



The Legal 500 Country Comparative Guides

Philippines

COMPETITION LITIGATION

Contributor

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This country-specific Q&A provides an overview of competition litigation laws and regulations applicable in Philippines.

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PHILIPPINES

COMPETITION LITIGATION



1. What types of conduct and causes of action can be relied upon as the basis of a competition damages claim?

Under the Philippine Competition Act (“PCA”), any person who suffers direct injury by reason of any violation of the PCA may institute a separate and independent civil action.

However, the PCA has not repealed the provisions of the Civil Code on unfair competition, so a competition damages claim may also find basis therein. Article 28 of the Civil Code in particular states that unfair competition in agricultural, commercial, or industrial enterprises or in labor through the use of force, intimidation, deceit, machination or any other unjust, oppressive or highhanded method shall give rise to a right of action by the person who thereby suffers damage.

To qualify competition as “unfair” under Article 28, the aggrieved party must show that: (1) it must involve an injury to a competitor or trade rival, and (2) it must involve acts which are characterized as “contrary to good conscience,” or “shocking to judicial sensibilities,” or otherwise unlawful.

2. What is required (e.g. in terms of procedural formalities and standard of pleading) in order to commence a competition damages claim?

For violations of the PCA, a separate and independent civil action may only be instituted after the preliminary inquiry of the PCC regarding the alleged violation is completed.

An action is commenced upon the filing of a complaint with the court having jurisdiction over the same, and the payment of the filing fees therefor. Every complaint must contain in a methodical and logical form, a plain, concise and direct statement of the ultimate facts, including the evidence on which the party pleading relies for their claim or defense, as the case may be. The

applicable law upon which the cause of action is based must also be clearly and concisely stated.

Every complaint must also include the following: (1) names of witnesses who will be presented to prove a party’s claim or defense; (2) summary of the witnesses’ intended testimonies; and (3) documentary and object evidence in support of the allegations contained in the pleading.

3. What remedies are available to claimants in competition damages claims?

Prior to a civil action for damages, the aggrieved party may seek redress through the PCC. The PCC may impose the following remedies:

- a. Behavioral remedy – a measure that obliges the entity concerned to act in a specific way, or to cease or refrain from engaging in specific conduct.
- b. Structural remedy – measure that effectively changes the structure of the market in order to maintain, enhance, or restore the competitive structure thereof
- c. Injunction – a remedy that orders the entity to: (a) perform a particular act; or (b) stop or refrain from doing an act or continuing a particular activity or course of action.
- d. Disgorgement – a remedy that requires the entity to disgorge: (a) excess profits; or (b) any other form of benefit or gain reasonably connected to any violation of the Act, its implementing rules, or other competition laws.
- e. Divestiture – a remedy that requires the entity to change its structure through partial or full disposal of businesses, shareholdings, business units, or tangible or intangible assets by sale, exchange, or any other means recognized by law.

In a civil action for damages, the parties may avail of the provisional remedies of attachment, injunction, and

receivership.

4. What is the measure of damages? To what extent is joint and several liability recognised in competition damages claims? Are there any exceptions (e.g. for leniency applicants)?

The law has not set a standard for damages in competition cases. However, the general law on damages provides that the plaintiff is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. In addition to actual damages, a plaintiff may also recover moral damages for loss that is incapable of pecuniary estimation, and exemplary damages by way of example or correction for the public good.

5. What are the relevant limitation periods for competition damages claims? How can they be suspended or interrupted?

Under the PCA, any action arising from a violation of any provision of the same shall be commenced within five (5) years from the time the violation is discovered by the offended party, the authorities, or their agents for criminal actions. For administrative and civil actions, it shall be commenced within five (5) years from the time the cause of action accrues. Otherwise, the action shall be forever barred.

6. Which local courts and/or tribunals deal with competition damages claims?

Section 44 of the Philippine Competition Act (PCA) vests the Regional Trial Court (RTC) with exclusive original jurisdiction over all criminal and civil cases involving violations of the PCA and other competition-related laws, including competition damages claims.

Parallel to this, section 12 of the PCA vests the Philippine Competition Commission (PCC) with the original and primary jurisdiction over the enforcement and implementation of the PCA. This includes the power to inquire, investigate, hear and decide on cases including any violation of the PCA, motu proprio, or upon verified complaint from an interested party, and institute the appropriate civil or criminal proceeding.

