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Working Party No. 2 on Competition and Regulation

Assessing and Communicating the Benefits of Competition Interventions – Note by the Philippines

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This document reproduces a written contribution from the Philippines submitted for Item 6 of the 75th meeting of Working Party 2 on 12 June 2023.

More documents related to this discussion can be found at
<https://www.oecd.org/competition/assessing-and-communicating-the-benefits-of-competition-interventions.htm>

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1. Introduction

1. Prior to the enactment of the Philippine Competition Act (PCA), the Philippines had a scattered and fragmented competition law regime. Competition provisions were inserted and found across various statutes (e.g., *the Civil Code*, *Intellectual Property Code*, *Revised Penal Code*, etc.) and there was no clear and sole authority on competition law enforcement.

2. It was only in 2015 when the PCA was enacted that the Philippines had a comprehensive legislation on competition and a central body to handle such matters – that is the Philippine Competition Commission (“PCC” or the “Commission”). To promote a culture of competition, the PCC advances three major thrusts: Review of Mergers and Acquisitions, Competition Enforcement, and Advocacy.

1.1. Review of Mergers and Acquisitions

3. Currently, the Philippines has a mandatory notification regime for its merger review, *i.e.*, when a particular merger or acquisition transaction breaches a certain threshold in terms of transactional value, size of parties, or level of control being transferred, parties to said transaction are mandated by law to notify the PCC through its Mergers and Acquisitions Office (MAO) and subject the proposed transaction to review.

4. Since 2016, the Commission has reviewed at least **232** merger and acquisition cases with a total transaction value of **PhP 4,858,179,091,026**. These transactions took place in various sectors - the top five (5) of which were the following: Manufacturing (51); Financial and Insurance Activities (41); Real Estate Activities (33); Electricity (27); and Transportation and Storage (19).

1.2. Competition Enforcement

5. The PCA also enumerates prohibited anti-competitive behavior which the Competition Enforcement Office (CEO) is tasked to investigate and prosecute, whether *motu proprio*, or thru verified complaints or referrals by sector regulators. Section 14 thereof outlines the anti-competitive agreements which are *per se* prohibited, while Section 15 enumerates the various forms of abuses of dominant position.

6. Over the years, more than 90 enforcement-related verified complaints and referrals have been submitted to the Commission for review or investigation – out of which, 55 had proceeded to administrative investigations, and 8 had ripened into full-blown administrative cases filed with the Commission.

1.3. Advocacy

7. Finally, the said law also expressly mandates the Commission to conduct, publish, and disseminate studies and reports on anti-competitive conduct and agreements to inform and guide the industry and consumers, and to advocate pro-competitive policies of the government.

8. In pursuit of these directives, the PCC posts on its official website various market studies and issues papers concerning various sectors, which the public may freely access.

The PCC also regularly conducts seminars, workshops, road shows, and fora across the country to raise awareness of competition law and inform them about the functions of the PCC.

9. In 2022, the PCC had completed eight (8) market studies and staff research activities and conducted fifty-one (51) advocacy and capacity building activities for partner institutions and key stakeholders.

10. Mindful of these key thrusts – it is crucial that the PCC is able to assess not only its performance, but also the impact its interventions have on the markets, and effectively communicate the same to the public in a clear and comprehensive manner. Doing so would not only promote consciousness about the value of competition, but hopefully, also serve as a call to action.

2. Evaluation of Competition Interventions by PCC

11. With respect to the evaluation of interventions made by the PCC (whether in merger or acquisition transactions or competition enforcement cases), the Commission has limited its assessment to tracking the above-cited statistics for each year, which are then published in the Annual Report.

12. For Mergers and Acquisitions particularly, a summary of the number of transactions submitted for review, the industry or sector the transaction is involved in, and the transactional value of each are reported. On the other hand, for Competition Enforcement, a summary on the total number of queries/complaints received, initial assessments conducted by the CEO, preliminary investigations, full administrative investigations, and Statements of Objections filed with the Commission are reported.

13. On certain occasions, on top of providing said statistics, the Commission would identify significant merger cases already concluded and highlight them in the Annual Report by stating the potential anticompetitive issues and theories of harm that arose therein, *e.g.*, a proposed takeover in the cement industry by one significant market player of another – whereby significant increases in market power, a shift towards a monopoly, and potential collusive behavior were reported.

14. The PCC submits its Annual Report to the Office of the President and National Archives of the Philippines on or before the first day of July of each year, pursuant to Executive Order No. 292, and to Congress pursuant to the PCA itself. Additionally, the PCA requires the PCC to publish its Final Decisions, Orders and Rulings, regulations on notification threshold, and the threshold for dominant position or minimum level of share in the relevant market that could give rise to a presumption of dominant position. The PCC may also publish studies and reports on anti-competitive conduct and agreements to inform and guide the industry and consumers. Interventions, case decisions, and agency reports may also be published through press releases and social media posts at the discretion of the Commission. These publication requirements help keep PCC in check by the general public.

