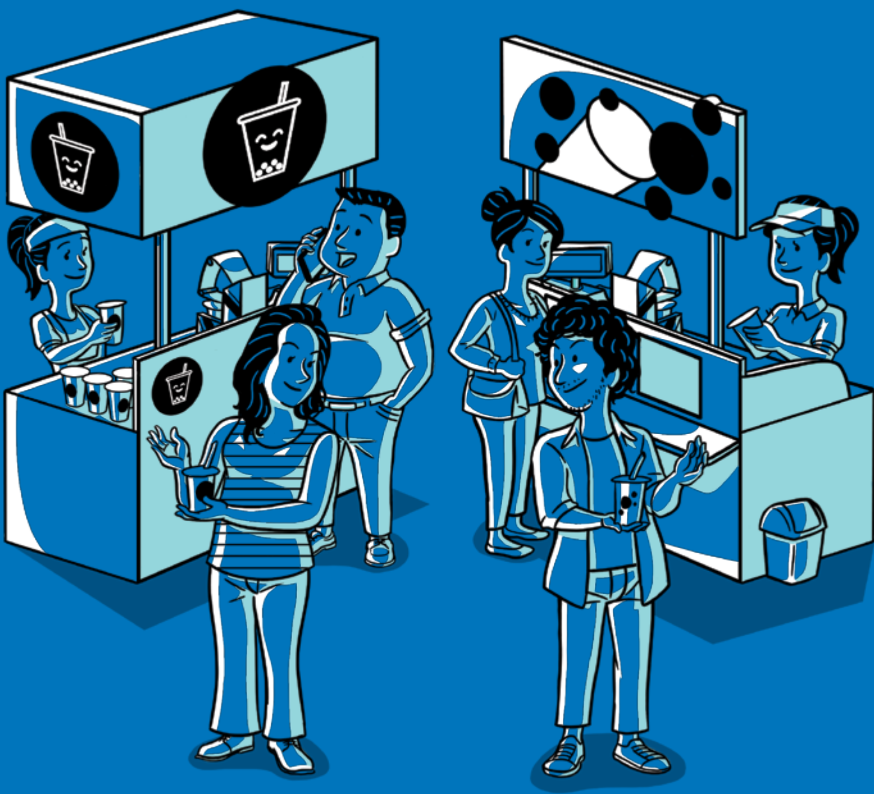
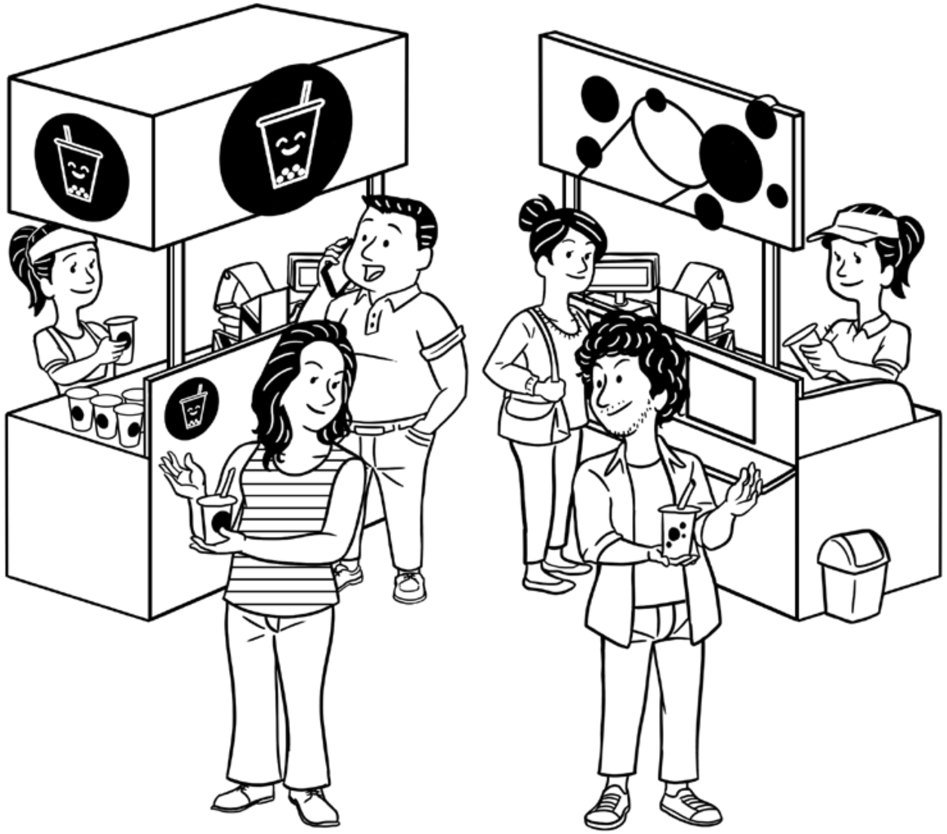
PHILIPPINE COMPETITION COMMISSION