7. How does the court determine whether it has jurisdiction over a competition

damages claim?

The PCA provides that the RTC of the city or province where the entity has its principal place of business is the court that has exclusive and original jurisdiction over a competition damages claim. Jurisdiction is conferred by law and not by the consent or acquiescence of any of the parties. Jurisdiction is further determined by the allegations in the pleadings of the parties.

8. How does the court determine what law will apply to the competition damages claim? What is the applicable standard of proof?

Substantive laws that will apply to competition damages claims are the PCA and the Civil Code, while the procedural laws can be found in the Philippine Rules of Court.

The claimant bears the burden of proof for competition damages claims, and must establish their case by a preponderance of evidence. Preponderance of evidence is defined as evidence which is of greater weight, or more convincing than that which is offered in opposition to it.

9. To what extent are local courts bound by the infringement decisions of (domestic or foreign) competition authorities?

The PCC is the quasi-judicial body created to implement national competition policy. While PCC decisions may be subject to judicial review, the decisions of quasi-judicial bodies are generally accorded with great respect and finality by courts, provided said decisions are supported by substantial evidence and not attended by grave abuse of discretion.

Since the PCA is adapted in part from US and EU competition law, decisions of competition authorities from those jurisdictions are persuasive, but not binding, on Philippine courts.

10. To what extent can a private damages action proceed while related public enforcement action is pending? Is there a procedure permitting enforcers to stay a private action while the public enforcement action is pending?

Under the PCA, any person who suffers direct injury by reason of any violation of the PCA may institute a

separate and independent civil action only after the PCC has completed its preliminary inquiry. The PCA does not provide any method for public authorities to stay a private action for damages, especially since the PCA itself specifies that the civil action is separate and independent from the public enforcement action.

11. What, if any, mechanisms are available to aggregate competition damages claims (e.g. class actions, assignment/claims vehicles, or consolidation)? What, if any, threshold criteria have to be met?

A class suit is available to plaintiffs when the subject matter of the controversy is one of common or general interest to many persons so numerous that it is impracticable to join all as parties. In such a case, a number of them which the court finds to be sufficiently numerous and representative as to fully protect the interests of all concerned may sue or defend for the benefit of all. The Philippine definition of a class suit is narrow, and excludes suits where between members of the class the right or liability of each is distinct.

In those cases, the court may permit the joinder of parties for all persons in whom or against whom any right to relief in respect to or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally, or in the alternative, where any question of law or fact common to all such plaintiffs or defendants may arise in the action.

Lastly, when actions involving a common question of fact or law are pending before the court, it may order all the actions consolidated.

12. Are there any defences (e.g. pass on) which are unique to competition damages cases? Which party bears the burden of proof?

The PCA provides for an efficiency defense, where entities may resist a charge of anti-competitive agreement or abuse of dominant position on the ground that their acts contribute to improving the production or distribution of goods and services or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefits. In such a case, plaintiff suffers loss but no injury. The defendant has the burden of proving economic efficiency.

With regard to anti-competitive agreements specifically, the PCA provides for a leniency program that grants immunity from suit or reduction from fine for any

participant to an anti-competitive agreement who volunteers information to the PCC during or prior to the preliminary inquiry, upon satisfaction of certain conditions specified in the law.

13. Is expert evidence permitted in competition litigation, and, if so, how is it used? Is the expert appointed by the court or the parties and what duties do they owe?

The Rules of Court permits the use of expert evidence. The testimony of an expert witness may be given on matters requiring special knowledge, skill, experience, training or education, but subject to the condition that the witness is first qualified. The choice of expert witness is the parties' to make, but courts are given a wide latitude of discretion in determining the weight of their opinion.

14. Describe the trial process. Who is the decision-maker at trial? How is evidence dealt with? Is it written or oral, and what are the rules on cross-examination?

The trial process follows the Rules of Court. The trial shall be governed by the pre-trial order. The plaintiff shall first adduce evidence in support of their claim, followed by the defendant who shall then adduce evidence in support of their defense. The period for the presentation of evidence on the third (fourth, etc.)-party claim, counterclaim or cross-claim shall be determined by the RTC. If the RTC deems it necessary, it shall set the presentation of the parties' respective rebuttal evidence. After which, the case shall be deemed submitted for resolution.

