

PHILIPPINE COMPETITION BULLETIN

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**PHILIPPINE
COMPETITION
COMMISSION**

Ensuring businesses compete and consumers benefit

SC LEVELS PLAYING FIELD IN CONSTRUCTION SECTOR

by Leanne Croisette Gorosin

Type of License	Type of Contractor	No. of Projects	Total Cost of License Application
Regular License	 Filipino Contractor		 P14,730
Special License	 Foreign Contractor		 P176,760

Estimated Annual Cost of License Applications for Local and Foreign Contractors

Source: PCC Policy Note 2017-01: Anti-Competitive Effects of Regulatory Restrictions: The Case of the Construction Sector

The Philippine Competition Commission’s (PCC) efforts to promote competition in the construction market got a boost after the Supreme Court (SC) ruled in September that certain provisions in the Contractors’ License Law were unconstitutional.

Voting 14-1, the high court voided the nationality requirement in licensing rules set by the Philippine Contractors Accreditation Board (PCAB). The SC cited PCC’s *amicus curiae* brief, which argues that the nationality-based restrictions bar the entry of foreign contractors and violate the state’s constitutional policy against unfair competition.

Prior to the ruling, only local firms were given regular licenses for multiple projects per year, while foreign contractors were granted only a special license per project. Based on PCC’s study, a foreign contractor would have to spend 12 times more for license applications than a local firm in order to engage in the same level of activity.

The PCC welcomed the SC decision, noting that “with the regulatory barrier struck down, competition among contractors should fall squarely on merit and not based on undue advantage

based on nationality alone.” It underscored the importance of fostering competition “by enabling the entry of new players, local or foreign, and allowing them to compete on equal footing with incumbents.” The SC decision is expected “to encourage contractors to enter the market, produce and price their products competitively, provide consumers with more choices in carrying out infrastructure projects, and open the construction sector to new technologies and global best practices.”

The SC decision reads: “As opined by the PCC, it would encourage healthy competition among local and foreign contractors and the market will have alternative options depending on the needs of each construction project. This will also open opportunities for development and innovation that the foreign industry may introduce to our local contractors to make them more competitive in the world market.”

“This is a game-changing ruling that unlocks the benefits of competition through effective competition advocacy,” PCC Chairperson Arsenio M. Balisacan said. “The country stands to significantly benefit from this development, especially amid the government’s Build, Build, Build

program. With fair competition in the construction industry, Filipinos obtain more value from taxpayers’ money through lower priced and better-quality infrastructure projects,” he added.

The ruling stemmed from a dispute between PCAB and Manila Water Company Inc., where the PCC intervened as *amicus curiae* (friend of the court), given its mandate to issue advisory opinions on competition matters and advocate pro-competitive government policies.

The said *amicus curiae* brief became the subject of a University of the Philippines College of Law’s virtual forum on “Advancing Competition Policy through Advocacy and Litigation” last September. During the forum, the PCC discussed how competition law and use of economic analysis were applied within a legal framework as important inputs in the case.

Earlier, the PCC submitted a position paper to a Congressional inquiry on competition in the construction sector, as well as issued a policy note. These can be accessed at <https://www.phcc.gov.ph/policy-note-no-1-anti-competitive-effects-regulatory-restrictions-case-construction-sector>. ■

CHALLENGES TO COMPETITION ENFORCEMENT AMID THE PANDEMIC

by Ciara R. Daquis

The Philippine Competition Commission (PCC) weighed in on the economic ramifications of the COVID-19 pandemic at the 58th Philippine Economic Society (PES) Annual Meeting and Conference in November. Titled “Crisis and Recovery: How is the Pandemic Affecting Antitrust Enforcement and Market Competition?”, the session, which was moderated by former Socioeconomic Planning Secretary and Ateneo de Manila University economics professor Dr. Cielito Habito, provided a platform for the exchange of ideas among antitrust officials, business executives, policymakers, development partners, and the academe on how to address the potential risks to market competition of the ongoing pandemic.

