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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
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Case Prioritisation and Prosecutorial Discretion – Note by the Philippines

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1. Prioritization is the process of converting strategic objectives into operational priorities.¹ Through this, government bodies direct resources, time, and energy to the areas deemed most relevant to achieving these objectives² and to activities consistent with the agency's mandate.³
2. Agencies generally use prioritization principles or criteria as filters to identify projects that yield desired results.⁴ The actual determination of whether a matter fits these criteria depends on the interplay of various considerations⁵ – some precisely codified in agency issuances, while some remain subjective on a case-by-case basis.⁶
3. In competition cases, the established practice in determining whether a case will be further pursued or set aside depends on the priorities set by the competition authority. Other factors that may be considered include resource allocation and availability of other measures that can better address the identified harm.⁷

1. PCC's Prioritization Guidelines

4. In the Philippines, the Philippine Competition Commission (PCC) expressly recognized the significance of establishing enforcement priorities in its Rules of Procedure. Section 1.4 thereof states:

¹ International Competition Network, *Agency Effectiveness Competition Agency Practice Manual*, Chapter 1 Strategic Planning and Prioritisation, March 2010, available at: https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/05/AEWG_APMStrategicPlanning.pdf.

² *Id.* These objectives are often laid out in the agency's strategic plan.

³ United Nations Conference on Trade and Development, *Foundations of an effective competition agency*, Note by the UNCTAD Secretariat, 09 May 2011, available at: https://unctad.org/system/files/official-document/ciclpd8_en.pdf.

⁴ *Id.* See also Brook, Or and Cseres, Kati, *Policy Report: Priority Setting in EU and National Competition Law Enforcement*, 28 September 2021, available at SSRN: <https://ssrn.com/abstract=3930189>.

⁵ International Competition Network, *Agencies' Case Prioritisation and Initiation*, ICN Agency Effectiveness Working Group (2021), available at: https://www.internationalcompetitionnetwork.org/wp-content/uploads/2022/04/AEWG_Report-on-Case-Prioritisation-and-Initiation-2021.pdf.

⁶ *Id.*

⁷ European Parliament, *The boundaries of the Commission's discretionary powers when handling petitions and potential infringements of EU law: From legal limits to political collaboration in enforcement?*, Policy Department for Citizens' Rights and Constitutional Affairs, November 2022, available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2022/703589/IPOL_STU\(2022\)703589_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/703589/IPOL_STU(2022)703589_EN.pdf).

*Section 1.4. Prioritization of investigations. — In initiating and conducting investigations, the PCC shall be guided by the enforcement priorities set by the Commission.*⁸

5. Pursuant to the above provision, and with the objective of enabling the PCC to manage its resources, maximize the impact of its enforcement actions, and provide efficient public service,⁹ the PCC adopted the Enforcement Strategy and Prioritization Guidelines on 29 August 2018¹⁰ (**Prioritization Guidelines**). The Prioritization Guidelines is a publicly available document accessible via the PCC’s website.

6. Under the Prioritization Guidelines, before the commencement of any enforcement action, the PCC shall first determine whether there is an actual or potential competition issue, in violation of Section 14 (anti-competitive agreements) or Section 15 (abuse of dominant position) of the Philippine Competition Act (PCA). It enables the PCC to assess the impact of the agreement or conduct on the market, and the possible remedies at the disposal of the Commission.¹¹

7. In determining which enforcement action to prioritize, the PCC weighs various factors, i.e.: (a) public interest, (b) resource allocation, (c) likelihood of successful outcome, and (d) other reasonable grounds to conduct enforcement action.¹²

8. Public interest is of primordial importance in the prioritization process of the PCC. The Commission looks into the following to determine whether a potential anti-competitive conduct is of public interest:

1. whether it involves any of the priority sectors identified by the PCC;
2. whether it results or may result in widespread consumer detriment;
3. whether it involves misuse of public funds;
4. whether action of the PCC thereon will have precedential value; or
5. whether action of the PCC thereon will have significant deterrent effect.¹³

9. The Prioritization Guidelines provided an initial list of priority sectors for 2018 and 2019, and is annually updated by the Commission¹⁴ based on the PCC’s market scoping and assessment of enduring, existing, and emerging issues and associated risks.¹⁵ While not strictly binding on the Commission, it also takes into consideration the economic

⁸ Sec. 1.4, Rules of Procedure of the Philippine Competition Commission (PCC).

⁹ *Whereas Clause*, Commission Resolution No. 20-2018: Approving and Adopting the Enforcement Strategy and Prioritization Guidelines, 29 August 2018 (Prioritization Guidelines), available at: https://www.phcc.gov.ph/storage/pdf-resources/1678153449_Commission-Resolution-20-2018_Prioritization-Guidelines.pdf.

