PHILIPPINE COMPETITION COMMISSION
Ensuring businesses compete and consumers benefit

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PRESS RELEASE
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PCC weighs in on competition issue to PCAB-Manila Water construction case

The Philippine Competition Commission (PCC) seeks to level the playing field among contractors in the construction industry as it sends its expert opinion to an ongoing case between the Manila Water Company, Inc. (MWCI) and the Philippine Contractors Accreditation Board (PCAB).

In its first *amicus curiae brief* filed before the Supreme Court on December 19, 2016, PCC asked the Supreme Court to nullify PCAB's nationality requirement in its current licensing scheme for contractors in the construction industry.

The PCAB-MWCI case was elevated to the high court just weeks before the Philippine Competition Act was passed in July 2015. PCC is the primary state agency on competition issues and the competition law figures prominently in carrying out the state's policy of promoting free and fair competition in all commercial and economic activities.

PCC stressed that the construction industry plays an important role in economic development because it builds the infrastructure of almost every other industry and the rest of the economy, including housing, transport, water and sanitation, and power.

"It is a settled principle in economics that if there are many players in the market, healthy competition will ensue. Competition results in better quality products and competitive prices that will benefit the public," PCC said in its brief. Competition in the construction industry would result in improvements in production processes, leading to economic benefits for the country.

The SC ruling on this case is anticipated to make a significant impact on the Philippine construction industry considering that such ruling could either: 1) open up and level the playing field for both domestic and foreign contractors; or 2) preserve the unduly restrictive licensing regime imposed under the assailed regulation, according to the PCC letter earlier sent to the Office of the Solicitor-General (OSG) that represents PCAB on the case.

Special licenses of foreign firms 12 times costlier than regular licenses

At present, PCAB, the authorized licensing body, issues two types of licenses to contractors—Regular and Special Licenses. Local firms can be granted a regular license, which gives them continuing authority to engage in many contracting activities throughout a one-year period. Foreign firms can only be granted a special license, and they need to have a separate license for each contract activity.

These conditions create a substantial difference in cost between foreign and local firms for securing licenses from PCAB.

To illustrate the difference in cost of licensing between foreign and domestic firms, PCC calculated the potential cost of licensing between special and regular licenses, under the PCAB rule that only domestic firms can get a regular license.

Since the application process takes an average of 30 days, applying the daily minimum wage would place a conservative estimate of the cost for each application at P14,700 even without adding the cost of categorization fees. For 2015, there were 132,000 construction projects and 10,526 registered contractors, which means each registered contractor undertook an average of 12 projects for the year.

Under the current PCAB rules, foreign firms can only be granted a special license. Thus, a foreign contractor would have to spend twelve times more for license applications compared to a domestic contractor in a typical year in order to engage in the same level of activity.

“These conditions are not very encouraging for foreign contractors intending to participate in the construction industry,” PCC said.

“The nationality requirement [by PCAB] puts a substantial barrier to the entry of foreign contractors in the construction industry,” PCC argued. “Ease of entry into an industry is a positive sign of competitiveness.”

Low participation of foreign contractors

PCC notes the low participation rates of foreign contractors in the Philippines, ranging from 10 to 15 percent. The Commission found that few new licenses were issued and three-fourths of the total licenses issued were merely renewals or amendments, indicating that the construction industry remained structurally unchanged.

In 2015, only 20 special licenses were issued to foreign construction firms and 4 were issued to joint venture participation out of 1,600 special licenses—or 0.23 percent of the total licenses for that year.

"The burdensome requirements could be hampering the entry of new participants, particularly, foreign firms, in the construction industry," PCC said.

"It is indicative of how competition in this industry remained relatively stagnant in years," it added.

"The government must advocate a level playing field where no market participant is given undue advantages that would allow it to gain market share over otherwise more effective and efficient competitors," PCC said in its brief.

PH has highest average cost of construction projects in ASEAN

At present, the Philippines has the highest average cost of construction in certain classified projects when compared to its ASEAN counterparts.[1]

For standard high rise apartments, it costs US$900/square meter in Manila, US$ 773.5/sqm in Bangkok, US$707/sqm in Jakarta, US$665/sqm in Vietnam, and US$465 in Kuala Lumpur.

For standard high rise offices, it costs US$870/sqm in Manila, US$757.5/sqm both in Kuala Lumpur and Jakarta, US$750/sqm in Vietnam, and US$727.5 in Bangkok.

For standard shopping centers, it costs US$815/sqm in Manila, US$750.5/sqm in Bangkok, US$740 in Vietnam, US$690/sqm in Kuala Lumpur, and US$594/sqm in Jakarta.

For prestige shopping centers, it costs US$1,115/sqm in Manila, US$885/sqm in Kuala Lumpur, US$882/sqm in Bangkok, US649/sqm in Jakarta, and no updated data in Vietnam.

PCC sees low FDI in construction industry

When compared to ASEAN counterparts, the Philippines' regulatory framework is characterized as "restrictive" due to its limited construction activities and equities available to foreign firms.

In contrast, Vietnam, Malaysia, Cambodia, and Singapore are considered "liberal," mostly with uniform licensing requirements for both domestic and foreign companies.

The "liberal" countries registered higher foreign direct investment (FDI) rates compared to "restrictive" countries such as Philippines, Indonesia and Thailand. In particular, Philippines barely has 1% FDI rate in the construction industry.

Thus, Philippines is missing out on investment opportunities and potentially deprived of the considerable benefits gained from more competitive key economic sectors.

PCC, as an amicus curiae or friend of the court, is not a party to the case and is not solicited by any party but has strong interest in the subject matter. PCC sought to intervene in the pending Supreme Court litigation to shed light on the effects of the PCAB regulation on competition. The decision on whether to admit the information lies at the discretion of the court.

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[1] Source: Langdon & Seah Construction Handbook (2016)

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