

PHILIPPINE COMPETITION BULLETIN



Ensuring businesses compete and consumers benefit

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L-R: Mergers and Acquisitions Office Director Atty. Krystal Lyn T. Uy; Commissioner Amabelle C. Asuncion; Chairman Arsenio M. Balisacan

MERGER CONTROL, NEW COMPETITION REGIMES IN SPOTLIGHT

16TH SESSION OF THE INTERGOVERNMENTAL GROUP OF EXPERTS

The Philippine Competition Commission (PCC) presented its experiences and learnings on merger review during the 16th Session of the Intergovernmental Group of Experts (IGE) on Competition Law and Policy held in Palais des Nations in Geneva, Switzerland on July 5-7, 2017.

This year's session centered around designs of merger control systems for small and young competition authorities, such as the PCC. "The design of a merger control regime should be adapted to the circumstances and needs of each jurisdiction. In the case of young and small competition authorities, it is also important to take into account financial and human resources constraints, lack of sufficient experience and lack of a competition culture," said the IGE in a statement.

German cooperation agency Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) was highly instrumental in the participation of the PCC at the recent IGE meet.

In his presentation, PCC Chairman Arsenio M. Balisacan focused on the lack of a culture of competition in the Philippines as one of the primary stumbling blocks in fully enforcing merger control specified in the Philippine Competition Act of 2015.

"The Commission has encountered resistance from regulated entities, especially with respect to the disclosure of sensitive information to the PCC and the Commission's ability to maintain the confidentiality of certain information submitted in relation to merger or acquisition notifications," said Balisacan.

"We believe that in order to instill a healthy culture of competition, trust is key. We aim to ingrain a rational, consistent, and dependable system—one that all stakeholders can trust. We know this can be achieved through our policy on confidentiality, the security of our files, and the professionalism of our staff," the PCC Chairman added.

Aside from the Philippines, competition authorities or agencies from Paraguay, Albania, Botswana, Egypt, and Kenya also presented their experiences on merger control.

Balisacan was joined by Commissioner Amabelle C. Asuncion, Spokesperson Atty. Leni Papa, and Mergers and Acquisitions Director Krystal Lyn Uy-Sia during the proceedings.

DID YOU KNOW?

The annual IGE event was conceptualized by the United Nations Conference on Trade and Development (UNCTAD) to discuss ways of improving worldwide cooperation on competition policy implementation and enhancing convergence through dialogue.



PCC Commissioner El Cid R. Butuyan* (fourth from left) with Silliman University faculty and students in Dumaguete City

COMMISSIONER SPEAKS ON COMPETITION LAW, TAMING OLIGOPOLIES

As part of the Philippine Competition Commission's (PCC) effort to raise awareness on competition policy and law, Commissioner El Cid R. Butuyan* delivered a lecture on Republic Act No. 10667 or the Philippine Competition Act of 2015 at the Silliman University College of Law in Dumaguete City on July 19, 2017.

Butuyan shared with the audience, composed of law students and recent bar passers, the context of competition policy in the country and discussed the importance of ensuring a competitive playing field for market players. He noted that the oligopolistic structure of the economy is paralleled in the political sphere.

The Commissioner, who sits as co-chair of the

American Bar Association (ABA) International Committee-Criminal Justice Section, also addressed recent attacks against the PCC in the media, noting that these may be the effect of the agency's efforts to assert its mandate.