¹⁰ Commission Resolution No. 20-2018.

¹¹ *Id.* at Sec. 5.

¹² *Id.* at Sec. 6.

¹³ *Id.* at Sec. 7.

¹⁴ *Id.* at Sec. 8. See also Philippine Competition Commission, *2020 Annual Report: Upholding Market Competition Amid the Pandemic*, available at: https://www.phcc.gov.ph/storage/pdf-resources/1678086717_Annual-Report-2020.pdf.

¹⁵ Sec. 9, Prioritization Guidelines.

agenda of the national government. For the fiscal year 2026 to 2027, the PCC has identified the following priority sectors:

1. water;
 2. food and agriculture;
 3. health and pharmaceuticals;
 4. transportation and logistics;
 5. telecommunications, financial services, and digital platforms; and
 6. energy.¹⁶
10. The PCC is currently prioritizing enforcement in industries that affect marginalized or under-served sectors as one of the measures to address inequality.¹⁷
11. After the public interest aspect of the potential anti-competitive practice is determined, the PCC assesses the likelihood of successful outcome of an enforcement action and the current allocation of its resources.¹⁸ Alternatively, other reasonable and compelling grounds for the conduct of enforcement action may also be examined.¹⁹
12. The Prioritization Guidelines is instructive to the Commission and to the Competition Enforcement Office (CEO), the investigative and prosecutorial arm of the PCC.

2. Preliminary assessment

13. The CEO makes an initial evaluation of prioritization during intake proceedings, when it receives a verified complaint or referral from a regulatory agency, or when deciding whether to conduct a fact-finding inquiry for possible *motu proprio* investigation. Currently, there is no structured method (e.g., scorecards or matrices)²⁰ in weighing each case based on the factors specified in the Prioritization Guidelines.

14. Guided by the Prioritization Guidelines, the CEO presents to the Commission its recommendation on verified complaints or referrals received, or its initial assessment of

¹⁶ See Philippine Competition Commission, *PCC joins global effort to combat inequality through competition policy*, 05 December 2024, available at: [https://www.phcc.gov.ph/news/pcc-joins-global-effort-to-combat-inequality-through-competition-policy#:~:text=The%20PCC%20has%20identified%20six,platforms%3B%20and%206\)%20energy.](https://www.phcc.gov.ph/news/pcc-joins-global-effort-to-combat-inequality-through-competition-policy#:~:text=The%20PCC%20has%20identified%20six,platforms%3B%20and%206)%20energy.)

¹⁷ *Id.*

¹⁸ *Id.* at Sec. 10.

¹⁹ *Id.*

²⁰ See International Competition Network, *Agencies' Case Prioritisation and Initiation*, ICN Agency Effectiveness Working Group (2021), available at: https://www.internationalcompetitionnetwork.org/wp-content/uploads/2022/04/AEWG_Report-on-Case-Prioritisation-and-Initiation-2021.pdf; International Competition Network, *Agency Effectiveness Competition Agency Practice Manual*, Chapter 1 Strategic Planning and Prioritisation, March 2010, available at: https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/05/AEWG_APMStrategicPlanning.pdf.

potential anticompetitive behavior for possible *motu proprio* Preliminary Inquiry.²¹ In deciding whether to deny or grant due course to a verified complaint or referral, or to direct the CEO to conduct a *motu proprio* Preliminary Inquiry, the Commission takes into consideration the factors specified in the Prioritization Guidelines and the Rules of Procedure.²²

15. The purpose of a Preliminary Inquiry is to ascertain whether there are reasonable grounds to conduct a Full Administrative Investigation for any violation of competition laws considering potential prejudice to public interest.²³ A Preliminary Inquiry may turn into a Full Administrative Investigation if there are reasonable grounds substantiated by the facts or information gathered by the CEO. It may be closed if no violation or infringement of competition law has been found.

16. A Full Administrative Investigation is conducted to ascertain whether there is sufficient basis to charge an entity for violation of competition laws.²⁴ It may be terminated by the filing of a Statement of Objections with the Commission or closure of investigation, depending on the findings of the CEO.²⁵

17. For cases involving micro or small enterprises, the Commission may pursue alternative enforcement actions, i.e., issuance of a warning or expedited show cause proceedings.²⁶

3. Prioritization as applied to enforcement actions and cases before the Commission

18. Several enforcement actions and investigations were conducted by the CEO applying the priorities and factors laid down in the Prioritization Guidelines. For intake proceedings, the CEO has recommended to the Commission the conduct of Preliminary Inquiry for a number of complaints spanning across the priority sectors.

