

Issue 6 | December 2017

PHILIPPINE COMPETITION BULLETIN

WHAT'S INSIDE

2 5 lessons from Japan's antitrust agency on enforcement, advocacy, resilience

4 PCC in 2017



**PHILIPPINE
COMPETITION
COMMISSION**

Ensuring businesses compete and consumers benefit

5 LESSONS FROM JAPAN'S ANTITRUST AGENCY ON ENFORCEMENT, ADVOCACY, RESILIENCE

Young competition authorities like the Philippine Competition Commission (PCC) have much to learn from their older and wiser counterparts in other countries.

The Japan Fair Trade Commission (JFTC), whose creation was mandated by the country's Anti-Monopoly Act of 1947,¹ shared its experience among fellow competition authorities from Association of Southeast Asian Nations (ASEAN) member states through a training course held on December 6-8 in Tokyo, Japan. Entitled "Enhancing the Effectiveness of a Competition Authority in Enforcement and Advocacy in the ASEAN Region," the course covered a myriad of topics, such as competition policy research, advocacy, building partnerships, public relations, and knowledge management, among others. The following were the key takeaways from the discussions:

1. Conduct competition policy research in aid of enforcement

The Competition Policy Research Center (CPRC) carries out activities aimed at strengthening JFTC's competition law enforcement from a medium- to long-term perspective. Through the CPRC, JFTC is able to attract the academic community as well as other relevant stakeholders to participate in research for competition law and policy. In this manner, the knowledge base on competition expands while expertise is also developed within the JFTC because of their exposure from working with the academe.

Some of the regular output of the CPRC include discussion papers, seminar and symposia, and study group reports. Study groups are formed by CPRC consisting of specialists or experts in specific fields of interest that require further study. CPRC also provides research support (e.g., data, methodology) to JFTC teams involved in economic analysis of merger reviews and case investigations. It should be noted that JFTC's Mergers and Acquisitions Division and Investigations Division have economic analysis units integrated in their respective divisions (see Figure 1).

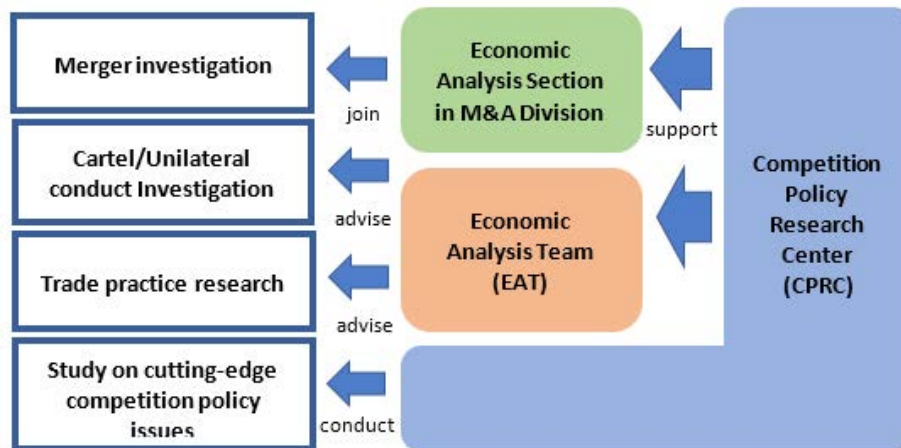


Figure 1. Inter-relationship between CPRC and JFTC's Economic Analysis Units

The CPRC is composed of academicians from various universities. It is headed by a professor of economics, and consists of two

(2) more economics professors and two (2) professors of law as members. While the CPRC is independent of the JFTC, the chairperson and commissioners of JFTC provide guidance in coming up with research agenda.

2. Educate the public and get them to participate

The chief objective of JFTC's public relations (PR) program is to increase awareness and understanding of competition policy and law, and engage the public in JFTC's activities. This has strategic value in that it prevents or minimizes violation of the competition law, making enforcement of the law smoother. Some of the regular output and activities of JFTC's PR program include the following:

a. Press releases and engagements

Press releases issued usually involve legal actions against violations of the Anti-Monopoly Act and other related laws and regulations, as well as various guidelines and fact-finding survey reports, among others. In 2016, 374 press releases were issued.

