

PHILIPPINE COMPETITION LAW

LATEST DEVELOPMENTS

BACKGROUND

Philippine Competition Act (PCA) enacted August 2015, nearly 25 years after it was first proposed in Philippine legislature

Philippine Competition Commission (PCC) was formed in February 2016

Implementing Rules and Regulations (IRR) prepared and adopted in June 2016

TRANSITORY RULES FOR MERGERS AND ACQUISITIONS

Issued prior to effectivity of IRR to deal with M&As occurring and covered by the new law

Summary notification

Sufficient compliance results in “deemed approved” status

61 notifications received

14 deemed insufficient, 13 complied w/more information

FIRST COURT CASE: SUFFICIENCY OF COMPLIANCE W/ TRANSITORY RULES

PCC alleged non-compliance (incomplete information) with transitory rules for M&A review; hence, PCC initiated comprehensive review under IRR

Involves acquisition of valuable frequencies by 2 telecommunications operators held by prospective 3rd player

Pending case against PCC to stop merger review

- Who determines sufficiency of compliance?

IMPLEMENTING RULES AND REGULATIONS: FOCUS ON M&As

Why?

M&As subject to compulsory notification under the law

Transactions subject of review are oft-recurring (possibly due to low threshold)

Guidelines on anti-trust enforcement are separate, less rigid, “easier” to revise

RULES ON MERGERS & ACQUISITIONS

Established more specific thresholds than PCA

‘Size of person’ + ‘Size of transaction’ test

Tests establish nexus between merger or acquisition with Philippine jurisdiction

Entities involved must have assets or gross revenues in, into or from the Philippines > \$21.5M

Covers Joint Ventures



STATE OF NOTIFICATIONS UNDER IRR

Notification Form used to elicit information required to assess market concentration, substantial lessening of competition

6 Notifications received in 12 weeks under IRR regime; 4 approved

1 transaction being reviewed on *motu proprio* basis initially found to have anti-competitive impact

- Injunction from appellate court

ANTI-TRUST ENFORCEMENT

2 Fact-finding Inquiries on-going:

1 possible collusion in Philippine spot market for electricity

1 alleged abuse of dominance in the cement industry

FURTHER DEVELOPMENTS

Application of Merger Review Guidelines
culled from ICN Recommended Best
Practices

Preparing Rules of Procedure/Practice and
Pleading in anti-trust enforcement

Before end of the year: Guidelines on
Remedies

1Q 2017: Draft Leniency Program

CAPACITY BUILDING

Technical assistance provided by US FTC

Australian government, including forthcoming embedding of staff in ACCC under CLIP program

UK government focused on providing enhanced understanding of competition law principles for Philippine judges/justices, as well as PCC preparation of National Competition Policy framework

GIZ, WB, ADB, others



THANK YOU

jrbernabe@phcc.gov.ph

