PHILIPPINE COMPETITION COMMISSION
Ensuring businesses compete and consumers benefit

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PCC recommends policy reforms for National Broadband Plan

The Philippine Competition Commission (PCC) supports the National Broadband Plan (NBP) and is recommending some measures to make it more effective including imposing higher penalties on erring telco players and removing government regulations that restrict healthy competition in the industry.

The Department of Information and Communications Technology (DICT) is spearheading the formulation and implementation of the NBP that aims to, among others, upgrade the quality of broadband services in the country, widen its reach, and link all government agencies, public institutions, and local government units through the internet.

“The objective of the NBP is to ensure that all Filipinos will reap the benefits of broadband, address challenges in the sector, and accelerate broadband deployment,” the antitrust watchdog said in a position paper. “The PCC supports the DICT in its efforts to improve broadband services in the country.”

To ensure that the NBP is effective in attaining its goals, the PCC is recommending several measures that include giving regulators such as the National Telecommunications Commission (NTC) more teeth to enforce their mandates, reviewing the competition landscape in the telco sector and resolving interconnection issues in the broadband market.

The NTC should be given sufficient tools to overcome several challenges that hamper its ability to effectively regulate the industry. Among the recommendations include amending Republic Act 7925 that would allow NTC to impose higher penalties on telco players that are violating the country’s laws and regulations.

The PCC noted that RA 7925, which was passed in March 1995 and provides for the development of the telco industry, does not have penal provisions. Because of this, the NTC applies the penalties provided under the Public Services Act of 1936, which sets fines at not more than P200 per day until the violation is corrected.

“When penalties are low and enforcement unlikely, operators will tend to choose to violate rules rather than sacrifice profits,” the PCC said.

Moreover, the antitrust body said the PCC should not be prevented from pursuing its mandate of enhancing economic efficiency and promoting fair and free competition in the market.

"The PCC plays a crucial role in improving broadband services in the country. By implementing the Philippine Competition Act (PCA), it prevents firms from exploiting consumers and excluding competitors. Experience has proven that regulation by itself is insufficient to create a robust competitive environment in the telco industry. The PCA establishes rules to safeguard the competitive process and its effective application is necessary to assist entry as well as ensure that competition is maintained," the Commission said.

There is also a need to remove regulations that create barriers to competition and the PCC identified three major types of government interventions that restrict competition and facilitate anti-competitive practices. They are:

- *Regulations that reinforce market dominance or limit the entry of new players.* These include high cost of franchises and other permits, making it difficult for new players to enter the market. As a result, market concentration is high and this allows existing players to dominate the market with less pressure to perform efficiently.
- *Regulations that are conducive to collusion or that increase costs to compete in the market.* These may include the ability of telco players to co-use, which allows them to transfer or share their privilege to use certain frequency bands to another firm. This sometimes poses a problem since it limits the government's prerogative to allocate the essential, but finite, resource in a way that is fair and efficient.
- *Regulations that discriminate against specific players, distort the level playing field, or protect vested interests.* These include limiting the entry of foreign equity ownership in telcos, which is capped at 40 percent under the Constitution. This effectively protects the existing players from competing with technologically advanced and efficient potential players.

The PCC also bats for the creation of an effective interconnection regime, which the agency said must be prioritized and aggressively pursued.

"Interconnection is arguably the most crucial component to enhancing competition within the telco industry. Because interconnection rates and terms are negotiated bilaterally between firms, they are strongly affected by relative bargaining strength," the PCC said.

"Operators with fewer subscribers or less extensive networks, for instance, have weaker bargaining power and would have difficulty obtaining favorable terms from their bigger competitors."

The PCC agreed with the NBP's suggestion of an open access policy, where players are provided with wholesale capacity from existing national backbone network operators under terms that are non-discriminatory and transparent, and at prices that are cost-oriented and subject to the NTC's regulatory oversight.

In formulating the rules for interconnection, the PCC proposed the following basic principles to make it more effective:

- Detailed regulatory guidelines should be provided on critical aspects of interconnection such as negotiation arrangements, establishment of interconnection rates, and technical terms and conditions.
- Focus should be given on interconnection obligations for the existing dominant operators since only firms with substantial market power have the ability to establish interconnection terms independently of competition.
- Mechanisms for the identification and resolution of discriminatory interconnection arrangements should be developed.
- Since the existing dominant players have the incentive to charge exorbitant rates to its smaller competitors, interconnection charges should be regulated to ensure that they approximate actual costs.

The PCC's recommendations are in line with its mandate to foster competition and protect consumer welfare.

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