JFTC's secretary general holds scheduled interviews with the press every Wednesdays, the results of which are published in JFTC's website and in its e-newsletters which are sent out every Tuesday. The e-newsletters also feature press releases and information/announcements on upcoming seminars.

b. Creation and distribution of PR materials

Various PR materials on the Anti-Monopoly Act and other related laws and regulations are published for distribution to stakeholders and posting in JFTC's website and social media accounts. Such materials include brochures, promotional DVDs and videos, and supplementary learning materials intended for students (e.g., "Our Daily Life and Market Economy" for junior high school students).

c. Operation of website and social media accounts

The PR materials developed are uploaded in JFTC's website including press releases,

interviews with the secretary general, brochures, frequently-asked questions (FAQs), and videos. In addition, the relevant laws, regulations and guidelines in Japan as well as competition laws in other countries are made available. The website also has a database of trial decisions, collection of corporate mergers, collection of consultations on Anti-Monopoly Act, as well as targeted content for children and consumers.

Press release and interviews with the secretary general are also posted in JFTC's Facebook and Twitter accounts while the videos are uploaded in its YouTube account. In its effort to reach out to younger audiences, JFTC has an official mascot named "Dokkin" which is featured in comic strip format for easier reading and appreciation of competition principles (see Figure 2).

The comic strips in video and print are uploaded to JFTC's social media accounts. It should be noted that using mascots in Japan is a common way of reaching out to the public.

d. Educating students about the basics of competition

To imbibe a culture of competition even with the younger generation, the JFTC conducts advocacy activities in schools and universities. These include workplace visits by students and conduct of seminars by JFTC in schools and universities. The teaching methodology employed by JFTC is more interactive as it features simulation games. In the game, students are divided into two (2) groups: sellers (producers) and buyers (consumers). Sellers are provided "competition cards" representing different sales methods (e.g., discounts, two-year guarantee, freebies) and consumers get to choose from a variety of packages for a particular product.

This enables the student to get a feel of the advantages of a market with competition and disadvantages of one without (see Figure 3).

JFTC also conducts field visits in partnership with selected businesses to introduce students to familiar markets lacking competition (e.g., cartels).

One example is a mock on-the-spot inspection of a home appliance retail shop that is supposed to operate as a cartel. Students act as inspectors while the teacher acts as the president of an offending company. JFTC also employs such simulation games during its seminars and roadshows for consumer groups.

3. Build and strengthen cooperation and coordination with stakeholders

Learning strategies to strengthen cooperation and coordination with various stakeholders should prove beneficial for the advocacy initiatives of young competition agencies. JFTC recommends three (3) such strategies, namely:

¹Enacted in 1947, the Anti-Monopoly Act (AMA) of Japan is the competition law of Japan. The law prohibits private monopolization, unfair trade practices and unreasonable restraint of trade, and regulates mergers and acquisitions.
Source of Figures: Japan Fair Trade Commission, "Enhancing the Effectiveness of a Competition Authority in Enforcement and Advocacy in the ASEAN Region", December 6-8, 2017, Tokyo, Japan



Figure 2. Dokkin, JFTC's official mascot

a. Dialogue with business federation, consumer groups, and academe on a regular basis

The JFTC holds regular dialogues with different stakeholder groups such as corporate business federations, federations of small and medium enterprises (SMEs), consumer groups, and legal and economic experts including bar associations and law/economics professors. Dialogues serve as a venue for JFTC to provide stakeholders a deeper understanding of its policies and enforcement outcomes, and to solicit the views of stakeholders.

that convey the importance of competition law compliance.

4. Ensure government policies, regulations, and practices support competition

The JFTC has been promoting competition within the ranks of government to ensure that public policies, regulations, and practices across all branches of government are in support of competition policy. Even in an industry or sector that is subject to existing regulation, the Anti-Monopoly Act applies unless a law expressly specifies exemption from the Anti-

information storage and security; and internal communication.

JFTC acknowledges that there are certain types of knowledge that are hard to capture and store, such as the skills or techniques employed by experienced case investigators. To the extent possible, however, such knowledge and skills are codified into a manual through a system of interviews with and written documentation from said individuals.

"Handover" protocols are also in place to ensure that knowledge is captured and retained within the institution in case of personnel movement, including resignation, retirement, and re-shuffling. Interviews and written documentation from individuals are likewise used as tools for capturing knowledge. As soon as personnel expresses formal intention to retire or resign, the appropriate handover is immediately initiated. To the extent possible, re-shuffling is practiced to enable personnel to develop multiple capabilities. Re-shuffling also prevents personnel, especially frontliners, from developing any relationship with stakeholders and therefore minimize the possibility of bribery.

