

Closure of investigation on alleged anticompetitive conduct involving price fixing of purified water in San Jose, Magsaysay, Rizal, and Calintaan (or “SAMARICA”), Occidental Mindoro

| | | |
|------------------------------|---|--|
| Industry | : | Provision of purified water in SAMARICA, Occidental Mindoro. |
| Case Reference | : | CEO-19-0031-FAI |
| Case Closed | : | 20 December 2024 |
| Issue(s) | : | Possible price fixing with respect to the provision of purified water in SAMARICA, Occidental Mindoro. |
| Relevant Provision(s) | : | Section 14(a)(1) of the Philippine Competition Act |

I. Background

1. On 30 January 2019, the Philippine Competition Commission (“PCC”) received an email inquiring whether the conduct of certain water refilling stations is anti-competitive.
 - 1.1. Attached to the email is a photo of Pabatid Blg 01 (“Notice”) of the SAMARICA Water Stations Cooperative (“SAMARICA Cooperative”). According to the email, the Notice was posted conspicuously in water stations in San Jose, Magsaysay, Rizal and Calintaan, Occidental Mindoro (“SAMARICA”) area.
 - 1.2. Based on the Notice, members of the Cooperative agreed to set the price of a 5-Gallon/1 container of drinking water as follows: (a) Walk-in/Counter-sales – P25.00; (b) Delivery Price – P30.00; (c) Outlet/Retailer – P25.00. The members are also prohibited from giving out free drinking water as an incentive to customers.
 - 1.3. Further to the email, the prices of 5-Gallon/1 container were P5.00 lower before the issuance of the Notice.
2. On 30 May 2019, the Enforcement Office issued a warning letter to the members of the SAMARICA Cooperative to voluntarily comply with the Philippine Competition Act (PCA) and immediately cease and desist from continuing with the observed price fixing agreement, which is in violation of

Section 14(a)(1) of the PCA. The letter was received by its President on 10 June 2019.

- 2.1. The letter enjoined the Cooperative, within 30 days from receipt, either to refute the preliminary finding of price-fixing, or to inform the Enforcement Office of its action to stop the agreement among its members and to voluntarily comply with the PCA.
- 2.2. Thirty (30) days after receipt, no reply was received from the Cooperative or any of its representatives.
- 2.3. In a Facebook message sent to the PCC account on 02 September 2019, the President confirmed that the Cooperative was set up to stabilize water prices. He further claimed that the Cooperative has already ceased after the Enforcement Office issued the warning letter.
3. Thereafter, initial assessment commenced to monitor compliance by the SAMARICA Cooperative with the PCA. During the initial assessment, information was gathered that despite the warning issued in May 2019 and the representation by the President of the SAMARICA Cooperative, it appears that the agreement is still ongoing.
 - 3.1. Information obtained showed that in November 2019, copies of the Notice were still posted in other areas except in San Jose and Poblacion in Occidental Mindoro. It appears that not all water refilling stations were informed of the prohibition or there are non-members that followed the price increase and still post copies of the Notice at their respective water refilling stations.
 - 3.2. Based on information provided by an office of the SAMARICA Cooperative, it appears that certain provisions of the Notice are still in effect particularly the Php 25.00 price and the prohibition on giving out free drinking water as an incentive to customers. It also appears that there is still an intention for the SAMARICA Cooperative to enforce the agreement. They were, however, interrupted by intervening events like typhoon Ursula and Covid-19 pandemic.
4. On 26 November 2020, the Commission found reasonable grounds and directed the Enforcement Office to conduct a *motu proprio* preliminary inquiry on a possible price fixing by the SAMARICA Cooperative. On 25 February 2021, the Enforcement Office found reasonable grounds to proceed with the conduct of Full Administrative Investigation (FAI).

II. Findings

5. During the FAI, field missions were conducted to gather information on the water refilling stations. These confirmed that Pabatid Blg. 01 setting the prices

of drinking water by the members of the SAMARICA were still posted on the premises of the water refilling stations.

6. The team also saw another notice, entitled Pabatid Blg 02-2019, which mandated the following minimum price per container of water: (a) walk-in/counter sale – P25.00; outlet/retailer – P25.00; and delivery price – P30.00. Pabatid Blg 02-2019 also reiterated the prohibition on giving out free drinking water as an incentive to customers. Pabatid Blg. 02-2019 was issued by the Samarica Water Stations Association on 06 January 2019 and signed by its officers.
7. Both notices mandated the minimum prices per container of water and prohibited the giving out of free drinking water as an incentive to customers. The notices were also signed by members of the associations, which are competing water refilling station owners. These are violative of Section 14(a)(1) of the Philippine Competition Act, which prohibits agreements among competitors which restrict competition as to price (price-fixing).
8. To immediately address this behavior, the Enforcement Office issued Show Cause Order Nos. 2023-018 and 2023-019 dated 5 October 2023 to SAMARICA Cooperative and SAMARICA Water Stations Association, ordering them to explain in writing the conduct described therein, to wit:

First Conduct: On 12 November 2018, the SAMARICA Cooperative issued Pabatid Blg. 01, which set the prices of 5-gallon container of drinking water as follows:

- a. Walk-in/Counter-sales – Php 25.00;
- b. Delivery Price – Php 30.00; and
- c. Outlet/Retailer – Php 25.00

Second Conduct: On 06 January 2019, SAMARICA Association issued a subsequent Pabatid Blg. 02-2019, reiterating the earlier issued Pabatid Blg. 01 and reminding water refilling stations of the agreed upon prices of 5-gallon container of drinking water in violation of Section 14(a)(1) of the PCA:

- a. Walk-in/Counter-sales – Php 25.00;
- b. Delivery Price – Php 30.00; and
- c. Outlet/Retailer – Php 25.00

9. Thereafter, show cause conferences were conducted by the FAI Team.
10. On 27 February 2024, SAMARICA submitted its written proposal to address the conduct described in the Show Cause Orders. Further negotiations and revisions ensued, pursuant to the recommendations of the Enforcement Office as well as the directives of the Commission.

11. On 04 November 2024, the Enforcement Office received Commission Resolution dated 11 June 2024 accepting and approving the Written Proposal dated 27 February 2024 submitted by the SAMARICA Cooperative, SAMARICA Association, and San Jose Water Station Operators Association.
12. On 20 December 2024, the Enforcement Office resolved to terminate the FAI pursuant to Sections 3.14 and 3.16 of the 2017 Rules of Procedure of the PCC, following the recommendation of the FAI Team upon the Commission's approval of the Written Proposal of the Cooperative, without prejudice to any other investigation with respect to the same or other possible violations of the PCA and other competition laws.
13. The Enforcement Office will monitor compliance with the commitments detailed in the written proposal.

III. Conclusion

14. In view of the findings above, the Enforcement Office formally closed its investigation on 20 December 2024.
15. 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.
16. The foregoing findings are based solely on the facts and circumstances of this investigation and relevant only to the particular issues examined herein.