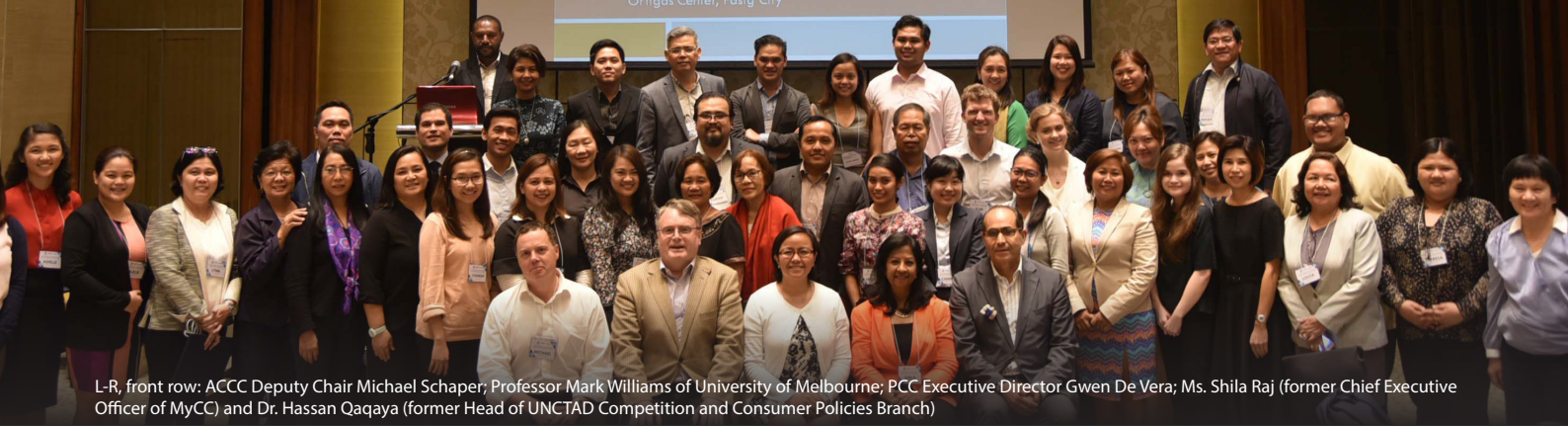
"Rightfully so, because the PCC poses as a disruptive force. It is well-positioned to influence firms that, for the longest time, have conducted their business without concern for their rivals or their consumers. The PCC brings forth a paradigm shift where the excesses and inefficiencies brought about by anti-competitive conduct will be kept in check," he said.

"As we slowly learn to tame the oligopolies that have long ruled the Philippine economy,

we hope that the economic landscape will gradually become more inclusive, participative, and equitable," he added.

Butuyan served as the head of Investigations and Litigation for the World Bank Integrity Vice-Presidency, where he conducted audits, fact-finding investigations, and litigation on cases relating to anticompetitive practices, corruption, collusion, cartel behavior, coercion, and fraud by multinational and local firms. He was a Faculty Member at Harvard Law School where he taught a course on Transnational Corruption.

*Atty. Butuyan resigned from his position as PCC Commissioner on July 25, 2017.



L-R, front row: ACCC Deputy Chair Michael Schaper; Professor Mark Williams of University of Melbourne; PCC Executive Director Gwen De Vera; Ms. Shila Raj (former Chief Executive Officer of MyCC) and Dr. Hassan Qaqaya (former Head of UNCTAD Competition and Consumer Policies Branch)

MSMEs, PCC CRAFT ACTION PLAN FOR GROWTH



University of Melbourne professor of law Dr. Mark Williams (left) during one of the breakout sessions of the workshop



PCC Executive Director Gwen de Vera synthesizes the workshop's learnings and points for action



PCC Competition Enforcement Office Assistant Director Ferdinand B. Redulla discusses the Philippine Competition Act with one of the participants

Micro, small, and medium enterprises (MSMEs) took center stage at the capacity building workshop organized by the Philippine Competition Commission (PCC) and sponsored by the Asia-Pacific Economic Cooperation (APEC) Secretariat. Held on July 27-28, 2017, in Ortigas Center, the main objective of the workshop was to craft an action plan that will facilitate the entry and growth of MSMEs.

“We recognize that the growth potential of MSMEs can be maximized if they have a fair chance of succeeding alongside larger and more established foreign and domestic players,” said PCC Chairman Arsenio M. Balisacan during his opening remarks. “Competition policy aims to make the entry of new players and the expansion of existing businesses easier.”

The two-day workshop is the culmination of the APEC SMEs project, which conducted baseline studies to benchmark MSME issues in similar countries, and focus group discussions with key stakeholders to identify challenges faced by Filipino MSMEs in doing business. Aside from MSMEs and MSME associations, the event was attended by international participants from APEC-member countries like Indonesia, Japan, Malaysia, Mexico, Papua New Guinea, Peru, Russia, Thailand, and Vietnam.

Here are the main discussion points of foreign experts:

- Dr. Mark Williams, professor of law at University of Melbourne and consultant from Sustineo Pty Ltd., presented key issues confronting MSMEs, such as government regulations and competition restrictions, advocacy activities, enforcement priorities, and access to infrastructure and credit.
- Former United Nations Conference on Trade and Development (UNCTAD) Competition and Consumer Policies head and Melbourne Law School senior fellow Dr. Hassan Qaqaya presented the preliminary findings of the survey on MSME owners, senior managers, and representatives from 17 countries. He highlighted the need for competition authorities to work side-by-side with growth-oriented

trade associations and MSMEs that support the role of competition agencies in maintaining competitive markets.

