



2018



**FORUM ON COMPETITION
IN DEVELOPING COUNTRIES**

Issue 8 | Special Edition

PHILIPPINE COMPETITION BULLETIN



ADB Chief Economist Yasuyuki Sawada opens the first session with a discussion on competition policy and development.



Japan Fair Trade Commission's former commissioner Hiroyuki Odagiri joins the panel on conglomerates and competition policy



Brent Snyder, Chief Executive Officer of the Competition Commission of Hong Kong, at the session on SMEs



(from left) PCC Chairman Frederic J. National Scientist R. Alberto Fenix Jr. at the session on SMEs

EDITORS' NOTE

In the last two decades, a significant number of jurisdictions have enacted competition laws and established competition authorities. However, with the rapid technological development and the changing global market landscape, new or young developing authorities, particularly those in developing countries, increasingly face challenges in competition enforcement and advocacy. While it is often easy and tempting to answer particular policy questions by importing successful policy recommendations, such recommendations may not prove to be effective without having considered the nuances and peculiarities of a developing country context.

In view of these challenges in competition law and policy implementation, the Philippine Competition Commission (PCC), in collaboration with its development partners, held the 2018 Manila Forum on Competition in Developing Countries last February 1-2 in Makati City. Attended by competition experts, authorities from various jurisdictions, government officials, and representatives from the business sector and the academe, among others, the forum provided a platform for global discourse on the theory and practice of competition. Prior to the start of the forum, simultaneous pre-forum seminars on competition issues in selected sectors were also held in cooperation with PCC's development partners and the academe.

For this special issue, the Philippine Competition Bulletin features key takeaways from the two-day forum, as well as from pre-forum activities.

The 2018 Manila Forum is brought to you by the Philippine Competition Commission, in partnership with:



OECD Competition and Consumer Policy Director Professor Alan Auld



Joshua Wright, Global Director of the OECD, on agency effectiveness



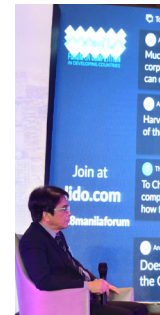
Professor Allan Fels and Han Li discuss the impact of competition



PCC Commissioner Stella Quimbo (leftmost) moderates the session on SMEs and competition policy. On the panel are Australian Competition and Consumer Commission Deputy Chair Michael Schaper, Presidential Adviser for Entrepreneurship and Go Negosyo founder Joey Concepcion III, Competition Commission of Hong Kong Chief Executive Officer Brent Snyder, and Philippine Institute for Development Studies research fellow Erlinda Medalla



Competition experts, authorities from various jurisdictions, government officials, and representatives from the business sector and the academe attended the two-day forum.



(from left) Philippine Competition Commission Chairman Frederic J. Fenix Jr. speaking at a session on competition

THE CHALLENGE OF COMPETITION POLICY I

by: Ciara R. Daquis



Opening session of the 2018 Manila Forum discussed competition policy and special considerations in developing countries. On the panel were (from left) ADB chief economist Yasuyuki Sawada, World Bank competition specialist Graciella Murciago, University of Hawaii Professor James Roumasset, Australian Competition and Consumer Commission deputy chairperson Michael Schaper, and Ayala Corporation Chairman Jaime Augusto Zobel de Ayala.

There is no one-size-fits-all configuration in competition policy implementation. As such, while there is much to be learned from the experiences of established competition regimes, young competition authorities, particularly in developing countries, have to carry out policy in a nuanced manner to ensure the success of competition laws in their respective jurisdictions. This is the main point established on the first session of the 2018 Manila Forum on Competition in Developing Countries (FCDC), which tackled the role of competition policy in developing countries and special considerations in its implementation.

MIDDLE-INCOME CHALLENGE

The first panel session led by Dr. Yasuyuki Sawada, chief economist of the Asian Development Bank (ADB), established the framework for the two-day Forum by tackling the relation of competition and overall development growth. Citing ADB's thematic chapter on the middle-income challenge in the Asian Development Outlook 2017, Dr. Sawada posited that a competitive environment is key in facilitating productivity growth and addressing the challenge for countries to move out of the middle-income trap (see Figure 1). "Effective competition is a driver of productivity growth, and competition policy therefore should be an essential part of any proper growth competition strategy, because productivity improvement is key to pushing up income and growth," he explained. From a private sector perspective, Jaime Augusto Zobel of Ayala Corporation, noted, however, that investment-

led growth is also as important as productivity-centered growth to reach high income levels. "Encouraging investment-led growth should be balanced in some way with consumer welfare and the need to create a competition policy," he commented.

Domestic markets, however, are still not competitive in many of the developing countries, despite this posited nexus between competition and development. One of the key concerns, as competition expert Graciella Murciago of World Bank (WB) pointed out, is the relationship between competition and regulation. "One of the key drivers for the lack of competition is precisely state intervention, and in the context of developing economies, it's not a question of whether the state should intervene in the economy or not, as a buyer or supplier of good or as a regulator, but it's a question of the fact that the state is very pervasive and appears across many markets and sectors," she noted.

Market attributes of developing countries affect the effectiveness of competition policy. However, Michael Schaper, Deputy Chair of the Australian Competition and Consumer Commission (ACCC), emphasized the importance of recognizing first that competition policy and law, like

broader economic policy, is rooted in an "ecosystem". Thus, it is not just a country's economic structure that is the concern in the implementation of competition policy but also other structures in the "ecosystem". "Successful competition policy framework context involves a whole set of plays," he explained. As such, establishing a successful regime would mean developing a whole ecosystem: from having appropriate laws that are enforceable and understandable, a judiciary that understands the law, industry associations that educate their members, to a well-educated consumer base. He noted that a very different framework was in place when established competition regimes were formed, and as such, the way that established agencies can help young agencies is by providing information assistance (e.g., training and staff development, advocacy in the business sector) rather than prescribing what the policy should be.

POLITICAL ECONOMY

The institutional realities that developing countries face require different approaches to competition policy. Frederic Jenny, chair of the competition committee of the Organisation for Economic Co-operation and Development (OECD), tackled this concern on institutional design in countries that recently adopted competition laws. Noting that there is no single institutional design that should be followed, Jenny advised competition agencies to keep in mind the tradeoffs that come with every dimension of institutional design.