Ensuring businesses compete and consumers benefit

PRIMER

An overview of the Philippine Competition Act





Disclaimer:
This document is not a substitute for the Philippine Competition Act (PCA) or its Implementing Rules and Regulations. In explaining the law, generalizations were made, and the examples given do not in any way restrict the enforcement or other powers of the Philippine Competition Commission (PCC). This document should not be taken as legal advice. If you have any doubt as to how you may be affected by the PCA, please consult a lawyer or contact us through queries@phcc.gov.ph.

Contents

Introduction

Why competition matters

Competition keeps the economy working well.

A competitive market is one where there are multiple buyers and sellers.

No single entity controls the price of goods or services. As such, businesses are more attuned to consumer demand and have to innovate to make their products different and better than the rest.

For consumers

When businesses compete, consumers benefit through lower prices, more product choices, and better-quality goods and services.

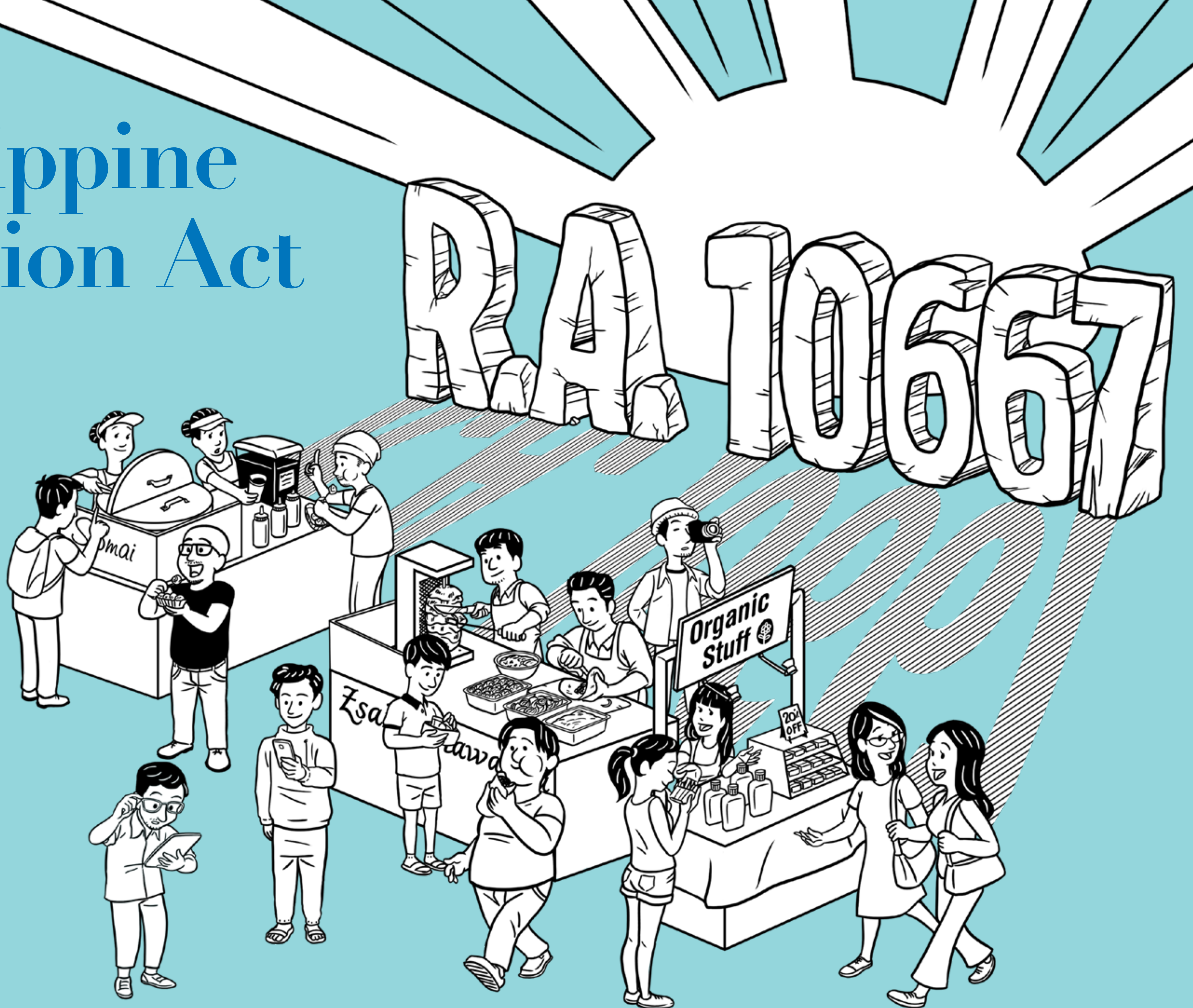
For businesses

Businesses benefit from competition, too. In competitive markets, no company benefits from undue advantage. This makes it easier to start and operate a new business. Competition also enables small businesses to compete with bigger businesses on fair terms.

Fair market competition benefits the broader economy. Without competition, there is no motivation for companies to provide convenient and fast services to consumers, and no reason to innovate products.

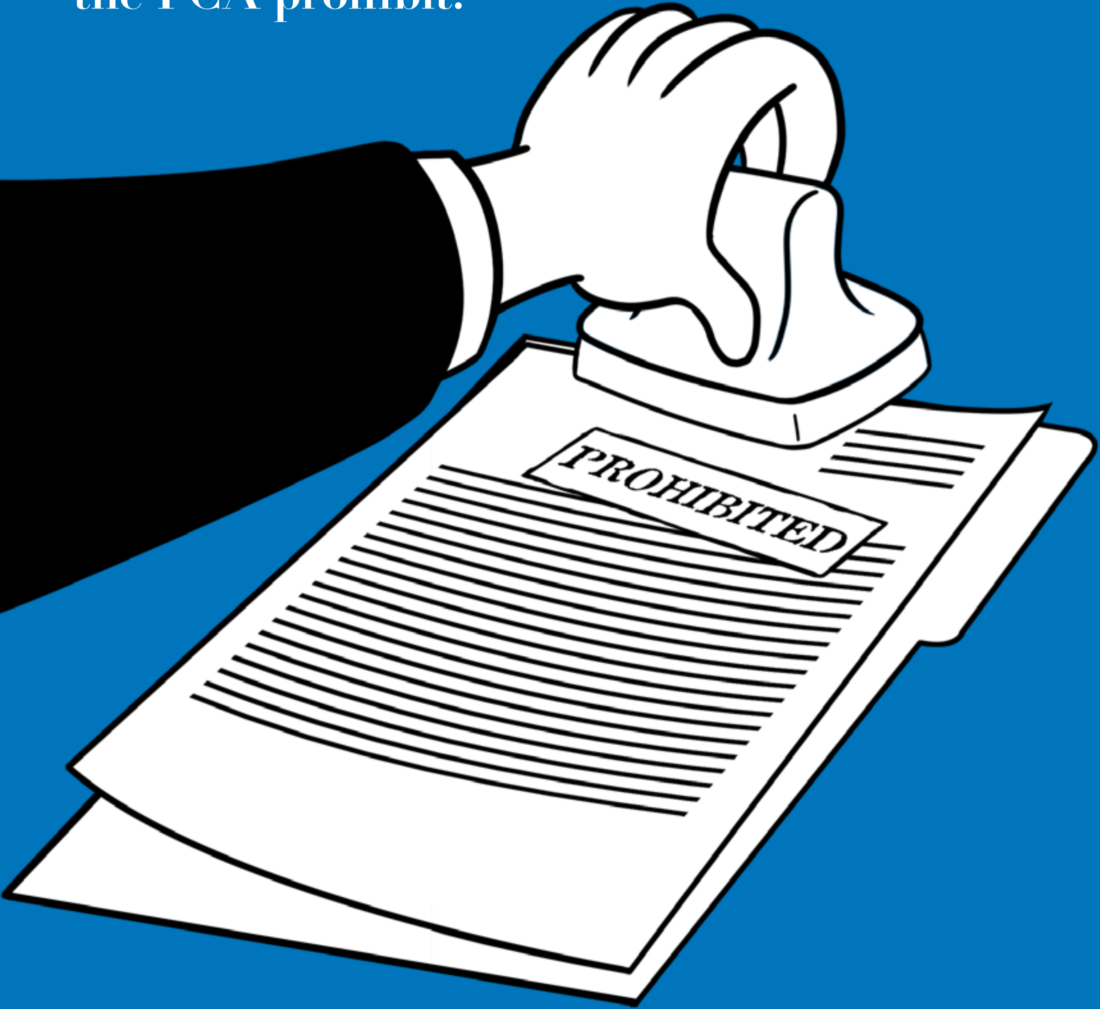
Investments flow to markets that are marked by greater innovation, where there is a level playing field, and where competition is protected. With greater investments come more jobs, which, in turn, increase consumption. Ultimately, competition contributes to economic growth and poverty reduction.

