

CLIENT UPDATE 2016 JANUARY



COMPETITION

Appointment of the Chairman of the Philippine Competition Commission

Introduction

The Philippine Competition Act (the “**Act**”) was signed into law on 21 July 2015 and came into force on 8 August 2015. The Act is administered by an “independent quasi-judicial body”, the Philippine Competition Commission (“**PCC**”) with “original and primary jurisdiction in the enforcement and regulation of all competition-related issues”.

On 24 January 2015, it was announced that Mr Arsenio Balisacan, Director-General of the Philippine National Economic and Development Authority had been appointed as the head of the PCC.

One of the first tasks of the PCC will be to issue the rules and regulations necessary to implement the Act. The PCC will also issue guidelines which are expected to provide guidance on the interpretation of the various substantive provisions of the Act. As the Act provides for a transitional period of two years during which businesses will have to put their house in order, businesses must monitor very closely the various legislation and guidelines which will be produced by the PCC and take every opportunity to voice any concerns the implementation may have on their business.

This update provides a quick overview of the composition and the powers of the PCC.

Composition of the Competition Commission

The Act provides that the PCC will comprise a Chairperson and four commissioners who all must have “distinguished themselves professionally in public, civic or academic service in any of the following fields: economics, law, finance, commerce or engineering”. Whilst the PCC ought to have been organised within 60 days after the Act came into effect, this has taken slightly longer than initially expected. The appointment of Mr Balisacan now marks the start of the implementation of the Act.

The newly appointed Chairperson, Mr Balisacan, is eminently qualified: he holds a PhD in Economics from the University of Hawaii, worked as an economist at the World Bank and held numerous leadership positions both in Philippines (including as the Executive Director of Philippine Center for Economic Development) and internationally. Mr Balisacan is also a professor of economics.

Under the Act, the Chairperson is appointed for seven years and cannot be removed or suspended from office except for just cause as provided by law.

Apart from Mr Balisacan, the PCC would comprise of the following four commissioners: Stella Alabastro-Quimbo, Johannes Bernabe, Elcid Butuyan and Menardo Guevarra.

A Competition Commission with Significant Exclusive Powers

The PCC is charged with the enforcement and implementation of the Act, which includes, inter alia, the power to investigate and adjudicate any violation of the Act, to review mergers and acquisitions, to issue advisory opinions and guidelines on competition matters and to advise the Government on the competitive impact of its actions and policies.

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As part of its powers of investigation, the PCC may issue a subpoena to require the production of information, documents, data, as well as to require personal appearance before it. With a warrant, the PCC can also conduct raids and search premises (including vehicles). The PCC is further empowered to impose penalties, fines and/or other remedies (including divestiture if appropriate) as well as to issue interim orders. This is similar (but not identical) to the powers of competition authorities in the region such as Singapore or Malaysia.

The Act further provides that the PCC has exclusivity over competition related matters: under Sections 31 and 32 of the Act, no law enforcement agency shall investigate any competition related matters and, vis-à-vis sectoral regulators, the PCC has 'original and primary jurisdiction in the enforcement and regulation of all competition-related issues'.

The PCC does not replace the Office For Competition ("OFC") which had been established under the Department of Justice. The OFC remains in existence, with revised (and limited) powers, namely the preliminary investigation and the prosecution of criminal offences under the Act.

Under the Act, the PCC has 180 days from the date the Act became effective to issue the necessary implementing rules and regulations, in consultation with the OFC and the relevant sectoral regulators.

Concluding Remarks

With the PCC being formed, the issuance of subsidiary legislation and guidelines on how the substantive provisions of the Act should be interpreted is the next critical step in the implementation of the Act.

Businesses are advised to monitor closely the various legislation and guidelines that will be issued by the PCC. Further, as the PCC will likely consult the stakeholders prior to issuing its advisory guidelines, businesses must start reviewing the Act and identify points that may require clarifications to ensure that compliance with the Act will be a smooth process.

The Philippines is the 9th country to have introduced a generic Competition Law in ASEAN, in keeping with the ASEAN Economic Community Blueprint.

Should you have any queries or wish to speak to us regarding your business' compliance with competition law in ASEAN, please do not hesitate to contact us at competitionlaw@rajahtann.com or kala.anandarajah@rajahtann.com.

Please feel free to also contact Knowledge and Risk Management at eOASIS@rajahtann.com.

ASEAN Economic Community Portal

With the launch of the ASEAN Economic Community ("AEC") in December 2015, businesses looking to tap the opportunities presented by the integrated markets of the AEC can now get help a click away. Rajah & Tann Asia, United Overseas Bank and RSM Chio Lim Stone Forest, have teamed up to launch "Business in ASEAN", a portal that provides companies with a single platform that helps businesses navigate the complexities of setting up operations in ASEAN.

By tapping into the professional knowledge and resources of the three organisations through this portal, small- and medium-sized enterprises across the 10-member economic grouping can equip themselves with the tools and know-how to navigate ASEAN's business landscape. Of particular interest to businesses is the "Ask a Question" feature of the portal which enables companies to pose questions to the three organisations which have an extensive network in the region. The portal can be accessed at <http://www.businessinasean.com/>

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