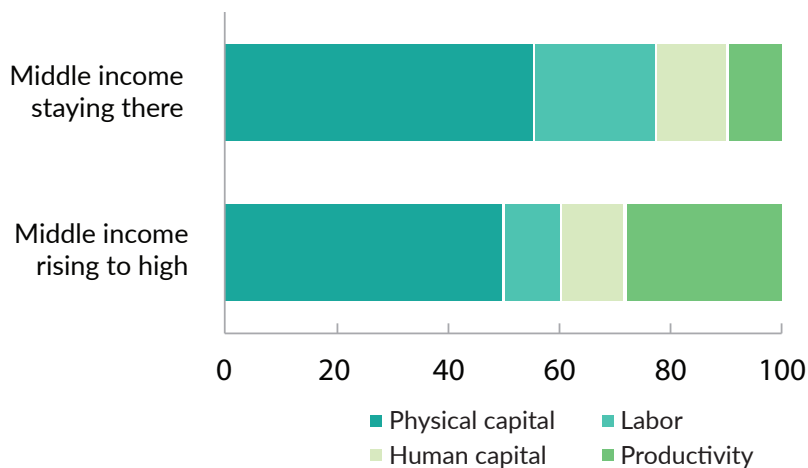
Box 1. Opportunities and challenges in the merger of competition law enforcement and sector regulation

Pros/Opportunities	Cons/Challenges
<p>Policy/Outcomes</p> <ul style="list-style-type: none"> • Reduced risk of regulatory capture • More flexible range / portfolio of tools to resolve market problems • Better able to detect/manage policy or enforcement conflicts (e.g., imposing a remedy that conflicts with regulatory requirements or vice versa) • Pooling of sectoral responsibilities may make agency more adaptable to changing markets (e.g., where convergence occurring) 	<p>Policy/Outcomes</p> <ul style="list-style-type: none"> • Different sometimes conflicting objectives • Different philosophy / approach to market intervention (ex ante vs ex post) • Prioritisation may be more complex • Loss of "focus" because some sector regulation activities less connected to competition (e.g., technical regulation) • May operate under different governance and decision-making structures due to different role (rule making vs. investigative)

Source of data: Frederic Jenny, 2018 FCDC presentation on competition policy and the quality of institutions

N DEVELOPING COUNTRIES NOW

Figure 1. Growth contributors in countries stuck in the middle income versus those that transitioned to higher income levels for period 1960-2014.



Sources of data: Dr. Yasuyuki Sawada, 2018 FCDC presentation on competition, productivity, and development; and Asian Development Outlook 2017

These tradeoffs are particularly significant in the setting of competition agency goals. In OECD countries, majority of competition laws promote several goals, including the protection of consumer benefits. In developing countries, competition law must be relevant to the domestic socioeconomic conditions or challenges, according to Jenny. Nevertheless, there is a strong argument against the pursuit of too many goals. “When competition law has several goals, some of them economic and others socio-political, the balancing between those goals becomes increasingly difficult for competition authorities to achieve,” Jenny said. National scientist Raul Fabella echoed this concern, adding that “non-economic goals are very difficult to assess”. Fabella also raised the difficulty of enforcing accountability when there are too many goals.

In the case of the PCC, it is best that the agency focus on the goal of consumer surplus, Fabella said. Despite this, PCC Commissioner Johannes Bernabe said the Philippine Competition Act (PCA) makes it clear that goals such as economic development and equitable distribution of opportunities are to be taken into consideration. Bernabe added that as a young agency establishing its credibility, the PCC is focusing on consumer welfare.

There are also tradeoffs when determining the functions of competition agencies. In dealing with other regulatory agencies, for instance, one of the concerns is the oversight function of competition agencies (see Box 1), for which there

are three scenarios. In the Australian model, the competition authority also regulates sectors such as electricity and telecom. In the United Kingdom model, the competition authority and sector regulators have concurrent powers on competition. The dominant model is the third one, wherein there is division of labor (i.e., regulators deal with the regulatory aspect and the competition authority deals with competition matters). The tradeoffs, according to Jenny, are in terms of risks, such as regulatory capture. “When the competition authority is also a sectoral regulator, there is less risk that the sectoral regulator, which is the competition authority, is going to be captured by an interest,” he said.

Mr. Alberto Fenix, Jr. of the Philippine Chamber of Commerce and Industry also delved into the issue of regulatory capture. Noting the reality of regulatory capture particularly in developing countries, Fenix inquired about the PCC’s capability to step in and engage with sector regulators in areas where consumer welfare levels are problematic, to which Commissioner Bernabe affirmed the agency’s mandate to intervene, in the name of consumer welfare, in a scenario of regulatory capture. “Based on our statute and predicated on the Constitution, the state should prohibit or regulate monopolies where the public interest so requires,” he said.

AGENCY EFFECTIVENESS

Discussions from the previous session on institutional design underscored that a good institution, while an absolute necessity, is not sufficient to

guarantee success of a competition law. It is also important to understand the constraints that competition authorities in developing countries face as they attempt to effectively fulfill their mandate. PCC Commissioner Amabelle Asuncion, who moderated the session on agency effectiveness, posited the importance of the political, social, and economic environment in which competition agencies operate for it to be able to effectively promote its objectives. “These nuances in the environment imply that the design of the competition authority’s regimes should differ as well,” she noted. As there is no one-size-fits-all approach to competition, agencies operate by a learning-by-doing process.

Joshua Wright, former commissioner of the US Federal Trade Commission (US FTC) and current executive director of the Global Antitrust Institute, echoed such concerns in the approach to competition in developing countries. “It doesn’t make sense to simply take the competition laws and structure of a developed country and export them in whole to any old regime. Regimes in developed and developing countries face unique challenges and unique contexts,” he pointed out.

Apart from the local context, Wright also underscored the importance of first defining effectiveness and its measures. Defining effectiveness has to start with a clear mission statement, which in reality would differ from jurisdiction to jurisdiction in consideration of the multiple goals that competition laws may have. “What really matters in the long term for agency effectiveness is setting in place, through design, through leadership, through the culture inside the agency, a structure that facilitates effectiveness, a structure that facilitates learning over time,” he said. For instance, a measure of effectiveness could be drawn up by doing retrospectives on enforcement actions. Wright explained that, as a measure of effectiveness, learning which cases turned out to be good cases and taking note of the reasons why can improve decision-making over time.

BUDGETARY CONSTRAINTS

Another important consideration in measuring agency effectiveness is the

Continued on Page 13

MARKET COMPETITION FOR SME DEVELOPMENT?

by: Ferdinand L. Paguia

While large businesses, as in the case of South Korea, may contribute more significantly to a country's economic output, small and medium enterprises (SMEs) more directly impact consumer welfare (e.g., per capita income). In the Philippines, SMEs account for 62 percent of private sector employment compared to 38 percent by large firms. It should be noted that 99.9 percent of businesses in the country are composed of SMEs. This phenomenon though is not unique to the Philippines, as most other countries, whether developed or developing, exhibit the same trend. On the average, SMEs comprise more than 98 percent of businesses in Asia, and more than 99 percent in the US, EU, UK, Australia and New Zealand.

Given its public interest implications, SME development initiatives should rank high on any country's national development agenda, thus begging the question of whether competition policy has a role to play in the sector's operation and development.

Michael Schaper, deputy chair of the Australian Competition and Consumer Commission (ACCC), presented how competition policy and law impacts SMEs especially considering their limited capacity to compete with large businesses. Schaper noted that, in theory, free and fair competition is central to entrepreneurial success, since it allows new, dynamic firms to access markets and encourages innovation. Nonetheless, a competitive marketplace may also cause some SMEs to fail or be driven out of the market.

IMPACT ON SMES

Competition policy can help facilitate the development of SMEs by prohibiting anti-competitive business practices that hinder their growth. These anti-competitive business practices include the following:

- market sharing, which can prevent SMEs from entering a market;
- bid-rigging, which reduces the ability of SMEs to win tenders; and
- abuse of dominant position by larger firms, which can cause SMEs to fail through predatory pricing, refusal to supply, and stockpiling raw materials, among others.