Given the confidentiality of information that a competition authority is in possession of, JFTC puts a high premium on document management, particularly with regard to storage and security. Of prime importance are documents related to cases and accounting, for safe-keeping as well as for jurisprudence. Both physical and electronic copies of documents are stored. The storage system allows for easy and quick tracking and retrieval of documents and information. JFTC is making an effort to digitize all of its documents and records, and to lessen paper transactions.

Considering its long history, JFTC claims that there has been no experience of information

Figure 3. JFTC's simulation game on competition for students

b. Discussions to build consensus in the legislative process

To help in building consensus in the legislative process, the JFTC provides recommendations to policy makers based on the results and findings of their research from the study groups organized by the CPRC. Some study groups, for instance, had been setup to look into the provisions of the Anti-Monopoly Act that may need review and amendment.

c. Promoting competition law compliance in the business sector and among government agencies

To promote a culture of compliance among businesses and government, the JFTC conducts surveys with businesses and produces reports

Monopoly Act. By monitoring the legislative agenda and coordinating with concerned government agencies, JFTC has been able to reduce provisions of exemption in various laws from 30 to 24 as government recognizes the importance of free competition. Joint guidelines have been established by JFTC and other government and regulatory agencies to ensure policy coherence between existing laws and regulations governing a particular sector or industry and the Anti-Monopoly Act.

5. Develop a system for managing knowledge, information, and communication to improve organizational efficiency

JFTC shared some aspects of its system for managing knowledge, including knowledge capture and sharing; document and

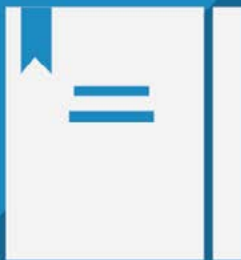
leakage thus far as information security is airtight. Even within JFTC, access to information depends on the level of confidentiality of the information and corresponding clearance level of personnel. There are also security protocols for electronic information transfer. For instance, electronic data sent through e-mail are coded, and the password to open the code is sent in a different email. Desktops and laptops also have a built-in protection system, e.g., file transfer using flash drives are not accepted. There is a formal system of document disposal in Japan which includes hiring of a company to manage disposal of documents.

PCC was represented by Director Joseph Melvin Basas, Ferdinand Pagua, and Jonah Karl Manalang. ■

PCC IN 2017

2017 was a fruitful year for the Commission. We at the Philippine Competition Commission extend our sincerest gratitude to all our stakeholders and partners, whose unwavering support in the past year helped us make a significant headway in mainstreaming competition policy in the country and strengthen our institutional capacity to carry out our mandate.

**A DEDICATED CHAPTER
ON COMPETITION IN THE
PHILIPPINE DEVELOPMENT
PLAN 2017-2022,
A FIRST IN THE COUNTRY'S
SOCIOECONOMIC
PLANNING HISTORY**



ENFORCEMENT

4

full administrative investigations

ISSUANCE OF RULES AND GUIDELINES

- PCC Rules of Procedure
- Merger Review Guidelines
- Rules on Merger Procedure

17

capacity-building activities for PCC personnel

17

capacity-building and advocacy activities for stakeholders



INSTITUTIONAL DEVELOPMENT

- PCC Citizen's Charter
- PCC Strategic Performance Management System (SPMS)
- PCC Quality Management System (QMS)

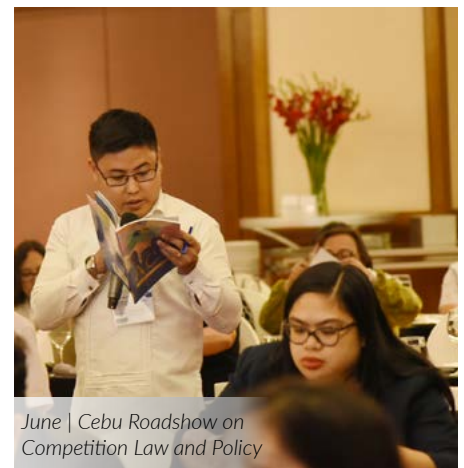
210

information-education-communication (IEC) materials developed

We look forward to your continued commitment in helping us build a culture of competition in the country, for the benefit of businesses and consumers alike.



