

PHILIPPINE COMPETITION BULLETIN

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**PHILIPPINE
COMPETITION
COMMISSION**

Ensuring businesses compete and consumers benefit

PCC CLOSES FIRST ABUSE OF DOMINANCE CASE

by Ryan Israel T. Advincula

In a landmark development on fair competition in the Philippines, the Philippine Competition Commission (PCC) slapped Urban Deca Homes Manila Condominium Corporation (Urban Deca) and 8990 Holdings, Inc. with a fine of PhP 27.11 million for imposing a sole internet service provider (ISP) on their residents and tenants, effectively preventing them from availing of alternative fixed-line ISPs.

On October 2, the PCC made public the penalty, alongside the order for Urban Deca and 8990 Holdings to immediately cease their anti-competitive conduct across their nine projects in the country. The fine should be paid within 30 days.

“This is a landmark case for the PCC that successfully resolved to stop an anti-competitive practice, restore competition in the affected market, and set an example to deter other businesses from employing similar exclusive dealings,” said PCC Chairman Arsenio M. Balisacan.

Urban Deca Homes Manila, a low-cost condominium project, is part of the property portfolio of 8990 Holdings and developed by Euson Realty and Development Corp., and Tondo Holdings Corp.

Earlier this year, PCC’s Enforcement Office filed before the Commission a Statement of Objections (SO), arguing that the companies’ exclusive partnership with Itech Rar Solutions, Inc. prevented the entry and access of other ISPs in Urban Deca Homes Manila. The PCC also found that Urban Deca Homes Manila’s property manager blocked other ISPs from installing fixed-line internet in the condo units and marketing their services.

The SO is a document containing the charges to an entity under investigation for any violation of the Philippine Competition Act (PCA) and its Implementing Rules and Regulations. It stands as the official complaint of the Enforcement Office, which serves as complainant for administrative cases filed before the PCC.

“Let this be a warning to businesses that abuse their market power by elbowing out competitors for their own gain. This case shows that the PCC is serious about addressing anti-competitive practices that have long been considered par for the course in different industries. Unscrupulous businessmen can only expect the PCC to pursue more cases of a similar nature in the future,” Balisacan said.

Joint motion for settlement

A few weeks after the case was filed, both Urban Deca Homes Manila and 8990 Holdings contacted the Enforcement Office to discuss an acceptable settlement. After a clarificatory conference, the respondents and the Enforcement Office filed before the Commission an amended motion for settlement.

Under Section 4.43 of the PCC Rules of Procedure, respondents in a pending case may contact the Enforcement Office to discuss settlement terms and conditions acceptable to the office. Should it find the proposed settlement filed by respondents to be proper and reasonable, the Enforcement Office and the respondents shall file a joint motion with the Commission, which shall include the terms of the settlement and the consequences for noncompliance therewith.

The amended motion for settlement states that Urban

Deca Homes Manila and 8990 Holdings shall admit that they entered into a contractual arrangement resulting in a situation wherein only Fiber to Deca Homes provided internet service in their nine condominium projects, which contravened Section 15(i) of the PCA.

The nine projects are: UDH Manila Tondo, Manila; UDH Tipolo in Mandaue City, Cebu; UDH Tisa 1 and 2 in Tisa, Labangon, Cebu City; UDH Campville in Brgy. Cupang, Muntinlupa City; UDH Hampton in Imus, Cavite; UDH Hernan Cortes in Brgy. Kasambagan, Mandaue City, Cebu; Deca Homes Pavia in Brgy. Pandac & Jibao- an, Pavia, Iloilo City; UDH Marilao in Marilao, Bulacan; and UDH EDSA in Brgy. Highway Hills, Mandaluyong City.

The motion also directs the respondents to invite other ISPs and telecommunication companies to enter the market in the nine condominium projects, to offer or market their services, and to use existing internet service facilities or to install their own under fair, reasonable, and nondiscriminatory terms. Residents who fell victim to the aforementioned anti-competitive practice shall be given the chance to opt out of their current subscription contracts at no cost and without penalty in any form.

“Competition—or lack of it—can be felt at home, at work, and in one’s daily activities. The residents may have chosen Urban Deca as their address, but the condo developer should not limit their choices for other services,” said Balisacan.

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PCC, DOE AND ERC INK PARTNERSHIP FOR POWER SECTOR INVESTIGATIONS

by Leanne Croisette N. Gorosin



Officials of the Philippine Competition Commission and Energy Regulatory Commission hold the newly signed memorandum of agreement between the two commissions: (L-R) ERC Commissioners Alexis Lumbatan, Catherine Maceda, and Josefina Asirit, ERC Chair Agnes Devanadera, PCC Chair Arsenio Balisacan, and PCC Commissioners Johannes Bernabe, Amabelle Asuncion, and Macario de Claro, Jr.

