PHILIPPINE COMPETITION COMMISSION
Ensuring businesses compete and consumers benefit

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PCC supports bills lifting foreign equity cap on telco, transport

The Philippine Competition Commission (PCC) is supporting initiatives in Congress to amend certain provisions in the 80-year-old Public Service Act (PSA) such as the lifting of the foreign equity cap on certain industries including telecommunications and transportation.

The Constitution limits foreign ownership of the operation of public utilities such as telco and transport to only 40 percent, and reserves the other 60 percent to Filipino citizens or corporations. Amending the PSA is meant to address this legal obstacle by streamlining the list of activities to be considered public utilities under the Constitution.

“To begin with, the Public Service Act is antiquated. It still refers to certain business activities such as ice plants and canals as public services or public utilities. With the current economic and business landscape, it is time to update the list of business activities considered as public utilities,” said PCC Commissioner Johannes Benjamin Bernabe.

The limitation has been a concrete constraint on the inflow of foreign direct investments (FDIs) in the country and in increasing competition in the market, said Bernabe.

“If you look at certain sectors like telecommunications, one way of promoting a competitive environment is to open fully the market to foreign players. The foreign equity cap unfortunately discourages entry of new foreign players in the sector that provide services to the public,” said Bernabe.

Improving competition in certain sectors and industries is incorporated in the Duterte administration’s Philippine Development Plan 2017-2022, specifically a chapter on building the framework for a national competition policy, which the one-year-old antitrust agency has drafted together with the National Economic and Development Authority (NEDA).

Enhancing competition, the primary mandate of the PCC, would help improve the quality of goods and services in the market, give consumers more choices and keep prices generally affordable.

Several bills have been filed in both houses of Congress that seek to amend the PSA that will remove certain industries considered as public services and in effect lift the ownership limitation imposed on foreign investors. Albay Rep. Joey Salceda, for instance, has filed House Bill 4468 that seeks, among others, to amend the definition of “public services” and “public utilities” in the PSA.

The PCC, for its part, is proposing “to define public utility as a person who operates, manages, and controls for public use the following: electricity transmission; electricity distribution; water pipeline distribution systems; gas or petroleum pipeline distribution systems; and sewerage systems,” said Bernabe.

“So there will be only five public utilities whose foreign ownership will be restricted to 40 percent,” said Bernabe.

The industries that would be removed from the PSA’s definition of what constitutes a public service or public utility such as telco and transport would still be regulated by a regulatory agency to protect the welfare of consumers, he said.

“In our proposed definition, we say that those business activities that have been delisted from the Public Service Act are considered as business affected with public interest and will continue to be regulated as such by the relevant sector regulators,” said Bernabe.

“You still want consumers to be protected, ensure that there is adequate access and reasonably priced services, and the services are of a certain quality or standard that will allow reasonable download and upload speeds,” added Bernabe.

The PCC and NEDA recently concluded the National Competition Policy Review aimed at identifying anti-competitive practices, regulations and legislations. Results of the review were included in the recently released Philippine Development Plan, the country’s roadmap for the next six years.

The Philippines, which has been running budget deficits for years, needs to attract more FDIs to help build and improve the country’s infrastructure, create more jobs, and stimulate the economy. The country has been lagging behind its neighbors in the ASEAN in terms of FDI flows. Last year, net FDI inflows to the country amounted to $5.7 billion, behind Thailand’s $8.0 billion, Malaysia’s $11.3 billion, Indonesia’s $16.9 billion and Singapore’s $61.3 billion, data from the Asean.org showed.

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