

Issue 3 | August 2017

# PHILIPPINE COMPETITION BULLETIN

## WHAT'S INSIDE

- 1 Competition enforcement in full swing as transitory period ends
- 2 Public comments sought on draft merger procedures  
ASEAN competition regulators discuss regional cooperation
- 3 Philippine Chamber of Commerce and Industry, Management Association of the Philippines tackle concerns about PCA
- 4 Government agencies take competition economics "class"



**PHILIPPINE  
COMPETITION  
COMMISSION**

*Ensuring businesses compete and consumers benefit*




Ferdinand L. Paguia  
**Editor-in-Chief**

Paul Andrew F. Lucena  
**Associate Editor**

Paul Jeffrey M. Ballentos | Ciara May R. Daquis  
Lea C. Gomez | Leanne Croisette N. Gorosin  
**Writers**

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

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



# COMPETITION ENFORCEMENT IN FULL SWING AS TRANSITORY PERIOD ENDS

**B**usinesses stand to gain from a more level playing field as the Philippine Competition Act (PCA) took full effect on August 9, 2017.

The Philippine Competition Commission (PCC), the government agency tasked to stop anti-competitive behavior and practices in the market, said that the law will now be fully enforced following the end of its two-year transitory period.

“The Philippine Competition Act is a game-changing legislation that significantly and irrevocably changed the country’s competition landscape. The law may be harsh as hefty fines await violators, but it is also fair as it gives everyone a fair chance to get it right,” PCC Chairman Arsenio M. Balisacan said.

Balisacan said that unfair practices, which are detrimental to consumers and industry players, happen when businesses agree to fix their prices or engage in bid rigging, when dominant firms actively prevent small and medium enterprises (SMEs) from expanding or entering the market, or when large companies merge, and as a result, raise prices without improving the quality of their products.

“Whether you are a CEO or a director in your company, you should think twice about allowing anti-competitive acts to be part of your business strategy,” he said.

In the last two years, companies were given the chance to renegotiate their agreements, amend their practices and restructure themselves in order to comply with the law passed in 2015.

“With the full force of the antitrust law, this shall serve as a warning to companies that continue to engage in unfair

business practices or harbor anti-competitive behavior,” Balisacan said.

“PCC is your partner in progress but remember that we will also do whatever it takes to fulfill our mandate,” he added.

PCC also advises other government agencies to strengthen market competition in their sectors, and curb unfair business practices like cartels, price-fixing, bid-rigging, and anti-competitive mergers.

While the PCC can mete out administrative fines, the Commission will have to depend on the Department of Justice’s Office for Competition (DOJ-OFC) in prosecuting criminal cases. DOJ-OFC signed a Declaration of Commitment to develop a collaborative and harmonized approach to enforcing the provisions of the Philippine Competition Act.

## Priorities and actions

The garlic-onion industry, where the existence of a cartel has been reported, is among the sectors to be investigated by the PCC.

Another case involving the cement industry is currently under full administrative investigation after a formal complaint reached the Commission’s desk.

“PCC looks at the broader picture beyond the complaint. The nature of our investigation is such that is not limited to information provided by the complainant. The PCC is free to also consider any other information which it thinks is relevant to a violation of the PCA,” Balisacan said.

PCC will also be partnering with the Office of the Ombudsman and the Commission on Audit to boost its campaign against bid rigging, price fixing and cartels in government procurements and projects.

## Mergers and acquisitions

Aside from enforcement of the pro-competition provisions, the PCC is also mandated to review business deals and activities of private or government-owned entities to safeguard the interest of consumers, including global deals with presence in the Philippines.

