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PHILIPPINE COMPETITION BULLETIN

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**PHILIPPINE
COMPETITION
COMMISSION**

Ensuring businesses compete and consumers benefit

FORUM TACKLES NEED TO REVISIT SPECTRUM MANAGEMENT



(From left to right) USAID Better Access and Connectivity (BEACON) Chief of Party John Garrity, PCC Chairperson Michael Aguinaldo, Windsor Place Consulting Principal Scott Minehane, and PCC Economics Office OIC-Division Chief Edgardo Manuel Jopson served as resource speakers during the PCC-USAID seminar last April 14.

Spectrum management is the process of regulating radio frequencies in order to promote efficient use and maximize net social gains. It plays a crucial role in providing various wireless communication services to consumers, especially social media, e-commerce, and ride-hailing facilities. However, present rules on spectrum management in the country continue to be governed by the Radio Control Law, a 1931 Commonwealth Act that did not yet contemplate the rise of wireless communication. Given the important role spectrum management plays in the everyday life of the consumer, there is a need to establish a modern and comprehensive framework for spectrum management towards the advancement of the information, communication, and technology (ICT) industry.

“It is vital to point out that these modern necessities are still governed by a 1931 law, the Radio Control Law, which requires that only enfranchised entities may be permitted to construct, install, establish, or operate a radio station,” Philippine Competition Commission (PCC) Chairperson Michael Aguinaldo

told participants of a forum co-organized by PCC and the United States Agency for International Development (USAID) last April 14. “While this requirement was inserted to serve public interest, it may not have foreseen the substantial growth of internet use in the Philippines. As of 2023, the Philippines is home to 85.16 million regular internet users—constituting 72.5% of the population,” said Aguinaldo.

Basics of spectrum management

During the forum, Scott Minehane, principal at Windsor Place Consulting and former Acting Director of the Australian Department of Industry, Technology, and Commerce, discussed the basics of spectrum management, from drafting telecommunications legislation to regulating the rise of 5G.

Radio spectrum: range of frequencies used in telecommunications

In the Philippines, radio frequencies are allocated according to radio services, as summarized in the National Radio Frequency Allocations Table (NRFAT) by the National

Telecommunications Commission (NTC). Some radio services include broadcasting, wireless data network and devices, and broadband wireless access, among others.

Radio interference as main issue in spectrum management

Minehane explained that the spectrum is a valuable, non-exhaustible, public, and national resource. Since spectrum is a shared resource, one problem that may occur is interference.

According to the United States Federal Communications Commission,¹ interference happens when unwanted radio frequency signals disrupt the use of television, radio, or cordless telephones.

Interference may result in non-reception, temporary loss of a signal, or reduction in the quality of the sound or picture produced by your equipment (e.g., television). Some manifestations of interference include frozen images or intermittent audio in televisions, disruptions in the audio during telephone calls, and reduction in performance of Wi-Fi.

Global and national regulation of spectrum

Minehane also discussed the global regulation of spectrum to address interference in radio frequencies. A “multi-layered system of spectrum management” has been developed to avoid radio interference comprising two steps: namely, international allocation of spectrum and national assignment of licenses.

Under the international allocation of spectrum, the frequencies are defined according to areas of use. For allocation purposes, the world is divided into three (3) regions. Through international agreements, the standards and harmonization are done with key players, such as the International Telecommunication Union (ITU), regional organizations such as the Asia Pacific Telecommunity (APT), and bilateral agreements.

At the national level, regulatory agencies are tasked with the allocation and assignment of frequencies in their respective countries. Licenses provide exclusive rights to operate over certain frequencies within the allocations. In the Philippines, the NTC is the agency tasked with maintaining a responsive regulatory environment for an effective telecommunications and ICT sector.²

Rationale for spectrum management

Spectrum directly affects the country's economic growth.

The Economic Contributions of Broadband, Digitization, and ICT Regulation: Econometric Modelling for the Asia-Pacific Region,³ a 2019 ITU report, revealed that a 10% increase in mobile broadband penetration results in a 0.51% growth of gross domestic product (GDP) per capita.

