

**Leveling the Playing Field:
Updates from the PCC & Priorities for 2019**

Arsenio M. Balisacan, PhD
Chairman

Keynote Speech

ECCP Membership Luncheon Meeting

Sarika Function Room, Dusit Thani Manila, Makati City

18 February 2019, 12:00 nn

<Salutations>

EU Ambassador Franz Jessen, ECCP President Nabil Francis, Executive Director Florian Gottein, our friends from the business, diplomatic, and legal communities, members of the media, ladies and gentlemen, good afternoon.

Thank you to the European Chamber of Commerce of the Philippines for this opportunity to share the recent efforts of the Philippine Competition Commission (PCC) and our priorities in 2019.

The PCC celebrated its third anniversary last February 1. Looking back, we see how rapidly we have scaled up our operations within such a short period of time. I am pleased to say that we have come quite a long way in building a robust competition policy framework.

After the Philippine Competition Act's transitory period ended in August 2017, the Commission cranked its gears full speed. In the ensuing months, the PCC put in place and began implementing a new competition regime in the country. Doing so

in the midst of several economic headwinds that beset the Philippines in 2018: high inflation, especially for necessities such as food and fuel, the rise of protectionist/populist policies from major country players of the global economy, disrupted Philippine markets.

The state of competition in Philippine markets needs serious, even radical, fixing. Globally, the country does not fare well in country comparison of domestic market restrictions and market concentration. Evidence shows that high market restrictions and high market concentration stifle prospects for sustained growth and inclusive prosperity.

Relative to other countries in East Asia and the Pacific, the Philippines harbors a greater proportion of monopolies, duopolies, and oligopolies in the manufacturing sector. Only a few business groups dominate the Philippine markets; in contrast, markets in China, Indonesia, and Vietnam are less concentrated.

When we examined the World Bank's Product Market Regulation (PMR) indicators, we find that we have much to do to undo state-enabled restrictions that stifle market competition and the realization of the country's economic potential. Relative to comparator countries, Philippine markets exhibit higher levels of restrictiveness to competition. State-enabled restrictions have significantly contributed to this outcome. Often, state-enabled restrictions or policies are misinformed and have unintended consequences that distort the incentives of players in the market. A case in point are state-owned enterprises (SOEs), which are in need of reform.

The situation clearly provides a strong impetus to effectively implement the Philippine competition policy.

To recall, the competition policy has four main pillars, which the PCC carries out. These first three are to prohibit (1) anticompetitive agreements, (2) abuses of dominance, and (3) anticompetitive mergers and acquisitions. The fourth pillar refers to competition advocacy to promote and support pro-competitive government policies in all sectors of the economy.

My presentation is organized along these four pillars.

Competition Enforcement

In 2018, the PCC opened new investigations into anticompetitive agreements and conduct and significantly expanded its enforcement portfolio. At the start of this year, the PCC launch a Leniency Program, which rules became effective last January 19. By encouraging whistleblowers to come forward, the program is expected to improve our ability to detect cartels and increase the number of cartel investigations in the coming years.

To date, the Commission has received a total of 169 queries and informal complaints on possible anticompetitive agreements and conduct. We have opened a total of 12 preliminary inquiries: four of these were based on verified complaints, while eight were opened *motu proprio* by the Commission. Of the 12 preliminary inquiries, 10 have advanced to full administrative investigations, one case is ongoing, and one was closed. On the other hand, out of the 10 full administrative investigations, eight are ongoing and 2 had been closed.

This year, the Commission will further flex its muscles as the country's competition enforcer. In an economy where oligopolistic market structures persist, there are high external expectations for the PCC to deliver by investigating anticompetitive agreements and conduct. We are very much mindful that effective deterrence requires not only the threat of penalties, but also effective detection and prosecution of infringements.

In fact, we have recently authorized the commencement of a full administrative investigation into a possible bid-rigging agreement concerning a government project awarded in 2017. This project involves hundreds of millions of pesos. Our efforts to open the investigation are in line with the Commission's prioritization of bid-rigging cases in public procurement as the government ramps up its Build, Build, Build Program.