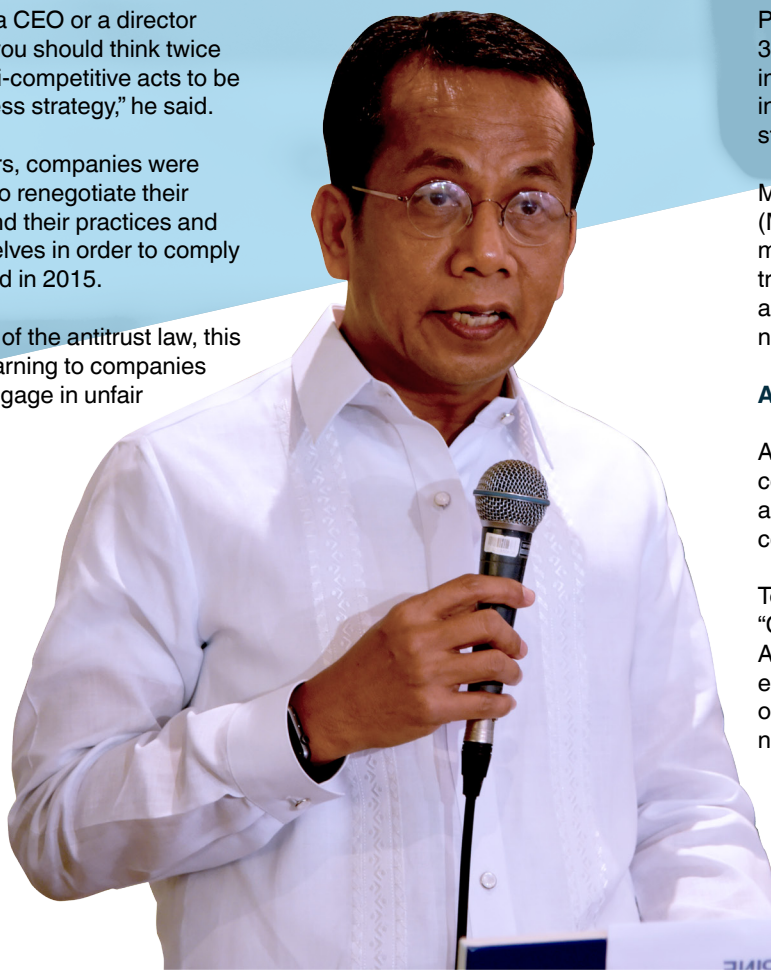
So far, 114 notifications have been submitted to PCC approximately worth P2 trillion, while 95 have been cleared, 32 of which were reviewed under the implementing rules and regulations issued in June 2016. Others are still in various stages of completion.

Majority of these mergers and acquisitions (M&As) came from the financial, manufacturing, electricity, and transportation sectors, accounting for about 62 percent of the total number of notifications.

## A culture of healthy competition

Apart from being an arbitrator in all competition-related issues, the PCC advocates building a culture of healthy competition in the Philippines.

To this end, the agency launched the “Comply. Compete. Commit. Learn the Act of Real Competition” campaign, which enjoins businesses to always be mindful of compliance with the law, as with the need to compete in the market.



*continued on page 5*



## PUBLIC COMMENTS SOUGHT ON DRAFT MERGER PROCEDURES

To improve transparency and inclusivity, the Philippine Competition Commission (PCC) made available for public comment and deliberation the agency's procedural blueprint for merger review and control. The public consultation was held on August 14, in Pasig City and was attended by business groups, the academe, and other competition stakeholders.

The PCC Mergers and Acquisitions Office (MAO) released the said draft procedure to guide interpretation and direction for merger reviews and to assure notifying parties of the transparency and objectivity of the review process as mandated by Section 16 of Republic Act No. 10667 or the Philippine Competition Act (PCA).

This was not the first time that the country's competition agency sought inputs from the public with regard to improving its processes. PCC's own Rules of Procedure underwent the same rigorous review when it was presented to stakeholders in Manila, Cebu, and Davao last June.

Participants were mostly members of various business groups and trade associations, law firms, conglomerates, academic institutions, consumer protection groups, civil society organizations, sector regulators, and other government agencies including the Department of Trade and Industry (DTI) as well as the Securities and Exchange Commission (SEC).

PCC officials fielded questions on sufficiency determination, Phase 1 and 2 review processes, proposal for remedies, as well as fines and penalties, among others.

The public consultation brought together a high-level roster of speakers from the PCC, including Chairman Arsenio Balisacan, Commissioner Johannes Bernabe, and Commissioner Amabelle Asuncion.