Moreover, the advancement in technology would result in cost efficiency. Citing Telstra as an example, Minehane said that 5G technology has a lower cost per gigabyte.

Given its value addition, spectrum must be managed

properly to ensure that it is being used in the highest value areas.

Philippine market assessment and competition issues

Mr. Edgardo Manuel Jopson, Officer-In-Charge of the Business and Economics Division of the PCC's Economics Office, presented the key findings of the PCC market study on “Spectrum Management of the Telecoms Sector.”

The PCC assessed the wireless spectrum market through legal analysis of relevant laws and issuances, such as the Public Telecommunication Act of 1995 (Republic Act No. 7925), and the NTC Memorandum Circular 03-03, series of 1996, as well as interviews with key stakeholders.

The study revealed that the NTC has conducted several administrative assignments and “beauty contests” (or comparative tender) for frequency bands 2G and 3G. After the 3G was awarded by the NTC, several public telecommunication entities (PTEs) later became interrelated to the telco duopoly. Eventually, the duopoly acquired the available 4G spectrum.

Regarding spectrum allocation and sharing in the Philippines, the study revealed stakeholder perception that the LTE (long-term evolution) spectrum may not have been prioritized in the NFRAT for public safety.

Spectrum users also noted that spectrum assignments are fragmented, hampering the effectiveness of spectrum deployment. In addition, some spectrum users find it challenging that spectrum-related policies of the NTC are scattered across various memorandum circulars.

It was also revealed that the method of spectrum assignment may limit the entry of new players in the market since the

¹ <https://www.fcc.gov/consumers/guides/interference-radio-tv-and-telephone-signals#:~:text=Interference%20occurs%20when%20unwanted%20radio,picture%20produced%20by%20your%20equipment.>

² <https://ntc.gov.ph/citizens-charter-3/>

³ https://www.itu.int/dms_pub/itu-d/opb/pref/D-PREF-EF.BDT_AP-2019-PDF-E.pdf

IN THE NEWS

DTI: Sugar sales limit stays

[A]s part of the whole-of-government approach to address food security issues related to price manipulation, a task force is being institutionalized in collaboration with the Philippine Competition Commission. (Raffy Ayeng, *Daily Tribune*, 10 May 2023)

Grab PH slapped anew with P9-million fine

Grab Philippines was fined with a fresh P9-million penalty by the Philippine Competition Commission (PCC) due to its failure to refund its customers more than three years after it was ordered to do so. (Alden M. Monzon, *Philippine Daily Inquirer*, 16 May 2023)

Government wants to impose SRP for onions to prevent price spikes

[A]griculture officials are also keen on tapping the assistance of the Philippine Competition Commission to prevent collusion among traders or price manipulation. (Raadee S. Sausa, *Business Mirror*, 18 May 2023)

DOE wants clearer PCC role in EPIRA

The Department of Energy (DOE) wants the Philippine Competition Commission's (PCC) powers in the energy sector, particularly in relation to that of the Energy Regulatory Commission, clarified under the proposed amendments to Republic Act 9136 or the Electric Power Industry Reform Act of 2001 or EPIRA. (Richmond Mercurio, *Philippine Star*, 24 May 2023)

NTC implements spectrum auction and licensing through administrative assignments, comparative tender (see MC 07-08, series of 2005), and spectrum auction, among others.

The study also showed that spectrum auction and licensing practices may be improved to foster effective market competition. Results also showed that the frequency plans may be aligned with new technologies.

The PCC may have a role in spectrum management, such as contributing to the development of competition criteria for spectrum assignment; monitoring of merger control, anti-competitive agreements, and abuse of dominance, if any; monitoring of movements in spectrum rights; and the provision of policy advice to relevant government agencies.

The key recommendation of the PCC is for NTC to adopt a market-based approach to spectrum assignment and the charging of spectrum license fees. Other recommendations include crafting a spectrum management framework with clear and measurable standards for the use of spectrum, encouraging network investment through transparent and predictable license renewals, and institutionalizing competitive assessment of movements in spectrum rights.