The Philippine Competition Act



Enacted in 2015, Republic Act No. 10667 or the Philippine Competition Act (PCA) is the country's primary competition law. It defines, prohibits, and penalizes anti-competitive practices, with the aim of enhancing economic efficiency and promoting free and fair competition in trade, industry, and all commercial economic activities.

What business practices does the PCA prohibit?



The PCA prohibits entering into anti-competitive agreements (e.g., price fixing, bid rigging), abusing a dominant market position, and entering into anti-competitive mergers and acquisitions (M&As).

What businesses and entities does the PCA cover?

The PCA covers any person or entity engaged in trade, industry, and commerce in the Philippines. It also applies to international trade that may impact trade, industry, and commerce in the Philippines.

The PCA does not apply to collective bargaining agreements or arrangements between workers and employers, and other such activities affecting conditions of employment.

“The Philippine Competition Commission (PCC) has original and primary jurisdiction in the enforcement and regulation of all competition-related issues.

The Philippine Competition Commission

The PCC is the government agency mandated to implement the PCA and the national competition policy. Established in February 2016, the PCC is the main authority on competition-related matters in the country.

What are the powers and functions of the PCC?

As the antitrust authority of the country, the PCC is mandated to exercise the following powers and functions:

- Conduct inquiry, investigate, and hear and decide on cases involving violations of the PCA, its implementing rules, and other competition laws;
- Monitor and analyze the practice of competition in markets, and issue advisory opinion, rules, and guidelines on competition matters for the effective enforcement of the PCA; and
- Conduct, publish, and disseminate studies, reports, and other publications on competition matters to inform and guide the industry and consumers.

While it has original and primary jurisdiction in the enforcement and regulation of all competition-related issues, the PCC works with relevant sector regulators on matters where the regulators' innate expertise and knowledge in the sector are critical.

How does the PCC conduct investigations?

In September 2017, the PCC issued its Rules of Procedure, which governs its investigations, hearings, and proceedings.[1] In initiating and conducting investigations, the PCC shall be guided by the enforcement priorities set by the Commission.

Investigations on possible violations of the PCA can be triggered by:

- A verified complaint[2];
- *Motu proprio* or PCC's own initiative to look into a case; or
- Referral by a concerned regulatory agency

On the basis of any of these triggers, the PCC, through its Enforcement Office, shall conduct a fact finding or **preliminary inquiry (PI)** to determine whether reasonable grounds exist to conduct a **full administrative investigation (FAI)** for any violation of the PCA, its Implementing Rules and Regulations (IRR), or other competition laws. The PI shall, in all cases, be completed by the Enforcement Office within ninety (90) days.

[1] Except matters involving mergers and acquisitions unless otherwise provided in the issuances and guidelines governing the same

[2] A verified complaint contains a statement that the complainant files a complaint and that he/she read the allegations and verified that these allegations are true to the best of his/her knowledge and can be supported by records

Upon finding reasonable grounds, an FAI follows the PI to determine whether there is sufficient basis to charge an entity for violation of the PCA, its IRR, or other competition laws.

After an FAI, the Enforcement Office shall either file the case with the Commission (assuming there is a sufficient basis for violation) or, otherwise, close the investigation.

If there is suficient basis, the Commission then proceeds with **adjudication**, to determine whether substantial evidence of a violation of the PCA, its IRR or other competition laws exists, and to justify the imposition of appropriate penalties and remedies. Final orders or decisions of the Commission may be appealed before the Court of Appeals in accordance with the Rules of Court.