The COVID-19 pandemic cut down consumer demand, business operations, and the government’s fiscal position. As the global pandemic persists, mobility and domestic activity had been restricted due to outbreaks and containment measures. Based on the Asian Development Bank’s (ADB) COVID-19 policy database, which tracks policy packages of member-countries and -economies, Asian governments’ crisis response had been wide-ranging. These policy packages included support to equity, credit creation, liquidity, direct long-term lending, and government support to income and revenue, which account for more than 50% of the region’s policy response. Despite the policy support, ADB’s estimates showed that regional GDP in 2020 was still projected to contract, a first in nearly six decades, and growth seen to resume only in 2021, but substantially below pre-pandemic expectations.

Dr. Habito noted the immense policy challenge of supporting economic recovery and alongside that, ensuring inclusive growth and protecting market

competition. While recent firm closures and increased appetite for mergers heighten the risk of anti-competitive behavior, various policy responses may also have anti-competitive effects. Concentration in market power may ensue, leading to more problems in the future that may widen economic losses.

In his keynote presentation, Dr. Yasuyuki Sawada, ADB Chief Economist and Director-General, said antitrust enforcement and fair competition policies are critical in achieving inclusive recovery from the ongoing crisis. “In responding to COVID-19, competition authorities should advise governments to select options that minimize competition restrictions and distortions that will slow economic recovery,” Sawada said.

PCC Chairperson Arsenio Balisacan agreed: “To aid in recovery, competition authorities must strike the balance between allowing for agreements that increase the efficiency of emergency responses while precluding cartelistic behavior and avoiding market distortions harmful to consumers both in the short and long term.” He also assured stakeholders that the PCC is vigilant and will continue to monitor the market for possible anti-competitive behaviors.

Competition concerns in digital markets

E-commerce accelerated during the year as most people stayed home due to mobility restrictions. Ambassador Benedicto Yujuico, President of the Philippine Chamber of Commerce and Industry (PCCI), said business operations had turned to technological innovations in order to survive. Companies adjusted operations by offering their products or services through contactless transactions via e-commerce platforms and

on-demand logistics delivery (e.g., GrabFood, Food Panda, Lalamove), contributing to efforts to minimize the spread of the virus. Undersecretary Rafaelita Aldaba of the Department of Trade and Industry (DTI) also noted that companies with greater innovation had emerged resilient from the economic slowdown, with some even recording gains.

While digital platform revenues could drive growth and recovery in Asia, Sawada cautioned that digital platform markets are highly concentrated, raising several competition concerns. He explained that several key characteristics inherent in digital platforms induce uncompetitive market outcomes, with only a few firms controlling a large share of the market. These characteristics included network effects, wherein the value of the platform is positively correlated with the number of users, extreme returns to scale, data-intensiveness, and switching costs. There were also competition concerns in dominant incumbents that vertically integrate, creating “walled garden” systems that make it difficult for new or small players to compete, as well as among those that expand their dominance to adjacent markets by leveraging their position in their home markets.

Higher market concentration could distort the playing field and worsen economic losses, harming micro, small, and medium enterprises (MSMEs). Dr. Ronald Mendoza, Dean of the Ateneo School of Government, raised concerns on how the disruption in the market could marginalize players and consumers. He noted that online logistics platforms suddenly gained bargaining power vis-à-vis many small businesses that were struggling. Mendoza underscored the need

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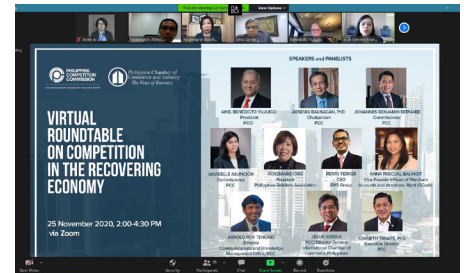
ADVOCACY ROUNDUP

PCC, PCCI HOLD DIALOGUE, FORGE PARTNERSHIP

The Philippine Competition Commission (PCC) held a virtual dialogue with the Philippine Chamber of Commerce and Industry (PCCI) in November to focus on the current and future state of the micro, small, and medium enterprise (MSME) market in the country, and to encourage regular exchanges between the government agency and industry leaders. During the dialogue, both parties formalized their partnership to promote competition law and policy.