15. The Commission, however, has yet to conduct quantitative or empirical assessments of impacts that may be attributable to its interventions made each year. While *ex-ante* quantitative assessments are undertaken during the course of merger or enforcement review, the findings and results of such are kept internal as these are made pending investigation or adjudication of a case. Some of these assessments, however, are reported to the public only after the conclusion of said case and if found to be pivotal to its

resolution or disposition. These assessments are found in Commission Decisions, Resolutions, and other issuances posted on the official website.

16. As for ex-post analysis of impacts, the Commission has had the opportunity to undertake an ex-post analysis in one of its interventions in a merger case. On this, a technical paper on the post-merger assessment of a cleared transaction was prepared in order to estimate its actual impact on prices as well as effect on consumer welfare through econometric analyses. The results of this paper, however, have not yet been communicated to the public.

3. Communications

17. As a relatively new institution compared to other Philippine government agencies and international competition authorities, the overriding objective of PCC's current communications strategy is to raise stakeholder awareness on the agency's key mandates and the prohibitions under the PCA with a view to boosting compliance.

18. To pursue this strategy, the PCC is developing two projects under its strategic initiative of Advocacy and Capacity Building Program on Competition Policy and Law, namely:

- Conduct of Multimedia Campaign (MCP) Project; and
- Champions of Competition (COC) Project.

19. The MCP Project is a top-of-the-funnel tactic intended to complement PCC's media relations by directly disseminating information, education, and communication (IEC) materials through various modalities, primarily through social media. The COC Project is a middle-of-the-funnel tactic aimed at leveraging influencers in key sectors to help move PCC's target audience towards consideration and eventually action, which in the case of an antitrust agency, involves key stakeholders lobbying for pro-competition policy reforms.

20. Over the years, the strategies to execute the PCC's communication campaign have evolved to take into consideration the changing landscape of media in the country, as well as the lessons learned from the previous campaigns. For instance, from mostly spending on paid media campaign, PCC is now implementing its communication campaigns through various online (e.g., organic and minimal in-house paid campaign) and offline (e.g., dissemination of PCC's IEC materials to business centers, government facilities and PCC investigation stations outside the Philippine capital) modalities. As mentioned in the previous item, content choice also has evolved given the audience's preference for news and information about PCC's enforcement actions.

21. It has been observed that PCC's communication efforts are more effective when it strikes the right mix of content and platform choice. Typically, content related to enforcement cases being handled by PCC has proven to be the most effective, as this type of content helps establish the agency's relevance to, and credibility among, its target stakeholders. Such content then gets picked up by news organizations, which account for PCC's earned media.

22. To complement these new strategies, the Commission, in 2018, also began conducting its National Awareness Surveys on Competition to determine the level of antitrust knowledge among private firms, government agencies, and households. These results are then used by the Commission to evaluate the effectivity of its advocacy efforts. In 2022, it was found that the level of PCC awareness increased significantly among firms but declined among households; while on the other hand, awareness of the PCA (the

competition charter) increased for both stakeholder groups. Compared to 2021, firms improved their qualified awareness level from 4.86% to 9.12%; while the target among households (7.5%) was still unmet.

23. Evidently, there is a need to strengthen PCC's advocacy efforts targeting households or consumers. The importance of consumer awareness of the PCC and the benefits of its intervention cannot be overemphasized. Awareness promotes confidence in and compliance with the law leading to desirable economic outcomes such as unencumbered market competition that works for the benefit of the people – ultimately raising the quality of life for all.

24. Another important facet of PCC's communication strategy and advocacy efforts is liaising with legislative and policy-making bodies. Under the PCA, the PCC is tasked to issue advisory opinions on proposed legislation for the regulation of commerce, trade, or industry. The PCC is also mandated to review economic and administrative regulations, motu proprio or upon request, as to whether or not they adversely affect relevant market competition; and then consequently advise the concerned agencies against such regulation. Further, the PCC is also enjoined to advise the executive branch on the competitive implications of government actions, policies and programs. These mandates are integral in the whole-of-government approach in developing strong competition culture that permeates the entire legal system.

4. Concluding Remarks

25. Despite over seven (7) years of experience under the PCC's belt, the PCC is still faced with the challenge of effectively communicating and making the Filipino public understand the value and effect of competition law in their daily lives. Perhaps one of the possible areas that can be improved to help address this challenge is by undertaking more quantitative impact assessments to complement the descriptive statistics that the PCC reports annually and communicating them in a clear, concise, and relatable fashion.

26. Quite often though, these assessments are perceived as theoretical or largely based on assumptions. But these perceptions can be minimized or addressed by establishing practical methodologies and utilizing data sourced from the parties themselves. The suggestion contained in the 2014 OECD Guide is therefore well taken – that these impact assessments can be made to focus more on case-specific information to establish more credibility with respect to assumptions made in the analysis.

27. As competition authorities, such as the PCC, strive to overcome this challenge, it should always be considered that each competition agency is faced with non-homogenous stakeholders with varying levels of competition understanding and appreciation. This challenge may entail solutions that are unique or distinct to each jurisdiction.