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Competition and Regulation in Professional Services – Note by the Philippines

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This document reproduces a written contribution from the Philippines submitted for Item 8 of the 77th meeting of Working Party 2 on 10 June 2024.

More documents related to this discussion can be found at
www.oecd.org/competition/competition-and-regulation-in-professional-services.htm

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Philippines

1. Similar to other jurisdictions, the admission, practice, activities, structure, and ethical responsibilities of certain professions are regulated in the Philippines. Professional services regulation in the country is primarily lodged with the Professional Regulation Commission (PRC). The PRC is the licensing and regulatory agency of the national government for the practice of professions that include accountancy, agriculture, engineering, medicine, and criminology, among others. It is mandated to maintain the validity, integrity, and credibility of the licensure examinations of forty-six (46) professions in the country. The PRC also prescribes ethical and technical standards of practice for these professions.
2. Distinct from these professions is the practice of law. Legal practice is under the supervision and regulation of the Supreme Court which covers admission to the bar¹ and the discipline of lawyers.²
3. There also exist private professional associations or organizations that are self-regulating. They set and impose their own technical and ethical standards that are binding on their members.

1. Policy developments in the regulation of professional services in the Philippines

4. Section 14, Article XII of the 1987 Constitution, mandates that the practice of all professions in the Philippines shall be limited to Filipino citizens, save in cases prescribed by law.
5. Republic Act 8981³ provides that licensed professionals from foreign countries who wish to practice their profession in the Philippines, except the practice of law, should obtain a special temporary permit from the PRC. Under the 12th Regular Foreign Investment Negative List issued by the government in 2022, foreigners were allowed to practice their profession in the Philippines provided their home countries extends the same privilege to Filipinos.⁴ This has been a significant step toward opening the domestic market for a more robust competition in the professional services sector.
6. The practice of law, however, remains reserved exclusively for Filipino citizens.⁵
7. Another crucial development in the regulation of professional services is embodied in the landmark case of *Philippine Contractors Accreditation Board (PCAB) v. Manila Water Co., Inc. (Manila Water)*.⁶

¹ Rule 138, RULES OF COURT.

² Rule 139-B, RULES OF COURT.

³ Otherwise known as the “PRC Modernization Act of 2000” (2000). *See also* Republic Act No. 5181 (1967).

⁴ Otherwise known as “reciprocity.” Note though that professionals in radiology, x-ray technology and criminology remain reserved for Filipino nationals only.

⁵ Rule 138, RULES OF COURT, with exceptions. *See also* International Trade Administration, “*Licensing Requirements for Professional Services*,” January 24, 2024.

⁶ G.R. No. 217590, March 10, 2020.

1.1. PCAB v. Manila Water

8. The Supreme Court, in this case, struck down the nationality requirement for the issuance of regular licenses to construction contractors.⁷ The Court ruled that a corporation involved in the construction business is not engaged in the exercise of a profession that is being exclusively restricted by the Philippine Constitution to Filipino citizens. It also recognized the economic benefits of opening the construction industry to foreign players.

9. The PCC had a chance to intervene as *amicus curiae* during the proceedings of this case in the Supreme Court. PCC maintained the position that the assailed regulation is contrary to the anti-trust principle of the Philippine Constitution and should be declared null and void.⁸ The nationality requirement is a barrier to entry of foreign contractors in the construction industry.

10. The PCC had the opportunity to explain that the available data indicates the restrictiveness of the nationality requirement on foreign contractors.⁹ Economic evidence suggested the obvious advantages of lifting such restriction (i.e. removal of significant infrastructure backlogs, introduction of the newest technologies, ability to meet large capitalization requirements, etc.).

11. The Supreme Court agreed with the position of the PCC that the lifting of this restriction would encourage healthy competition among local and foreign contractors. Upon opening the market, customers will have alternative options depending on the needs of each construction project. This would also usher opportunities for development and innovation.

2. Competition law enforcement and regulation of professional services

12. Private professional associations partake in the regulation of the professional service sector. However, these entities are not exempt from the review and assessment of existing regulations under a competitive perspective. Self-regulating professional associations are also subject to the scrutiny of the PCC.

2.1. Investigation against the Philippine Academy of Ophthalmology

13. In 2016, the PCC received a verified complaint against the Philippine Academy of Ophthalmology (PAO) for alleged anticompetitive provisions in its Mission Guidelines, among other concerns.¹⁰

14. There was an agreement between PAO and its members that implicitly divides the territory of practice and establishes barriers to entry. Pursuant to the Mission Guidelines,

⁷ Rule 3, Section 3.1 (and, in effect, Rule 12, Section 12.7) of the Implementing Rules and Regulations of Republic Act No. 4566, or the “Contractors’ License Law.”

⁸ *Id.*

⁹ In 2015, out of the 1,600 special licenses issued, only 20 were issued to foreign firms while 4 were issued to joint ventures with foreign participation. The PCC also showed that from 2013-2015, a large majority of the total licenses issued during this period did not translate to the entry of new participants in the construction industry.

¹⁰ Case Reference CEO-201703-FAI003.

visiting mission groups are required to first seek permission from PAO itself or from the local ophthalmologists in the area to be able to conduct a medical mission therein.

15. The investigation team found that PAO indeed imposed barriers to entry and effectively limited competition by facilitating the division of practice by territory. The complaint was eventually dismissed. PAO ceased from enforcing the provision, and the objectionable section found in its Mission Guidelines was permanently dropped within the transitory period. The Philippine Competition Act (PCA) provided for a two-year transitory period to enable entities to adjust and reorganize their existing structure to comply with provisions of the law.¹¹

2.2. Investigation against the Philippine Association of Legitimate Service Contractors, Inc.

16. In a more recent case involving another private professional association – the *Philippine Association of Legitimate Service Contractors, Inc. (PALSCON)*,¹² the PCC conducted an investigation on possible market allocation.

