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What are Anti-Competitive Agreements?

In general terms, **ANTI-COMPETITIVE AGREEMENTS** are agreements that substantially prevent, restrict, or lessen competition.

Some anti-competitive agreements may be classified into “horizontal” and “vertical” agreements.

HORIZONTAL AGREEMENTS are those entered into by and between two (2) or more competitors. For example, two (2) competing manufacturers could collude and agree to sell the same product at the same price.

VERTICAL AGREEMENTS are those entered into by and between two (2) or more entities at different levels of distribution or production chains such as those entered into by suppliers, manufacturers, distributors, and retailers. Examples include distribution, agency, and franchising agreements.

Examples of anti-competitive agreements include:

- **Price-Fixing** – Competitors collude with one another to fix prices of goods or services, rather than allow prices to be determined by market forces.

- **Bid-Rigging** – Parties participating in a tender process coordinate their bids, rather than submit independent bid prices.

- **Output-Limitations** – Agreements which, among others, limit output or control production by fixing production levels or setting quotas, or agreements which deal with structural overcapacity or coordination of future investment plans.

- **Market-Sharing** – Producers restrict their sales of goods and services to certain geographic areas, developing local monopolies.¹

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What does the Philippine Competition Act say about anti-competitive agreements?

As a general rule, the Philippine Competition Act makes it illegal for business rivals to act together in ways that can limit competition, lead to higher prices, or hinder other businesses from entering the market.

The Philippine Competition Act absolutely prohibits the following agreements, between or among competitors:

- Restricting competition as to price, or components thereof, or other terms of trade;
- Fixing prices at an auction or in any form of bidding including cover bidding, bid suppression, bid rotation and market allocation, and other analogous practices of bid manipulation;

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¹ <http://www.tariffcommission.gov.ph/competition.html#What%20is%20Competition%20Policy>

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These acts or agreements are illegal *per se*, which means that they are inherently illegal and no further inquiry into their actual effect on the market or the intentions of the parties who engaged in the illegal act or agreement is necessary.

The law prohibits other anti-competitive agreements which have the object or effect of substantially preventing, restricting, or lessening competition such as:

- Setting, limiting, or controlling production, markets, technical development, or investment;
- Dividing or sharing the market, whether by volume of sales or purchases, territory, type of goods or services, buyers or sellers, or by any other means.

Other agreements other than those described above which also have the object or effect of substantially preventing, restricting, or lessening competition are also prohibited by the Philippine Competition Act.

The law also provides that anti-competitive agreements (not including those which have been identified as *per se* violations) which contribute to improving the production or distribution of goods and services or promoting technical or economic progress, while allowing consumers a fair share of the resulting benefits, may not necessarily be deemed a violation of this Act.

PCC balances the efficiency benefits of the questioned act against its anti-competitive implications to determine whether or not such acts should be prohibited.

For example, manufacturers sometimes restrict the supply of a product in different geographic markets only to selected retailers not only to earn higher profits, but to have an incentive for advertising the product, and provide better service to customers. In such cases, the anti-competitive effect of restricting the supply of the product could be outweighed by the efficiency and welfare gains to the consumer.

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What are cartels and collusive agreements?

Generally speaking, a cartel is an association of businesses in the same industry colluding with one another to substantially prevent, restrict, or lessen competition.

There may be collusion in cases wherein there is an explicit or tacit agreement among competing firms in an industry to take steps that will enable them to dominate the market, control the market price, and ultimately act like a monopoly or duopoly.

Cartels and collusive agreements as described above are illegal. They result in anti-competitive practices like price-fixing and market-sharing, which, in turn, reduce output and raise prices.

They can also lead to a misallocation of resources—as when goods and services demanded by customers are not produced or sold—and create an artificial shortage of supply.

Cartel and Collusion Cases Around the World

JAPAN: Japan Fair Trade Commission

- Automotive headlamp and tail-lamp manufacturers paid a fine amounting to JPY 4.678 billion for bid-rigging on March 2013.
- Manufacturers of high-fructose corn-syrup, specific starch syrup manufacturers, and a glucose manufacturer were sanctioned for price-fixing.

INDONESIA: Indonesian Competition Authority

- Possible cartel activity relating to the recent increase in food prices, particularly in the prices of beef, chicken, eggs and shallots were investigated.
- Nineteen (19) companies were tried for garlic price-fixing.

THAILAND: Trade Competition Commission

- Probe into anti-competitive foreclosure of competitor sales in the energy drinks sector.

- Petitioned the Attorney General to indict Honda for anti-competitive exclusive arrangements with its distributors.

SINGAPORE: Competition Commission of Singapore

- Bid-rigging by 12 motor vehicle traders (March 2013)
- In July 2012, fines were imposed on two (2) ferry operators for sharing of information on price.

CHINA: National Development and Reform Commission (NDRC) and State Administration for Industry and Commerce (SAIC)

- NDRC imposed monetary sanctions totaling RMB 353M on six (6) Korean and Taiwanese LCD panel makers for cartel behavior.
- Five (5) gold retailers through their local industry association were sanctioned for price-fixing agreement. The retailers were fined RMB 10.9M while their association was fined the maximum permitted amount of RMB 500,000.