In his welcome remarks, PCC Chairperson Arsenio M. Balisacan explained that competition policy, even during a pandemic,

remains a means of enhancing the ability of markets to deliver economic welfare by lowering prices, improving quality, increasing choices, and promoting innovation. He underscored that competition policy becomes all the more relevant in charting a way to recovery and building a resilient economy, and that the design of policy response to the crisis—relief, recovery, resiliency—has to be mindful of risks and pro-competitive solutions. In the transition to the “new normal”, PCC will be vigilant in market monitoring, enforcement, and evidence-based advocacy, he said. Commissioner Johannes Bernabe presented PCC’s stakeholder



response in aid of economic recovery.

Industry representatives shared their competition-related issues and concerns, and proposed the scope for future PCC advocacy initiatives and interventions. Speakers were Perry Ferrer,

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PCC COMMISSIONER SPEAKS AT VIRTUAL ICN ANNUAL CONFERENCE

The Philippine Competition Commission (PCC) participated in the International Competition Network’s (ICN) 2020 Annual Conference held in September. As with most international events this year, what was planned as an in-person conference in Los Angeles, USA, in May became a virtual meeting due to the ongoing COVID-19 pandemic.

PCC Commissioner Amabelle A. Asuncion served as panelist at the session for young and small agencies. Others in the panel were competition authority officials from Brazil, Australia,

Costa Rica, Colombia, and New Caledonia. The session looked at the progress made on the pilot implementation of the Bridging Project, an ICN special partnerships project launched in December 2019 to promote inclusiveness of younger competition agencies in the network.

“As a young agency, PCC looks to best practices for guidance in its approach to specific issues and challenges in the performance of its work. And of course, the ICN provides a wealth of resources that could help us. However,

this web of material can also be quite intimidating for a young agency like the PCC,” Asuncion said. Participation in the Bridging Project provides guidance to the PCC on how to maximize use of ICN resources. Asuncion noted that the “PCC is keen on adopting a gradual but steady progress from a participation-oriented involvement to a leadership role in ICN activities.”

Recordings of the Conference can be accessed via tinyurl.com/2020ICN.
- P. Ballentos ■

COMPETITION POLICY IN AGRICULTURE UNDERScoreD AT APAP FORUM

Competition policy in the agricultural sector plays an important role in ensuring improvement in the food markets during the pandemic. This key point was expounded by Philippine Competition Commission (PCC) Chairperson Arsenio M. Balisacan in his keynote speech at the 19th Asia Pacific Agricultural Policy (APAP) Virtual Forum held in November.

“Bigger players in the food markets may use the pandemic

as a veil to engage in anti-competitive practices. Policy responses to the crisis, whether through trade reforms or fiscal measures, should remain pro-competitive and avoid creating barriers to entry of potential competitors,” Balisacan said. He added that ensuring competition in agriculture can help the country achieve a more resilient food supply system and fairer market outcomes, as well as facilitate more innovation and inclusive growth.

The Forum’s theme was “Impact of COVID-19 Pandemic on Food Security, Agriculture and Rural Economy: Current Issues and Challenges.” Organized by the Korea FAO Association (KFA), the Forum discussed the challenges and emerging practices on sustainable food systems amid the COVID-19 pandemic in the Asia-Pacific Region. It was participated in by representatives from 12 countries. First launched

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COMPETITION ADVOCACY AT DILG FORUM, BOHOL CONSUMER CONGRESS

Despite quarantine restrictions, the Philippine Competition Commission (PCC) engaged its stakeholders, advocating competition awareness using online channels of communication.