- Australian Competition and Consumer Commission (ACCC) Deputy Chair Dr. Michael Schaper presented the expectations of MSMEs from regulators and competition agencies. Among those Dr. Schaper underscored were the following: (a) dealing reasonably with minor breaches, (b) implementing laws that are easily understood, (c) minimizing the role of the judiciary, (d) resolving business disputes simply, (e) investigating complaints promptly, (f) providing concise and easy-to-read guidance, (g) emphasizing MSMEs’ rights, (h) recognizing MSMEs’ size difference with respect to bigger players, and (i) providing practical advice and assistance to help MSMEs comply.
- Malaysia Competition Commission’s (MyCC) former Chief Executive Officer Ms. Shila Dorai Raj narrated MyCC’s experiences in implementing competition policy and law for MSMEs during their initial years. She recounted the failures of their advocacy activities (e.g., too technical briefings, many programs not welcomed by MSMEs) and enforcement (e.g. negative news reported by media). She suggested that advocacy activities should be comprehensive and practical that feature real case studies and illustrations, and should focus on their rights. Raj explained that this is because competition issues are not a priority for MSMEs. She encouraged regulators to frequently engage the MSME community and form a core group that will advocate and support the agency’s work.

The event was facilitated by Sustineo Pty Ltd., an Australian-based firm specializing in technical and management services to create positive and sustainable social economic change in Australia and across the Asia Pacific region.

PCC PREPARES BUSINESSES FOR END OF COMPETITION LAW TRANSITORY PERIOD

In a media forum held on July 14, 2017, PCC Commissioners Stella Luz A. Quimbo and Johannes Benjamin R. Bernabe reminded the business community, government-owned and -controlled corporations (GOCCs), and other entities involved in trade and commerce about the expiration of the two-year transitory period specified in the Philippine Competition Act (PCA) that falls on August 8, 2017.

Quimbo said the transitory period allowed businesses to restructure their arrangements or agreements, including contracts, to comply with the law. "In terms of enforcement, the end of transitory period activates the full imposition of fines and penalties of the law towards the violators. This, however, did not prevent the PCC from looking into cases prior to August 8," she said.

Section 53 of the PCA states that "an existing business structure, conduct, practice or any act that may be in violation of this Act shall be subject to the administrative, civil and criminal penalties prescribed... only if it is not cured or is continuing upon the expiration of two years after the effectivity of this Act."

Bernabe said the transitory period pertains to enforcement rather than merger control since the PCC has been accepting and reviewing notifications since it started.

A firm or person found violating the law would incur criminal, civil, and administrative liabilities. Penalties include fines ranging from

100 million pesos to 250 million pesos, and imprisonment.

Senator Cynthia Villar, the head of the Senate Committee on Agriculture and Food, also joined the media forum to report to the PCC the alleged existence of a cartel in the garlic industry. Villar asked the PCC to look into a 2014 report of the Department of Justice-Office for Competition (DOJ-OFC) on the operation of the alleged garlic cartel in the country, saying the 2014 incident similarly was accompanied by price spikes that happened in May to June this year.

Quimbo said the agency could investigate the case right away upon receiving the request, adding that the Commission would look into the DOJ-OFC study on garlic cartels. "We have rules and procedures to follow. If the Commission decides to open the case, this report will be taken into consideration," she said.

The event was held at the Kamuning Bakery Café and was part of the establishment's Pandesal Forum, which has been running since 2015. PCC's participation at the forum was part of the Commission's fresh round of press briefings to remind businesses and consumers of the lapse of the transitory period.

IN THE NEWS

MORE COMPETITION NEEDED IN PH TELCO INDUSTRY – PIDS STUDY

Latest report from the Philippine Institute of Development Studies (PIDS), the country's premier think tank, said that at least three major players would help promote competition in the telecommunications sector. Although various structural barriers hinder such advancement, PIDS senior research fellow Erlinda Medalla noted such challenges may be addressed through liberalization, competition, and regulatory reforms, especially in key government agencies.

READ MORE:

PIDS: 3rd telco player is necessary to advance competition in PH
(Miguel R. Camus, Philippine Daily Inquirer, 29 June 2017)

ANTI-COMPETITIVE AGREEMENTS EXPLAINED

Atty. Korina Ana T. Manibog of the Angara Abello Concepcion Regala & Cruz Law Offices (ACCRALAW) discussed in her column the provisions of the Philippine Competition Act (PCA), particularly anti-competitive agreements covered under Section 14 of the PCA. She mentioned that agreements to be consummated by individuals and/or corporations may be 'per se' prohibited or may be justified by pro-competitive benefits, depending on the review of the Philippine Competition Commission (PCC).