While competition policy helps level the playing field, smaller businesses are at a disadvantage often due to lack of capacity and access to resources (e.g., legal, regulatory, and market information; financial, technological and legal resources).

ACCESS TO JUSTICE OVERLOOKED

"Access to justice is often an important but overlooked issue in competition law," Schaper said. Most SMEs are not aware of or do not completely understand laws that might affect them, including competition law. SMEs have limited access to legal resources due to time, information, and financial constraints. In many instances, they only access lawyers on an *ad-hoc*, last-minute basis or seek help only when a problem reaches crisis proportions. Rather than seek legal advice, they often consult other professionals such as accountants, or otherwise deal with the problem directly themselves. The SME industry and professional associations have an important role to play in helping SMEs develop and compete in the market. They can help educate SME members about competition and other relevant laws; facilitate provision of legal advice and representation; and serve as a third party in competition law enforcement and advocacy, by helping monitor and control member behavior, and serve as vocal supporters of competition law.

AGAINST THREE 'MS'

In view of the constrained capacity of SMEs to compete, SME development policy and competition policy should be mutually reinforcing. In fact, SME development policy should have competition policy as one of its pillars, according to Erlinda Medalla, research fellow at the Philippine Institute of Development Studies (PIDS). When SMEs grow, they become potential rivals to big incumbents. Competition becomes more dynamic, resulting in more competitive markets.

This, however, is a position that Jose Ma. Concepcion III, president and chief executive officer of RFM Corp. and founder of Philippine Center for Entrepreneurship – Go Negosyo, doesn't share, saying instead that competition law may not really be

the key for SMEs to succeed. Rather, it is access to the three 'M's: money, market, and mentorship. These will enable them to move out of "survival entrepreneurship" and corner a larger share of the market. In the specific case of the digital market, regulation, he said, should tread carefully given digital commerce's role as a game changer and platform for inclusivity, that is, for SMEs to adapt and improve their way of doing business. Digital commerce will enable SMEs to access markets, financial capital, and logistical support, even without the advantages of heft. They can sell online and not have to go to big malls to sell their products. In closing, here are Schaper's key points on competition policy and practice related to SME development:

KEY POINTERS

- SMEs are not "a small version of a large corporation." They are impacted by competition laws differently and their responses are different.
- Government policies on SME development may conflict with competition laws. SME policies are more likely to change, as they are driven by current political imperatives of government. Competition laws change rarely and slowly.
- There is a need to embed an SME perspective in all levels of the competition authority. Competition agencies should adapt their practices, administrative processes, and enforcement approach to recognize the special situation of SMEs.
- Small firms, to begin with, are often disadvantaged by the legal system. Access to justice, in particular, is emerging as a very important issue, in light of greater competition law enforcement.
- The role of industry associations and accountants as the primary vehicle for facilitating access of SMEs to legal services and dispute resolution mechanisms needs to be recognized. This may require competition agencies to provide basic legal literacy skills to these groups. ■

INNOVATION, MARKET DISRUPTION IN THE DIGITAL ECONOMY

by: Paul Jeffrey M. Ballentos

Antitrust authorities face new challenges in fostering competition in markets, as businesses dynamically change through innovation. Existing regulations and incumbent firms' business strategies could become obsolete or, worse, anti-competitive, due to disruptive innovation.

In a panel discussion on "Disruptive Innovations and Competition Policy" held on February 2 as part of the 2018 Manila Forum on Competition in Developing Countries (FDCD), it was highlighted that new products and new ways of doing business are profoundly affecting how the existing markets function. For instance, internet-based "sharing services" are disrupting the conventional taxi market. While such disruptive innovations may be beneficial to consumers and competition, these may also give rise to competition-related concerns.

Professor Allan Fels of the University of Melbourne and the former chairperson of the Australian Competition and Consumer Commission (ACCC) broadly defined disruptive innovations as "new products, new ways of delivering and distributing them, and new ways of doing business—most often, internet-based."

Disruptive innovation can radically change the competition landscape of markets, according to Fels. Some notable examples are online streaming services such as Netflix and taxi services like Uber, many of which are intermediated by mobile application platforms.

Philippine Competition Commission (PCC) Commissioner Johannes Bernabe, who moderated the panel discussion, recounted how the Commission recently decided a merger case that involved the acquisition of a financial technology company by a large overseas player. For that case, he said the Commission weighed several factors relating to disruptive innovation.

IMPROVING CONSUMER CHOICE

"Disruptive innovation increases competition and improves consumer choice with new products and services, often provided more quickly and conveniently, and at better prices," Fels said, adding that it reduces or destroys the market shares of incumbent firms. In the mobile phone market, for instance, iPhone overtook then-dominant Nokia, which eventually fell by the wayside.



Session main speaker Professor Alan Fels (leftmost) is joined in the panel by CCS Chief Executive Toh Han Li, UNCTAD Competition and Consumer Policies Branch head Teresa Moreira, and venture capitalist Francisco Sandejas.

Competition Commission of Singapore (CCS) Chief Executive Toh Han Li, one of the panelists for the session, said disruptive innovation also transforms economies, as geospatial technology fundamentally changes the way a lot of services are delivered. He cited as examples the use of geospatial data by ride-sharing service providers and Singapore's electronic payment services, which streamline transaction payment processes by diverting from traditional currency forms.

These disruptive innovation also offer employment opportunities. Toh cited Indonesia, where the use of ride-sharing platforms for motorcycles (e.g., Go-Jek and GrabBike) helps low-income families by providing them a more stable stream of income. "They are so successful that Google has decided to invest in them. So a lot of Go-Jek drivers have benefitted from this kind of disruptive technology," Toh said.

Consequently, this drives sales of small businesses, for instance, in the food delivery business. "In terms of e-commerce, SME-retailers do not have to fight with a brick-and-mortar retailer, because they can enlist in a digital platform and get a lot wider catchment for their services than compared to the brick-and-mortar world," Toh said. Therefore, e-commerce provides a level playing field for small- and medium enterprises to compete with large businesses.

RESISTANCE BY INCUMBENT FIRMS

Despite its benefits, disruptive innovation raises several concerns that need to be monitored by competition authorities.

One of these is the resistance from incumbent firms. Fels said that disruptive innovation attracts automatic

opposition from incumbent firms, who feel threatened they would be displaced by innovators; hence, may resort to regulatory barriers to block the entry of competitors. "Incumbents typically have a lot of political power, which they can use to block change. Sometimes, they can get the regulator to only half-accept the change," Fels said. For instance, when ACCC called for taxi deregulation in Australia, the taxi players raised several concerns relating to safety and consumer protection regulations, among others.

Another area of concern that competition authorities need to monitor is the set of outdated regulation, which are based on old business models, and restrict new ways of doing business. In several countries, some regulations are not innovator-friendly. For instance, ride-sharing service providers, in some countries, may operate, but may not pick up passengers in less than 10 minutes.

Moreover, traditional antitrust methods may also hamper or even discourage innovation. Toh said merger remedies with long-term frameworks may disincentivize firms from innovating or making use of state-of-the-art technologies. "This is a case to show that you want to move the market into a new era. Because if you had a very long commitment, you would still be stuck on the old technology," he said.

