

**Disrupting Unfair Market Competition:
PCC's Enforcement Updates and Priorities**

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Good afternoon!

Before anything else, I would like to thank the Asian Legal Business and Thomson Reuters for inviting me to this Forum to discuss recent developments in the country's competition regime. I am happy for the opportunity to update you on improvements we have made on our policy frameworks in the last few months.

The Philippine Competition Commission believes that the easiest way of achieving the objectives set out in the Philippine Competition Act or PCA is via voluntary and faithful compliance with the principles and provisions of the law. Therefore, everyone's presence in this forum is encouraging.

The Commission has actively gone about building the country's antitrust regime since its inception in 2016. In a short span of time since then, we have managed to quickly lay down and build the necessary institutional frameworks. In 2018, the PCC published its Rules on Leniency and several guidelines that streamline our merger process. Along with these, we have doubled down on efforts to investigate anticompetitive conduct and remedy competition concerns for certain mergers and acquisitions through the use of voluntary commitments.

This year, we continue to sharpen our rules and processes, keeping in mind the lessons of the past three years and the aim of effectively and efficiently enforcing the PCA. We are committed to disrupting anticompetitive practices and creating a level playing field for all.

The PCC is mandated to prohibit three types of conduct:

- anticompetitive agreements such as price-fixing and bid rigging;
- exclusionary, exploitative, and discriminatory conduct that constitutes abuses of dominant position; and
- anticompetitive mergers and acquisitions.

As the country's champion for competition advocacy, we spearhead and support efforts to understand the competition landscape across different industries and promote pro-competitive laws and regulations that benefit both consumers and businesses.

Allow me to provide updates on the Commission's three core functions, namely: competition enforcement, merger review, and competition advocacy.

First, under competition enforcement, the Commission is pleased to note of the general public's growing awareness of the PCC's role as antitrust enforcer. This is evidenced by the increasing number of queries and informal complaints—241 to date—that we receive through different channels that are accessible to anyone. A dedicated intake team processes and filters these queries to identify claims that are to be pursued.

Thus far, the PCC has opened 14 preliminary inquiries or investigations. Six of these were based on verified complaints. The other 8 were opened *motu proprio* or through the Commission's own initiative. Twelve of these inquiries have

advanced to full administrative investigations: 9 are ongoing, 2 are closed, and 1 case has proceeded to the adjudication phase. I will expound on this landmark case later.

As mentioned, the Commission got its Leniency Program off the ground effective January 19 of this year. Such program is a critical component of any competition authority's toolkit, so let me elaborate on what this means for businesses.

The PCA expressly prohibits anticompetitive agreements or cartel conduct because of the significant harm that activities like price-fixing, bid rigging, output restriction, and market allocation inflict on consumers. Hence, it is only appropriate that any person or entity found to be engaged in such conduct faces grim prospects—in the order of imprisonment from 2 to 7 years and a fine from PHP 50 to 250 million. The PCC's Leniency Program allows for qualified entities—which include current or former participants in a cartel—to be granted immunity from suit (including criminal, administrative, and civil actions initiated by the PCC) or a reduction of administrative fines in exchange for voluntary disclosure of information on a cartel.

The Leniency Program is essentially the PCC's whistleblower program. It works on a "first-to-file" basis. That is, applicants must secure the first position in the queue for leniency if they wish to be granted immunity from suit. Once the immunity from suit is granted, subsequent applicants may only be eligible for exemption or reduction of fines. Through this program, the Commission hopes to improve its ability to detect, prosecute, and deter cartel conduct.

Therefore, to those who have knowledge of or involved in such conduct: we urge you to come clean—and quick. You would not want to be the last one, or

even to be the second, on the queue. The Commission's website contains details of the Leniency Program.

Last March, our Enforcement Office filed with the Commission its first abuse of dominance or Section 15 case against Urban Deca Homes and 8990 Holdings. The condominium corporation was alleged to have abused its dominant position through exclusionary conduct: it prevented internet service providers or ISPs other than its own, Fiber to Deca Homes, from providing fixed-line internet service to tenants of Urban Deca Homes Manila. In its investigation, our Enforcement Office also found that Fiber to Deca Homes charges a significantly higher price than other ISPs for similar services. This illustrates the harm inflicted on consumers when firms abuse their dominant position.

Within the next few months, Urban Deca Homes approached our Enforcement Office to address the alleged infringement for Urban Deca Homes Manila and its eight other condominium projects. After a series of negotiation, Urban Deca Homes and our Enforcement Office filed a Joint Motion for Settlement with the Commission, the proposed terms of which were published on our website last Monday for public comments.

The proposed terms of settlement seek to have the respondents admit and publicly apologize for their abusive conduct, cease from engaging in such conduct, and remedy the anticompetitive concern identified by the Enforcement Office. Moreover, the respondents shall allow the entry of other ISPs in the market so that their tenants may choose their service provider.