Philippine Local Government Forum 2020. PCC Executive Director Kenneth V. Tanate joined the Forum's Leaders' Dialogue on Good Local Governance, where he emphasized the benefits of competition and levelling the playing field in developing the local economy.

"Competition enables competitiveness at the local level. It fosters economic dynamism, promotes entrepreneurial

spirit, enhances resource productivity, facilitates technology development and transfer, encourages private investments, and adds jobs and reduces poverty," Tanate said.

The Forum was organized by the Department of Interior and Local Government - Local Government Academy (DILG-LGA) in October. Other speakers in the leaders' dialogue were Assistant Director Vivian P. Suansing of the DILG-Bureau of Local Government Supervision, Governor Dakila Carlo E. Cua of Quirino Province, Director Susana G. Juangco of the Office of Civil Defense, and Maria Belinda E. de la Paz, Chief Operating Officer of Haribon Foundation.

1st Bohol Virtual Consumer Congress. Likewise, PCC Director Arnold Roy D. Tenorio was a speaker in this Congress, where he discussed the benefits of competition to consumers. Moreover, he explained how the Philippine Competition Act aims to enhance economic efficiency and promote free and fair competition in trade, industry, and all commercial economic activities.

The Congress, with the theme "Sustainable Consumer in the New Normal", was conducted in October by the Department of Trade and Industry-Bohol Provincial Office, in partnership with Consumer Watch Bohol, Inc. - P. Ballentos ■

COMPETITION ECONOMICS MINI-COURSES HELD

The Philippine Competition Commission (PCC) partnered with the OECD Korea Policy Centre and the Asian Development Bank (ADB) in the Workshop on Competition Economics for ASEAN Competition Authorities held in October. The two-part online workshop, which was designed for economists and practitioners in the ASEAN region, featured mini-courses on merger and abuse of dominance economics.

The first part was a mini-course on competition economics of merger control. It covered economic theories, insights on the relevant empirical methods, and recent high-profile merger cases. Resource speaker was Professor Massimo Motta, author of *Competition Policy: Theory and Practice*, the standard international reference on the economics of antitrust.

The second part was a mini-course on abuse of dominance economics. Professor Chiara Fumagalli from Bocconi University, Italy, the main resource speaker, discussed economic theories, business practices, and cases on abuse of dominance.

The workshop was conducted through the Knowledge Partnership Agreement between the ADB and the OECD. - C. Daquis and L. Gorosin ■

NEW INDUSTRY STUDIES OUT: SUGAR, MANUFACTURING

The PCC recently released the results of two commissioned studies on the Philippine sugar and manufacturing industries.

Written by Roehlano M. Briones, the sugar issues paper, and its accompanying policy note (released last September), identifies potential areas of competition concerns in the industry, particularly, the economies of scale in the sugarcane milling stage and pervasive government intervention. The paper also provides recommendations in view of PCC's function to advocate pro-competitive government policies. Competition

issues in the industry were highlighted when the PCC blocked a merger-to-monopoly deal between Universal Robina Corporation (URC) and Central Azucarera Don Pedro, Inc.

In December, the PCC published the issues paper on the manufacturing sector, which was authored by Erlinda Medalla, Francis Mark Quimba, and Maureen Ane Rosellon. The paper assesses the state of competition, identifies problem areas, and presents a prioritization matrix to aid the achievement of the objectives of competition law and policy. "PCC should add support to other agencies,

particularly DTI/BOI [Department of Trade and Industry/Board of Investments], in getting rid of unnecessary, harmful regulations. Even if its findings may only be recommendatory, its position on certain issues would bolster actions for regulatory reform, especially when it has established enough track record and credibility in recommending well thought out policies," the authors noted.

