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PHILIPPINE COMPETITION BULLETIN

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**PHILIPPINE
COMPETITION
COMMISSION**

Ensuring businesses compete and consumers benefit

NATIONAL COMPETITION POLICY: A WHOLE-OF-GOVERNMENT APPROACH TO ANTITRUST ENFORCEMENT

by Paul Jeffrey M. Ballentos

Government entities in the Executive branch are now mandated to incorporate competition principles in the formulation and execution of policies and regulations. This came about after the Office of the President issued Administrative Order (AO) No. 44 on October 20, instructing agencies to implement the National Competition Policy (NCP).

“Mainstreaming a culture of competition requires a whole-of-government effort. While the importance of competition is mainly felt by businesses and consumers, its success requires appreciation of competition principles by leaders, regulators, policymakers, and the entire bureaucracy,” said Philippine Competition Commission (PCC) Chairperson Arsenio M. Balisacan.

The NCP complements the Philippine Competition Act (PCA) and the Philippine Development Plan 2017-2022 in guiding

the design of government interventions, especially those relating to the economic recovery of vulnerable sectors like micro, small, and medium enterprises. It recognizes the need for competition policy to guide decisions and strategies in helping restore market efficiency, as the country deals with economic challenges brought on by the COVID-19 pandemic.

“By ensuring that government responses and interventions follow competition principles, we can prevent policies that may exacerbate market failures and distortions. As the country tackles the economic consequences of the pandemic, the NCP is an important policy tool in improving market efficiency and stimulating economic recovery that is not only robust but also inclusive,” Balisacan added.

The PCC and the National Economic and Development Authority (NEDA) issued a

joint memorandum circular (JMC) in July 2020, directing all national government agencies, government-owned or -controlled corporations (GOCC), and local government units (LGU) to comply with the NCP.

The NCP implementation will now also form part of the criteria on good governance conditions for the grant of incentives to government agencies. Under Section 2 of AO No. 44, the adoption and compliance with the NCP and its key elements, as far as practicable, are to be integrated with the performance-based bonus (PBB) to government personnel and in the conferment of the seal of good local governance (SGLG) on cities and municipalities. The PBB is a top-up bonus given to government employees based on their contribution to the achievement of their offices’ targets and commitments each year. The SGLG is a program for all LGUs based on award, incentive, honor, and recognition. ■

Key Principles of the NCP



- **Pro-competitive policies and government interventions.** All policies, rules and regulations, issuances, and other interventions shall promote market efficiency and enhancement of consumer welfare, and shall not distort competition by creating barriers to entry, promoting collusive market outcomes (e.g., cartels), or restricting trade, except when the restrictions are proven consistent with the promotion of consumer welfare, or when the benefits to the community outweigh the costs, or when the objectives of the policies and government interventions can only be achieved by restricting competition.



- **Competitive neutrality.** GOCCs shall not enjoy net competitive advantages over or be subjected to disadvantages vis-à-vis private sector businesses simply because they are publicly owned, unless it can be clearly demonstrated that the greater public interest will be served and there is lack of commercial viability.



- **Enforcement of competition-related laws and issuances.** All government agencies shall uphold the original and primary jurisdiction of the PCC over the enforcement and implementation of the PCA provisions.

59TH PES ANNUAL MEETING AND CONFERENCE COMPETITION, INCLUSION, AND GROWTH IN THE POST-PANDEMIC DIGITAL ERA

by Leanne Croisette N. Gorosin

The Philippine Competition Commission (PCC) sponsored a plenary session at the 2021 Philippine Economic Society (PES) Annual Meeting and Conference held on November 10-12. The session focused on the application of competition law in digital markets.

With the theme, “Competition, Inclusion, and Growth in the Post-Pandemic Digital Era”, the panel discussed various competition-related issues emerging from the digital economy and several proposed measures for greater digital inclusion to support economic recovery. Joining PCC Chairperson Arsenio M. Balisacan in the panel were Dean Tetsushi Sonobe of the Asian Development Bank Institute (ADBI); Benjamin Azada, chief strategy officer, Converge ICT Solutions, Inc.; Christopher Monterola, executive managing director, Asian Institute of Management (AIM); and Ng Ee Kia, assistant chief executive, Competition and Consumer Commission of Singapore (CCCS). The session was moderated by Professor Sarah Lynne Daway-Ducanes of the University of the Philippines School of Economics.

Sonobe highlighted the immense impact of digitalization on jobs, productivity, and economic value creation. Digitalization has made it easier to match human resources with the demand for their services. Similarly, e-commerce sites have connected sellers to customers, matching products to consumers’ needs and interests. He pointed out that with digitalization, community mechanisms, such as the rise of online review sites of products and services, have become more common and accessible, adding value to the process.

