid rigging is eliminated.<sup>2</sup>

In the Philippines, bid rigging in government projects may be prevalent. For instance, the World Bank notes that bid-rigging and collusion among contractors often undermine competition in road construction in the Philippines, having previously identified signs of bid-rigging in the procurement of road projects in the early 2000s.<sup>3</sup>

Before the creation of a competition law, the Government Procurement Act provided for the regulation of procurement activities, espousing the principles of competitiveness, transparency, and accountability. With the enactment of the Philippine Competition Act (PCA) in 2015, there is a new drive against bid rigging, with the specific declaration that any form of such act is illegal and subject to sanctions under the PCA.

Competition authorities should be equipped with the necessary know-how, tools for prevention, detection and enforcement in fighting bid-rigging cartels. In a recent workshop on going after bid-rigging cartels hosted by the OECD/Korea Policy Centre<sup>4</sup> and Authority for Fair Competition and Consumer Protection of Mongolia, competition authorities from various jurisdictions shared their experiences in cracking down on this type of cartel.<sup>5</sup>

## Identifying badges of bid-rigging

Bid rigging may be detected by looking at suspicious bidding patterns and clues in documents. In one of the cases discussed during the workshop, a bid-rigging cartel was successfully prosecuted with the help of public procurement officials trained in detecting bid-rigging activities. In the case of Japan, its Fair Trade Commission is also empowered to investigate public officials involved in bid-rigging activities.

Recognizing when cartels may be concealing illegal behaviour is a necessary know-how for competition agencies, as cartels' behavior evolve from standard practices. The Indonesian competition agency KPPU discussed one of its bid-rigging cartel cases, wherein the perpetrators used "dummy" accounts to participate in the public tenders.

Also discussed during the workshop was the existence of an upside-down" cartel, which may be prevalent in the agriculture industry. In such cases, a cartel of buyers may deprive farmers of significant income. A significant cartelized price drop can reduce quantity, and income is transferred from the farmers to middlemen.

## Using technology

In Portugal, its competition authority case handlers and investigators go through an intensive training program on IT forensics, equipping them with the capability to handle Nuix software. Likewise, the Korea Fair Trade Commission uses a software that aids in the identification of possible bid-rigging conduct in public tenders.

Cooperation among competition authorities in fighting cartels and bid rigging is important. For young competition agencies such as the Philippine Competition Commission (PCC), such international workshops provide opportunities to capacitate lawyers and economists, and enhance the agency's enforcement capabilities. ■

## PITCH FOR COMPETITIVENESS IN 16TH ASIA PACIFIC AGRI FORUM

Philippine Competition Commission (PCC) Chairman Arsenio Balisacan keynoted the 16th Asia Pacific Agricultural Policy (APAP) Forum held in Seoul, South Korea from August 31 to September 1. In his address, Balisacan discussed transformation and competitiveness for sustainable agriculture and rural development, emphasizing the importance of concerted efforts, including regional organizations, in addressing the development challenges facing smallholders and the rural economy.



The APAP Forum was launched in 2002 as a network and coalition of various organizations and individuals to build cooperation in agricultural development among countries in the Asia-Pacific Region. ■

## ROLE OF COMPETITION POLICY IN GVC'S DISCUSSED

Philippine Competition Commission (PCC) Commissioner Johannes Bernabe represented the country at the Global Economic Symposium held in Kiel, Germany from September 18-19. In his presentation, Bernabe said services liberalization, regulatory reform, and competition law are essential to boost the participation of small and medium-scale enterprises (SMEs) in global value chains (GVCs). The conference had as its theme "Developing Inclusive and Sustainable Global Value Chains in the Digital Age", with special interest in fostering inclusive and sustainable development.



<sup>1</sup> Powers of competition agencies to intervene in public purchasing procedures vary across jurisdictions depending on national legal framework. They range from granting competition agencies powers to cancel the public procurement bids they believe to be anticompetitive and impose the necessary remedies, to the possibility of influencing public bidding regulations and public procurement bodies' practices solely by competition advocacy and educational means. (Source: International Competition Network, Anti-Cartel Enforcement Manual 2015.)