If you need more details on how the PCC conducts investigation, you may refer to the full text of the 2017 Rules of Procedure of the PCC, which may be accessed at *https://phcc.gov.ph/2017-rules-of-procedure/*

Understanding anti-competitive agreements

What are anti-competitive agreements?

Anti-competitive agreements are those that substantially prevent, restrict, or lessen competition.

The agreement may be any type or form of contract, arrangement, or understanding between or among businesses to fix prices or manipulate bids.

It does not matter if the said agreement is formal or informal, explicit (i.e., written or announced) or tacit, or in written or oral (i.e., verbal) form. It is illegal for business rivals to act together in ways that can limit competition or hinder other businesses from entering the market.

What are examples of anti-competitive agreements?

Price fixing

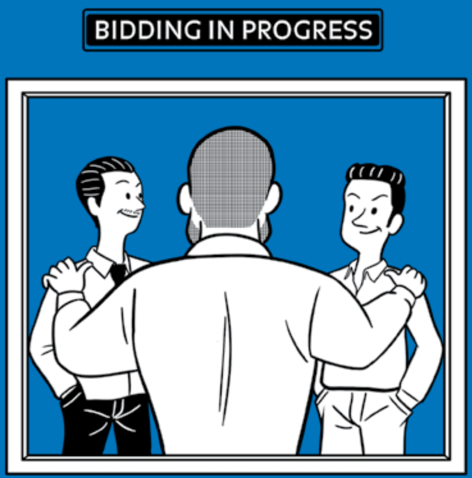
Businesses agree to directly or indirectly fix purchase or selling price, instead of letting supply and demand determine the prices of goods and services.

Output limitation

Businesses agree to limit production by restricting output or setting quotas, creating an artificial shortage in the market that subsequently drives up prices.

Market sharing

Businesses divide the market and claim dominance according to territory, customer demographic, sales volume or type, creating local monopolies that deprive consumers of choice.



Bid rigging

Businesses agree to fix prices at an auction or manipulate bids, forcing buyers to select the higher-priced "pre-selected" bid instead of the best price.

What are cartels?

A cartel is an organization formed by competitors in a specific industry, which enables them to set prices or control levels of production. Agreements to form cartels or to collude are considered anti-competitive agreements.

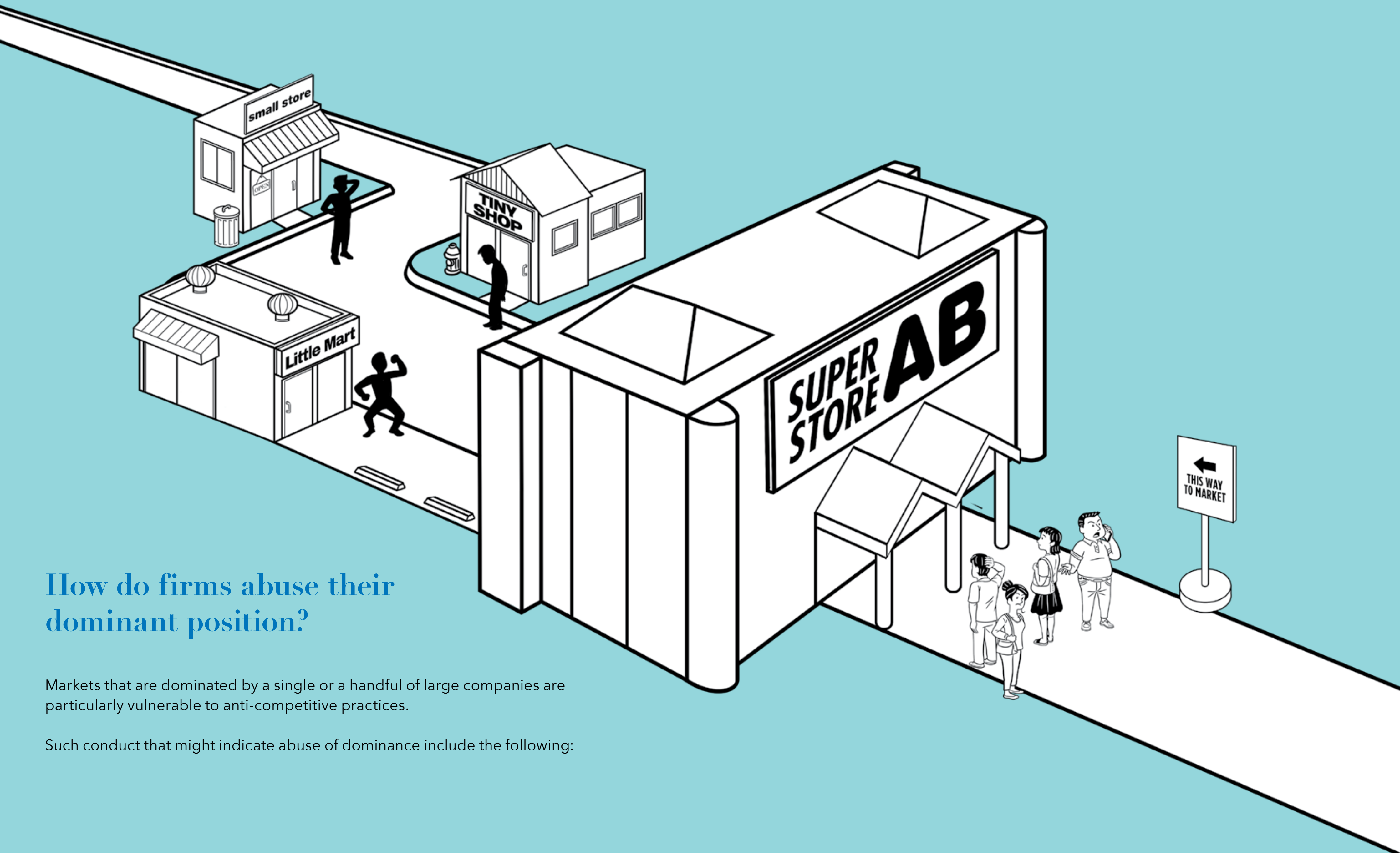
Understanding abuse of dominant position