17. PALSCON is a non-profit association incorporated to represent and act as an umbrella organization of the local service contractors in the Philippines.¹³ The investigation centered on a particular provision in its Code of Ethics that prohibits member-contractors from directly or indirectly encroaching upon the existing business relationship of another PALSCON member and the latter’s clients.

18. In the course of the PCC’s Full Administrative Investigation, PALSCON submitted a written proposal for settlement. After a series of negotiations, the PCC agreed to terminate its investigation on the condition that PALSCON shall revise its Code of Ethics to remove the subject provision that was alleged to have anticompetitive effects. PALSCON’s other commitments include: (i) attendance to competition law seminars, (ii) appointment of competition law compliance officer; (iii) payment of a settlement amount; and (iv) issuance of a statement acknowledging its mistake.

19. In approving PALSCON’s proposal for settlement, the PCC took into account the likelihood of directly addressing the alleged competition concern at the soonest possible time.

¹¹ Section 53 of Republic Act No. 10667: “*Transitional Clause*. — In order to allow affected parties time to renegotiate agreements or restructure their business to comply with the provisions of this Act, an existing business structure, conduct, practice or any act that may be in violation of this Act shall be subject to the administrative, civil and criminal penalties prescribed herein only if it is not cured or is continuing upon the expiration of two (2) years after the effectivity of this Act: Provided, That this section shall not apply to administrative, civil and criminal proceedings against anti-competitive agreement or conduct, abuse of dominant position, and anti-competitive mergers and acquisitions, initiated prior to the entry into force of this Act: Provided, further, That during the said two (2)-year period, the government shall undertake an advocacy program to inform the general public of the provisions of this Act.”

¹² Case Reference CEO-20-0059-FAI.

¹³ Philippine Competition Commission Resolution - Full Administrative Investigation No. 20-0059-FAI, In the Matter of the Settlement Proposal in 20-0059 FAI In Re: Code of Ethics of the Philippine Association of Legitimate Service Contractors, Inc. (PALSCON).

3. Competition advocacy

20. One of the efforts made by the government to promote a culture of competition in various sectors is the issuance of the National Competition Policy (NCP) through NEDA-PCC Joint Memorandum Circular No. 01-2020. By virtue of Administrative Order 44,¹⁴ all government agencies, including the PRC, are required to adopt and implement the NCP.

21. Under the NCP, government agencies are mandated to review their policies, rules and regulations, issuances, and other interventions to determine whether they restrict, prevent, or lessen competition, or render undue advantage to some players within the same sector. They are directed to amend anticompetitive policies and interventions, as well as eliminate undue regulatory burdens on competition. This aims to harmonize regulation with competition.

22. Considering that the PCA was only enacted in 2015, awareness campaigns and capacity building efforts remain indispensable in the effective implementation of the NCP. The PCC hopes to assist in capacitating sector regulators, including the PRC, in this endeavor by conducting dialogues and strengthening inter-agency coordination.

23. As for private professional associations, the PCC remains steadfast in its cooperation initiatives with private stakeholders. To this end, the PCC (1) conducted a forum for businesses¹⁵ with the Chamber of Customs Brokers, Inc.; (2) spearheaded the *Competition Advocacy Pledge Roundtable Discussion*,¹⁶ with the Pharmaceutical and Healthcare Association of the Philippines, the Financial Executives Institute of the Philippines, and the Philippine Federation of Professional Association;¹⁷ and (3) executed a *Memorandum of Agreement*,¹⁸ with the Philippine Economics Society. These efforts aim to increase awareness and deepen stakeholders' understanding of competition in the hopes of eventually enlisting them as advocates of competition in the professional services sector.

4. Concluding remarks

24. The PCC recognizes that professional services regulation can be an effective means to ensure the quality of services and to address general issues in the market.¹⁹ Regulation can address the knowledge imbalance between the provider and purchaser of professional services by providing assurance to the purchaser that the provider has the necessary

¹⁴ Entitled "Directing the Adoption and Implementation of the National Competition Policy" (2021).

¹⁵ A forum organized by the PCC with the business and professional sector members as intended participants.

¹⁶ A PCC project to heighten PCA and PCC awareness campaigns, establishing a network of business sector representatives, which include professionals, in the promotion of competition agenda.

¹⁷ Note that the Philippine Federation of Professional Association is the umbrella organization of *all* professional associations in the Philippines.

¹⁸ For the conduct of the 59th Philippine Economic Society's Annual Conference.

¹⁹ It has been acknowledged in several cases by the Supreme Court of the Philippines: *Manalo v. Ateneo de Naga University*, G.R. No. 185058, November 9, 2015; *Octaviano v. Board of Architecture of the Professional Regulation Commission*, G.R. No. 239350, August 22, 2023; *Remman Enterprises, Inc v. Professional Regulatory Board of Real Estate Service*, G.R. No. 197676, February 4, 2014.

qualifications and will meet the appropriate professional standards in his or her work.²⁰ It could also ensure that benefits and costs to third parties are duly considered in determining what service is to be produced and at what quality.²¹

25. Regulation, however, should not go beyond what is strictly necessary lest it becomes a restriction that is antithetical to competition. Just like in any other sector, continuous efforts must be made to maintain the delicate balance between competition and regulation.

²⁰ *Id.*

²¹ *Id.* Accounting profession, for instance, shall ensure that financial statements used by the public are accurate, complete and compliant with relevant accounting standards.