The PCC Issues Papers aim to examine the structure, conduct, and performance of industries to better inform and guide PCC's

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IN THE NEWS

PCC, HKCC ink partnership

The Philippine Competition Commission (PCC) and the Hong Kong Competition Commission (HKCC) are partnering for enhanced competition law enforcement.

(Louella Desiderio, The Philippine Star, 15 December 2020)

Competition commissioner touts red tape reduction as big help to small businesses

Micro, small and medium enterprises (MSMEs) will find it easier to do business if they receive efficient services from their regulators, the Philippine Competition Commission (PCC) said.

(Angelica Y. Yang, Business World, 26 November 2020)

PCC tightens watch on cartels after Congress clipped review powers

With review powers clipped by Congress, antitrust regulators are concentrating their resources on catching corporates abusing their dominance and promoting cartels to protect consumer interest amid the pandemic.

(Ian Nicolas Cigaral, The Philippine Star, 5 October 2020)

Pandemic may spur more M & A

The Philippine business environment may see a number of asset purchases and mergers and acquisitions as some bigger companies and private funds are gobbling up those hit by COVID-19, seizing opportunities in the “new normal.”

(Iris Gonzales, The Philippine Star, 1 December 2020)

PCC still monitors M&As below P50B

The country’s competition watchdog said it remains vigilant to transactions below the significantly lower mandatory threshold merger review of P50 billion even as it focuses on its enforcement function during this period of pandemic.

(Bernie Cahiles-Magkilat, Manila Bulletin, 30 November 2020)

Challenges to Competition... continued from page 3

to ensure adequate competition in this segment while building inclusion among as many firms. “Competition should be strong among these network-based platforms, so they end up offering better value for both consumers and firms,” he said.

Supporting digital transformation

With digital technology at the forefront of the “new normal”, addressing market barriers to support this rapid digital transformation became more pressing.

Yujuico noted that about 40% of the population had zero access to internet facilities, putting many households at a disadvantage at a crucial time. Among the policy reforms that the PCCI was pushing or supporting included the proposed amendment to Executive Order 467 of 1998 to remove the congressional franchise requirement in the access of international satellite systems for internet delivery, as well as open access in data transmission, which seeks to lower barriers to market entry and lower the cost of deploying broadband facilities in the country. “We believe these changes will also help the internet industry in the country, as well as the expected increase in industrial competition, that will hopefully lead to innovation and enable all Filipinos to be effectively supported and equally participate in the recovery process,” Yujuico said.

But digital transformation of markets involved more than the integration of digital technology. “Digital transformation is also about change in mindset that requires businesses to continually rethink, reimagine, innovate, experiment, and be comfortable with failure,” Aldaba said. Citing a 2019 DTI survey on technology utilization, she noted that while businesses, including MSMEs, were highly aware of these new technologies,

use remained very low. Barriers such as financing and poor digital infrastructure were to blame. To address low usage, DTI had been working on industry 4.0 initiatives, which included the development of roadmaps for automotive, electronics, aerospace, agribusiness, artificial intelligence, and human resource development, as well as fiscal and non-fiscal support for companies transitioning from analog to digital technologies.

Mendoza said the country should prepare for these technological shifts. “The country needs to prepare to help people and sectors adapt and compete. Otherwise, vast wealth creation will be accompanied by non-inclusive recovery from COVID-19 and growing inequality,” he said.

Recognizing the need to balance consumer protection, competition, innovation, and regulatory concerns that arise from these new technologies, Aldaba noted that the DTI and PCC must cooperate to enable an open and inclusive digital trading environment through structural reforms, effective standards, and regulations.

The 58th PES Annual Meeting and Conference was held online with the theme “Economics of Pandemics: From Response to Recovery to Resilience”. A recording of the PCC-sponsored session can be accessed at the PES Facebook page and website. ■

*PCC, PCCI Hold Dialogue...
continued from page 4*

Chief Executive Officer of EMS Group of Companies; Rosemarie Bosch-Ong, President of the Philippines Retailers Association (PRA); and Ana Pascual-Balingit, Mynt (GCash) Vice President and Head of Merchant Accounts and Acquirers.