A business may become dominant in a certain industry by gaining a significant share in the market or becoming an industry leader by virtue of years in operation.

It is not illegal to be dominant provided businesses do not abuse their dominance.

What is abuse of dominant position?

In the conduct of their business, dominant companies – considering their size, scope, and position of economic strength – may have a disproportionately severe effect on the market. The PCA defines abuse of dominant position as a conduct of an entity, whether a company or an individual, with dominant position that substantially prevents, restricts, or lessens competition in the market.



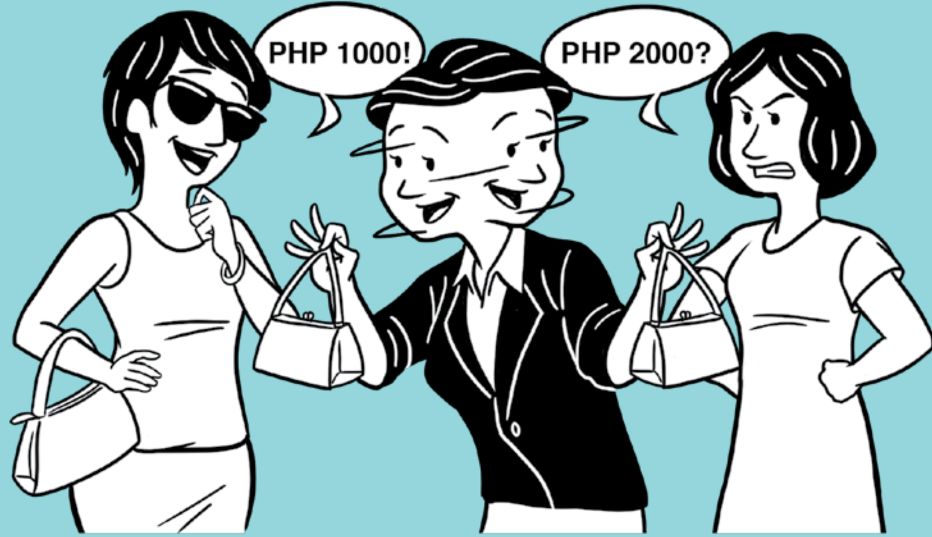
How do firms abuse their dominant position?

Markets that are dominated by a single or a handful of large companies are particularly vulnerable to anti-competitive practices.

Such conduct that might indicate abuse of dominance include the following:

Predatory pricing

A dominant firm deliberately incurs losses in the short term by selling goods or services below the cost of its production, which can eventually force its competitors out of business.