19. For instance, a Preliminary Inquiry was conducted on an alleged price fixing agreement within an association of local water refilling stations, taking into account that water is one of the priority sectors of the PCC. The case was resolved through a settlement that was approved by the Commission. The association committed to cease and desist from any price fixing practices and to issue a public statement to that effect. They also committed to assist the PCC in its investigation and competition awareness advocacy programs. The officers and members of the association are also required to attend competition law seminars to be conducted by the PCC. The case is still under monitoring by the CEO.

²¹ Recommendations on verified complaints or referral from regulatory agencies are submitted to the Commission through Intake Reports; while a recommendation to open a *motu proprio* Preliminary Inquiry is submitted to the Commission through an Initial Assessment Report.

²² Sec. 2.3, Rules of Procedure of the PCC. These factors are: (a) jurisdiction of the PCC; (b) public interest; (c) resource allocation; (d) likelihood of a successful outcome; (e) compliance with the formal requirements for a verified complaint; and (f) presence or absence of reasonable grounds to commence Preliminary Inquiry.

²³ Sec. 2.1, Rules of Procedure of the PCC.

²⁴ Sec. 2.8, Rules of Procedure of the PCC.

²⁵ Sec. 2.11, Rules of Procedure of the PCC.

²⁶ See Commission Resolution No. 01-2026: Approving the Guidelines on Small Cases, 12 February 2026.

20. Another investigated case straddles both the transportation and the financial services sector. It also culminated in settlement, where the investigated entity committed to establish a system-wide mechanism to address the competition concerns identified in the investigation, among other standard settlement commitments.

21. There are ongoing investigations involving the other priority sectors, i.e. food and agriculture, health, energy, logistics, and digital platforms. Among the Statement of Objections filed and pending before the Commission, a handful involves the priority sectors identified – food and agriculture,²⁷ health,²⁸ financial services,²⁹ telecommunication,³⁰ and logistics.³¹

4. Prioritization as applied to market studies and competition impact assessments

22. The priority sectors are also one of the main considerations in determining possible topics for market studies, papers, policy notes, and competition impact assessments (CIAs)³² conducted by the Economics Office (EO).³³ Some of their published works include:

1. Water
 - CIA on the Provincial Water Utilities Act (2021)
 - CIA on the Water Code of the Philippines (2022)
2. Food and agriculture
 - Issues Paper on the Sugar Industry in the Philippines (2020)
 - CIA on Seeds Certification Regime (2021)
 - CIA on the Livestock and Poultry Feeds Act (2023)
 - CIA on Fish Importation (2024)
3. Health and pharmaceuticals
 - Market Study on the Profile of the Philippine Pharmaceutical Industry (2020)
 - CIA on Cheaper Medicines Act (2021)
 - CIA on Health Maintenance Organizations (2021)
4. Transportation and logistics

²⁷ PCC Case No. E-2022-004, PCC Case No. E-2024-007.

²⁸ PCC Case Nos. E-2021-002 & E-2024-001.

²⁹ PCC Case No. E-2019-008.

³⁰ PCC Case No. E-2020-003, PCC Case No. E-2019-001.

³¹ PCC Case No. E-2026-001-SO.

³² Competition impact assessments (CIAs) are conducted by the PCC to evaluate the impact of laws, rules and regulations on competition in markets. The assessments are designed to provide insights on how markets function and provide policymakers with additional tools for crafting regulations.

³³ See also Anna Leah E. Gonzales, *PCC to conduct market studies of priority sectors*, The Manila Times, 18 January 2018, available at: <https://www.manilatimes.net/2018/01/18/business/pcc-conduct-market-studies-priority-sectors/375000>.

- Market Study on the State of Competition in the Air Transport Industry: A Scoping Exercise (2020)
 - Competition Policy Issues in Cargo Services (2021)
 - CIA on Truck-for-Hire Licensing Regime (2021)
5. Telecommunications, financial services, and digital platforms
- Issues Paper on the Philippine Digital Commerce Market (2020)
 - CIA on Electronic Money Issuers (2022)
 - Blocktime Agreement Sector Brief (2024)
 - Market Study on Digital Markets and Data Privacy (2025)
6. Energy
- Market Study on the Refined Petroleum Industry (2021)
 - CIA on Green Energy Auction Program (2025)

5. Prioritization as applied to advocacy activities

23. The Prioritization Guidelines provides that where a potential anti-competitive practice is not a priority for enforcement action, the PCC may address the same through an advocacy measure or initiative that will promote competition and a culture of compliance.³⁴ Pursuant to the Guidelines on Small Cases³⁵ adopted by the Commission, Warning Notices to be issued to erring micro or small enterprises shall also include an invitation to attend competition law seminars.