Recent legislative developments in spectrum management

During his speech, Chairperson Aguinaldo shared recent initiatives in Congress to improve spectrum management in the Philippines. Under the 19th Congress, several bills in the Senate and the House of Representatives sought to address perceived flaws in local spectrum management.

Senate Bill No. 1742, filed by Senator Risa Hontiveros, seeks to encourage the development and deployment of new technology that will ensure better service by preventing excessive concentration of spectrum licenses. The bill stresses competitive bidding to

safeguard public interest and increase government revenues. The bill likewise mandates the NTC to divide usable frequencies into sufficient blocks in each spectrum band to ensure adequate competition in the telco industry and prevent harmful interference.

House Bill No. 896, filed by Representative Christian Yap, seeks to maximize frequency spectrum to meet the growing demand for information technology services and the booming digital economy. The said bill aims for more transparency for consumers through the establishment of an NRFAT, as well as accountability mechanisms such as national security reviews and spectrum management plan meetings under an inter-agency task force.

Chairperson Aguinaldo said there is a need for effective collaboration with key organizations toward a

competitive spectrum industry. "One of the thrusts of [the] seminar is to reiterate the PCC's request for a role in crafting a new spectrum management regime—as this would aid the technical expertise of our colleagues from the NTC, the Department of Information and Communication Technology (DICT), and the Anti-Red Tape Authority (ARTA) with economic and antitrust expertise. This balance of knowledge would undoubtedly serve the best interests of both our government and consumers," he said.

Apart from PCC, the following agencies attended the forum: ARTA, NTC, DICT, National Economic and Development Authority, the University of the Philippines' Competition Law and Policy Program, Philippine Space Agency, Department of Science and Technology – Advanced Science and Technology Institute, and the Department of Finance. ■



ADVOCACY ROUNDUP

PCC, SC CONFAB FOCUSES ON COMPETITION LAW TRAINING FOR JUDGES

Officials of the Philippine Competition Commission (PCC) paid a courtesy visit to Supreme Court (SC) Chief Justice Alexander Gesmundo and Associate Justice Ramon Paul Hernando on April 4 at the SC En Banc Conference Room to confer on joint efforts in competition law enforcement.

PCC Chairperson Michael Aguinaldo was joined by Commissioners Marah Victoria Querol, Lolibeth Ramit-Medrano, Ferdinand Negre, and Executive Director Kenneth Tanate.

Joining Chief Justice Gesmundo and Justice Hernando were Philippine Judicial Academy (PHILJA) Chancellor Rosmari Carandang, PHILJA Chief of

Office for Academic Affairs Dean Emerito Enginco, and Deputy Clerk of Court and Chief Technology Officer Jed Sherwin Uy.

During their meeting, Chief Justice Gesmundo shared with PCC officials the Strategic Plan for Judicial Innovations (SPJI) 2022-2027, which includes the High Court's proposed efforts to educate judges on competition law and policy and other emerging fields in law through PHILJA.

According to Chancellor Carandang, PHILJA has conducted several seminar-workshops on the Philippine Competition Act (PCA) and its Implementing Rules and

Regulations, and on the Rules on Administrative Search and Inspection under the PCA for special commercial court judges and pairing courts.

Since part of the commitments under the SPJI is to deliver technology-driven judicial services, the capacity-building activities for judges have been enhanced using online and digital resources to aid in face-to-face instruction.

In 2019, the SC issued its Rules on Administrative Searches and Inspection in support of the PCC's power to conduct dawn raids. The following year, the SC also ruled, in the case of *Philippine Contractors Accreditation Board (PCAB) v. Manila Water Company* (G.R. No. 217590, dated 10 March 2020), against anti-competitive practices in the construction industry by citing PCC's amicus curiae brief, which discussed nullifying PCAB's nationality requirement in order to lower the price of licenses, reduce construction project costs, and induce FDI inflows in the industry. ■



PCC officials, headed by Chairperson Michael Aguinaldo (ninth from left), paid a courtesy visit to SC Chief Justice Alexander Gesmundo (center) and Associate Justice Ramon Paul Hernando (sixth from left) on April 4, 2023.