The Philippine Competition Commission (PCC) signed separate memorandums of agreement (MOA) with the Department of Energy (DOE) in June and the Energy Regulatory Commission (ERC) in August in a bid to promote market competition and to coordinate investigations in the power sector.

“Our MOAs with the DOE and the ERC exhibit how the PCC, the sector regulators, and the energy department play complementary roles in promoting competition in the sector while fulfilling their respective mandates,” said PCC Chairman Arsenio M. Balisacan. “Our partnership allows for the sharing of information and coordination of enforcement actions for a more robust competition landscape in the energy sector.”

Aside from information sharing, the MOAs set the stage for the PCC, DOE and ERC to establish collaborative mechanisms on investigation support, technical audits, joint task forces, and continued capacity building and consultations. The agreements also pave the way for the creation of a technical working group to coordinate

investigation efforts on alleged collusions or abuses of dominance in the power sector.

The MOA with DOE, signed last June 11, assigns the Department with the responsibility of implementing policies that ensure reliability, quality, and security of electric power supply. The PCC, on the other hand, shall prohibit anti-competitive agreements and conduct, and impose fines and penalties on violators.

The PCC warns power generation companies against engaging in anti-competitive or collusive behavior, which is punishable by fines of up to PhP 250 million and imprisonment of responsible officers of up to seven years.

“Ensuring consumers are provided adequate supply of electricity on fair terms and prices, while allowing market players of all sizes to operate on a level playing field, is at the center of our partnership,” Balisacan said.

On the other hand, PCC’s partnership with ERC, signed last August 5, allows for the conduct of joint fact-finding inquiries pertaining

to competition matters in the electric power industry. It also facilitates consultations with institutions or firms to obtain relevant information, such as the Philippine Electricity Market Corporation (PEMC), National Grid Corporation of the Philippines (NGCP), and generation companies.

“The PCC and ERC recognize the merit of adopting a coordinated approach toward the shared goal of promoting competition in the power industry. We are confident our combined expertise and investigative capacities will lead to a stronger push for competition enforcement in this critical sector,” Balisacan said.

A tripartite task force among PCC, DOE and ERC was formed ahead of the MOAs to coordinate probes on alleged collusions or abuses of dominance in the power industry through information exchange and fact-finding, given the policy mandate of the DOE, the regulatory functions of the ERC, and the market competition lens of the PCC.

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ADVOCACY ROUNDUP

DIGITAL ECONOMY TAKES CENTER STAGE AT 2019 IGE ON COMPETITION LAW AND POLICY

Commissioner Johannes R. Bernabe represented the Philippine Competition Commission (PCC) at the latest iteration of the Intergovernmental Group of Experts (IGE) on Competition Law and Policy roundtable conducted last July 10-12.

During the panel session on competition issues in the digital economy, Bernabe shared his insights on how competition law can be applied to the evolving digital economy.

He raised concerns on the adequacy of existing competition law and tools in addressing competition issues related to abuse of market power and merger control arising from dominant online platforms. He said erring tech companies, no matter how big, would likely be compelled to abandon their anti-competitive conduct due to pressure from multiple competition jurisdictions. "Cooperation and consistency

in the implementation of competition disciplines are key if the anti-competitive cross-border practices of tech firms are to be effectively sanctioned," Bernabe noted.

The annual IGE meeting was held at the Palais des Nations in Geneva, Switzerland. It marked the group's 18th session overall since its inception in 1997.

– R. Advincola ■

PCC TAPS UNCTAD IN BID TO STRENGTHEN INTERNATIONAL COOPERATION

The Philippine Competition Commission (PCC) has made strides in pursuing cooperation with other antitrust authorities through the United Nations Conference on Trade and Development (UNCTAD).

Last July 31, Dr. Pierre Horna, Legal Affairs Officer of UNCTAD's International Trade Division, Competition and Consumer Policies branch, visited the PCC and discussed with the Commission's top officials potential avenues for cooperation among member-countries' competition agencies. The discussion focused on bringing young and more developed jurisdictions together for collaboration, and opening doors for dialogue among intergovernmental experts in competition law.

Horna shared the Guiding Policies and Procedures under Section F of the United Nations (UN) Set on Competition. "These guiding policies and procedures are meant to promote mutual trust and understanding among competition authorities' legal frameworks, facilitate contact with other authorities, and



Dr. Pierre Horna (4th from left), UNCTAD International Trade Division Legal Affairs Officer, is joined by PCC Chairman Arsenio Balisacan (middle) and (from left) Commissioners Macario de Claro, Jr., Amabelle Asuncion, and Johannes Bernabe.

clarify what is possible in the existing scheme," he said.