After the discussion, the PCC and PCCI formalized their cooperation by executing a Memorandum of Understanding to ensure significant synergies toward enrichment and propagation of discourse, education, and advocacy on competition law and policy. - L. Gorosin ■

*Competition Policy in Agriculture...
continued from page 4*

in 2002, the annual APAP Forum brings together national leaders and experts for exchange of experiences and ideas on policy developments in agriculture, forestry and fisheries in the Asia-Pacific region. Three Filipinos are currently in the APAP Forum leadership, namely, Dr. Donato B. Antiporta, Vice Chair; Mr. Herman Ongkiko, Secretary General (and President of the Orient Integrated Development Consultants, Inc.), and Dr. Tirso B. Paris, Jr., Board Member. - P. Ballentos ■

*New Industry Studies Out...
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advocacy and enforcement initiatives. The PCC published five such papers in 2020. These can be downloaded, along with other information, education, and communication materials on competition, from the resources section at <https://phcc.gov.ph/>. - C. Daquis ■

RULES ISSUED ON MERGER REVIEWS UNDER BAYANIHAN 2

The Philippine Competition Commission (PCC) has issued rules to implement Section 4 (eee) of the Bayanihan to Recover As One Act (Bayanihan 2) relating to the review of mergers and acquisitions (M&As). Published and made effective in October, the rules detail the exemptions from compulsory notification and *motu proprio* review, computation of new thresholds, and the option for voluntary notification of M&A transactions while Section 4 (eee) of Bayanihan 2 is in effect.

To recall, Section 4 (eee) exempts from compulsory notification all M&As with transaction values below PHP 50 billion if entered into within two years from the effectivity of Bayanihan 2 on 15 September 2020. Additionally, the law suspends PCC's exercise of *motu proprio* review of these transactions for one year. Under the rules, M&As with transaction value of at least PHP 50 billion, or entered into before the effectivity of Bayanihan 2 and exceed the applicable thresholds when the definitive agreement was signed, are still subject to compulsory notification.

In determining the transaction value, the rules apply PHP 50 billion as the new size of person (SOP) and size of transaction (SOT) thresholds for compulsory notification. Prior to this, the thresholds were adjusted annually and set at PHP 2.4 billion for SOT and PHP 6 billion for SOP for 2020. As of October, the PCC was reviewing five transactions notified before Bayanihan 2's effectivity.

In terms of *motu proprio* review, M&As entered into before the effectivity of Bayanihan 2, which had not yet been subject to PCC's review or was pending review before the effectivity of Bayanihan 2, are not covered by Bayanihan 2's exemption. M&As that are likely to substantially lessen competition may be reviewed *motu proprio* one year after Bayanihan 2's effectivity.

Parties to M&As below the PHP 50-billion threshold may choose to voluntarily notify the PCC regarding their transaction. In its discretion, the PCC may give due course to the voluntary notification, with review periods of 45 days for Phase 1 and 90 days for Phase 2.

"The PCC recognizes the need to strike a balance in implementing the policy objectives of promoting business continuity under the Bayanihan 2 and looking after market efficiency and consumer welfare under the Philippine Competition Act," said PCC Chairperson Arsenio M. Balisacan.

"With fewer merger notifications expected, the PCC will intensify action in other areas of enforcing the competition law especially against anti-competitive agreements and abusive practices that harm consumers or unscrupulously take advantage of the crisis," he added.

For more information, the Commission Resolution can be accessed at <https://www.phcc.gov.ph/crn22-2020-merger-rules-sec4eee-ra11494-baro/>. ■

M&A DASHBOARD

Notifications received from
January to December 2020:

23

Notifications received since
February 2016:

248



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