They were joined by MAO Director Atty. Krystal Uy-Sia, MAO Notifications Division Chief Atty. Ivy Medina, MAO Review Division Chief Atty. Anya Palileo, MAO Merger Monitor Division Chief Atty. Lourdes Polido, and Legal Services Division Chief Atty. Gianfrancis Camacho. ■

## ASEAN COMPETITION REGULATORS DISCUSS REGIONAL COOPERATION

Competition regulators from member states of the Association of Southeast Asian Nations (ASEAN) came together for the "Brainstorming Meeting on the Essential Elements of the Regional Cooperation Framework (RCF) on Competition" to improve safeguards on market competition not only in their respective regimes but across the region.

The brainstorming session was aimed at promoting cooperation in the ASEAN region to ensure efficient implementation of competition policies and laws despite differences across jurisdictions. Discussion points included: 1) producing more coherent antitrust decisions, 2) empowering competition authorities through capacity building, 3) reducing costs due to duplication of efforts, 4) lowering compliance costs for businesses in the ASEAN region, and 5) accelerating achievement of an integrated market.

Competition authorities and business regulators from the Philippines, Singapore, Thailand, Cambodia, Lao PDR, Myanmar, Malaysia, and Vietnam aired their concerns with regard to the

preliminary RCF. The meeting was held at The Manila Peninsula Hotel in Makati City, on August 28-30. An informal meeting of the ASEAN Australia New Zealand Free Trade Area (AANZFTA) Competition Committee also took place.

Competition experts from the Australian Competition and Consumer Commission (ACCC), Organization for Economic Cooperation and Development (OECD), and United Nations Conference on Trade and Development (UNCTAD) were also in attendance to share various approaches in developing an effective cooperation mechanism as well as their respective roles in promoting effective collaboration among antitrust authorities and regulators.

Competition consultants Shila Dorai Raj and Rachel Burgess presented the salient points of the preliminary RCF. Five (5) areas of cooperation identified were 1) sharing resources, 2) exchange of information, 3) technical assistance and capacity building, 4) enforcement cooperation, and 5) cooperation in merger investigations.

ACCC manager Bruce Cooper enumerated the key initiatives developed during the 2015 RCF workshop. Such activities were 1) staff secondments, 2) agency coordination and consultations (i.e., competition policies and law developments), 3) information sharing and exchange (i.e., advocacy materials, procedural documentation, merger and enforcement decisions), and 4) conduct of joint projects and activities (i.e., governmental/university trainings, joint market studies, peer reviews on agency effectiveness, and seminars/training programme).

Despina Panchnou of OECD's Competition Division highlighted best practices for international cooperation adopted by other competition agencies in selected jurisdictions, while UNCTAD legal officer Pierre Horna enumerated his agency's initiatives and activities to encourage international cooperation. ■



# PHILIPPINE CHAMBER OF COMMERCE AND INDUSTRY, MANAGEMENT ASSOCIATION OF THE PHILIPPINES TACKLE CONCERNS ABOUT PCA

In a keynote address delivered at the recent Joint General Membership Meeting of the Philippine Chamber of Commerce and Industry (PCCI) and the Management Association of the Philippines (MAP), PCC Commissioner Stella Luz A. Quimbo took stock of the implementation of the Philippine Competition Act, highlighting both achievements and challenges in enforcing the law as its transitory period ended on August 8, 2017.

Citing the low awareness of competition among Filipinos, Quimbo underscored the importance of the business sector's willingness to engage in competition under the newly defined set of rules. "Since the Commission was created, we have reached out to the business sector either in public hearings or in business fora, to let businesses know about the law and to take advantage of this transitory period if needed. Obviously, for a young competition agency like the PCC, with scant enforcement record to date, voluntary compliance is the most cost-effective way of promoting competition."

Quimbo also addressed concerns of the business community, particularly on the review period for proposed mergers and acquisitions, and its cost on business transactions.

"A complaint we have heard from the business community is that the merger review process is long and difficult", she said. Quimbo explained that the PCA provides for very tight deadlines for review and emphasized that the

Philippines has one of the shortest allowable review periods in the world. "In order to avoid any delays or returns of notifications, we highly encourage parties to avail of pre-notification consultations so that requirements can be fully explained", she said.