<sup>2</sup> OECD (2009), Guidelines for Fighting Bid Rigging in Public Procurement.

<sup>3</sup> The World Bank, Philippines: Meeting Infrastructure Challenges, Report No: 40764-PH, accessed 21 November 2017 (<http://documents.worldbank.org>).

<sup>4</sup> OECD/Korea Policy Centre, Competition Programme is a joint venture between the Korean government and the OECD. The Centre was opened in May 2004 and works with competition authorities in the Asia-Pacific region to develop and implement effective competition law and policy.

<sup>5</sup> Lawyers Genevieve Jusi, Christian De Los Santos, Amos Adriano, Marielle Delfin and senior Economist Aubren Prado represented the PCC in the said event held from 13 to 17 September in Ulaanbatar, Mongolia.

The Kiel Centre for Globalization (KCG) and the United Nations Industrial Development Organization (UNIDO) jointly organized the event. ■

## EU TRADE ATTACHÉS BRIEFED ON PCA

Commissioner Amabelle Asuncion of the Philippine Competition Commission (PCC) served as a guest speaker during the monthly European Union (EU) Commercial Counselor's Meeting, organized last September 16 by the Delegation of the EU to the Philippines. During the said meeting, Commissioner Asuncion shared that the Philippine Competition Act became a game-changing legislation in building a competitive business environment in the country.

She also shared PCC's achievements, including a zero backlog on merger reviews during its ambitious first year of enforcement, and mentioned its efforts towards capacity-building and strengthening of linkages with key stakeholders. ■

## PCC TAKES MEDIA ROUNDTABLE TO PSE-SEC BEAT, MANILA TIMES

The Philippine Competition Commission (PCC) held roundtable discussions with members of the press in September, starting with beat reporters covering the Philippine Stock Exchange (PSE) and Securities and Exchange Commission (SEC) on the 13th. On September 20, the PCC held a roundtable with editors and reporters of the The Manila Times. The media engagements were undertaken to brief members of the press on the latest developments in competition issues. ■

## IN THE NEWS

**ANTI-COMPETITIVE AGREEMENTS UNDER NEW COMPETITION ACT.** Anti-competitive agreements prohibited under the PCA are not just limited to written or formal agreements. The law covers any type or form of contract, arrangement, understanding, collective recommendation, or concerted action. (*Korina Ana T. Manibog, Asia Business Law Journal, 18 September 2017*)

**COMPETITION POLICY ENFORCEMENT IN THE DIGITAL AGE.** The Philippine Competition Commission will set the tone for competition regulation in the country, as it finds itself in a unique position of being guided by not bound by precedents from jurisdictions with long-established competition regimes. (*Emmanuel M. Garcia, Rappler, 30 September 2017*)

**PCC: WE'RE GOOD FOR BUSINESS.** PCC Chairman talks about how anti-competitive factors in the Philippine markets hamper inclusive growth in the country. He also explains how the PCC can help businesses improve their products and services. (*Iris Gonzales, Philippine Star, 7 September 2017*)

**PHILIPPINE COMPETITION COMMISSION ISSUES THE INTERIM RULES ON PRELIMINARY INQUIRY AND FULL ADMINISTRATIVE INVESTIGATION.** After the end of the two-year transitory period under the PCA, the PCC is now ready to escalate its efforts towards enforcement and imposition of penalties for violations of the law. (*Maria Christina Macasaet-Acaban and Mia Carmela T. Imperial, Lexology-Quisumbing Torres, 4 September 2017*)

**DOMINANT POSITION IN COMPETITION LAW** The Philippine Competition Commission is empowered by the PCA to investigate and punish abuse of dominant position. However, there is a need to make businesses understand first what exactly is abuse of dominant position and how it can be abused. (*Jemy Gatdula, BusinessWorld, 15 September 2017*)

## TRANSPORT DISCUSSED AT 13TH EAST ASIA COMPETITION CONFERENCE

Commissioner Stella Luz A. Quimbo of the Philippine Competition Commission (PCC) joined senior officials from East and Southeast Asian competition and related authorities at the back-to-back 13th East Asia Top-Level Officials' Meeting on Competition Policy and 10th East Asia Conference on Competition Law and Policy held on September 6-7 in Bali, Indonesia.