Price discrimination

A dominant firm sets different prices or conditions for equivalent transactions.

Limiting production, markets, or technical development

A dominant firm restricts output or refuses to supply, or restricts access to/use of/ development of a new technology, to the detriment of consumers.

Exploitative behavior towards consumers, customers, or competitors

A dominant firm charges excessive or unfair prices, or employs other unfair trading conditions.

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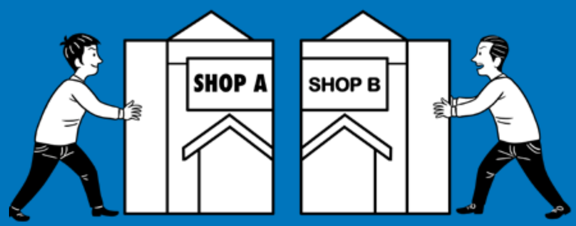
It is not illegal to be dominant provided that a business does not take advantage of its dominance to substantially lessen competition in the market.

Understanding mergers and acquisitions (M&As)

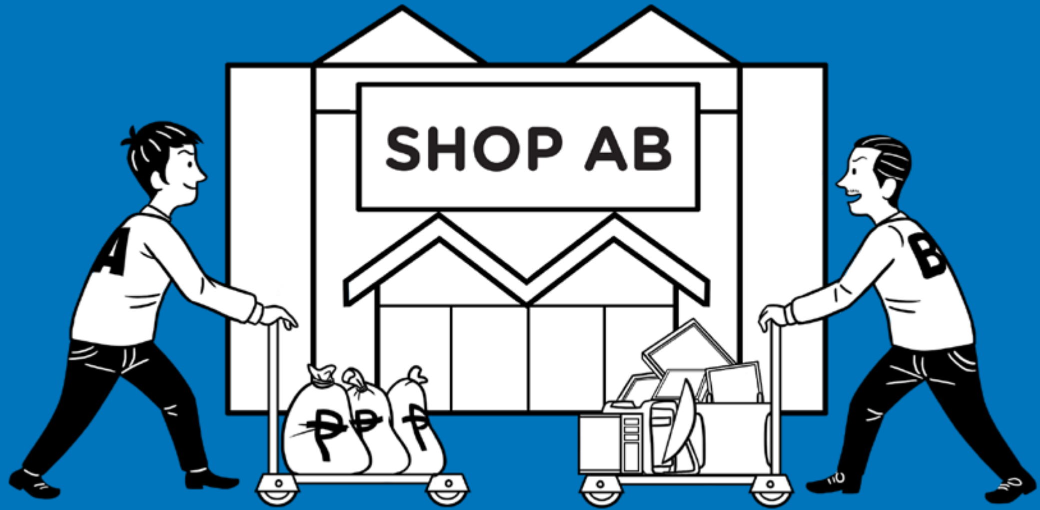
M&As can benefit consumers because they may lead to businesses that operate more efficiently, enable the transfer of technologies, broaden access to capital and increase productivity. However, there are M&As that harm competition and can be disadvantageous to consumers.



What are M&As?

A *merger* refers to the joining of two or more entities into an existing entity or to form a new entity.

Acquisition refers to the purchase of securities or assets for the purpose of obtaining control of another entity.



Which M&As violate the PCA?

Not all M&As are prohibited. The PCA prevents M&As only if they substantially lessen competition in the Philippines. For instance, M&As that create companies with dominant market power could potentially lessen, restrict, or prevent market competition.

The PCC conducts merger review to predict a proposed M&A's competitive impact. The review process involves rigorous economic analysis and investigation to determine whether a transaction might harm consumers.

There are three triggers of merger review:

- Notification by merger parties;
- *Motu proprio* or PCC's own initiative; and
- Third party complaints.

The PCA provides for compulsory notification by parties to the M&A agreement, subject to notification thresholds for both size of transaction and size of person to be determined by the PCC.

- Size of transaction refers to the value of the assets or revenues of the acquired entity.
- Size of person refers to the value of assets or revenues of the ultimate parent entity (UPE), including entities it controls, of at least one of the parties.

For more details on the merger review process, you may visit *https://phcc.gov.ph/mergerprocedurerules2017/*

In line with PCC Memorandum Circular No. 18-001 released in 2018, the thresholds for compulsory notification of M&As will be adjusted annually based on the nominal gross domestic product (GDP) of the previous year. For more information, visit *https://phcc.gov.ph/pcc-policy-statement-18-01-adjustment-thresholds-compulsory-notification-mergers-acquisitions/*

Fines and penalties

What will the PCC do to an entity or entities found violating the PCA?