The PCC remains committed to upholding the principle of fairness in public procurement so that all businesses are given equal chances to compete and so that taxpayers and consumers get the best return to every peso they pay.

The Commission, however, is not alone in this endeavor. I am quite pleased to say that the ranks of competition enforcers have grown to now include three key offices. Last year, the Commission executed Memorandums of Agreement with the Department of Justice-Office for Competition and the Office of the Ombudsman. Just last Friday, we signed a Memorandum of Agreement with the Department of Trade and Industry to strengthen lines of cooperation and coordination with respect to sharing of key information and resources. The PCC's personnel have also undergone training with the National Bureau of Investigation (NBI) to sharpen their investigation skills.

We consider the effective enforcement of the Philippine Competition Act as the most obvious criterion on which our credibility as a young agency will be judged. Toward this end, we expect to close a number of our investigations within the year.

Mergers and Acquisitions

The PCC has remained quite busy on the merger control front, as the appetite for mergers and acquisitions (M&As) within a rapidly growing economy remains high. To date, the Commission has received a total of 175 transactions, of which 160 (91%) had been approved. The sectors under which most transactions are classified remain largely unchanged from last year. These include manufacturing, finance and insurance, real estate, electricity and gas, and transportation and storage. In total, the Commission has received transactions whose combined value has reached PHP 2.82 trillion (or roughly US\$ 54.2 billion) to date.

As members of the business community, you may also be pleased to know that the Commission is carrying out its mandate to efficiently review M&As. In 2018, we took an average of 18 days only to review the five non-problematic transactions filed with us. On the other hand, the 33 M&As that proceeded to the Phase I stage took an average of 23 days to review, a full week ahead of the statutory limit of 30 calendar days. Likewise, the analysis of two transactions that proceeded to the more in-depth Phase II review took an average of 33.5 days to complete, far below the mandated limit of 60 calendar days.

Furthermore, the Mergers and Acquisitions Office issued several guidelines last year to further simplify the notification process. These included the adjustment of the PCC's notification thresholds and guidelines on the notification of joint ventures, consolidation of ownership, and requests for noncoverage from compulsory notification.

The PCC has cleared most of the transactions that fall under its merger control regime after carefully determining that these do not pose significant concerns to competition in their respective markets. However, for transactions that do pose potential harm, the Commission has been steadfast in promoting or maintaining competition by reviewing and monitoring voluntary commitments offered by the parties. Allow me to provide updates on these transactions.

First, on the Chelsea-TransAsia-2Go transaction, the Commission has accepted the voluntary commitments proposed by the parties to correct the potential harm posed to the market for passenger and cargo shipping services. Essentially, these commitments serve to provide checks on service quality and prices offered by the company to ensure that consumer welfare will not be reduced by the transaction.

Second, the Commission recently imposed a fine of PHP 16 Million on Uber Philippines and Grab Philippines for violating the Commission's Interim Measures Order and another PHP 6.5 Million on Grab Philippines for submitting deficient, inconsistent, and incorrect data for the monitoring of its compliance with its voluntary commitments.

To recall, when Grab acquired Uber—its biggest competitor—it offered to adhere to a set of price and service-quality commitments through quarterly monitoring

conducted by an independent monitoring trustee. These commitments were designed to address the Commission's concerns regarding Grab's pricing behavior, as well as its incentives to maintain service quality, in the absence of a significant competitive pressure in the market. However, the Commission cannot effectively enforce these commitments without the submission of correct, sufficient, consistent, and timely data by Grab. We remain steadfast in binding Grab to its commitments, as these are meant to address the concerns of market competition and the ride-hailing public.

