
Closure of investigation on alleged anticompetitive conduct in the supply and distribution of pneumococcal conjugate vaccine for immunization in the Philippines

Industry	:	Supply and distribution of pneumococcal conjugate vaccine for immunization in the Philippines
Case Reference	:	CEO-22-0100-FAI
Case Closed	:	30 August 2024
Issue(s)	:	Anticompetitive agreements and abuse of dominance with respect to the supply and distribution of pneumococcal conjugate vaccine for immunization in the Philippines
Relevant Provision(s)	:	Section 14(c) and Section 15(b) and (e) of the Philippine Competition Act

I. Background

1. On 19 January 2022, the Philippine Competition Commission (“PCC”) received a Verified Complaint (the “Complaint”) of the same date filed by the United Filipino Consumers and Commuters (“UFCC”) represented by Jonathan Dela Cruz (“Complainant”) against Pfizer, Inc. (“Pfizer”) and Zuellig Pharma Corporation (“ZPC”).¹
2. As alleged in the Complaint, since 2019, only Pfizer and ZPC Joint Venture with Interphil Laboratories, Inc. (collectively referred to as “ZPC-ILI JV”) has been participating in and alternatively winning the government bidding process for pneumococcal conjugate vaccine (“PCV”) procurement, based on the Department of Health (“DOH”) Central Office Bids and Awards Committee-A (“COBAC-A”) Resolutions attached to the Complaint.
3. For 2020, it was alleged that there is patent collusion between Pfizer and ZPC-ILI JV when the latter submitted a non-compliant bid with the technical requirements on the mere PCV schedule of delivery. Further, it was alleged that

¹ MB Business, ‘Consumer group urges PCC probe on pneumonia vaccines’ *Manila Bulletin* (Manila, 28 March 2022) <<https://mb.com.ph/2022/03/28/consumer-group-urges-pcc-probe-on-pneumonia-vaccines/>> accessed 17 December 2024; John Eric Mendoza, ‘Group wants pneumonia vaccine purchase halted over alleged bidding anomaly’ *Inquirer* (Manila, 21 January 2022) <<https://newsinfo.inquirer.net/1543244/fwd-suspend-procurement-of-pneumonia-vaccines-due-to-alleged-bidding-anomaly-govt-urged>> accessed 17 December 2024.

ZPC-ILI JV suspiciously did not raise any comment to Pfizer's attempt to stop the bidding during the Pre-Bid Conference.

4. The Complaint also alleged that, taken together with the aforementioned events of the 2020 procurement for PCV, acts committed by Pfizer and ZPC-ILI JV during the 2021 PCV procurement suggested collusion.
5. There was also allegation that indicators of bid-rigging identified by the Organization for Economic Cooperation and Development ("OECD") are present in the PCV procurement, increasing the likelihood of collusion between Pfizer and ZPC. However, the Complaint did not elaborate on this aspect.
6. The Complaint likewise alleged that DOH's decision to procure only PCV13 heavily contributed to the monopolistic advantage of Pfizer and its partner-distributor Zuellig, leading to higher prices in PCV procurement. In particular, it referred to a Health Technology Assessment Council study in 2020 ("2020 HTAC Report"), which stated the following findings:
 - 6.1. PCV is the most expensive vaccine in the National Immunization Program ("NIP") at a DOH spending of Php4.4 billion, taking up more than half of the total Php7.2 billion budget allocation for NIP in 2020;
 - 6.2. PCV13 is more expensive than PCV10 on a per-dose basis; and
 - 6.3. A significantly lower-priced vaccine would be most favorable to the DOH as this can ensure universal coverage of the entire birth cohort, compensating for the advantage of greater serotype advantage under the current scenario where there is an incomplete target population because of the high price of PCV13 currently implemented by NIP.
7. On 27 January 2022, the Enforcement Office conducted a preliminary inquiry on the Complaint. On 28 April 2022, the Enforcement Office proceeded with the conduct of a Full Administrative Investigation ("FAI") for possible violations of Sections 14(c), 15(b), and 15(e) of the Philippine Competition Act ("PCA"), which prohibit anticompetitive agreements and abuse of dominance.

II. Findings

8. On 30 August 2024, the Enforcement Office terminated its FAI on the alleged anticompetitive conduct and abuse of dominance committed by Pfizer, ZPC, and/or GlaxoSmithKline Philippine, Inc. ("GSK") in the supply and distribution of PCV for immunization in the Philippines.
9. Based on information gathered, the Enforcement Office finds no sufficient basis to charge Pfizer, GSK, and/or ZPC for violating the PCA, its implementing rules, or other competition laws in relation to their participation in the procurement of the supply of PCV for mass immunization by the DOH from 2019 to 2021.