MERGER REMEDIES

In one of its cases involving airfield lighting, CCS imposed merger remedies with a relatively shorter timeline to usher the market toward the use of a new technology. Two of the top halogen light manufacturers, capturing a combined 90 percent of the market,

Continued on Page 14

WHERE PUBLIC PROCUREMENT MEETS COM

by: Paul Andrew F. Lucena

An effective public procurement policy is critical for economic development. This is because governments, especially in developing countries, are significant purchasers of goods and services, and these markets represent huge opportunities to enhance competition and development.

These were the statements of Graciela Miralles Murciego, senior economist under the Markets and Competition Policy Team of the World Bank (WB), during the Workshop on Competition and Public Procurement conducted on January 30. The Workshop was organized by the Philippine Competition Commission (PCC), in partnership with the World Bank Group, as part of the pre-forum activities of the 2018 Manila Forum on Competition in Developing Countries (FCDC).

Held at the WB Manila Office, the Workshop brought together international resource persons, competition enforcers, and administrators and technical staff from various Philippine government agencies to discuss procurement processes and issues from the perspective of competition law enforcement. WB resource persons provided fresh and cutting-edge perspectives and tools useful for the detection and analysis of bid rigging cases.

IMPLEMENTATION CHALLENGES

Given the importance of public procurement in economic development, Murciego said that it is important to embed competition policy in the system, which requires a multi-layered approach (i.e., regulatory, institutional, public procurement officials, and competition authorities). At the regulatory level, public procurement policy or reform should be connected with broader policy objectives, while competition should be used as a tool to help achieve public procurement goals. At the institutional level, Murciego highlighted the importance of governance framework, and noted that cost-efficient public procurement procedures (e.g., negotiated procurement, outsourcing) need not reduce competition. Further, public procurement officials should encourage pro-competitive design of tenders,

through capacity building, and sanction unlawful or anti-competitive behavior. Competition authorities should be able to prosecute bid rigging cases, and collaborate with public procurement agencies to prevent and flag bid rigging.

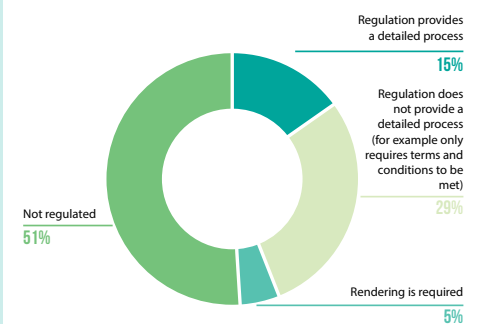
In doing so, these frameworks need to be implemented throughout the different stages of the public procurement process: from selection of the most pro-competitive procurement procedure, designing the terms of tender to favor competition, preventing anti-competitive decisions during and after the tendering process, to the detection, prosecution, and sanctioning of bid rigging cases and related anti-competitive practices.

Authorities should design tender conditions in line with competition policy. As the eligibility stage could be a barrier, eligibility criteria shouldn't include territorial discrimination, foreign restrictions, reference to types or brands, and other burdensome technical or economic requirements, according to Murciego. Moreover, the criteria for awarding the project should be objective, transparent, well-defined, and non-discriminatory. As to the duration of the project, it is important that contracts do not foreclose the market longer than necessary; hence, lengthy contract periods, as well as supervening or successive extensions should be avoided.

During the tender process, authorities are also encouraged to avoid anti-competitive decisions or practices by providing equal access to information; making procedural formalities (e.g., publication of reference price, open bidding) public and transparent; and reducing anti-competitive risks of pre-bidding meetings or conferences (e.g., by maintaining the confidentiality of the bidders' identities). There should also be mechanisms on how procuring entities will address a sole-bidder scenario, as it raises concerns about whether such a single bid will provide the best value for money. As a general rule, "even when only one bid is submitted, the bidding process may be considered valid if the bid was satisfactorily advertised, the qualification criteria were not unduly restrictive, and prices are reasonable in comparison with market value."

Citing the results of the WB's "Benchmarking PPP Procurement 2017," Murciego said that the Public-Private Partnership (PPP) regulatory framework does not address this issue in half of the economies measured in the study (see Figure 1). For instance, procuring authorities in Kenya, Peru, and Senegal were not required to follow any specific procedure before awarding a PPP contract, when they received a sole proposal. On the contrary, procuring authorities in Kyrgyz Republic, Madagascar, Tajikistan, Tanzania, and Tunisia require automatic retendering for a sole-bidder scenario.

Figure 1: Approach to addressing cases when only one bid is received



Source: Benchmarking PPP Procurement; World Bank, 2017

Authorities should also avoid anti-competitive decisions or practices after the tender process as ex-post modifications of a contract can affect the competitive character of the initial call for tenders. For example, while subcontracting provides flexibility and promotes the participation of small and medium enterprises (SMEs), the procedure for doing so should be transparent. This is because subcontracting can be used as a venue for bid rigging. Hence, subcontracting to those who also joined the tender should be prevented, according to Murciego.

DETECTING BID RIGGING PRACTICES

There are challenges in addressing bid rigging in less developed economies. For instance, competition authorities face difficulties in detecting bid-rigging practices due to the lack of mandate, lack of access to direct evidence, and the limited role of indirect evidence in cases. Murciego said indirect evidence is not enough. These difficulties limit the competition authorities' capacity to

COMPETITION POLICY

prosecute bid rigging cases, and are on top of the lack of institutional resources to build solid cases (e.g., inadequate organizational setup, lack of procedural framework, limited resources to conduct investigations). Moreover, sanctions are not a deterrent. There is no incentive to comply as fines are either too low or non-existent. There are also some cases when fines are not imposed by the competition authority.

Despite the difficulties cited above, competition authorities have developed tools to detect bid rigging. One such analytical tool in detecting collusion in markets are screens.

Sara Nyman, economist under the Markets and Competition Policy Team of the WB Group Macroeconomics Trade and Investment, said screens are being used for this purpose by competition authorities such as the United States Federal Trade Commission (US FTC), European Commission (EC), United Kingdom's Office of Fair Trading, and other

competition authorities in Canada, The Netherlands, Austria, Italy, Turkey, Hungary, Brazil, Mexico, India, South Africa, and Japan.

Nyman said developing proper screens will require understanding of the market and industry at hand, including its key drivers and the nature of competition. However, while screens can provide valuable evidence for and against the existence or materiality of alleged anti-competitive behavior, caution should be exercised when using screens as they may provide "false positives" (i.e., results which incorrectly indicate that collusion is present). This is because price parallelism may not necessarily be a proof of collusion owing to common shocks. Moreover, econometric test results are sensitive to different techniques; hence, these may be useful only as complementary evidence, rather than as solid proof of collusion.

Nyman noted the difficulty for investigators in crossing the barrier from economic to legal evidence. In

substantiating the existence of cartels, competition authorities need to be equipped with appropriate enforcement tools to conduct dawn raids and other mechanisms. The role of information technology is also important to generate hard proofs, Nyman said.