Noting forecasts suggesting that mergers and acquisitions are likely to increase and businesses will have to spend more time and resources for compliance with the competition law, Quimbo also assured the business sector that the Commission is mindful of cost on business transactions. "We have entered into MoAs (Memorandum of Agreements) with other sector regulators to streamline procedures, if there are overlaps", she said. The PCC has signed a MoA with the Securities and Exchange Commission (SEC) that mainstreams PCC approval into the SEC merger approval, effectively allowing for parallel instead of sequential procedures. Similar MOAs with the Bangko Sentral ng Pilipinas and Insurance Commission are in the final stages of crafting, with the aim of rationalizing the approval processes and ensuring policy coherence.

The event, held last August 1, at Dusit Thani Hotel in Makati City, was organized in partnership with the PCC. ■

## IN THE NEWS

**MAKING SURE FIRMS PLAY FAIR.** The culture of competition cultivates flexibility and adaptability that enable the economy to cope better with a constantly changing environment. The competition law also promotes equal opportunity across firm sizes and incomes, thereby advancing equity. (*Cielito F. Habito, Philippine Daily Inquirer, 15 August 2017*)

**HOW DOES CORRUPTION HURT YOU?.** We wish the Philippine Competition Commission more than good luck in achieving their mandate in creating fair market conditions that will provide Juan de la Cruz with better products and services at better prices. (*Henry J. Schumacher, Business Mirror, 14 August 2017*)

**CORRUPTION ENABLERS.** The PCC must be allowed to do its job without court interferences, with the aim to remove monopolies/duopolies to properly address, reduce and finally eliminate corruption. (*Michael K. Raeuber, Business Mirror, 29 August 2017*)

**ECCP SEEKS FAIRER RULES IN CONSTRUCTION INDUSTRY.** The PCC renewed a call to address nationality distinctions that provide more flexible rules for domestic contractors while restricting the access of foreign ones. The Commission also said that opening the market to more players would invite additional investments while also boosting the public sector through knowledge transfer and the use of new technologies. (*Raadee S. Sausa, The Manila Times, 26 August 2017*)

## PCC PROVIDES COMPETITION LENS AT SULONG PILIPINAS 2017

The Philippine Competition Commission (PCC) joined a series of workshops at the 2017 Philippine Development Forum: Sulong Pilipinas that highlighted the banner projects of different national government agencies for 2017-2018. PCC Executive Director Gwen De Vera, Atty. Jen Tuazon, and economist Kirsten dela Cruz represented the Commission in the forum focusing on infrastructure development, ease of doing business, and regional competitiveness.

The Philippine Development Forum was convened by government to discuss policy,

develop consensus, and generate commitments among development stakeholders. Recommendations from the forum were transformed into actionable items for the government's reform agenda.

This year's forum was held at the EDSA Shangri-La Hotel in Mandaluyong City on August 9. It was attended by over 500 participants from the executive and legislative branches of government, business groups, and representatives of multilateral institutions and civil society. ■



(From left to right) Atty. Jen Tuazon, PCC Executive Director Gwen de Vera, and economist Kirsten dela Cruz



PCC Commissioner Stella A. Quimbo

## GOVERNMENT AGENCIES TAKE COMPETITION ECONOMICS “CLASS”

Developing a culture of competition in the country is imperative in order for the Philippine Competition Commission (PCC) – the country’s antitrust authority – to fulfill its mandate of ensuring competitive markets and to effectively implement the provisions of Republic Act No. 10667 or the Philippine Competition Act (PCA).

Toward this end, the PCC offered an introductory course in Competition Economics for representatives of different government agencies such as the Office of the Solicitor General (OSG), Department of Justice-Office for Competition (DOJ-OFC) and the Department of Trade and Industry (DTI).

The event was held at the Premier Joy-Nostalgy Center in Pasig City on August 31.