Lastly, the PCC has blocked the merger-to-monopoly transaction between Universal Robina Corporation and Central Azucarera Don Pedro last Tuesday, February 12. The Commission found that URC's buyout of its only competitor in the sugarcane milling services market leads to a monopoly in Southern Luzon, particularly in Batangas, Cavite, Laguna, and Quezon. After consultations and meetings with the parties and stakeholders, we found that the voluntary commitments offered by the parties do not sufficiently address the anticompetitive effects arising from the transaction.

Recently, the Commission has noted that parties have been increasingly open to offering voluntary commitments that would serve as remedies to the harms or concerns that the PCC has identified throughout the course of its review. This is a welcome trend: the Commission believes that the most cost-efficient and effective way of preventing anticompetitive conduct is through voluntary compliance from the business community. This is also a positive signal that the private sector has gained a deeper appreciation and understanding of sound competition principles—the fruit of our competition advocacy efforts.

Looking ahead, the PCC will be adjusting the thresholds for compulsory notification of M&As based on nominal gross domestic product (GDP) growth for the previous calendar year. Consistent with the memorandum circular we have issued last year, come March 1, 2019, the Size of Transaction threshold will be increased to PHP 2.2 billion from the current PHP 2 billion, and the Size of Party threshold will be increased to PHP 5.6 billion from the current PHP 5 billion.

The Commission looks to further simplifying the merger notification process and proactively monitoring non-notified transactions, keeping in mind that one of the objectives of our review regime is to prevent anticompetitive M&As from being realized while reducing the burden for nonproblematic transactions.

Competition Advocacy

A proactive competition advocacy is especially potent in its ability to significantly improve the landscape faced by businesses and consumers. The matter of mainstreaming sound competition principles has taken on a greater sense of urgency in a globalized and technologically-disrupted world where an economy's competitiveness matters more than ever.

The PCC recognizes that healthy market competition entails the critical participation of foreign players, as these firms have both the potential to increase competitive pressure on domestic incumbents and the capability to bring in new technology and improved business processes. The Commission has been vocal in its support of various policy reform initiatives that aim to liberalize foreign access

to domestic investment opportunities. The following are some of the initiatives we have actively pursued in relation to this endeavor.

First, the PCC welcomed the filing of a Senate resolution that aims to conduct an omnibus study for purposes of updating the Foreign Investments Act. In our position papers expressing support for various legislative measures seeking to amend the 80-year old Public Services Act, the PCC proposes a more streamlined and straightforward definition of what constitutes a public utility, while at the same time balancing the interests of necessity and market competition.

Second, the PCC has championed the competition lens in the selection process for the third player in the telecommunications market by providing technical inputs to the Department of Information and Communications Technology and the National Telecommunications Commission. To complement this major reform, we have likewise advocated for pro-competitive features in legislative and regulatory measures concerning the common tower policy, mobile number portability, open access in data transmission, and spectrum management reform. These reforms are expected to inject much-needed competition in a sector long-characterized by high prices and poor quality of service.

Third, we have advocated for the easing of the nationality-based restrictions in the domestic construction business by filing an Amicus Brief in a case before the Supreme Court. Relatedly, we have submitted a position paper regarding a House resolution concerning foreign participation in the construction sector. Healthy competition in this industry is especially critical if we are to achieve the ambitious targets set out under the Build, Build, Build Program.

With respect to retail trade, the PCC has expressed its support for the passage of the Retail Trade Liberalization Act. In our position paper, we expressed our belief that maintaining regulatory barriers against physical foreign retailers in the form of a minimum capitalization requirement will do little to insulate domestic retailers of micro, small and medium enterprises (MSMEs) from competition with foreign retailers, especially those with online operations. The Commission believes that the government can show its support of MSMEs without resorting to restrictive policies, such as by improving the ease of doing business in the country.

The Commission has also actively responded to requests of Congress for analyses of the competitive effects of legislative franchises, especially in the energy and telecommunications sectors. Through these inputs, we hope to inject the competition perspective and foster a deeper appreciation of sound competition principles among our legislators.