US FTC SHARES INSIGHTS ON INTERIM MEASURES APPLICATION

Senior lawyer Eric Edmonson and Counsel for Southeast Asia Timothy Hughes, both from the United States Federal Trade Commission (US FTC), exchanged insights with case managers from the Philippine Competition Commission (PCC) last April 3 on the application of antitrust interim measures.

Under the Philippine Competition Act (PCA) and the agency's merger rules, the PCC may issue interim orders to protect the integrity of its merger reviews or prevent actions that prejudice the Commission's market investigations.

Navigating the similarities and differences in competition laws between the Philippines and the United States, Edmonson and Hughes shared with PCC

their broad experience on how the US FTC used preliminary injunctions, mostly in merger cases. ■



UP WILOCI, PCC PARTNER FOR WOMEN'S MONTH

Last March 27, the Philippine Competition Commission (PCC) conducted a public forum on the Philippine Competition Act (PCA), in partnership with the University of the Philippines Women Lawyers' Circle, Inc. (UP WILOCI).

PCC Commissioner Lolibeth Ramit-Medrano delivered the opening remarks, while Legal Services Division Chief Michelle Diana Maniwang-Basa, Mergers and Acquisitions Senior Lawyer Katrina Margarita Lopez, Competition Enforcement Office OIC-Assistant Director Genevieve Jusi, and former Litigation Division Officer-in-Charge and current PCC Head Executive Assistant Nina Remedios Mejia joined the all-women roster of speakers for the event.

The speakers discussed the benefits of fair market competition, salient provisions of the PCA, and the antitrust law's key prohibitions, namely: anti-competitive agreements, abuses of dominance, and anti-competitive mergers and acquisitions.



Around 200 stakeholders from the legal community, industry players mostly from the finance and insurance sectors, and educators attended the said forum.

This PCC advocacy activity was organized in observance of the National Women's Month, with the theme "WE for Gender Equality and Inclusive Society #WEcanbeEquALL." ■

COMPETITION IN KOREA, PH HIGHLIGHTED IN UP LAW LECTURE

In the lecture titled "Korean Competition Law—Overview and Enforcement Priorities in 2023," Dr. Sungjin Kang, a University of the Philippines (UP) College of Law, Master of Laws (LLM) Program international visiting professor and foreign legal counsel at the Kim and Chang Law Firm, discussed the history and key provisions of the Korean competition law, as well as pressing matters on competition enforcement before an audience of law students and practitioners on March 17.

Kang shared a brief history of the Korea Fair Trade Commission's (KFTC) activities throughout the years on addressing cartels, anti-competitive mergers, abuse of dominant position, unfair business conduct, and the regulation of large conglomerates.

He likewise reported the agency's priorities for

the year, including the promotion of innovations in the marketplace through competition, strengthening of fair trade practices among small and medium enterprises (SMEs), ensuring sound corporate governance among large business groups, and establishing trustworthy digital markets for consumers.

"The KFTC attempts to play competition advocate as well as competition law enforcer in the rapidly changing business environment. It also announced plans to improve transparency, predictability, and due process rights in its investigations," said Kang.

Lawyer Johannes Bernabe, former Commissioner of the Philippine Competition Commission (PCC), now Master of Laws (LLM) program lecturer at UP Law, served as a reactor and reflected on the history

of the Philippine Competition Act and its parallels with Korea's competition policy. He pointed out that KFTC's efforts are worth emulating, such as the use of platforms for the career growth of competition practitioners, the inclusion of statutes on consumer protection, establishment of regional offices, and more aggressive merger control.

The event was organized under the LLM Program and Competition Law and Policy Program (CLPP) of the UP College of Law. ■

PH ANTITRUST OFFICIALS TRAIN WITH KOREA COMPETITION EXPERTS

Officials of the Philippine Competition Commission (PCC) traveled to South Korea to participate in the Management-Level Capacity Building Course, sponsored by the Korea International Cooperation Agency (KOICA), last April 16 to 29.