January | Briefing with Malacañan Press Corps



June | Cebu Roadshow on Competition Law and Policy



February | PCC at Year One

THE YEAR THAT WAS

An agency in action



April | High-Level Seminar on Adjudication



August | Public Consultation on Merger Procedure



September | PCC-LTFRB Meeting



October | Campus Tour- UP Diliman School of Economics



November | Stakeholder Engagement with the Food & Beverage Industry

PH ANTITRUST CHIEF LEADS YEAR-END PRESS BRIEFING

Philippine Competition Commission (PCC) Chairman Arsenio Balisacan discussed recent developments regarding various competition-related issues during the agency's year-end press briefing held last December 12 at the City Garden Grand Hotel, Makati City. Balisacan, together with Commissioners Johannes Bernabe and Stella Quimbo, shared updates on merger reviews, ongoing investigations, and priority sectors.

On merger and acquisition (M&A) reviews, the Commission has approved over 100 notifications, including 59 letters received prior to the issuance of the Implementing Rules and Regulations of the Philippine Competition Act. PCC has been notified of over P2-trillion worth of M&A transactions, with majority coming from manufacturing; financial and insurance activities; electricity, gas, steam, and air-conditioning supply; human health and social work activities; and administrative and support services sectors.

Balisacan provided information regarding enforcement cases monitored by the Commission, citing that PCC has received a total of 71 complaints and queries. Since 2016, the Commission has conducted five (5) preliminary investigations (PI) which proceeded to full administrative investigations (FAI).

PCC officials also discussed updates on priority cases concerning telecommunications, cakes/pastries, health, garlic, and cement industries.

Particularly on telecommunications, the Commission was asked regarding its position on China's possible move to enter the Philippine telco market. "The PCC welcomes a third player in the telco industry. More market players mean better services, lower prices, and more innovative products," Commissioner Johannes Bernabe said. He also mentioned that, in accommodating a third player or subsequent players, the formidable costs which must be surmounted are investments in infrastructure (e.g., voice, text, and internet access).

IN THE NEWS

THUMBS UP FOR PHL COMPETITION LAW According to the EU Competitiveness report, the law that created the PCC is a "game changer" as far as the Philippines is concerned. The same EU Competitiveness report noted important "milestones" from the time the competition bill was first filed in the 8th Congress in the Philippines until RA 10667 was finally approved by the 16th Congress. (Marichu A. Villanueva, *Philippine Star*, 3 December 2017) [Read more >>](#)

PCC, BSP INK PACT ON BANK MERGERS, ACQUISITION The Philippine Competition Commission (PCC) and the Bangko Sentral ng Pilipinas (BSP) signed an agreement that will enable the two to partner in implementing a strong push toward efficient regulatory approach concerning the banking and financial industry. (Lawrence Agcaoil, *Philippine Star*, 22 December 2017) [Read more >>](#)

ANTI-TRUST BODY SEEKS MORE PARTNERS IN GOV'T In an effort to foster competition among businesses across Philippine markets, the Philippine Competition Commission is ramping up its efforts in seeking more partnerships with other government agencies. The PCC currently has signed agreements with the Securities and Exchange Commission, Commission on Audit, Philippine Statistics Authority, and the Bangko Sentral ng Pilipinas. (Julito G. Rada, *Manila Standard*, 24 December 2017) [Read more >>](#)

CDO LAWMAKERS ASK COURT, PCC TO LOOK INTO WATER DISTRICT DEAL WITH FIRMS Three Cagayan de Oro city councilors have asked the Philippine Competition Commission to prevent Cagayan de Oro Water District (COWD) and MetroPac Water Investments Corp. (MetroPac) from executing their joint venture contract to ensure that there is no collusion between the two to "jack up the water rate and restrict the competition". (Jigger J. Jerusalem, *Davao Today*, 7 December 2017) [Read more >>](#)

Commissioner Stella Quimbo further stressed that 12.8% of the spectrum used for all services must be available to a third player. Although the PCC acknowledges that the National Telecommunications Commission (NTC) serves as the main agency which deals with spectrum-related issues, Quimbo hopes that the PCC could be included in discussions involving competition concerns.

Various journalists and members of media organizations attended the said briefing, signifying the Commission's extensive involvement in different sectors and stakeholders. ■

continued on page 7



Philippine Competition Commission (PCC) Chairman Arsenio Balisacan, together with Commissioners Johannes Bernabe and Stella Quimbo, led a year-end briefing with various journalists and members of media organizations last December 12 at the City Garden Grand Hotel in Makati City to discuss updates concerning competition-related issues.

PROCEDURE FOR NOTIFICATION

The Mergers and Acquisitions Office (MAO) of the Philippine Competition Commission (PCC) is responsible for the review and investigation of mergers and acquisitions that could substantially prevent, restrict, or lessen competition in the relevant market.