The Workshop was attended by Executive Director Dennis Santiago (GPPB), Deputy Executive Director Melissa Santiago-Yan (GPPB), OIC Director Florina Agtarap (Department of Justice - Office for Competition), Assistant State Prosecutor Gilmarie Fe S. Pacamara (DOJ), Assistant Ombudsman Asryman Rafanan, Atty. Julius Matibag (Ombudsman), and Atty. Richard Fulleros (Commission on Audit). Representatives from the PCC include Commissioner Stella Luz Quimbo, Executive Director Gwen Grecia-De Vera, Director Orlando Polinar, Director Kenneth Tanate, and representatives from the Administration Office, Communications and Knowledge Management Office, Competition Enforcement Office, and Economics Office. ■

STRENGTHENING PCC-KFTC PARTNERSHIP



KFTC Chairman Kim Sang-jo leads the discussion on conglomerates and competition policy on the second day of the Forum



PCC Chairman Arsenio Balisacan welcomes delegates at the opening of the Forum

PCC Chairman Arsenio Balisacan held a bilateral meeting with Korea Fair Trade Commission (KFTC) Chairman Kim Sang-jo on the sidelines of the 2018 Manila Forum on Competition in Developing Countries last February 1. Chairman Balisacan expressed the PCC's appreciation for KFTC's participation in the 2018 FCDC and the partnership opportunities for capacity building.

KFTC is actively engaged in constant exchanges with many foreign competition agencies, providing technical assistance largely through the Seoul International Competition Forum, the International Workshop on Competition Policy, KOICA training courses of competition policy, expert dispatch program, and internship programs. ■

WORLD BANK BOOSTS PCC CAPACITY ON MERGER REVIEWS

The World Bank Group (WBG) organized a merger review process workshop for the Philippine Competition Commission (PCC) last January 29 in Taguig City, in line with the PCC's continuing improvement of its operational capacities. Lawyers and economists from the PCC Mergers and Acquisitions Office and the Economics Office participated in the workshop that focused on economic analysis of mergers and procedural aspects of merger control. Workshop sessions were facilitated by Robert Lancop, former chief economist of the Competition Bureau of Canada; Graciela Miralles Murciego, WBG senior economist and competition policy specialist; and Marta Bardón, former official of the Spanish Competition Commission. ■

PUBLIC INTEREST IN COMPETITION POLICY

by: Leanne Croisette N. Gorosin

Competition policy may not always be aligned with a wide range of public interest considerations (PICs) such as protection of small and medium enterprises (SMEs) and domestic firms, and the stability of the financial system during crisis periods – to cite just two instances. These considerations sometimes complicate competition enforcement and introduce unpredictability, which can be costly to businesses. In some instances, the objectives of market competition are often not aligned with the political goals of governments, which have to manage various interest groups and balance competing policies.

Speaking at the session on Competition Policy and Public Interest Considerations during the first day of the 2018 Manila Forum on Competition in Developing Countries (FCDC), Philippine Competition Commission (PCC) Chairman Arsenio Balisacan said that the last 25 years saw the rapid adoption of competition policy among developing economies in Asia—to some extent spurred by advanced economies, particularly the EU and the US. This trend is fueled by the continuing drive of multilateral institutions and competition networks, including the International Competition Network (ICN), to harmonize trade and foreign investment rules.

According to Balisacan, while market efficiency is at the core of competition policy, PICs carry greater weight in developing economies. The resurgence of protectionist/populist sentiments in major economies, partly arising from the highly unequal and disruptive effects of globalization and the recent global financial crisis, have stirred anew political calls for a new antitrust movement which expands the core of competition policy to include public policy goals or the so-called PICs. In the context of developed economies, these goals or considerations include preventing industrial concentration, limiting the economic or political power of large firms, correcting wealth maldistribution, and protecting jobs and small enterprises.

NO UNIVERSAL DEFINITION

While there is no universal definition or list of PICs in implementing antitrust law, much of the literature published by emerging and more mature competition authorities enumerate either general or specific economic and non-economic matters, which need further clarification.

For Ultrex Management and Investment Corporation president Senen Bacani,

clarifying the intersection between competition policy and PICs is urgent, in light of “too broad” statements in both the Philippine Constitution and in the Philippine Competition Act, including its Implementing Rules and Regulations. “It’s imperative that public interest considerations are transparent and clearly well-articulated. Leaving public interest defined in broad terms may give rise to uncertainty or unpredictability and make assessments of business combinations more complex,” he said.

Bacani said the competition authority must consult with various regulatory bodies to clarify their overlapping responsibilities to ensure the protection of public interest. Public consultation should also be held with the private sector to discuss PICs in assessing mergers and acquisitions. Add to that the need to review existing jurisprudence on public interest issues, especially the cases decided upon by the Supreme Court.

According to a 2016-2017 Organization for Economic Cooperation and Development (OECD) report (see Figure 1), PICs adopted in pursuit of competition policy implementation vary across developed and developing economies. Nevertheless, most countries consider national security, environmental and social protection, and employment and innovation, among others, as important PICs.

As there is no one-size-fits-all policy, Balisacan said it is important to note the difference of PICs under country classes. In richer economies such as OECD member-countries, the deployment of public interest considerations in, for example, merger decisions “rarely occur in practice,”

as market efficiency gains greater weight in these countries. In the case of developing countries, broad policy objectives are injected in the goals of competition policy owing to their economic, social and institutional characteristics.

STRUCTURAL TRANSFORMATION

For most developing countries, efficient structural transformation of the economy is key to attaining their public policy objectives of massive poverty reduction, employment generation, and industrial development, Balisacan said. “Together with facilitating mobility of labor from low productivity areas or sectors to high productivity areas or sectors of the economy, the objective of development policy is to facilitate innovations... Competition policy is not expected to solve those problems but they can be expected to supplement other public policy tools to realize this transformation,” he said, adding that in drafting competition policies, one must understand the context of the development issues faced by certain sectors or areas of the economy.

To this, Center for the Advancement of Trade Integration and Facilitation, Inc. chairman Raphael Lotilla proposed a different tack: for competition policy not to dive head-on in PICs, but to become part of a coordinated move to achieve public policy objectives. “I am not for introducing public interest arguments in the PCC’s work. Enough is being done by others in that area,” he said.

Prof. Allan Fels of the University of Melbourne, who moderated the session, said it may also be interesting

Continued on Page 14

Figure 1. Public interest considerations across different jurisdictions

Country	Public interest considerations
China	National security, development of the national economy
Indonesia	Safeguard interest of the public, ensure equal opportunities for small businesses
India	Any class of interest of security of the State or public interest
Thailand	State-owned enterprises, public organizations, or other government agencies
Philippines	Forbearance is based on public interest and consumer welfare
Fiji	Environmental and social considerations
South Africa	Employment generation and restrictions on job losses, promotion of SMEs
Vietnam	Non-infringement of public interest, and the lawful rights of enterprises and consumers
Malaysia	Innovative technologies as a path to environmental sustainability, economic development and social advancement
South Korea	Increase of employment, economic development of non-metropolitan areas, the stable provision of energy and improvement of environmental pollution
EU	Legitimate (non-competition) public interest, including public security, plurality of media and prudential rules
Australia	Significant increase in the real value of exports, import replacement, matters relating to international competitiveness

Source: OECD (2016, 2017)

ADVANCING COMPETITION IN ACADEME

While having original and primary jurisdiction over the enforcement and implementation of the provisions of the Philippine Competition Act and its Implementing Rules and Regulations, the Philippine Competition Commission (PCC) recognizes the need for cooperation and collaboration not only between government and the academe, but among competition-related disciplines such as law and economics to ensure a thorough and proper implementation of a national competition policy.