The judge is the decision-maker. Evidence may be object, documentary or testimonial. Under the Rules of Evidence, a witness may be cross-examined by the adverse party on any relevant matter, with sufficient fullness and freedom, with the aim of testing the accuracy and truthfulness of their testimony, including freedom from interest or bias, or the reverse.

15. How long does it typically take from commencing proceedings to get to trial? Is there an appeal process? How many levels of appeal are possible?

A civil case may be filed with the court only after the conduct of a preliminary inquiry by the PCC which

inquiry, under the Rules of Procedure of the PCC (“PCC Rules”), must be completed within ninety (90) days from the commencement thereof. It takes around five (5) months to get to trial from the commencement of the civil case with the proper court.

The Rules of Court provides for an appeals process from final decisions of the trial court. The specific appellate track will depend upon the grounds. If the grounds are based on questions of fact or mixed questions of fact and law, the appeal shall be filed with the Court of Appeals. If the grounds are based on pure question of law, direct appeals to the Supreme Court may be had.

16. Do leniency recipients receive any benefit in the damages litigation context?

The PCC has promulgated its Rules of the Leniency Program, which offers the benefit of leniency in the form of immunity from suit or reduction of administrative fines. Immunity from suit includes immunity from civil actions initiated by the PCC on behalf of the affected parties and third parties.

17. How does the court approach the assessment of loss in competition damages cases? Are “umbrella effects” recognised? Is any particular economic methodology favoured by the court? How is interest calculated?

As of this writing, there is no case law that lays down specific rules on assessment of loss in competition damages cases. Neither has the PCA issued specific guidance on this. Consequently, the general provisions on damages under the Civil Code apply.

Similarly, the courts and the PCA have not adopted any guidance relating to “umbrella effects” and/or any preponderant economic methodology adopted in competition damages cases. As mentioned above, the Civil Code provisions on damages apply, whereby actual damages must be proven with reasonable certainty.

18. How is interest calculated in competition damages cases?

The rate of legal interest i.e., when the judgment of the court awarding a sum of money becomes final and executory, shall be 6% per annum from such finality until its satisfaction.

19. Can a defendant seek contribution or indemnity from other defendants? On what basis is liability allocated between defendants?

A defendant can seek contribution or indemnity from other defendants for violations of the PCA, its implementing rules, or other competition laws based on solidary liability. There is solidary liability only when the obligation expressly so states, or when the law or the nature of the obligation requires solidarity. In this regard, the PCC Rules expressly provides that the responsible officers, directors, trustees, and partners shall be solidarily liable with an entity liable for infringement.

In general, each one of the solidary defendants is liable for the entire obligation. The defendant who paid the entire obligation may demand reimbursement from their co-defendants who are solidarily liable only the share which corresponds to each, with interest for the payment already made. Unless the contrary appears, the Civil Code provides that the credit or debt shall be presumed to be divided as many equal shares as there are creditors or debtors.

20. In what circumstances, if any, can a competition damages claim be disposed of (in whole or in part) without a full trial?

If the defendant fails to file an answer to the complaint within the reglementary period, the plaintiff can move that the defendant be declared in default. Thereafter, the RTC shall proceed to render judgment granting the plaintiff such relief as the latter’s pleading may warrant, unless the RTC in its discretion requires the plaintiff to submit evidence.

The RTC may also motu proprio or on motion render judgment on the pleadings, without a full trial, if it is apparent that the defendant’s answer fails to tender an issue, or otherwise admits the material allegations of the adverse party’s pleadings.

Moreover, a claimant may, at any time after the pleading in answer thereto has been served, or the defending party at any time, move for summary judgment. Summary judgments are proper when, upon motion of the plaintiff or the defendant, the court finds that the answer filed by the defendant does not tender a genuine issue as to any material fact and that one party is entitled to a judgment as a matter of law.

21. What, if any, mechanism is available for the collective settlement of competition damages claims? Can such settlements include parties outside of the jurisdiction?

Currently, there is no specific mechanism provided under the PCC Rules. Party litigants may, however, apply for a judgment based on a compromise agreement. A compromise agreement, which is not contrary to law, morals or public policy, is valid and enforceable between the parties. A judgment based on compromise agreement is a judgment on the merits. Moreover, it is immediately final and executory unless set aside because of falsity or vices of consent.

Such settlements may include parties outside of the jurisdiction, subject to the rule that no foreign corporation transacting business in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency of the Philippines.