Below is a guide on each step in the Merger Notification and Review Process based on the Implementing Rules and Regulations of the Philippine Competition Act.

Parties to the merger or acquisition agreement where the value of the transaction exceeds one billion pesos (P1,000,000,000.00) are required to notify the PCC within 30 days from signing the definitive agreement and prior to consummation of the said agreement.



Step 1
PCC Receives Notification

Parties are informed within fifteen (15) days if their filing is deficient and given the opportunity to complete notification. Once completed, the PCC will issue a Notice of Sufficiency to the Parties.



Step 2
Phase I Review

The PCC has thirty (30) days to determine the potential effect of a proposed merger or acquisition on competition in the relevant market. The proposed transaction is deemed approved upon the lapse of the 30-day period and no action is taken by the PCC.

During this period, the PCC may also request for additional information from the notifying parties and third parties to investigate any potential harm to competition in the relevant market arising from the proposed merger or acquisition. Parties will be informed that a more detailed review is needed and issue a Phase II Request for additional information.



Step 3
Phase II Review

The Phase II review shall commence on the day after service of the Phase II notice. The PCC has sixty (60) days to determine if it will approve or disapprove a proposal for merger or acquisition. If Phase II review exceeds the allotted number of days, the proposal is deemed approved.

The proposed transaction is deemed approved upon the lapse of the 60-day period and no action is taken by the PCC.

ADVOCACY ROUNDUP continued from page 6

PCC SHARES KEY LESSONS AT THE 16TH GLOBAL FORUM ON COMPETITION

Chairman Arsenio Balisacan showcased PCC's experiences in competition enforcement and advocacy at the 16th Global Forum on Competition, sharing key lessons in ensuring effective action in the Philippine government.

In his address, Balisacan noted that an evidence-based competition policy must be mainstreamed in the government's development strategy and decision making to make a significant and

sustainable impact. He underscored the importance of mobilizing champions of competition policy within the government. He also discussed how law enforcement and policy implementation require coordination and collaboration with other government agencies and development partners.

The Organization of Economic Co-operation and Development (OECD) organized the said forum, which brought together high-level competition

officials from over 100 authorities and organizations worldwide.

This year's forum focused on emerging issues on competition and economic development such as challenges for small and developing agencies and judicial perspectives of competition law. Commissioner Amabelle Asuncion and Atty. Melbourne Pana joined Balisacan during the two-day forum held in Paris, France on December 7-8. ■

ASIAN COMPETITION FORUM TACKLES BID RIGGING IN PUBLIC TENDERS

Public procurement is prone to bid-rigging. This was the issue-on-spotlight during the Asian Competition Forum's "13th Annual Conference 2017" on December 11-12 in Hong Kong.

Various competition authorities from across jurisdictions have encountered a number of bid-rigging cases in public procurement. Competition agencies strategize to deter such conduct by conducting market studies to determine potential sectors and industries with

bid rigging, promoting awareness through various media (e.g., Hong Kong's advocacies through TV commercials, posters, seminars, and exhibitions), intensifying enforcement through leniency programs, and penalizing perpetrators (e.g., filing of corruption cases involving procurement officials in Brazil and the United States).

In the Philippines, the cooperation among PCC, the Government Procurement Policy Board, the Presidential Anti-Corruption

Commission, the Commission on Audit, and the Office of the Ombudsman will be essential to detect, investigate, and deter bid-rigging practices in the country.

Philippine Competition Commission (PCC) Competition Enforcement Director Orlando Polinar, Atty. Alyssa Castillo, and economist Adelle Arbo joined the pool of representatives from competition authorities during the two-day event. ■

MERGERS AND ACQUISITIONS DASHBOARD

Notifications received from
January to December 31,
2017:

65

Notifications received since
February 2016:

142

**creation of Philippine Competition Commission*

NEW PUBLICATIONS




Electronic publications are available at the PCC website
(<http://phcc.gov.ph/category/resources/publications/collaterals/>)





Paul Jeffrey M. Ballentos | Lea C. Gomez
Leanne Croisette N. Gorosin | Ferdinand L. Paguia
Writers

Jose Caesar M. Jamoralin | Althea Betriz M. Santiago
Layout Artists

2/F DAP Building, San Miguel Avenue,
Ortigas Center, Pasig City 1600

 Philippine Competition Commission

 @CompetitionPH

 www.phcc.gov.ph