24. The PCC also conducts sector-specific conferences, i.e., i-Station Conference on Food and Agriculture (2022)³⁶ and Tourism (2023).³⁷ The discussions among different stakeholders in these conferences triggered some of the market studies conducted by the EO and the fact-finding activities undertaken by the CEO.

³⁴ Sec. 12, Prioritization Guidelines.

³⁵ The Guidelines on Small Cases was adopted to provide guidance in addressing possible violations of the Philippine Competition Act involving micro and small enterprises, as well as those belonging to the informal sector.

³⁶ The consultation gathered around 200 participants, regulator representatives, and stakeholders which raised concerns revolving around pricing, supply, logistics, financing, licensing, and government intervention in the agricultural sector. See Philippine Competition Commission, 2022 Annual Report: A Year of Change, available at https://www.phcc.gov.ph/storage/pdf-resources/1752636449_PCC-2022-Annual-Report-A-Year-of-Change.pdf.

³⁷ This conference and consultation event covered food and transportation sectors, as part of the broader tourism industry. See Philippine Competition Commission, *Third PCC i-Station opens in Davao City*, 22 September 2023, available at: <https://www.phcc.gov.ph/resource-details/third-pcc-i-station-opens-in-davao-city>; Che Palicte, *Competition Commission probe station opens in Davao City*, Philippine News Agency, 20 September 2023, available at: <https://www.pna.gov.ph/articles/1210257>.

6. Prioritization as applied to *motu proprio* merger reviews

25. Under the PCC Rules on Merger Procedure,³⁸ the PCC has the power to conduct *motu proprio* reviews, pursuant to its market surveillance function.³⁹ Reasonable grounds to commence a review may exist where, among others: (a) there are preliminary indications that customers may be adversely affected, (b) there are possibilities for foreclosure, (c) a high degree of market concentration exists, (d) either of the merger parties has high market shares, or (e) the merger takes place in a critical industry or a priority sector.⁴⁰

26. Complaints from stakeholders – both businesses and consumers – are also considered as vital inputs in the PCC’s determination of whether or not it will open an investigation.⁴¹ When evaluating these complaints, the Commission assesses the following: (a) PCC’s jurisdiction, (b) public interest, (c) resource allocation, (d) strength of supporting evidence, and (e) overall effect of the merger on the market.⁴²

27. In the past, the PCC has conducted *motu proprio* review of transactions involving the financial and pharmaceutical sectors: (a) the *Proposed Merger of BancNet, Incorporated and Philippine Clearing House Corporation* (PCC Case No. M-2023-002-SOC)⁴³ and (b) the *Proposed Acquisition by Robinsons Retail Holdings, Inc. of shares in Rose Pharmacy, Incorporated* (PCC Case No. MP-M-2021-001).⁴⁴

7. Moving forward

28. The identified priority sectors are currently set for the medium term, but the Commission annually revisits the lists for possible adjustments to ensure that PCC’s prioritization in enforcement strategies remains responsive and flexible to changing times.

³⁸ Available at: <https://www.phcc.gov.ph/file-manager/1/Businesses/Mergers%20Acquisitions/Rules%20on%20Merger%20Procedure/PCC-MERGER-PROCEDURE-RULES.pdf>.

³⁹ Sec. 13.1, PCC Rules on Merger Procedure.

⁴⁰ *Id.* at Sec. 13.3.

⁴¹ *Id.* at Sec. 13.4.

⁴² Sec. 13.8, PCC Rules on Merger Procedure. Note that these factors are similar to those enumerated under the Enforcement Strategy and Prioritization Guidelines.

⁴³ This case started as a *motu proprio* review, but parties subsequently filed a voluntary notification before the Mergers and Acquisitions Office (MAO). It finally culminated in a Commitment Decision with merging parties executing an undertaking to address the potential competition concerns identified in the Statement of Concerns (SOC). See Commitment Decision No. 02-M-2024, available at: https://www.phcc.gov.ph/storage/pdf-resources/1736414226_Commitment-Decision-No-02-M-2024_Redacted_compressed.pdf.

⁴⁴ This case was eventually terminated due to lack of sufficient data from competitors who refused to provide the necessary information. See Commission Resolution dated 05 October 2023, titled “IN THE MATTER OF THE TERMINATION OF THE MOTU PROPRIO PHASE II REVIEW OF THE COMPLETED ACQUISITION BY ROBINSONS RETAIL HOLDINGS, INC. OF SHARES IN ROSE PHARMACY, INCORPORATED.” See also Miguel R. Camus, *Antitrust body OKs Gokongwei takeover of Cebu-based pharmacy*, Philippine Daily Inquirer, 18 November 2023, available at: <https://business.inquirer.net/432043/antitrust-body-okays-gokongwei-takeover-of-cebu-based-pharmacy>.