The PCC is empowered to impose fines and penalties on businesses whose conduct or activities violate the PCA, those found to be in contempt, fail to comply with orders, or supply misleading or false information to the PCC.

The PCA imposes four kinds of administrative penalties as follows:

Administrative fines for violations of Sections 14 (Anti-competitive Agreements), 15 (Abuse of Dominant Position), 17 (Compulsory Notification), and 20 (Prohibited Mergers and Acquisitions)

In fixing the amount of fines, the Commission shall consider both the gravity and duration of the violation. In cases involving basic necessities and prime commodities as defined in the Price Act of 1992 (Republic Act No. 7581), the final fine shall be tripled.

Fines ranging from PHP50,000 to PHP2 million for failure to comply with an order of the Commission

Businesses that fail or refuse to comply with a ruling, order, or decision issued by the Commission are required to pay the above penalty for each violation, and a similar amount of penalty for each day afterwards, until the business fully complies.

These fines shall only accumulate daily starting on the 45th day from the time that the Commission's ruling, order, or decision was received.

Fines of up to PHP1 million for the supply of incorrect or misleading information

This fine is applicable to any entity that wittingly or unwittingly supplies incorrect or misleading information in any document, application, or other paper filed with or submitted to the Commission; or supplies incorrect or misleading information in an application for a binding ruling, a proposal for a consent judgment, proceedings relating to a show cause order, or application for modification of the Commission's ruling, order or approval, as the case may be.

Fines worth at least PHP50,000 for any other violation not specifically penalized under the relevant provisions of the PCA

This schedule of fines shall be increased by the Commission every five years to maintain their real value from the time they were set.

Only the Court of Appeals and the Supreme Court may issue a temporary restraining order or injunction against the PCC in the exercise of its duties and functions.

Reporting possible violation of the PCA

How can you help the PCC promote consumer welfare?

To be fully effective, competition policy must be supported by a culture of competition that is shared by everyone – from the government to the private sector, civil society, and the general public.

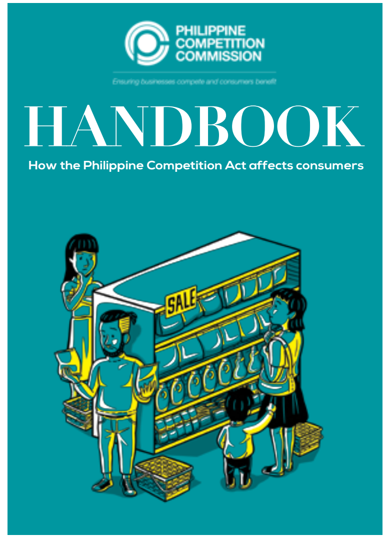
The PCC welcomes helpful information from the public. If you notice or are aware of a possible violation of the PCA, do not hesitate to contact PCC.

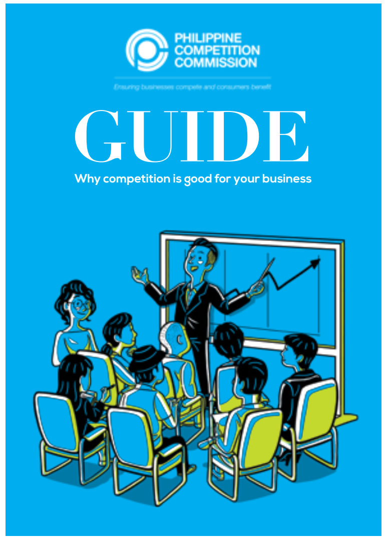
You may reach PCC at **(+632) 8771-9722** or email at **queries@phcc.gov.ph**

You may also visit PCC's office at 25/F Vertis North Corporate Center 1, North Avenue, Quezon City 1105.

The identity of the persons who provide information to PCC under condition of anonymity is kept confidential. Further, the law protects confidential business information submitted to PCC.

Do you want to learn more about competition policy and law? You may download other publications from www.phcc.gov.ph.





Contact Us

The Philippine Competition Commission is open Mondays through Fridays, from 8:00 a.m. to 5:00 p.m.

Submissions of notifications and complaints are accepted during these hours.

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