The advent of digitalization has also enabled easier payment and settlement of goods and services, resulting in reduced transaction cost, thereby expanding commerce and



creating more jobs. Sonobe added that digitalization has helped improve productivity by enabling remote work and fragmentation of production, resulting in higher efficiency levels. As an example, he cited improvements in business development processes through cloud accounting and financial technology.

However, he noted that the benefits of digitalization are not maximized by those who do not use or are unable to access digital technology, creating a virtual divide among industries and stakeholders. Hence, he recommended that digitalization must be accompanied by measures that level the playing field and cast social safety nets, such as competition-related policies aimed at protecting both industry and consumer welfare.

Ng Ee Kia shared that six years ago, Singapore’s trade sector observed the emergence of digital players and e-commerce platforms that disrupted the market, prompting the CCCS to take a close watch into these developments. This led to various market studies and inquiries to understand the benefits and risks of digital economies. Aside from being the country’s market watchdog, the CCCS brought in consumer protection measures. This involved facilitating studies on price transparency in online

markets and issuing guidelines to industries in setting prices among online and offline platforms. Ng Ee Kia said the next steps of the CCCS include recalibrating its frameworks to consider multi-sided markets, amending outdated guidelines, and facilitating public consultations.

With the rise of digitalization and digital economies, Monterola said that big data and artificial intelligence (AI) are reshaping trade and business across all major sectors. New industries are mainly driven by significant amounts of data that can now be stored and crunched, resulting in not just plain information, but information that has critical business value to its stakeholders. This has helped businesses accelerate innovation and migrate to advanced business models. He presented studies on technologies that industries heavily invest in such as AI, cloud computing, and blockchain technology, adding that AI adoption would be a significant gamechanger to their offerings and processes.

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ADVOCACY ROUNDUP

BALISACAN DISCUSSES PCC'S RECALIBRATION OF PANDEMIC STRATEGIES AT 16TH EATOP

Philippine Competition Commission (PCC) Chairperson Arsenio M. Balisacan outlined the Commission's major undertakings amid the pandemic in his address at the 16th East Asia Top Level Officials' Meeting on Competition Policy (EATOP). Most of the notable activities shared during the 16th EATOP were aimed at disciplining risks of anti-competitive behavior among businesses amid the crisis and promoting measures for creating structurally competitive and dynamic markets in the post-pandemic world.

Balisacan said the PCC has intensified its monitoring efforts as it stands ready to review potentially anti-competitive mergers and acquisitions once the suspension of such authority is lifted in September 2022. The Commission has also allotted more resources to competition enforcement and

created specialized divisions that will separately handle cases involving cartels and abuses of dominance. Competition advocacy efforts have likewise been strengthened to ensure long-term health of markets. These include supporting and providing competition-related inputs to economic relief and foreign investment legislation.

"The pandemic has resulted in a recalibration of the PCC's strategies to ensure that the agency remains responsive to pressing needs while remaining faithful to its mandate under the competition law. With the health and economic situation rapidly evolving, the PCC has been active in ensuring that the recovery is supported by markets that are competitive and fair," Balisacan said.

The 16th EATOP was held in conjunction with the 13th East Asia Conference (EAC) on

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PCC CHOSEN TO CO-LEAD INTERNATIONAL BODY'S ADVOCACY WORKING GROUP

The Philippine Competition Commission (PCC) has been selected to co-chair the Advocacy Working Group of the International Competition Network (ICN), along with the Hong Kong Competition Commission and the Superintendency of Industry and Commerce of Colombia.

The ICN Advocacy Working Group is dedicated to fostering robust cultures of competition through the development of practical tools, resources, and platforms for experience-sharing among members and raising public awareness.

The ICN is a global body composed of national and multinational competition enforcement authorities that discuss and recommend sound competition principles and practices. An informal, virtual network, it has project-oriented working groups that address advocacy, agency effectiveness, cartels, mergers, and unilateral conduct. It advocates the best antitrust practices and benchmarks for the benefit of governments, businesses, and consumers. It celebrated its 20th year in 2021. The PCC has been an active member of the network since 2017.

–L. Diño ■

IN THE NEWS

PCC opens i-Station in Baguio City

The Philippine Competition Commission (PCC) has opened its first investigation station (i-Station) in Baguio City as part of efforts to expand its operations nationwide.

(Jordeene B. Lagare, Manila Times, 23 November 2021)

PCC exec says telco sector 'not a natural monopoly'

A Philippine Competition Commission (PCC) official agreed with business groups that the telecommunication sector should be excluded from services with foreign equity restriction as it is not a natural monopoly.