The respondents are compelled also to adopt a competition law compliance program, pay an administrative fine, and submit periodic compliance reports to the Commission.

This landmark case shows that the PCC is serious about addressing anticompetitive practices that have long been considered par for the course in different industries. Unscrupulous businessmen can only expect the Commission to pursue more cases of a similar nature in the future, as we continue to receive information and queries from the public that is becoming more aware of what the Commission can do for them.

We have in the pipeline several more rules and initiatives that build on the current enforcement framework. Within the year, we expect to finalize or issue our Revised Rules on Consent Order, the Rules on Warnings for Non-Priority Cases, and the Rules on Search and Inspection.

Currently, the application for a Consent Order allows an entity to propose terms and conditions to remedy anticompetitive conduct or agreement identified by the Enforcement Office, without admitting a violation. The Revised Rules on Consent Order seeks to amend the 2017 Rules of Procedure by clarifying that Consent Order, as a non-adversarial remedy, is not appropriate for conduct involving hardcore cartels, or infringements of Sections 14(a) and 14(b) of the PCA. As mentioned earlier, the Leniency Program is the remedy available to entities that engage in these types of conduct owing to the gravity of their economic consequences. We expect the draft to be released this month for public comments.

Regarding the Rules on Search and Inspection, the PCC has submitted its proposed rules to the Supreme Court for approval, hopefully within the year. These rules govern the application, issuance, and enforcement of inspection orders or dawn raids for PCC's administrative investigations. Having the authority to undertake search and inspection is another critical component of our

enforcement toolkit because it will enhance our ability to obtain information needed to prosecute violators of the PCA.

The Rules on Warnings for Non-Priority Cases, on the other hand, is the framework that we will adopt to address “small” cases or infringements of the PCA. The Enforcement Office shall determine whether or not cases are “small” by considering PCC’s overall prioritization framework—that is, whether public interest is involved, availability of the Commission’s resources, the likelihood of a successful outcome, and other reasonable grounds to conduct enforcement action. The warnings issued by the Enforcement Office shall serve as non-adversarial administrative remedies for anticompetitive conduct. However, if entities fail to cease their anticompetitive behavior despite our warning, the Commission will not hesitate to undertake further investigative actions and impose significant fines.

In addition to issuing the above rules, the Commission is looking to form a tripartite task force with the Commission on Audit and the Office of the Ombudsman to bolster our efforts to detect, investigate, and prosecute bid rigging in the public procurement process. This endeavor has acquired a sense of urgency, given that the government’s Build, Build, Build infrastructure program is in full swing.

Lastly, as prescribed by the PCA, the Commission’s schedule of administrative fines will be adjusted by 2020 to maintain their real value from the time the law was enacted in 2015.

Let me now turn to the matter of mergers and acquisitions or M&As, for short.

Thus far, the PCC has received a total of 192 M&A transactions. Of these, 179 have been approved while others are undergoing different stages of review or being monitored as regards their voluntary commitments. Collectively, these transactions have reached a value of PHP 4.47 trillion or about USD 87 billion.

It should hearten businesses to know that the majority of transactions filed with us have cleared our merger review. We have blocked only one transaction, which involves Universal Robina Corporation's acquisition of Central Azucarera Don Pedro. Our review shows that such merger would result in a monopoly in the market for sugarcane milling services.

Businesses should also be pleased to hear that the PCC's review days in 2018 were well within the statutory periods. This shows that as we commit to fulfilling our mandate as PCA enforcer, we also keep in mind considerations related to the ease of doing business.

As a demonstration of this commitment, the PCC's Mergers and Acquisitions Office continuously seeks ways to simplify its merger review process. Last March, we adjusted our notification thresholds. We increased the Size of Transaction threshold from a value of PHP 2 billion to PHP 2.2 billion, and the Size of Party threshold from PHP 5 billion to PHP 5.6 billion. These adjustments are intended to more effectively filter the M&As that merit review by the Commission, given the constraints on its resources and the likelihood of finding substantial competition concerns on smaller transactions.

More recently, the Commission put into effect the Rules on Expedited Merger Review, wherein qualified transactions can be put on the fast-track review route. Under this process, M&As will now be subjected to a review period of 15 working days, instead of the 30 calendar days provided by the PCA. The

expedited review applies to transactions that are less likely to pose competition concerns. These include M&As involving: (1) parties with no actual or potential vertical or horizontal overlaps in the market, (2) export-oriented Philippine operations with a global relevant geographic market, (3) parties with a negligible Philippine presence, and (4) real estate joint ventures.

Further, we have just recently issued our Rules for Solicited Public-Private Partnership (PPP) Projects, which streamlines the merger review process for these transactions, paving the way for a faster rollout of priority infrastructure projects.