During a presentation on competition law and policy in archipelagic countries, Quimbo underscored the importance of efficient transportation in promoting competition, particularly in the tradable goods sector.

The East Asia Conference on Competition Law was first organized in 2004 to promote competition law and raise public awareness, while the annual East Asia Top-Level Officials' Meeting started in 2005 to provide a platform for Southeast and East Asia enforcement authorities to share experiences and exchange views on competition policy and best practices.

This year's meeting and conference was co-hosted by the Japan Fair Trade Commission (JFTC), the Indonesian Commission for the Supervision of Business Competition (KPPU), and the Asian Development Bank Institute (ADBI). ■



Commissioner Stella Luz A. Quimbo (left) with senior officials from East and Southeast Asian competition and related authorities

## ANTITRUST WORKSHOP FEATURES DIGITAL CASE

Philippine Competition Commission (PCC) economist Edgardo Manuel Jopson showcased the agency's digital case during the "Antitrust Regional Workshop on Economic Analysis in Competition Enforcement" organized by Taiwan Fair Trade Commission (TFTC) in Singapore on September 25-28. The case featured how the PCC team hurdled a number of issues, including how the relevant market was defined, accessing substantial data from key government agencies and market players, and evaluating the nature of dynamic markets, among others. ■

## FINANCIAL MANAGEMENT COURSE

Legal assistant Ana Clariza Briones of the Philippine Competition Commission (PCC) joined an introductory module on financial management conducted by the Ateneo Center for Continuing Education from September 18-22. Serving as a preliminary learning for the Center's Diploma in Corporate Finance program, the course covered the role of financial management in a corporate environment, tasks and responsibilities of financial managers, and their methods of solution for financial crisis. ■

## 2017 EROPA CONFERENCE

Philippine Competition Commission (PCC) senior staff Antonia Lynnelly Bautista, Joseph Bernat, Arvin Go-Aco Cabillan and Charissa Santos took part in the 2017 Eastern Regional Organization for Public Administration (EROPA) Conference held from September 11-15 in Seoul, South Korea.

EROPA is an organization of states, groups and individuals in the region of Asia Pacific that aims to improve knowledge, systems and practices of government administration to help accelerate economic and social development in developing countries. ■

## 10TH SEARLE CENTER CONFERENCE

Mergers and acquisitions lawyer Michael Kris Ben T. Herrera participated in a conference titled "Tenth Annual Searle Center Conference on Antitrust Economics and Competition Policy" organized by Searle Center on Law, Regulation, and Economic Growth and the Center for the Study of Industrial Organization on September 15-16 at Northwestern University in Chicago, Illinois.

Leading scholars from different universities across the United States presented research relevant to antitrust economics and competition policy, including patent policy, how contracts can be a barrier to entry, how investment and prices are related to market power in mobile telecommunications, recoupment and predatory power analysis, a proposal to deal with the anti-competitive effects of institutional investors, how price caps affect competition, the competitive effects of minimum advertised price restrictions, and how vertical integration affects markets. ■

## INVESTMENT BANKING PROGRAM

Lawyers Mercedes Torrijos and Carlo Lagdamag of the Philippine Competition Commission (PCC) attended a three-day advanced program on investment banking conducted by the Ateneo Center for Continuing Education last September 2, 9, and 16, at the Ateneo Professional Schools, Makati City. The training covered the current state of domestic and global financial markets, treatment of security issues, public offerings, valuation techniques, and pricing considerations, among others. ■

## MERGERS AND ACQUISITIONS DASHBOARD

Notifications received from  
January to September 30,  
2017:

48

Notifications received since  
February 2016:

125

## NEW PUBLICATIONS



Electronic publications are available at the PCC website  
(<http://phcc.gov.ph/category/resources/publications/collaterals/>)



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