This was the take off point for the competition law and policy seminar at the University of the Philippines School of Economics last January 31, 2018.

“Competition is key to inclusive economic growth. The objective of this undertaking is to have an interdisciplinary relationship and cooperation, between lawyers and economists, and between government and the academe,” said Danilo L. Concepcion, president of the University of the Philippines and dean of UP College of Law during his welcome remarks. The seminar was organized in partnership with the UP College of Law and with the strong support of Concepcion.

SELECT COURSES

One of the main initiatives discussed during the seminar was the possible inclusion of competition theories and its application in select courses in tertiary institutions. Australian Competition and Consumer Commission (ACCC) Deputy Chairperson Michael Schaper shared that ACCC has already been developing competition modules for inclusion in law, economics, business, and media courses. He underscored the importance of including competition studies in such courses to ingrain early on among students the importance and benefits of competition on the overall economic health of a country.

Schaper also explained how the academe could provide substantial research on anti-competitive practices such as gathering empirical evidence for the existence of cartels and their specific business behavior. However, the ACCC deputy chairperson also



UP President Danilo Concepcion speaks on the importance of apprising legal practitioners and economists on the implication of the competition law in their fields of study.



(from left) Michael Schaper (ACCC), Atty. Andre Palacios (UP Law), and Peter Lee U (UA&P), and PCC Commissioner Amabelle Asuncion.

mentioned that there is a needs gap existing between governments and members of the academe. For instance, in Australia, he explained that the academe usually present research projects to the government to request funding without knowing first the knowledge and information needs of the government.

CAPACITATE STAKEHOLDERS

During the discussions, PCC Commissioner Amabelle Asuncion explained that one of the challenges facing the PCC is capacitating its internal and external stakeholders, including higher educational institutions (HEIs), on competition knowledge. She noted that opportunities for strengthening the ties between governments and HEIs include research tie-ups training of trainers within HEIs, and transforming law and economics schools into centers of excellence for competition.

Lawyer Andre Palacios from the UP College of Law remarked that the principal role of the academe in the Philippines is instructional; engaging the government in research undertakings is just secondary. He added that there are very few universities engaged in research, not to mention that most academic professors are not full-time faculty members. University of Asia and the Pacific School of Economics Dean Peter Lee U noted that several issues need to be addressed first to maximize the relationship of the government and the academe. For instance, the lines defining ownership of studies, as well as publication of research findings, are not always clear. Further, the government does not always give full access to data to academicians in research undertakings due to confidentiality issues.

Moving forward, PCC Commissioner Stella Quimbo commented that politics plays a big role in the implementation of policy changes in the country. She advocated that champions from relevant government agencies support findings backed by empirical evidence research.

DIFFERENCES IN INNOVATION

One area of research interest, according to Global Antitrust Institute Executive Director Joshua Wright, is the relationship between innovation and competition. He said economic gains from innovation take the form of process innovations and more disruptive technological change. According to Wright, predicting how conduct changes incentives for businesses to compete is at the heart of antitrust and that prediction is inherently more difficult in the context of innovation.

Unfortunately, development of tools on the demand and supply sides of antitrust economics have been uneven in the last three decades. While antitrust economic tools have evolved substantially by shifting away from structure to more reliable predictors, no real progress can be said on the supply side. Aside from a lack of efficiency analyses incorporated into models, there is also no empirical understanding of any systematic relationship between product market competition and incentives to innovate.

Wright warned regulators that greater focus should be on high-tech markets, as antitrust agencies are lacking tools in that area. “Predicting competitive effects when the primary theory of harm is reduced innovation presents additional challenges. The very feature of high tech markets—dimensionality of competition, network effects,

Continued on Page 13

THE CASE FOR, AGAINST CONGLOMERATES

The intent of competition policy across all jurisdictions is universal – to level the playing field, that is, to afford all businesses, big and small, equal opportunity to engage in free and fair competition in markets. Nonetheless, the relationship of competition authorities with big and small businesses alike is varied and in some cases, complex because of the differing economic, political, and socio-cultural structures across jurisdictions. In South Korea, for instance, the relationship between its competition authority and conglomerates may be perceived by some as adversarial.

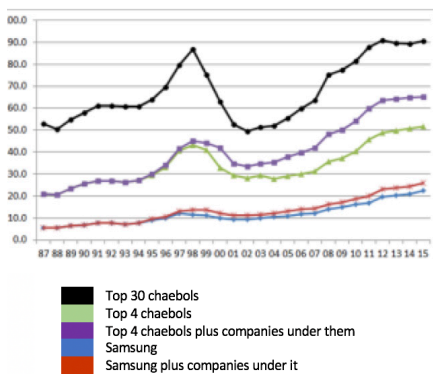
PARADIGM SHIFT

The Korean economy in recent times has been characterized by low economic growth and worsening inequality. To address this problem, South Korea decided to undergo a paradigm shift towards a more “people-oriented economy,” Kim Sang-jo, chairman of the Korea Fair Trade Commission (KFTC) said in his presentation on Competition Policy and Conglomerates during the 2018 Manila Forum on Competition in Developing Countries held on February 1-2 in Makati City. The new paradigm has three main pillars: (i) job creation and income-driven growth; (ii) innovative growth; and (iii) fair economy. The latter affords everyone equal opportunity to engage in business through free and fair competition.

The need for free and fair competition is imperative because it is inevitably tied to how South Korea’s economy will progress. Economic power is concentrated in a handful of large, family-controlled business groups known as “chaebols”. As of 2015, the top 30 chaebols accounted for roughly 90 percent of the country’s economy. The top four (4) chaebols alone accounted for more than half of the economy; if companies under them were included, their share of the economic pie rises to more than two-thirds (see Figure 1).

Alarmed over increasing merger and acquisition (M&A) activity among chaebols, the KFTC, South Korea’s competition authority, set its sights on intensifying regulation of large business groups.

Figure 1. Ratio of chaebol output to national economy, as of end-2015



Source: Korea Fair Trade Commission

Notwithstanding the economic concentration in a few businesses, Kim clarified that in an era of global competition, the size of a company is not enough basis for regulation by a competition authority. In many instances, consolidating businesses lead to economies of scale and scope, reduced transaction costs, and availability of internal financing.

Graciella Murciago, competition specialist at the World Bank Group, and one of the panelists, echoed Kim’s sentiment, saying that competition policy should not penalize size but foster a level playing field for the benefit of all businesses, big or small. She said that among many developing countries, key markets are likewise concentrated, where a single or a handful of companies control more than 50 percent of the market. Size is merely an indication of market structure.