Implementing agencies may seek an exemption from the compulsory merger notification process by filing an application for a Certificate of Project Exemption from the PCC. To streamline the review process, the Commission shall already inject competition safeguards ahead of the actual bidding. It shall do this by providing inputs to the transaction advisor's Terms of Reference during the project development stage and by evaluating several pertinent documents during the project procurement stage.

The Commission may also require an undertaking to be executed by potential bidders to address potential competition concerns that it has identified. Of course, the Commission is not precluded from launching a *motu proprio* merger review if the conditions of the undertaking are not carried out. These rules take effect on August 16.

By 2020, we intend to issue the Rules on Unsolicited PPP Projects, as well as the Guidelines on Remedies for M&As found to have competition concerns. It is quite encouraging to see that, for these types of transactions, parties have been increasingly open to offer voluntary commitments that remedy identified

competition concerns. To aid merging entities, we aim to provide guidelines outlining principles and best practices on structural and behavioral remedies that will draw on the experiences of more mature competition jurisdictions, as well as the experience of the Commission with its current set of monitored transactions.

The Commission is keeping its eyes trained and its enforcement and advocacy resources focused on particular sectors that hold strategic value. We identify these sectors based on a careful and strategic assessment of their impact on consumers, the probability of enforcement success, and legislative priorities.

In 2020, the PCC's initiatives will focus on telecommunications, retail, electricity, transportation, construction, food and food manufacturing, and health and pharmaceuticals. All of these fall under the sectoral priorities laid down in the 2017-2022 Philippine Development Plan.

The Commission is engaging with legislators and regulators in the aforementioned sectors in order to push for the passage of several pro-competitive laws and regulations. In line with the government's overall socioeconomic development strategy, the PCC believes that competition introduced in several strategic sectors can help unleash market forces and usher in a period of increased economic productivity and inclusive growth for all.

Let me summarize a few of our initiatives.

As a new Congress begins its term, the PCC reiterates its support for several proposals that seek to shake up stagnant industries that have long been enjoying the fruits of misguided protection. First, the PCC welcomes 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 the amendment of the 80-year old Public Services Act, the PCC has proposed 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 and continue to advocate 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 on 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 again expresses its support for the passage of the Retail Trade Liberalization Act. In our position paper, we express our belief that maintaining regulatory barriers against physical foreign retailers in the form of a minimum capitalization requirement will do little to insulate domestic MSME retailers from competition with foreign retailers, especially

those operating online. The Commission believes that the government can show support to MSMEs without resorting to restrictive policies, such as by improving the ease of doing business in the country.

The Commission has also been very active in providing its position whenever Congress requests for an analysis 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. These include the Philippine-Japan Economic Partnership Agreement (PJEPA), the Regional Comprehensive Economic Partnership (RCEP), and more recently the Philippine-Korea Free Trade Agreement. The Commission has provided inputs that introduce additional disciplines on state-owned enterprises and the granting of subsidies to promote the principle of competitive neutrality.

As demonstrated by what I have just discussed, the Commission recognizes that it cannot operate within a silo, isolated from the rest of the national policymaking architecture. Such an approach, if adopted, would likely result in conflicting policies with unintended consequences, as well as inefficient decision-making and suboptimal delivery of public services.

In this regard, we have been exerting effort and devoting resources to mainstreaming competition within government. In addition to our advocacy initiatives, we have entered into Memoranda of Agreement or MOAs with other government agencies in order to establish information and knowledge-sharing channels, streamline work processes, and strengthen enforcement capacity.

These include the Securities and Exchange Commission, the Bangko Sentral ng Pilipinas, the Department of Justice, the Department of Trade and Industry, and most recently the Energy Regulatory Commission.

We aim to further widen our network by establishing productive relationships with more agencies in the future.

In addition, the PCC is looking at entering into MOAs with competition authorities in the East Asian region in order to facilitate cross-border cooperation on merger review, enforcement action, and capacity-building activities.

Moving forward, the Commission aims to further strengthen capacities within its core functions in order to more effectively fulfill its mandate of disrupting unfair market practices. We have identified many opportunities for improvements in our current framework. As we continue to learn from our experience and from the best practices of more mature jurisdictions, I assure the business and legal communities that they can look forward to a competition policy regime that is transparent, predictable, efficient, and fair.

Let me close by reiterating our call to the business community to be our partner in creating a robust culture of competition and achieving our shared goal of having a vibrant Philippine competition landscape. I urge you to faithfully comply with our processes. Additionally, I invite you to provide comments and suggestions to our rules, engage in productive discussions to clarify and point out areas for improvement, and attend our public consultations. Let us work together to build a world-class antitrust regime!

Thank you.