



**COUNTRY
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Philippines

COMPETITION LITIGATION

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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?

There is basis for a private claim for damages under section 45 of the Philippine Competition Act (**PCA**).

Section 45 of the PCA provides that any person, who suffers direct injury by reason of any violation of the PCA, may file a separate and independent civil action for damages. Under Philippine law and procedure, a civil action for damages is the primary remedy by an aggrieved party to obtain compensation for loss or injury arising from a violation of the PCA.

The PCA aims to promote and protect a competitive market by prohibiting anti-competitive agreements and abuse of a dominant position, and prescribing a compulsory notification regime for certain mergers and acquisitions.

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

A civil action for damages for any violation of the PCA may only be filed after the Philippine Competition Commission (**PCC**) has completed its preliminary inquiry on the violation. This is because the PCC has original and primary jurisdiction to enforce the PCA and investigate violations of the same.^[1] Under Philippine law, a case which falls under the specialized expertise of an administrative agency must first be filed with such administrative agency before the courts can take jurisdiction.^[2]

A preliminary inquiry can result in: (i) a resolution of closure, if the PCC finds that the PCA has not been violated; (ii) a resolution of closure without prejudice, if the PCC finds that the facts or information are insufficient to proceed, but without prejudice to another preliminary inquiry; or (iii) a resolution to proceed, if the

PCC finds reasonable ground to conduct a full administrative investigation.^[3]

After completion of a preliminary inquiry by the PCC, a party commencing a competition damages claim must file a complaint with the Regional Trial Court (**RTC**) setting out (a) the facts constituting the violation of the PCA; (b) the fact that a preliminary inquiry has been completed by the PCA finding that the violation was indeed committed; and (c) the injury / damages arising out of the violation. The complaint must contain and be accompanied by (a) the names and residences of the plaintiff and defendant; (b) names of witnesses who will be presented to prove a party's claim or defense; (c) a summary of the witnesses' intended testimonies and their judicial affidavits; and (d) documentary and object evidence in support of the allegations contained in the pleading. These allegations will have to be proven by the complaining party during the proceedings.

[1] PCA, section 12.

[2] *Euro-Med Laboratories v. Batangas*, GR No. 148106, 17 July 2006.

[3] PCA, section 31; PCC Rules of Procedure, Rule II, section 2.6.

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

Claimants may seek administrative remedies under the PCA. These remedies may be availed of by filing an administrative complaint with the PCC.

Upon receipt of the complaint, the PCC, through its Enforcement Office, will conduct a preliminary inquiry. During the inquiry, the Enforcement Office may require the submission of testimony and documents through subpoenas. The PCC may also issue interim measures during the inquiry to prevent the entity being investigated from performing certain acts that may have a material and adverse effect on consumers and competition.^[4]

At the end of the inquiry and the investigation process, the PCC may impose (a) administrative fines of up to Php 250 Million, depending on factors such as frequency of violation, relevant turnover and other aggravating or mitigating factors (e.g., voluntary desistance from the anti-competitive act); and (b) behavioral and structural remedies, such as an injunction ordering an entity to refrain from doing an act or continuing a particular course of action, disgorgement of excess profits or divestiture of shareholdings.

Aside from the private action for damages, (which as discussed above may only be filed after the PCC has completed its inquiry on the violation) pursuant to the Philippines general procedural law or the Rules of Court,^[5] a court hearing a civil action under Section 45 of the PCA may issue interim and final injunctive relief in favor of a claimant in a competition damages claim. For interim relief, the following essential requisites must be present:

- a. the right of the complainant is clear and unmistakable;
- b. the infringement of right sought to be protected is material and substantial; and
- c. there is an urgent and paramount necessity for the injunction to prevent serious damage.^[6]

Pursuant to the Rules of Court, a court hearing a civil action under section 45 has the power to issue other interim relief such as (i) preliminary attachment and (ii) receivership, if warranted.^[7]

^[4] PCC Rules of Procedure, Rule XII, section 12.1.

^[5] Rules of Court, Rule 58.

^[6] *Pedro Lukang v. Pagbilao Development Corporation*, G.R. No. 195374, 10 March 2014.

^[7] Rules of Court, Rules 57 and 59.