Under Section F of the UN Set, "Collaboration at the international level should aim at eliminating or effectively dealing with restrictive business practices." Since the UN Set was adopted, work by the Intergovernmental Group of Experts (IGE) on Competition Law and Policy and other international bodies, including the International Competition Network (ICN) and the Competition Committee

of the Organization for Economic Cooperation and Development (OECD), has nurtured understanding of the importance of international cooperation.

With this international cooperation in place, the PCC hopes to work with its counterparts in different parts of the world in the campaign against cross-border cartels and on other anti-competitive cases within the legal and regulatory frameworks of various jurisdictions. – L. Gorosin ■

US DOJ DIGITAL MARKET EXPERT SHARES INSIGHTS ON TECHNOLOGY MARKET CASES

A two-day seminar titled “Digital Platforms and Competition Policy” was conducted on August 14-15 by the Philippine Competition Commission (PCC), in partnership with the United States Department of Justice (US DOJ). Ihan Kim, Trial Attorney, Technology and Financial Services Section, Antitrust Division of the US DOJ, served as resource speaker.

The first day of the seminar discussed a digital market merger case, *United States v. Bazaarvoice*. Bazaarvoice, a dominant commercial supplier of product ratings and review platforms in the US, acquired its most significant rival, PowerReviews, in hopes of benefitting from diminished

price competition. The US DOJ filed a civil antitrust lawsuit in January 2013, assailing that the USD168.2 million transaction substantially lessened competition.

The second day of the workshop tackled a non-merger digital economy case, *Ohio v. American Express (Amex)*. Card companies prevent merchants from expressing any preference for cards through anti-steering rules. As such, merchants cannot encourage their customers to use a card that charges lower fees. These rules kept merchants from pitting credit card companies against each other for their transactions, so card companies do not have to compete.

In 2010, DOJ-Antitrust and 17 states sued Visa, MasterCard, and Amex for engaging in anti-competitive conduct. Visa and MasterCard settled and agreed to abandon their rules, leaving Amex as the only defendant. In 2018, the US Supreme Court ruled in favor of Amex, noting that a special kind of two-sided market should have been used, not the market used by DOJ-Antitrust and the states (i.e., “General Purposes Card Network Services,” also “General Purpose Card Network Services for Travel and Entertainment Businesses”).

The seminar was organized by the PCC’s Technical Support Service Unit and Knowledge Management Division.
– P. Ballentos ■

INTERFACE BETWEEN COMPETITION LAW, INTELLECTUAL PROPERTY TACKLED IN SEMINAR IN UP BGC

A seminar titled “The Interface between Intellectual Property (IP) and Competition Law” was held last August 16 in UP Bonifacio Global City (BGC) by the Philippine Competition Commission (PCC), in cooperation with the University of the Philippines (UP) Law Center. It featured Prof. Thomas Cheng of the University of Hong Kong. Prof. Cheng presented his research on patent and antitrust interface.

He explained that competition law strives for lower price

and higher quality, while the patent system is an award for a period of exclusivity to recoup the innovation investment. He added that the “patent system preempts competition by preventing rivals from replicating and exploiting the patented technology.” He noted that while the intentions of competition (i.e., striving for lower price and higher quality) and patent (i.e., preventing rivals from replicating and exploiting the patented technology) seem contradictory, they have

a common policy objective—to promote innovation. “Competition law is a tool to recalibrate the innovation incentives generated by patent system,” Cheng said.

The seminar was attended by delegates from the IP Office, IP Association of the Philippines, UP, Philippine Institute for Development Studies, and Philippine law firms.
– P. Ballentos ■

LINK BETWEEN COMPETITION, COMPETITIVENESS DISCUSSED IN CONFERENCE

PCC Chairman Arsenio M. Balisacan served as plenary session speaker during the Microeconomics of Competitiveness (MOC) international conference held last June 10 in Quezon City. Themed “Economics of Competitiveness in the Era of the Fourth Industrial Revolution,” the conference was organized by the Ateneo Center for Economic Research and Development (ACERD).

Balisacan presented his insights on the links, differences, and effects between competitiveness and competition. He emphasized how competition became a factor of competitiveness in the country’s economic growth in the last decade. He said that when done right, competition and competitiveness are key to poverty reduction and shared prosperity.