Chairperson Michael Aguinaldo led the PCC delegation that also included Commissioners Marah Victoria Querol, Lolibeth Ramit-Medrano, and Ferdinand Negre, Executive Director Kenneth Tanate, Assistant Director Sheryl Fortune Supapo-Sandigan, OIC-Assistant Director Genevieve Jusi, OIC-Assistant Director

Michael Kris Ben Herrera, OIC-Assistant Director Emmanuel Garcia, and Division Chief Michelle Diana Maniwang-Basa.

Representatives from the Korea Fair Trade Commission (KFTC) and the Korea Fair Competition Federation (KFCF) provided the participants with modules on review of mergers and acquisitions (M&As), procedures for competition law enforcement, and trends in regulation and investigation techniques on cases of abuse of market dominance.

The course also included discussions on tools and methods used in regulating market competition, such as the leniency program, bid-rigging detection system, case handling system, knowledge management, and administrative support. ■



WORKSHOP ON COMPETITION POLICY DESIGN HELD

The Philippine Competition Commission (PCC) joined competition experts at the Asian Development Bank (ADB) and Asian Development Bank Institute (ADBI) Workshop on "Designing Competition Policy for Economic Development" held on March 23 to 24 at the ADB Headquarters in Ortigas, Mandaluyong City.

PCC Chairperson Michael Aguinaldo, Economic Planning Secretary Arsenio Balisacan, Senator Sherwin Gatchalian, Marikina 2nd District Representative Stella Quimbo, and ADBI Dean Tetsushi

Sonobe shared their insights on competition policy from the perspective of policymakers and regulators.

PCC Commissioner Lolibeth Ramit-Medrano joined the panel on the effective regulatory environment to foster domestic market competition presented by World Bank (WB) senior economist Graciela Miralles Murciego and Ateneo de Manila University (ADMU) School of Management Dean Roberto Martin Galang.

Competition policy highlights were also included in the survey

of market structures across the region, presented by Secretary Balisacan, Professor Majah-Leah Ravago of the Ateneo de Manila University's Department of Economics, and Professor James Roumasset of the University of Hawaii.

As the country's competition authority, the PCC was an active participant in the analysis and application of expert antitrust studies. Discussions in the workshop will feed into the ADB-ADBI book on Asia-Pacific competition policy, to be published in March 2024. ■



PCC HOSTS STUDY TOUR FOR CAMBODIA COUNTERPARTS

The Philippine Competition Commission (PCC) hosted a study tour for the Cambodia Competition Commission (CCC) from March 23 to 24.

PCC Chairperson Michael Aguinaldo welcomed the delegation from CCC, led by Chairperson Pan Sorasak and Secretariat Head Phan Oun.

During the two-day visit, the PCC provided an overview of market competition in the Philippines, and discussed its mandate and

institutional structure, legal implementation strategy, and experience in creating a national competition policy, advocacy initiatives, and enforcement and merger review operations.

Chairperson Sorasak expressed his gratitude to PCC for hosting the capacity-building activity which adheres to regional cooperation arrangements on competition law and policy, under the third strategic goal of the ASEAN Competition Action Plan 2025.

The study visit was supported by the Gesellschaft für Internationale Zusammenarbeit (GIZ) as part of the COMPETE project, which aims to strengthen cooperation and relations between the competition authorities.

Cambodia is the latest member-state of the ASEAN to formally establish a regulatory agency for market competition, with the CCC becoming operational in February 2022. ■



PCC Chairperson Michael Aguinaldo (front row, center), together with PCC Commissioner Marah Victoria Querol (front row, first from left) and other officials, welcomed the delegation from the Cambodia Competition Commission, led by Chairperson Pan Sorasak (front row, second from left) and Secretariat Head Phan Oun (back row, ninth from left).

M&A

DASHBOARD

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8

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279



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