Kim said anti-competitive behavior, not size alone of some chaebols, triggered discussions on how to democratize South Korea’s economy. “The ultimate goal of economic democratization is to improve the lives of the socially and economically weak including subcontract SMEs, micro enterprises, and irregular workers, and it should start from chaebol reforms”, he said.

There are several reasons why such reforms are necessary. First, concentration of economic power in a few chaebols poses systemic risks to the national economy if such chaebols were to weaken. Second, since most chaebols also own financial and insurance companies, they have the means to maintain and expand their power by using investors’ and policy holders’ money. Third, there are instances where families with

controlling shares in chaebols exploit intra-group transactions by engaging in unethical business practices such as “tunneling”, in which owner-families transfer wealth from a company where they have low shareholding to another company where they have higher shareholding. Fourth, some chaebols have been known to penetrate business areas of SMEs and thus expand their market dominance, hindering small business growth and driving some out of the market.

NEED FOR REFORMS

Tony Fernandes, co-founder of Tune Group Sendirian Berhad, another panelist in the session, agreed with Kim, saying that while big corporations make huge contributions to a country’s economy, they may also stifle competition. Nonetheless, if a company is innovative enough, it will be able to compete even against bigger companies, he said.

Since 1986, the KFTC has introduced a series of regulatory measures designed to curb the concentration of economic power in a few large businesses. The measures are focused on three (3) critical areas: investment, business behavior, and market monitoring. The regulatory policies in place mostly involve restrictions among affiliate companies of large business groups. These include prohibitions on cross shareholding and providing unfair advantage to specially related persons; restrictions on voting rights of affiliated financial and insurance companies, and debt guarantee; and disclosure of the business group’s status, large-scale internal transactions, and resolutions of boards of directors.

While regulation remains the most effective way to reform chaebols, KFTC recognizes that its “one-size-fits-all” policy has not been as effective as expected. It was too weak for large business groups and too strong for small ones. Rather than complying with the regulation, some large business groups resorted to lobbying to mitigate or abolish the regulation.

For reforms to be effective, there is a need to combine various regulatory measures in a flexible manner according to the characteristics of each business group, which vary in terms of size, type of business, and organizational

Continued on Page 13

Continued from Page 11

complementary products, dynamic competition—pose well known challenges.”

Wright argued that there is also a pressing need to understand high-tech markets as they are double-edged: on one side, the possibility of rapid technological innovation may mean room for many possible new entrants; on the other, network effects and lock-in effects from an installed base may mean high entry barriers.

PCC Commissioner Johannes Bernabe shared that the agency also has to contend with high-tech markets, specifically in the context of disruptive innovations. According to Bernabe, disruptive innovation in the form of new technology can either be a source of competition (e.g., Uber and Grab) or a risk to competition (e.g. algorithm-based pricing). He added that technology has the potential to affect the market structure, which is followed by a change in the understanding of relevant markets in any given product or industry.

Dr. Laarni Escresa of the UP School of Economics commented that there should be a balance between innovation and competition and that the PCC should set legal standards to encourage both. “Competition agencies such as the PCC should exercise more prudence when deciding on cases involving balancing of competition and innovation. Consumer welfare should always be a primary consideration,” she said.

PROMOTING COMMON GOOD

In new competition jurisdictions such as the Philippines, it is important to communicate to the general public the advantages and benefits to consumers of having competitive markets. University of Hawaii’s Dr. James Roumasset underscored in his presentation the important role of government in ensuring that competition policy is working toward economic development.

He cited the need for the government to do a market review of priority

sectors as well as to coordinate with other departments and agencies to ensure investment coordination, innovation, specialization, means, and mechanisms. He added that governments and regulators should go beyond merely responding to complaints and requests for approval such as in mergers and acquisitions.

Roumasset also warned against the pitfalls of governments doing harm to competition. “What if government itself is stifling competition, such as through protectionist policies? There should be transparency: who is gaining, and who is losing, and by how much? Competition policy is an instrument; general welfare is the objective.”

The Competition Law and Policy Seminar for Law and Economics Faculties & Researchers was among the several pre-forum activities of the 2018 Manila Forum on Competition in Developing Countries. — R. L. T. *Advincula* ■

Continued from Page 5

budgetary constraints that competition agencies face. Muhammad Nawir Messi, commissioner and former chair of Indonesia’s competition authority Komisi Pengawas Persaingan Usaha (KPPU), talked about this link between performance and funding. A scenario that is perhaps common in the conduct of budget deliberations in many countries is the accounting of agency outputs or accomplishments, which then become a basis for the succeeding year or period’s budgetary allocation for an agency. As such, the challenge for agencies is to prioritize outputs. “You have to choose, to prioritize cases where you can have the larger impact to the economy,” Messi said.

This need for prioritization was also pointed out by Kelly Bird, ADB Country Director for the Philippines, noting that, particularly for young competition agencies, identifying a strategic focus is key. Drawing from lessons in Southeast Asia, he noted that one of the usual considerations in terms of agency effectiveness is the kind of cases that young agencies take. “Often there is a lot of pressure to take on the big cases, the ones that are very political or high profile, but that’s quite a risky strategy,” he said.

Noting that ASEAN has already developed its own toolkit for measuring agency effectiveness, Lai Peng Yap,

head of the Consumer Protection and Intellectual Property Rights Division of the ASEAN Secretariat for Competition, underscored the concern over the kind of resources that competition agencies have. As competition regimes in the region are relatively new, the idea was to examine agency effectiveness from an institutional standpoint. This involves looking at the legal framework, enforcement, institutional and cooperative arrangements, as well as an agency’s capability to conduct advocacy. This self-assessment among ASEAN member states, according to Yap, aims to help agencies gain better understanding of their legal systems’ strengths and weaknesses. ■

Continued from Page 12

structure, among others. “For successful chaebol reforms, policies should be carried out in a sustainable and predictable manner, with consistent principles and willingness rather than focusing on short-term measures”, Kim said.

BALANCE REGULATION, INNOVATION

Fernandes however cautioned against over-regulation, pointing out the need to strike a balance between regulation and innovation, i.e. to make sure that regulatory policy is not stifling

incentives to innovate.

Responding to the question of whether competition authorities and conglomerates can live harmoniously, Murciego said it is possible, adding that while the competition authority is mandated to enforce the law and punish anti-competitive behavior, it can “live harmoniously” with conglomerates by virtue of its advocacy mandate. A competition authority can engage, for instance, with policy makers to correct regulatory policies that are causing

inefficient markets, to the detriment of both big and small businesses.

Affirming that enforcement and regulation are not enough, Kim said the KFTC is taking on a positive campaign approach – enhancing communication with business circles to encourage voluntary changes in business practices. During initial meetings with large business groups, KFTC highlighted the need for business groups to live up to the expectations of society and the market. — F. L. *Paguia* ■

decided to merge. CCS perceived that while there are certain issues to the merger, the agency wanted to move the airfield lighting market to LED technology; hence, they imposed remedies with a shorter time frame.

In another case, CCS considered disruptive technologies in defining the relevant market for the review of a book distributor's acquisition of a publishing house. In defining the relevant market, the agency assessed whether the digital books market constrained the physical books market. CCS' study showed that the e-books market in Singapore was not yet developed, restricting the final relevant market to physical books.