Joining Balisacan as conference speakers were Dr. Yasuyuki Sawada, Chief Economist of the Asian Development Bank, and Dr. Kenneth Charman, behavioral economics professor from the United Kingdom, as well as other competitiveness researchers from the Association of Southeast Asian Nations (ASEAN) circuit.
– P. Ballentos ■

IN THE NEWS

Group greets competition review for energy sector

“Murang Kuryente responded positively to the agreement between the Philippine Competition Commission (PCC) and the Energy Regulatory Commission (ERC) to cooperatively review anti-competitive practices in the energy sector but lamented the exclusion of a consumer feedback mechanism in the process.” (*Mindanao Gold Star Daily, August 9, 2019*)

Need for speed: expedited M&A approvals

“The expedited review of non-problematic mergers will strengthen the cooperation between the private sector and the government towards the establishment of a holistic regulation of M&As. To this end, monopolies that restrain trade and tilt the scales against consumers are better policed without the usual long delays associated with government review.” (*Dean Nilo Divino, The Daily Tribune, August 16, 2019*)

Competition body backs Iloilo public markets’ PPP

“The Philippine Competition Commission (PCC) has backed Iloilo city’s effort to develop public markets through a public-private partnership (PPP) model.” (*Gail Momblan, Philippine News Agency, August 28, 2019*)

PCC streamlines review for joint ventures on solicited PPP projects

“The Philippine Competition Commission (PCC) is streamlining the review process for joint ventures formed for solicited private-public partnership (PPP) projects by allowing exemptions from compulsory notification, thus helping accelerate the implementation of key infrastructure projects.” (*Louella Desiderio, Philippine Star, August 2, 2019*)

PCC closes... continued from page 2

Social media complaints

In 2017, the PCC first became aware of the ISP arrangement by Urban Deca Homes and 8990 Holdings in their properties when a tenant sent a private message to the PCC’s official social media account. While PCC was assessing the first complaint, similar complaints poured in throughout 2018. ■

PCC, DOE and ERC... continued from page 3

Last April, the PCC said it will investigate allegations of possible collusion or abuse of dominance by certain power generators following simultaneous shutdowns that may have caused an artificial supply shortage and consequently an increase in electricity prices.

With the above MOAs, the PCC now counts 14 partnership agreements in its bid to strengthen collaboration with various agencies to foster a culture of competition. Previously, partnerships had been entered with the Insurance Commission, Department of Justice, Office of the Ombudsman, Public-Private Partnership Center, Integrated Bar of the Philippines, Department of Trade and Industry, University of the Philippines College of Law, Bangko Sentral ng Pilipinas, Philippine Statistics Authority, Commission on Audit, Securities and Exchange Commission, and the Office of the Solicitor General. ■



The Philippine Competition Commission and Department of Energy sign a partnership agreement on June 11, 2019: (seated L-R) PCC Commissioner Johannes Bernabe and Chairman Arsenio Balisacan, DOE Secretary Alfonso Cusi and Undersecretary Jesus Cristino Posadas; (standing L-R) PCC Commissioners Macario de Claro, Jr. and Amabelle Asuncion, and DOE Undersecretary Felix William Fuentebella and Assistant Secretary Caron Aicitel Lascano.

ADVISORY

PGC EXPEDITES MERGER REVIEW PROCESS

In line with Philippine government efforts to improve ease of doing business in the country, the Philippine Competition Commission (PCC) recently launched an expedited review process for mergers and acquisitions (M&As).

Under the rules that took effect on July 2, 2019, expedited review for qualified M&A transactions will take 15 working days only, down from the 30 calendar-day turnaround time for regular Phase 1 review prescribed by the Philippine Competition Act.

Based on PCC's experience in merger review for the past years, certain transactions are less likely to substantially prevent, restrict or lessen competition in their relevant markets. Expedited review will be available to four (4) types of transactions. These transactions involve (1) parties with no actual or potential overlapping business relationships; (2) foreign entities whose subsidiaries in the Philippines only act as manufacturers or assemblers of products, at least 95% of which are exported; (3) parties with a global scale but with negligible or limited presence in the Philippines; and (4) joint ventures formed purely for the construction and development of residential and/or commercial real estate projects. Merging parties may apply for the expedited review within 30 days after signing the definitive agreement on the deal, but prior to any acts of consummation.

In 2018, Phase 1 review of M&A transactions took an average of 23 calendar days. The expedited process for non-problematic mergers will allow PCC to more efficiently use its resources in the effective implementation of a holistic merger control regime.

The full text of the PCC Rules on Expedited Merger Review can be accessed at <https://phcc.gov.ph/expedited-merger-review-rules/>.

EXEMPTION FROM COMPULSORY NOTIFICATION OF SOLICITED PPP PROJECTS

Joint ventures of private entities formed for a solicited public-private partnership (PPP) project may be exempted from compulsory notification. Under PCC Memorandum Circular No. 19-001, agencies and instrumentalities of the government may seek exemption from compulsory notification in behalf of their solicited project's prospective bidders by filing an application for a Certification of Project Exemption from the PCC, subject to PCC's review of the solicited project.

For more information on the process, PCC Memorandum Circular No. 19-001 can be accessed at <https://phcc.gov.ph/pcc-mc19-001-exemption-solicited-ppp-projects/>.

M&A

DASHBOARD

Notifications received from
July to September 2019:

9

Notifications received since
February 2016:

221

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www.phcc.gov.ph



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