PHILIPPINE COMPETITION COMMISSION
Ensuring businesses compete and consumers benefit

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Closure of Investigation on the Alleged Violation by Entities of the Philippine Competition Act in the Conduct of Fumigating Vessels

Industry	:	Vessel Fumigation
Case Reference	:	CEO-201711-FAI005
Case Closed	:	19 February 2018
Issue/s	:	Abuse of dominance and other anti-competitive agreements in the vessel fumigation business
Relevant Provision/s	:	Sections 14 (c) and 15 (b), Philippine Competition Act

Case Summary:

In September 2017, the PCC, through the Enforcement Office, conducted a preliminary inquiry on a verified complaint alleging anti-competitive agreement and conduct in the vessel fumigation business. In November 2017 the Enforcement Office decided to open a full administrative investigation for possible violations of Sections 14 (c) and 15 (b) of the PCA, which prohibit anti-competitive agreements, and abuse of dominance by imposing barriers to entry in an anti-competitive manner, respectively.

The investigation looked into an alleged irregular post-fumigation inspection by certain inspection companies to undermine the business reputation of the complainant which conducted the fumigation and whether there was substantial lessening of competition in the vessel fumigation business as a consequence thereof. The investigation also included the purported involvement of a major fumigation company in the subject scheme and whether it abused its market power to prevent the complainant company from growing in the fumigation business.

Vessel fumigation is done when there is a finding, upon inspection, that the cargo of a ship is infested. This is to ensure that the cargo is free of any live pest once it enters the port of destination. It is the consignee's obligation to hire a fumigation company. Once the required fumigation is completed, independent quality

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assurance providers (i.e. inspectors) and relevant government agencies inspect the fumigated vessel to ensure that the cargo is completely pest-free and ready for unloading.

Fundamental in the conduct of anti-competition investigation is the determination of the relevant market. Relevant market has two dimensions: relevant product market and the relevant geographic market.

A relevant product market comprises all the goods and/or services that are regarded as interchangeable or substitutable by the consumer or the consumer, by reason of the goods and/or services' characteristics, their prices and their intended use.

In this investigation the relevant product market considered is the market for fumigation of vessels. There are no significant entry barriers for a fumigator to engage in the business of vessel fumigation because: (1) methyl bromide and aluminum phosphide fumigation (the main chemicals used in fumigation) are inexpensive; (2) it is relatively easy for prospective fumigators to be accredited and obtain licenses from regulatory agencies; and (3) there will always be a demand for the fumigation of infested imported commodities because cargoes can only be unloaded once determined to be pest-free.

On the other hand, a relevant geographic market comprises the area in which the entity concerned is involved in the supply and demand of goods and services, in which the conditions of competition are sufficiently homogenous and which can be distinguished from neighboring areas because the conditions of competition are different in those areas.

The relevant geographic market considered in this investigation are all the seaports in the Philippines. Apart from licensing, accreditation and other regulatory requirements, which may easily be complied with by a prospective fumigator, there are no other significant barriers that could prevent fumigation companies from operating in the different ports across the country. Since these fumigation companies usually operate nationwide, importers and consignees have a wide variety of choices of fumigators and are thus able to take advantage of any price or quality differences these competing fumigators may have.

Based on the information and data obtained during the investigation, it was determined that there is no actual or potential adverse impact on competition in the relevant market caused by the alleged agreement or conduct.

On the alleged anti-competitive agreement, the findings are:

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- There was no evidence to indicate that the inspectors under investigation colluded to undermine the complainant company's vessel fumigation business; and

- There was no incentive for the subject inspectors to engage in the purported anti-competitive agreement in that sabotaging an inspection will not lead to an increase in their profits. Worse, such unprofessional conduct may even ruin their reputation as quality assurance providers and deprive them of potential clients.

On the alleged abuse of dominance to prevent a competitor from growing within the vessel fumigation business, the findings are:

- The complainant's rival fumigation company does not have sufficient market power to be considered dominant in the vessel fumigation business in that its market share is way below 50%, it is not the largest fumigation company operating in the Philippines, and there are numerous companies that can provide vessel fumigation services;

- It is relatively easy for a prospective fumigator to comply with regulatory and financial requirements and enter the vessel fumigation business; and

- There are low switching costs in the fumigation business, that is companies requiring fumigation services may easily choose and switch between fumigators without incurring any significant additional cost.

Given the evidence available, it is more likely than not that the entities under investigation did not engage in anti-competitive agreement or conduct. Consequently, the Enforcement Office closed the investigation in February 2018.

The closure of the investigation does not necessarily mean that there is no anti-competitive agreement or conduct in the vessel fumigation business in the country. The PCC, through the Enforcement Office, may still conduct another investigation in this industry if the circumstances so warrant.