(Tyrone Jasper C. Piad, Business Mirror, 4 October 2021)

PH, SG competition authorities ink MoU for cross-border cooperation

The Philippine Competition Commission (PCC) and the Competition and Consumer Commission of Singapore (CCCS) inked a Memorandum of Understanding (MoU) today in a move to strengthen the bilateral ties between the competition authorities.

(Bernie Cahiles-Magkilat, Manila Bulletin, 29 November 2021)

PCC co-chairs advisory group of int'l antitrust network

The Philippine Competition Commission was chosen by the International Competition Network (ICN) to lead the ICN Advisory Working Group, along with the Hong Kong Competition Commission and Colombia's Superintendency of Industry and Commerce.

(Kris Crismundo, Philippine News Agency, 17 November 2021)

Tech seen requiring robust competition policy

Philippine competition policy needs to be geared towards confronting major digital companies and head off monopolies that could worsen the digital divide, an Asian Development Bank (ADB) think tank said.

(Jenina P. Ibañez, Business World, 12 November 2021)

DAP INCLUDES COMPETITION IMPACT ASSESSMENT IN ADVANCED RIA COURSE

The Development Academy of the Philippines (DAP) has integrated competition impact assessment (CIA) in its advanced regulatory impact assessment (RIA) course. This was accomplished in partnership with the Philippine Competition Commission (PCC).

The CIA evaluates the potential competitive effects of a proposed or existing policy. It enables a competition agency or a government body to identify

regulations that potentially restrict or harm competition, and thus to develop alternative regulations.

PCC staff served as resource speakers and facilitators of CIA sessions in the first run of such advanced RIA course last September 20-24. Participants included 53 representatives from the Department of Trade and Industry and local government units of Guimaras, Iligan City, Legazpi City, and Santa Barbara.

The RIA is part of the Modernizing Government Regulations (MGR) Program, a priority project under the Philippine Development Plan 2017-2022. The MGR Program was launched by the DAP, the Department of Budget and Management, and the National Economic and Development Authority in 2016 to improve regulatory quality in the country.
–P. Ballentos ■

MULTI-AGENCY MCA AGREEMENT SIMPLIFIES BANK MERGER APPROVALS

The Philippine Competition Commission (PCC) and banking and financial sector regulators signed a multi-agency agreement that aims to streamline the merger, consolidation, and acquisition (MCA) process among banks.

The Memorandum of Agreement on the Procedures for Applications for Mergers, Consolidations, and Acquisition of Banks was signed in a virtual ceremony held on November 5. Signatories were PCC Chairperson Arsenio M. Balisacan, Chairperson Joseph B. Encabo of the Cooperative Development Authority (CDA), Governor Benjamin E. Diokno of the Bangko Sentral ng Pilipinas

(BSP), President and Chief Executive Officer Roberto B. Tan of the Philippine Deposit Insurance Corporation (PDIC), and Chairperson Emilio B. Aquino of the Securities and Exchange Commission (SEC).

A first-of-its-kind among financial regulators, the MCA agreement aims to streamline the requirements and timelines in processing bank MCA proposals. The regulators agreed on harmonizing requirements for proposals, reducing the number of documentary requirements from 58 to only 30. The synchronized timelines and elimination of duplicate functions among the concerned agencies will also reduce

to a third the average total processing time (from 160 to 55 business days).

The implementing guidelines on the procedures for MCA applications will subsequently be issued via a joint circular by the agencies.
–P. Ballentos ■

PCC TRAINS MALAYSIAN, CAMBODIAN COUNTERPARTS ON MERGER CONTROL

The Philippine Competition Commission (PCC), through its Mergers and Acquisitions Office (MAO), held virtual dialogues on merger control with the Malaysian Competition Commission (MyCC) and Cambodia's Consumer Protection, Competition and Fraud Repression Directorate-General (CCF).

During a six-part online training for the MyCC held from September 16 to October 1, the PCC shared its experiences and insights on merger control regimes with Chief Executive Officer Iskandar Ismail and

the Amendments Team of MyCC. Chairperson Arsenio M. Balisacan, Commissioner Johannes Benjamin R. Bernabe, and MAO Director Krystal T. Uy constituted the PCC delegation.

The two-session dialogue with the CCF on October 25, on the other hand, focused on assessing CCF's operations and procedures on mergers. The Cambodian delegation was led by CCF Deputy Director General Pich Chan and Meng Songkheang, Director of Competition Department. Balisacan, Bernabe, and Uy represented the PCC.

In his messages for both activities, Balisacan highlighted the value of cross-border collaboration among competition authorities and how such encourages a culture of fairness, productivity and innovation.