Mergers and acquisitions by disruptive innovators also raise a competition problem. Toh said that this may result in a loss of competitive dynamics if a "maverick player" is acquired. CCS has an ongoing investigation involving the merger between a ride-sharing service provider and a taxi operator.

PREDICTABILITY OF REGULATION

To ensure competition and foster disruptive innovation, antitrust regulators must enhance their enforcement tools, cooperate with key agencies, and advocate competition policy among multiple stakeholders.

Competition enforcement tools and methods must cope with the current business landscape. Another panelist, Teresa Moreira, Competition and Consumer Policies Branch Head of

the United Nations Conference on Trade and Development (UNCTAD), said competition enforcement has evolved in the information age. She recalled how the conduct of dawn raids in the Portuguese Competition Authority adapted by tagging along an information technology expert. Although continual improvement will be undertaken, competition authorities must also ensure the reliability and predictability of their regulations.

Moreira said regulation should provide a framework for predictability, to create a level playing field, where all companies have even opportunities, without hampering innovation and development of new business models and new products. This minimizes the disparity between big and small players, as pointed out by another panelist, venture capitalist Francisco Sandejas: "We learn to play the game (e.g., competition law and policy) and we know we have to compete against the giants. But if the rules keep changing, then that makes it really hard, especially when venture capital backs up to two years at a time."

SECTOR REGULATORS, COOPERATION

Cooperation between competition authorities and key institutions is also crucial for improving the understanding of competition law with respect to markets and industries. "Cooperation is really the best way to facilitate knowledge and expertise," Moreira said, adding that consultations with public sector regulators help gain

better knowledge and understanding of markets. "Market studies are a good example of this complementarities, where a competition authority may benefit from inputs from sector regulators that have expertise of the market."

Cooperation should also extend to international regulators and development partners. "At the regional level and with the ASEAN framework, this is also an excellent setting to really provide for a very thorough and comprehensive exchange of experiences," Moreira said.

Equally important in ensuring competition amid disruptive innovations is the conduct of advocacy activities that provide opportunities to effectively implement competition law and policy. Moreira said that competition authorities should undertake advocacy among the government, sector regulators, business sector, civil society, and the public.

Advocacy could also be used as a complementary tool for enforcement. Toh shared the importance of advocacy to influence the key market players in Singapore in one case of exclusivity in a certain market where dominance was not established. The CCS declared the market as competitive, but flagged that exclusivity will be a problem in the future if there was dominance. A few months later, the level of exclusive agreements dropped, Toh said. ■

if PICs were analyzed using the competition lens, adding that competition bodies may come up with useful insights.

Across economies, misplaced deployment of public interest arguments can stifle efficient economic transformation and hence the advancement of total and consumer welfare. In the Philippines, although rice production increased, the imposition of quantitative restrictions on imports to achieve self-sufficiency resulted in higher prices at the expense of the poor. "The poor spent about 20% of their expenditure and the consequence for pushing for this kind of public interest is clearly higher poverty in the population," Balisacan said. In this case, misguided or ill-informed public interest can be very costly to efficiency and may do more

harm than good to consumer welfare.

In enforcing PICs, OECD Competition Committee chairman Frederic Jenny introduced in a separate session two models followed by majority of competition authorities. First is the single authority model, which entrusts the competition authority to conduct both competition and public interest tests; second is the dual responsibilities model, which means the competition authority would conduct a standard competition assessment, while a sector regulator or a political body, like a government department, would look directly into PICs. Balisacan noted that the latter is useful for non-economic PICs and its assessment results are more predictable and transparent, adding that the dual responsibilities model is followed by majority of OECD

member countries and the Philippines.

Across developed and developing countries, well-defined, transparent, and predictable PICs in competition policy reduce business uncertainty and corruption, Balisacan said. "Competition policy has to be part and parcel of a coordinated move to achieve broad public policy objectives," he said, citing the PCC's goal of mainstreaming competition policy in socioeconomic development policy and planning and to work closely with sector regulators or government departments to achieve goal coherence or harmonized processes. According to him, good governance entails clarity, transparency, and predictability in handling PICs in competition enforcement, especially for non-economic PICs. ■

RAISING THE PROFILE OF COMPETITION IN EMERGING ECONOMIES



At the end of the 2018 Manila Forum on Competition in Developing Countries, participants and speakers alike possess stronger resolve in implementing competition policies and laws in their respective jurisdictions amidst the changing ways of doing business brought about by technological advancement, economic system shocks, and other factors.

“The thesis of our forum is that there exists no one-size-fits-all competition policy. A competition enforcer has to grapple with the particular features of the emerging market and to reckon with the institutions, the laws, the practices, and implicit rules that function as the constraints that bind an enforcer’s behavior,” said Philippine Competition Commission (PCC) Chairman Arsenio M. Balisacan during his closing remarks.

Balisacan noted that competition agencies from developing countries such as the PCC must be able to case scarce resources in pursuit of a healthy competition landscape. “The competition authority in a developing country cannot afford to overlook several other factors, public interest considerations, intricate market dynamics between conglomerates and micro and small and medium enterprises, and the onset of disruptive innovations that act as both an immense opportunity and an impending risk.”

The inaugural Manila Forum was intended to serve as a spring board and catalyst for more elaborate small-scale dialogues on competition. “We hope that our experience in the 2018 Manila Forum will raise the profile of competition in emerging economies. The participants in this ongoing conversation may change but looking ahead, I sincerely hope that we come together to sit down once more and talk about new experiences and development of competition policy,” Balisacan said.

ASEAN COMPETITION AUTHORITIES TACKLE 2025 AGENDA



Heads and representatives of ASEAN competition authorities discussed the region’s work towards achieving the ASEAN 2025 agenda on competition in an informal meeting organized by the Philippine Competition Commission (PCC) in collaboration with the ASEAN Secretariat and the German Society for International Cooperation (GIZ).

Among the matters discussed were the

ASEAN Experts Group on Competition (AEGC) initiatives on ASEAN Regional Cooperation Framework (ARCF) and the ASEAN Research Centre for Competition (ARCC), a project that the Philippines leads.

The ARCF is a non-binding cooperation framework that sets out general objectives and principles that will guide ASEAN member-states in developing

the ASEAN Regional Cooperation Agreement (ARCA) by 2020. On the other hand, the establishment of ARCC, which is envisioned to be a platform for knowledge sharing among the academia and practitioners, will complement the ARCF by promoting better understanding and awareness on competition in the region.

Competition authority heads and representatives also discussed the progress and impact of regional and international cooperation programs and the role of ASEAN in international competition events. The said meeting was held last January 31 in Makati City as part of the pre-forum activities of the 2018 Manila Forum on Competition in Developing Countries. ■



**PHILIPPINE
COMPETITION
COMMISSION**

Ensuring businesses compete and consumers benefit

📍 25/F Vertis North Corporate Center 1,
North Avenue, Quezon City 1105

✉ queries@phcc.gov.ph

📘 www.facebook.com/CompetitionPH

🐦 www.twitter.com/CompetitionPH

🌐 www.phcc.gov.ph

Ciara R. Daquis
Editorial Coordinator

Jose Caesar M. Jamoralin
Layout Artist