On Section 14 of the PCA

10. In the 2019 PCV procurement, the only PCV valent-type listed in the Philippine National Formulary (“PNF”) was PCV13. Thus, the technical specification for procurement that year was PCV13 which is manufactured by Pfizer.
11. Beginning 2020, the PNF has incorporated PCV10 as a result of the 2020 HTAC study, opening the supply of PCV for mass immunization to PCV10. GSK, the manufacturer of PCV10, reached out to ZPC to work together and participate in the 2020 PCV procurement. Thereafter, ZPC and ILI entered a JV. Such relationship between and among the three entities was documented by the DOH COBAC-A. ZPC-ILI JV was not the winning bidder due to the inability of GSK to provide supply as a result of the Covid-19 pandemic and not because of collusion with other bidders.
12. Regarding the 2021 PCV procurement, ZPC-ILI JV’s ability to meet the schedule of delivery and win the contract was due to preparations made to meet the requirement of DOH and not a result of collusion with other bidders.
13. Likewise, upon careful assessment, the distribution agreement between Pfizer and ZPC as regards PCV13 does not include terms or conditions that appear to have the object or effect of substantially lessening competition.
14. Thus, there is no sufficient basis to charge Pfizer, GSK, and/or ZPC for violating of Section 14(a)(2) and 14(c) of the PCA.

On Section 15 of the PCA

15. Based on the documents submitted and information given by ZPC, Pfizer, and GSK as well as sub-distributors, the Enforcement Office determined that ZPC is not a dominant player in the relevant market for supply and distribution of PCV (PCV10 and PCV13) for mass immunization in the entire Philippines.
16. There exist sufficient competitive constraints from suppliers (manufacturers) and competitors (other distributors and sub-distributors) that would prevent ZPC from exercising any market power in the relevant market.
17. As dominance is an essential element of a violation of Section 15 of the PCA, the Enforcement Office finds no basis to charge ZPC of a violation thereof.

Coordination with the DOH

18. On 29 August 2024, the Enforcement Office met with the Disease Prevention and Control Bureau (“DPCB”) of the DOH to discuss its findings and recommendations.

19. Based on the HTAC Report, PCV10 and PCV13 are both found to be cost effective using multidose vials, the incremental cost-effectiveness ratio values of PCV10 and PCV13 are wider in single dose vials compared with multidose vials, and PCV10 resulted in lesser costs but also a lower number of deaths and related diseases. Thereafter, the DOH issued Department Memorandum dated 14 August 2020, which mandated the inclusion of PCV10 and the multidose vial formulation to the PNF.
20. The inclusion of PCV 10 in the PNF resulted in bid prices for procurement of PCV to drop. Beginning 2016, the bid price of PCV13 saw an average decline of 0.8%. With the inclusion of PCV10 in the PNF in 2020, PCV13 bid prices vastly declined by 48.6%, and saw a further decline of 4.2% the year after. Meanwhile, PCV10 bid prices also saw an average decline of 11.8% from 2020 to 2022.
21. In practical terms, the decline in bid prices for PCV13 and PCV10 resulted in the drop of price per dose paid by DOH from Php816.82 in 2019 to Php419.44 in 2020, resulting in actual savings of more than Php3 billion. The price per dose paid dropped even further in 2021 and 2022 to Php345.23 and Php315.68, respectively. Year-on-year, this translates to an additional savings of another Php480 million in 2021, and almost Php60 million in 2022. However, it was found out that PCV end-users in the public sector have low awareness of the results of the HTAC Study.
22. Thus, the Enforcement Office recommended that DOH issue an administrative order to provide guidelines to all national and local government entities in procurement of PCV in relation to the 2020 HTAC Report on cost-effectivity and its benefits to price competition. It was also recommended that DOH conduct and/or include in its information efforts the unique benefits identified in the HTAC Report for both PCV13 and PCV10 in multidose vials in the appropriate case.

III. Conclusion

23. In view of the findings above, the Enforcement Office formally closed its investigation on 30 August 2024.
24. Nonetheless, in accordance with Section 2.13 of the 2017 Rules of Procedure of the PCC, closure of the FAI shall be without prejudice to the conduct of another inquiry or investigation if the circumstances so warrant.
25. The foregoing findings are based solely on the facts and circumstances of this investigation and relevant only to the particular issues examined herein.