PCC Commissioner Stella A. Quimbo served as the primary speaker of the said course, which was a prelude to a two-part training series on Competition Economics

to be conducted by competition experts from the United States Federal Trade Commission (US-FTC).

Quimbo holds a doctorate degree in Economics and formerly served as department chair of the University of the Philippines School of Economics. She was also former Prince Claus professorial chair-holder at Erasmus University of Rotterdam in the Netherlands.

Quimbo explained the role of economics in competition law and the various references to markets and competition in the PCA. She also talked about how markets allocate resources in perfect and imperfect competition environments. ■

## ASEAN BODIES MEET, FIRM UP CROSS-BORDER ENFORCEMENT

In keeping abreast with developments in competition law in the ASEAN region, the Philippine Competition Commission (PCC), represented by Ms. Rosylyn Ramirez of the Competition Enforcement Office and Mr. Carlos Tolentino II of the Economics Office, attended a three-day training course on improving regional engagement in competition enforcement from August 22 to 25, in Bandung, West Java, Indonesia.

Hosted by the Indonesian Competition Authority (KPPU) in partnership with the Japan Fair Trade Commission (JFTC), the said course under the Japan-ASEAN Integration Fund (JAIF) Program focused on cross-border cases and diversity issues that various case handlers face and on the development of the ASEAN regional cooperation framework in competition. ■

## PDRCI CONDUCTS ARBITRATION TRAINING

Representatives from the Philippine Competition Commission (PCC) attended the 13th Commercial Arbitration Training seminar conducted by the Philippine Dispute Resolution Center, Inc (PDRCI) from August 14 to 18, 2017 in Fort Bonifacio. The training provided participants insights on resolving commercial disputes in domestic and international arbitrations through practical exercises such as mock arbitration and written assessments. PCC sent lawyers Akemi Aida, Honorio Buccat, Jr., and Stephen Duma to the event. ■

## ACCC SHARES BEST PRACTICES

A session on enforcement law with Atty. Sharon M. Deano of the Australian Competition and Consumer Commission (ACCC) was conducted for Philippine Competition Commission (PCC) lawyers, economists, and specialists last August 9.

The forum served as one of the culminating activities of Deano’s stint as PCC resident advisor. She shared her practical advice on investigation processes and protocols, external communications and messaging, and internal challenges. Deano served as the resident advisor for the PCC Competition Enforcement Office from May 12 to August 10. ■

## TRAINING THE TRAINORS

Philippine Competition Commission Training Division staff participated in two Civil Service Commission (CSC) courses on program development and learning measurement to boost PCC’s capacity in conducting training programs.

Training specialists Ramon Logoc, Lorenzo Vidal, and Charmaine Escueta participated in a two-day course on Program/Course Design and Development conducted from August 24 to 25. The course trained the participants on curriculum and program design and learning materials development.

Logoc also completed a two-day course on Learning Measurement and Evaluation from August 30 to 31. The training focused on measuring and evaluating learning as a means in determining learning needs; and assessing if the said needs have been effectively addressed. ■

## REGULATORY IMPACT ANALYSIS SKILLS

Philippine Competition Commission staff lawyer Daryl Dumayas, as well as Communications and Knowledge Management Office’s Inah Geneve Tolentino, and Ciara Daquis joined representatives from various regulatory agencies in the Training Course on Regulatory Impact Analysis held from August 29 to September 1 in Baguio City. Dr. Shin Kim from the Korea Institute of Public Administration facilitated the course, which involved lectures and workshops on subjecting proposed or existing government regulation to proportionate analysis, problem analysis, cost and benefit analysis, public consultations, as well as planning of regulation enforcement and implementation.

The course is part of the Modernizing Government Regulations Program, a five-year (2016-2020) comprehensive national regulatory reform program implemented by the Development Academy of the Philippines in cooperation with the National Economic and Development Authority. ■



# New Approaches For A New Economy

16 August 2017



(From left to right) Philippine Competition Commission (PCC) Economist Adelle Arbo, Executive Director Gwen de Vera, and lawyer Anya Palileo

## SINGAPORE CONFERENCE LOOKS INTO FUTURE OF COMPETITION LAW IN THE NEW ECONOMY

In keeping up with the developments in competition law and policy in other jurisdictions, the Philippine Competition Commission (PCC) joined competition law practitioners, businesses, and regulators at the 2017 Competition Commission of Singapore (CCS)-Singapore Law Academy Competition Law Conference held on August 16.