READ MORE:

Anti-competitive agreements under the Philippines' Competition Act
(Korina Ana T. Manibog, Business World, 6 July 2017)



L-R: Kamuning Bakery Café owner Wilson Lee Flores; Senator Cynthia A. Villar; PCC Commissioner Stella Luz A. Quimbo; PCC Commissioner Johannes Benjamin R. Bernabe



CHAIRMAN BRIEFS PICPA, ICD ON PHILIPPINE COMPETITION POLICY, LAW

In a string of speaking engagements, Philippine Competition Commission (PCC) Chairman Arsenio M. Balisacan called on all stakeholders to help in promoting a culture of competition in the country to ensure a level playing field for big and small businesses.

The Philippine Institute of Certified Public Accountants (PICPA) invited Balisacan to speak during the Regulators' Day Forum of 2017 Accountancy Week: SHINE (Service, Honesty, Innovation, and Nation-building through Education). The event was held on July 21, 2017 in Mandaluyong City.

"As accountants, your main task is to help businesses and their owners guard their existing assets and ensure that their operations continuously yield sustainable profits. Making businesses aware of the Philippine Competition Act (PCA) and the risks of engaging in anti-competitive acts can help you in this task," said Balisacan.

The PCC Chairman also sought the help of accountants in ensuring that their clients' businesses are in accord with the PCA: "Your value to your client goes beyond your accounting skills. As custodians of the book, you are in a primary position of knowing if your client is

in danger of breaking the law. If they are, encourage them to seek appropriate legal advice."

"Our doors are also open and our hands remain extended in partnership to all, especially erring businesses that want to rectify their anti-competitive behavior," he said.

Balisacan was also invited to participate in a breakfast roundtable discussion organized by the Institute of Corporate Directors (ICD), a non-stock, not-for-profit organization dedicated to raising the corporate governance standards in the Philippines.

"It is understandable that the business community may not be used to the idea of being regulated for competition and antitrust concerns, and will have different paces of adopting until it becomes the norm in business ethics and every business deal," said Balisacan.

The two high-profile speaking engagements were part of the second pillar of PCC's powers, namely its role as a competition policy and advocacy champion.



PCC Chairman Arsenio M. Balisacan delivers his keynote message during the ICD roundtable discussion



PCC Chairman Arsenio M. Balisacan (third from right) receives a plaque of appreciation from PICPA executive officers

ASEAN MEMBER STATES MEET TO DEVELOP COMPETITION BUSINESS PERCEPTION INDEX

The Philippine Competition Commission (PCC) joined competition authorities from the Association of Southeast Asian Nation (ASEAN) member states to develop the Competition Business Perception Index in a brainstorming session last July 19-20 2017 in Bali, Indonesia.

Hosted by the Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH (GIZ) and the Commission for the Supervision of Business Competition (KPPU) of Indonesia, the brainstorming session aimed at sharing conceptual considerations, approaches and experiences from within and outside of ASEAN with respect to capturing the degree of business awareness, as the basis for planning advocacy or enforcement actions.

In line with Initiative 4.5 of the ASEAN Competition Action Plan (ACAP) 2025, the Competition Business Perception Index serves as a tool to gauge business perception

and knowledge of competition issues every five years. This supports the notion that effectiveness of competition regimes does not merely rely on a sound legal framework or institutional capacities, but also requires extensive business compliance and public understanding about the principles and benefits of competition. In line with this, competition agencies around the world are holding regular dialogues with the business community and have developed specific tools to inform the private sector about the importance of fair competition.

PCC was represented by Atty. Jolina Pauline Tuazon and Shanti Aubren Prado. Its participation in the event is part of the PCC's commitment in helping build a culture of competition in the ASEAN region.

PCC LAWYERS COMPLETE COURSES ON FINANCIAL MARKETS, CORPORATE FINANCE, COMPETITION

To build the capacity of its employees, the Philippine Competition Commission (PCC) sent its lawyers from the Mergers and Acquisitions Office (MAO) to various training courses and seminars on financial markets, corporate finance, and competition.

Lawyers Michael Kris Ben T. Herrera and Akemi B. Aida completed the course on Financial Markets and Corporate Finance organized by the Ateneo de Manila University Graduate School of Business - Center for Continuing Education.

The three-session seminar-workshop, held every Saturday from July 22 to Aug 5, 2017, provided the participants background on the financial markets as potential sources of capital and the various financial instruments or securities that firms use to raise funds. The module also covered the basic principles of equity valuation, which is essential in performing equity research, recommendations, peer comparisons, and portfolio creation and management.

The participants also took a practical look at stock market trading and operations to supplement the classroom lectures. The module discussed real situations through case analyses, simulations, and actual stock trading operations.