Lastly, the PCC has been active in the Philippines' review and negotiations of its modern trade agreements such as the Philippine-Japan Economic Partnership Agreement (PJEPA) and the Regional Comprehensive Economic Partnership (RCEP). The Commission has provided inputs that introduce additional disciplines on state-owned enterprises and grant subsidies to promote the principle of competitive neutrality.

The PCC, through the members of its legal and economics offices, is committed to continuously providing input to Congress to help it come up with laws that will liberalize foreign ownership restrictions. To this end, we intend to implement a multi-year work plan to proactively review laws, bills, and regulations that hamper competition. We also hope to organize a quick-response mechanism, tapping

competition and sectoral experts in the provision of targeted, timely, and informed comments on legislative proposals and executive issuance.

Priority Sectors in 2019

This year, the Commission's competition enforcement, merger review, and competition advocacy efforts will focus on several industries.

From our market scoping of the manufacturing sector, we have identified several industries to add to our existing list of priority sectors for competition analysis and enforcement. These new sectors include the logistics supply chain, corn milling and trading, refined petroleum manufacturing and trading, sugar, and fertilizer and pesticides. The sectors we have identified remain consistent with the priorities laid down in the 2017-2022 Philippine Development Plan.

The PCC chose these industries based on a careful and strategic assessment of their impact on consumers and the probability of enforcement success, among other considerations. These choices sprung from the work the Commission has done on several issue papers and studies, which serve as our springboard to more specific enforcement and advocacy work. Each issue paper/study provides us with essential knowledge to put industries, sector regulators, and consumers on notice, and offers guidance for future enforcement and advocacy actions.

For example, the issue paper on air transport, which reviewed past regulations that led to significant improvements in the country's air transport, flags possible competition concerns due to the highly capital-intensive and oligopolistic structure of the market. In particular, it recommends the review of airfare regulation in

routes served by only one carrier and the government's policy on negotiating bilateral air service agreements.

Strengthening Institutional Capacity

From a fledgling agency in 2016, the Commission has grown and expanded to now include among its ranks 162 dedicated public servants. Last July, we have also moved into our new, bigger home in Quezon City, enabling us to expand and hire new personnel and improve work productivity.

We are expecting the National Competition Policy (NCP) to be issued this year through an Executive Order. The NCP acts as a comprehensive framework that steers regulations and administrative procedures to promote effective competition. With competitive neutrality as one of the policy's pillars, the NCP states that state-owned enterprises and private sector businesses shall compete on a level playing field. When the NCP is executed, all government agencies will effectively be directed by the President to assess and remedy competitive neutrality issues. The PCC is mandated to assist and collaborate with the NEDA in the formulation and adoption of this policy, as well as to create an interagency mechanism to operationalize it. This endeavor is expected to further widen our network of competition champions within government.

Lastly, we are finalizing the details and anticipating the approval of a loan from the Asian Development Bank that aims to build the government's collective institutional capacity to foster a vigorous competition environment in the country. This proposed ODA-assisted project effectively places the PCC in the driver's seat of its capacity development strategy. It will afford the PCC a

guaranteed supply of knowledge and expertise, the flexibility to engage the bureaucracy from a whole-of-government approach, and the resources to propagate competition law and policy within and beyond academic and policy spheres.

The private sector can only expect the Commission to become more capacitated and able to efficiently fulfill its mandate in the coming years.

Toward a More Vibrant Competition Landscape

Last year, the PCC significantly expanded the portfolio of cases it holds under its belt. We instituted merger and enforcement rules and have carefully built up the competition policy architecture to inform and guide both the private and public sectors in the years to come. In the months ahead, we aim to further strengthen our capacities in our core processes in order to fulfill our mandate even more effectively.

No business wants to compete on a playing field that is rigged from the start. Thus, we call on the business community to be our partners as we seek to achieve our shared goal of enabling a more vibrant competition landscape across all industries. We encourage you to comply with the Philippine Competition Act and PCC processes to uphold the principle of fairness in the marketplace.

Once again, thank you to the ECCP for the privilege to speak in this forum. I look forward to the discussions we have ahead of us.