With the theme “New Approaches for a New Economy,” the conference highlighted key developments and emerging trends in competition law and policy in Singapore. Recognizing the significant impact of digital economy on all sectors of the economy, the panel discussions centered on identifying and managing competition issues in the new economy, including challenges to traditional business models with the advent of disrupters and new regulatory challenges for competition authorities and regulators.

As the emerging innovation in technology and business models are creating new markets and disrupting the existing ones, the conference examined the effects of disruption through case samples as well as explored the

application of competition law in disrupted markets. The use of big data as a tool to innovate and its impact on competition enforcement were also tackled.

Another session also provided insights on how regulators, together with industry, can leverage on alternative tools to better understand markets and facilitate competitive markets through policy design. Also discussed was the application of remedies available to enforcers and the innovative solutions proposed by companies to achieve pro-competitive outcomes.

Further, the conference provided updates on competition law developments in Singapore that companies and practitioners should be aware of, including CCS’s Revised Guidelines, which took effect on December 1, 2016.

The conference, held at the Supreme Court Auditorium in Singapore, is a flagship activity of the CCS. The PCC delegation was composed of Executive Director Gwen G. de Vera, Atty. Anya Palileo, Ramon Logoc of the Training Division, and Adelle Arbo of the Economics Office. ■

*continued from page 1*

PCC Chairman Arsenio Balisacan reiterated this point to those engaging in trade and commerce in the country during a press briefing held at the Malacanang Palace on August 3, 2017.

To include other stakeholders in this advocacy, particularly the next generation of entrepreneurs, the PCC has also enjoined students to take part in a video-making contest as its theme, “How does the Philippine Competition Act benefit the common Filipino?” This will popularize the issue and help the public appreciate the importance of antitrust laws.

Interested parties may get the contest mechanics from the PCC Facebook page.

“The law equally applies to all businesses, large or small, and we will not hesitate to use it to ensure fairness in the market. To our colleagues in government, let us spearhead initiatives and commit our efforts to create and sustain a robust culture of competition in the years to come. Lastly, to all consumers, we are counting on you to inform us about anti-competitive behavior and practices and be champions for competition,” said Balisacan. ■



PCC Senior Economist Isabela Villamil (right)

ASIA PACIFIC ECONOMIC COOPERATION

# WORKSHOP EXAMINES ROLE OF COMPETITION IN FREE TRADE AGREEMENTS

The Philippine Competition Commission joined trade and competition authorities and other international economic organizations in a capacity building workshop on free trade agreement (FTA) negotiation skills organized by the Asia Pacific Economic Cooperation (APEC) secretariat.

PCC senior economist Bela Villamil served as resource speaker in a session that tackled challenges and opportunities in relation to the acceptance of competition chapters in FTAs and economic partnership agreements (EPAs). Sharing the Philippines' experiences in establishing a competition chapter in FTAs, Villamil noted that the inclusion of competition-related provisions (e.g., obligations to adopt or maintain competition laws, or to regulate state aid and subsidies) in FTAs can help preserve

gains made through trade liberalization, foster cooperation and convergence in enforcement matters, and reinforce internal reform and advocacy.

Representatives from Japan and Thailand also shared country experiences in lobbying for a competition chapter. The workshop focused on the significance, implications, and benefits of establishing a chapter on competition in FTAs and EPAs, and provided insights on recent trends in FTAs and EPAs.

The workshop, held on August 19 in Ho Chi Minh City, Vietnam, was part of the activities under the APEC 2017 Third Senior Officials' Meeting (SOM). Atty. Joseph Giancarlo Agdamag of the Legal Services Division also represented the PCC in the workshop. ■

## MERGERS AND ACQUISITIONS DASHBOARD

Notifications received from  
January to August 31,  
2017: **45**

Notifications received since  
February 2016: **122**

## NEW PUBLICATIONS



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