The MyCC, established in 2010, is now reviewing its competition policies for amendments. Formed in March 2020, the CCF is the newest competition policy body in the ASEAN.
–L. Diño ■

ICN ANNUAL CONFERENCE UNDERSCORES IMPORTANCE OF INTERNATIONAL COOPERATION



Philippine Competition Commission (PCC) Chairperson Arsenio M. Balisacan served as a panelist on international enforcement cooperation at the 20th International Competition Network (ICN) Annual Conference held last October 14.

He emphasized how the PCC has benefited from enforcement cooperation mechanisms through ICN's programs, and the advantages the programs present for countries with emerging economies such as the Philippines.

He cited the Grab-Uber merger as a prime example of international enforcement cooperation, wherein the PCC referred to ICN's guide for mergers and had the case reviewed with other competition authorities in ASEAN, especially the Competition and Consumer Commission of Singapore (CCCS). The exercise paved the way for the PCC and CCCS to decide to formalize their collaboration through a memorandum of understanding.

Balisacan also stressed the value of international cooperation during the pandemic and the merits of aligning with established networks such as the ICN.

The panel likewise discussed the outputs of ICN's special project group on international cooperation, which saw improvements on the accessibility of the materials and tools dedicated to the subject, and plans to promote initiatives in this area.

Other antitrust experts in the panel included Elizabeth Kraus, Deputy Director for International Antitrust, US Federal Trade Commission; Michele Pacillo, International Affairs Officer, Italian Competition Authority; Teresa Moreira, Head of Competition and Consumer Policies Branch, United Nations Conference on Trade and Development; and Antonio Capobianco, Acting Head of the Competition Division, Organisation for Economic Cooperation and Development.

The ICN is an international group of competition law authorities with 140 member-agencies. The 20th annual conference, held virtually on October 13-15, was hosted by the Hungarian Competition Authority.
–L. Diño ■

Competition...continued from page 3

Like big industries, micro, small, and medium enterprises (MSMEs) need access to AI, which helps level the playing field. Monterola shared that the government is working on a national AI roadmap in partnership with the private sector. This roadmap aims to establish a national AI center, wherein MSMEs can access data centers and research clouds as part of capacity-building measures to enable them to compete in the market.

From the private sector perspective, Azada shared how bringing in new players, such as Converge, to the fixed broadband market can significantly bridge the gap between the demand surge for connectivity and inadequate supply in the country. He said that, in competing with other players, companies engage in innovative business practices to keep their product prices affordable yet still deliver better-quality goods and services to their stakeholders. With the aim of reducing the digital divide, these strategies also involve focusing on targeted markets to adequately provide services tailored to meet customer needs and expanding networks to help improve accessibility to such services. He acknowledged the government's efforts such as enabling an efficient regulatory environment for industries and encouraging businesses to invest in the market.

Balisacan noted that the pandemic has hastened the digital transition, adding that strategic reforms are necessary to attain the government's long-term goals. Although significant adjustments have been made in previous years, he pointed out some remaining gaps that need to be addressed to create a more competitive information and communication technology (ICT) regulatory environment that enables inclusive access. These include amendments to various laws on public services and spectrum management, reallocation of spectrum to mobile broadband services from analogue TV, operationalization of the National Competition

Policy (NCP) and competition impact assessments on the rules and issuances of the National Telecommunication Commission (NTC), streamlining of permit requirements for broadband deployment equipment, and restructuring spectrum user fees to encourage investment. He underscored the need to attract investments in the country to increase competitive pressure on incumbents. He likewise pointed out that resolving the digital divide requires more equitable access to infrastructure and services, especially in terms of connectivity, digital technology, and financial services, as ICT serves as an enabler and multiplier of opportunities.

Moreover, Balisacan highlighted that a robust enforcement of competition law and policy aids in enhancing consumer welfare and building the economy, post-pandemic. Through the three pillars of competition policy—advocacy, enforcement, and merger control—competition policy can play a significant role in the country's recovery.

The 59th PES Annual Meeting and Conference had six plenary panels and various breakout sessions. The PES annual conference is held every November as part of the organization's celebration of the Economic and Financial Literacy Week. ■

Balisacan...continued from page 4

Competition Law and Policy, in which PCC Commissioner Johannes Benjamin R. Bernabe served as a moderator of the panel discussion on competition law enforcement in digital markets. Held on September 28-29, these events were organized by the Competition and Consumer Commission of Singapore, Japan Fair Trade Commission (JFTC), and the Asian Development Bank Institute (ADBI).

In 2022, the PCC will be hosting the 17th EATOP and the 14th EAC. Conducted in cooperation with the ADBI and the JFTC, the annual gathering is one of the premier meetings by heads of competition authorities in the region for cooperation and coordination on cross-border advocacies and enforcement. —L. Gorosin ■

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