REGULATORY FRAMEWORK FOR BUSINESS TRANSACTIONS (RFBT)

CPALE Concept Notes

PHILIPPINE COMPETITION ACT

Source: REO Live (Atty. Kris), ReSA Lecture (Atty. Nicko)

Topics Covered:

5. *Philippine Competition Act*
    - 5.1. *Definition and scope of application*
    - 5.2. *Prohibited act*
    - 5.3. *Covered transaction*

Applicability and Exclusion

Applicability:

- Any person or entity *engaged in any trade, industry, and commerce in the Philippines*
- International trade *with direct, substantial, and foreseeable effects in the Philippines' trade*, industry, and commerce even if done outside the Philippines

Exclusion:

- Workers or employees' activities, combinations, or arrangements with their employers designed **solely to facilitate collective bargaining** of their employment

Prohibited Acts

1. ANTI-COMPETITIVE AGREEMENTS

- Agreements substantially preventing, restricting, lessening competition
- Competitors do not include entities under common control, with common economic interests, not able to act independently of each other
- Defense:
    - If transaction improves the production or distribution of goods and services, or promotes technical or economic progress, while allowing consumers a fair share of the benefits
    - If gains in efficiency are greater than the effects on limitation

a. Price Fixing

- Competitors collude to fix prices rather than allow prices to be determined by market forces
- Per se prohibited
- Restricting competition as to price and/or other components of trade

b. Bid Rigging

- Any form and practices of bid manipulation
- Fixing prices, cover bidding, bid suppression, bid rotation
- Per se prohibited

c. Supply Restriction or Output Limitation

- Controlling production, markets, technical development, or investments

d. Market Sharing or Allocation

- Whether by volume of sales or purchases, territory, type of goods or services, customer demographics, etc.

2. ABUSE OF DOMINANT POSITION

- ***Dominant Position*** – a position of economic strength an entity holds, making it able to control the relevant market independently of its competitors, customers, suppliers, or consumers
- ***Relevant Market*** – market in which particular good or service is sold; combination of relevant product market and relevant geographic market
- Defense:
    - The same as anti-competitive agreements ***(gains > effects)***
- Obtaining dominant position is *NOT of itself prohibited*, only the abuse is prohibited

a. Predatory Pricing

- Selling goods or services below cost to drive competition out

b. Imposing Barriers to Entry or Committing Acts Preventing Competitors from Growing

c. Making a Tied-Up Obligation

- Subject to acceptance by other parties of other obligations with no connection to the original transaction

d. Limiting Production, Markets, or Technical Advancement

e. Discriminatory Pricing

- Setting prices or other terms and conditions discriminating unreasonably between customers or selling of same goods or services

XPNs (Permissible):

- Socialized pricing for the less fortunate sector
- In response to changing market conditions, marketability of goods or services, or volume
- In response to competitive price of payments, services, or change in facilities furnished by competitors
- Those reflecting difference in cost to manufacture, sale, or delivery due to differing methods, technical conditions, or quantities

f. Monopsony or Exploitative Pricing

- Imposing unfairly low purchase prices of the marginalized and MSME service provider's services and producers' goods

g. Unfair Pricing

- Imposing unfair purchase or selling prices on competitors, customers, suppliers, or consumers

XPN:

- Result of a superior product, process, and business acumen

h. Exclusivity Agreement

- Restriction as to where, to whom, or in what forms goods or services may be sold or traded
- Conditions or preferential discounts or rebate not to deal with competing entities

i. Tied-up Product

- Supply of product dependent upon the purchase of other goods or services from a supplier with no direct connection to the main goods or services to be supplied

3. MERGERS AND ACQUISITIONS

- ***Merger*** – joining of two or more entities into an existing or new entity
- ***Acquisition*** – purchase of securities or assets to obtain control

What are prohibited?

- Only those that are substantially preventing, restricting, or lessening competition

XPNs (Allowed):

- Gains in efficiencies greater than effects of limitation
- Party faced with actual or imminent financial failure with the agreement as the least anti-competitive arrangement
- Acquisition of stocks **solely for investment**, and not used for voting or exercise of control
- Those acquired prior to approval of the PH Competition Act

Compulsory Notification
If the following are <u>exceeded</u>:

	Codal	March 2024	March 2025
Size of Transaction	1 Billion	3.2 Billion	3.5 Billion
Size of Party		7.8 Billion	8.5 Billion

- The agreement only ***takes affect after 30 days*** from the provided notification to the Philippine Competition Commission
- *<u>Size of Transaction</u>*
  Value of the assets or revenue of the acquired entity
- *<u>Size of Party</u>*
  Value of the assets or revenue of the Ultimate Parent Entity (UPE), including entities it controls of at least one of the parties

XPN to Required Notification: ***Internal Restructuring***

- Request for further information is allowed if done **before** the expiration of the 30-day period
  - Extends the period to wait for the agreement to take effect for additional 60 days after the request was received by the parties
  - ***Maximum*** total period for review = ***90 days***
- Inaction from the Commission renders the agreement as deemed approved

<u>Effects of Non-Notification:</u>
- Agreement is ***void***
- Parties subject to ***administrative fine of 1% to 5%*** of the value of the transaction

Philippine Competition Commission (PCC) as to Mergers and Acquisitions (M&As)
- Changes the threshold for compulsory notification
- Exercises motu proprio review of mergers and acquisitions subject to compulsory notification (now restored)

Three Triggers of Merger Review
- Notification by merger parties
- Third party complaints
- Motu proprio *(PCC's own initiative)*

Powers of the PCC
1. Review proposed mergers and acquisitions
2. Conduct administrative proceedings
3. Issue subpoena
4. Review articles of merger of merging corporation
5. Promulgate other criteria in determining whether parties to a merger and acquisition shall notify the commission
6. Request for further information in reviewing the merger and acquisition
7. Adopt and publish regulations about
   - Exemptions from notification requirements
   - Transaction value threshold and other notification requirements
   - Information that must be supplied for notified mergers and acquisitions
   - Other rules to the notification procedures

Facts about the PCC
- Quasi-judicial body can only undertake business inspections upon a court order
- Can impose fines for non-compliance, and institute criminal actions for violations of the Act

Fines and Penalties

Administrative Fine
For prohibited acts and compulsory notification
- 1st offense – up to 100 million
- 2nd offense – up to 250 million

Incorrect or Misleading Information
- Up to 1,000,000

Failure to Comply with PCC's Order
- Each violation – 50,000 to 2,000,000
- Similar amount of penalty for each day until if fully complies
  - Begins to accrue only ***45 days*** from the receipt of order

Other Violations
- 50,000 to 2,000,000

Update of Schedule of Fines
- Made by the PCC every 5 year

Criminal Penalties
As to anti-competitive agreements only
- Fine – 50 million to 250 million
- Imprisonment – 2 to 7 years to responsible officers, directors, or managerial positions