Separately, Atty. Ma. Lourdes C. Polido was sent to the 7th Diploma Program in Corporate Finance of the Ateneo Center for Continuing Education (ACCE).

The course aimed at enhancing the participant's understanding of the basic objectives, the critical role, and the strategic importance of finance in business, as well as the behavior of financial markets from the global and domestic fronts and the factors that affect them.

Finally, lawyers Juan Anton Arcilla and Joemyl Baloro participated in competition courses organized by the College of Europe's Bruges campus in Belgium in July 2017.

Atty. Arcilla attended the EU Competition Law course, which provided participants a professional guide to European Union competition law, as well as important tools for mastering legal complexities. The program covered the constituent provisions of the EU competition law and merger regulation. Atty. Baloro completed the IT Markets and Competition Matters course, which discussed how competition law can be an effective tool to attain a digital single market in the European Union, promote competition, eliminate anti-competitive trade barriers and, enhance market efficiency. Both courses involved practical simulations, case studies, and active discussions for each topic in focus.

COMPETITION SEMINAR SERIES HELD FOR PCC EMPLOYEES

The Philippine Competition Commission (PCC) held the Seminar Series on Competition Matters for PCC employees on July 24, 2017. Spearheaded by the Human Resource Development Division, the event ensures PCC employees' awareness of the developments in the agency's operations as the national competition watchdog.

The seminar focused on the agency's learnings and way forward in mergers and acquisitions procedures and regulation, the analysis of key prohibitions under the Philippine Competition Act (PCA) using a "constraint framework," and PCC's role in lobbying competition provisions in free trade agreement negotiations with the Asia Pacific Economic Cooperation (APEC), Association of Southeast Asian Nations (ASEAN), European Union (EU), and other countries.

The preliminary results of the "Household Survey on the Perception and Awareness on Market Competition" were also presented during the seminar, which provided insights in the general public's perception and understanding of market competition.

TRAINING ON QUANTITATIVE TECHNIQUES BOOSTS PCC STAFF SKILLS

Econometrics expert and former University of the Philippines professor Dr. Geoffrey Ducanes conducted a training on basic statistical methodologies used in competition last July 21, 2017.

The training session focused on statistical procedures in identifying products within the relevant market, as well as empirical techniques in determining the impact of firm mergers in the same relevant market. He also discussed econometric methods in recognizing relationships between price and level of concentration in a certain market using simple linear and fixed-effect regressions, and in pinpointing possible horizontal conspiracies and potential signs of collusion in an industry.

The two-part training session aimed at boosting the skills of PCC's economists and other specialists.

PCC PARTICIPATES IN 2017 CRESSE

Officials and technical specialists from the Philippine Competition Commission (PCC) participated in the 2017 Competition and Regulation European Summer School and Conference (CRESSE) organized by the Athens University of Economics and Business (AUEB) in Crete, Greece.

Commissioner Amabelle C. Asuncion, along with Director Krystal Lyn T. Uy, and lawyers Ma. Leonila P. Papa, Katherine Ann C. Baldos, Melbourne Ziro D. Pana, and Jenicka Elizabeth E. Hosaka, participated in the 4th CRESSE Lawyers' Course on the Role of Economics in Competition Law and Practice.



L-R: Global Relations Co-ordinator, OECD Competition Division Lynn Robertson; Member of Competition Tribunal of Kenya Alice Wanja; Division chief of PCC Economics Office Isabela Rosario G. Villamil

Separately, economists Isabela Rosario G. Villamil, Janine P. De Vera, and Cara Gabrielle T. Latinazo, and accountant Harvey R. Callueng attended the 12th CRESSE Summer School and Conference on Competition Policy and Regulation.

The program, held from June 24 to July 6, 2017, provided a comprehensive and updated account of the developments in economic theory, empirical analysis, legislation, and policy in the areas of competition and regulation. The course focused on industry economics and game theory for the analysis of market power, market definition and the assessment of market power, dominance and its abuse, collusive practices, economics of mergers, competition and regulation in network industries, quantitative analysis for competition policy, and competition policy and intellectual property rights.



L-R: Atty. Jenicka Elizabeth E. Hosaka; Mergers and Acquisitions Office Director Krystal Lyn T. Uy; Chairman of the Organisation for Economic Co-operation and Development (OECD) Frederic Jenny; Commissioner Amabelle C. Asuncion; Atty. Katherine Ann C. Baldos; Atty. Melbourne Ziro D. Pana; Atty. Ma. Leonila P. Papa

The course, which ran from June 30 to July 3, 2017, provided legal practitioners a comprehensive understanding of economic concepts and theories, and its application to competition. The course also enabled participants to collaborate with economists on cases.



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