22. What procedures, if any, are available to protect confidential or proprietary information disclosed during the court process? What are the rules for disclosure of documents (including documents from the competition authority file or from other third parties)? Are there any exceptions (e.g. on grounds of privilege or confidentiality, or in respect of leniency or settlement materials)?

Under the PCC Rules, any entity claiming confidentiality must, upon submission of the information with the PCC:

1. Provide at the time of the submission of the pleading, motion, or any document containing the information it claims as Confidential Business Information, both confidential and non-confidential versions thereof;
2. Specifically identify the information it claims as Confidential Business Information. Blanket claims for confidentiality shall not be accepted; and
3. Provide a written statement justifying and substantiating the request for confidential treatment over each piece of information, and the period within which confidentiality is requested.

However, the PCC may disclose Confidential Information in any of the following circumstances:

1. When consent is obtained from the entity claiming confidentiality;
2. When disclosure is required by law;
3. When disclosure is required by a valid order of a court of competent jurisdiction or pursuant to a lawful writ or process of a government agency;
4. When disclosure is based on an agreement with a government agency: Provided, That the information shall be treated by the agency as confidential, and used for law enforcement purposes; or
5. When necessary for enforcing the Act, its implementing rules, or other competition laws.

The Rules of Court allow for different modes of discovery in proceedings before courts to procure documents from the adverse party, the competition enforcers, and third parties. However, a person cannot be compelled to testify about any trade secret, unless the non-disclosure will conceal fraud or otherwise work injustice. When disclosure is directed, the RTC shall take such protective measure as the interest of the owner of the trade secret and of the parties and the furtherance of justice may require.

23. Can litigation costs (e.g. legal, expert and court fees) be recovered from the other party? If so, how are costs calculated, and are there any circumstances in which costs recovery can be limited?

Generally, costs of litigation cannot be recovered as a part of damages. However, in the absence of stipulation, attorney's fees and expenses of litigation may be recovered, among other things, when exemplary damages are awarded, when the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect their interest, where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim, and when the court deems it just and equitable. In any event, costs are judicially determined based on proof of actual costs incurred, with the statutory requirement that they must be reasonable

24. Are third parties permitted to fund competition litigation? If so, are there any restrictions on this, and can third party funders be made liable for the other

party's costs? Are lawyers permitted to act on a contingency or conditional fee basis?

At present, there is no rule permitting or prohibiting third-party litigation funding in the Philippines. However, courts in the Philippines may only exercise jurisdiction over parties who actually participate in the proceedings, and do not have jurisdiction over the third-party who funded the litigation, unless there is cause for which to implead that third-party in the action.

A contingent fee arrangement between lawyers and clients is valid in this jurisdiction, but such arrangements are under the supervision and scrutiny of the court to protect clients from unjust charges.

25. What, in your opinion, are the main obstacles to litigating competition damages claims?

In the Philippines, private litigation in competition damages is subordinated to prosecution and enforcement by the PCC since a civil action may only be filed after the PCC has completed its preliminary inquiry. Thus, it may appear that the plaintiffs do not have full control over their case since their presentation of the facts and issues have already been predetermined by the results of the PCC's inquiry. Moreover, the fact that the completion of the PCC's preliminary inquiry is a condition precedent to the filing of a civil action may be

a source of delay for the plaintiff, albeit three (3) months at most, in case the former needs immediate court intervention to seek redress for injury sustained.

26. What, in your opinion, are likely to be the most significant developments affecting competition litigation in the next five years?

For the most part, developments in the field of competition in the Philippines are in public enforcement more than private litigation. Still in its infant stages, competition litigation has seen little in the way of innovation. The tepidity with which private parties approach competition claims might be due to the outsize role of the PCC as the government regulator of competition policy. In this regard, it should be noted that the PCC has a new set of Commissioners at its helm. This will, in all likelihood, affect the direction and priorities of the PCC, including enforcement actions.

Moreover, the eight-point socio-economic agenda of the current administration includes "[ensuring] a level playing field by strengthening market competition and reducing barriers to entry and limits to entrepreneurship." Whether or not this will translate into refining and strengthening competition policy and institutions, including enforcement mechanisms, remains to be seen. The express inclusion of competition policy in the socioeconomic agenda, nonetheless, is a strong indicator of a competition-conscious national policy.

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