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 PCA does not set out specific guidelines on the quantification of damages. Neither has the PCC issued any rules or guidance on this subject. Thus, damages would have to be proved based on the Philippine Civil Code:

- Compensatory damages are recoverable, and

awarded based on “pecuniary loss suffered [as] duly proved;” they cover the value of the loss suffered, as well as lost profits. Assuming that the claim can be framed and will be treated as a tort action, the infringer will be liable for all damages that are the “natural and probable consequences” of the act or omission that is subject of the complaint.

- “Moral” damages may be recovered, if the claimant can show that it suffered “physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury.”^[8] The amount of the moral damages is determined by the court, which has the power to reduce claims for excessive moral damages.^[9]
- Exemplary (or punitive) damages may be awarded to serve as a deterrent to future parties from committing a similar offense^[10] However, these cannot be recovered in all cases, and may be awarded only if the act was tainted with bad faith.^[11]
- Attorney’s fees and legal costs may be awarded only under certain circumstances (see item 21 below). Moreover, awards of attorney’s fees and legal costs by Philippine courts are generally minimal.

Joint and several liability

The PCA does not expressly provide for joint and several liability (i.e., solidary) for violations of the PCA.

However, depending on the circumstances, violators may arguably be considered as joint tortfeasors under Philippine law. Joint tortfeasors are persons who “command, instigate, promote, encourage, advise, countenance, cooperate in, aid or abet the commission of a tort, or who approve of it after it is done, if done for their benefit.”^[12] By way of example, cartel participants may arguably be considered as joint tortfeasors as they commit acts that would result in damage to another person.

Under the Philippine Civil Code, the liability of joint tortfeasors is joint and several.^[13] It has yet to be seen whether a Philippine court will treat, as tortious, causes of action arising from violations of the PCA.

^[8] Civil Code, Article 2217.

^[9] *Yuchengco v. Manila Chronicle Publishing Corporation*, GR No. 184315, 28 November 2011

^[10] Civil Code, Article 2229.

[11] Civil Code, Article 2233.

[12] *People v. Velasco*, GR No. 195668, 25 July 2014.

[13] Civil Code, Article 2194.

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

Competition damages claims under Section 45 of the PCA must be filed within five years from the time the cause of action accrues. A cause of action accrues when an infringer's act or omission violates the right(s) of the claimant. Such period is suspended or interrupted when the case is filed.

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

Civil actions under Section 45 of the PCA are brought before the RTC under the Philippines' Rules of Court.

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

Under Philippine laws, jurisdiction is conferred by statute.[14] The PCA provides that the RTC has jurisdiction over all criminal and civil cases involving violations of the PCA.

[14] *Foronda-Crystal v. Son*, GR No. 221815, 29 November 2017

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

Actions brought under Section 45 of PCA will be decided based on the relevant provisions of the PCA, the relevant provisions of the Civil Code and the Rules of Court. The burden of proof for civil actions under Section 45 is the same as in civil actions — the claimant bears the burden of proving his case by a preponderance of evidence. Section 45 of the PCA implies that a claimant must show that there was an infringement of the applicable provisions of the PCA, and that it suffered actual loss as a result of the infringement.

In determining where the preponderance or superior weight of evidence on the issues involved lies, the court

may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility as far as the same may legitimately impact upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.[15]

[15] *Id.*, Rule 133, section 1.

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

The PCC is primarily tasked with the original and primary jurisdiction to enforce and implement the PCA, and its rules and regulations. Thus, its factual findings, as the administrative body charged with this specific field of expertise, will be afforded great weight by the courts. Based on jurisprudence, unless it is shown that such findings by an administrative body are not supported by substantial evidence (i.e., such amount of relevant evidence that a reasonable person might accept as adequate to justify a conclusion), they are conclusive and will not be disturbed.[16]

Philippine courts are not bound by decisions of foreign competition authorities. Nonetheless, under Philippine jurisprudence, when a Philippine statute has been adopted from another State and such statute has previously been construed by the courts of such State or country, this statute is deemed to have been adopted with the construction so given it.[17] Thus, the decisions of competition authorities in those jurisdiction whose competition laws served as models for the PCA (i.e. the United States and the European Union) may have persuasive weight in a Philippine court's interpretation of the provisions of the PCA.

[16] *Miro v. Mendoza, et al*, GR No. 172532, 20 November 2013

[17] *Carolina Industries, Inc v. CMS Stock Brokerage*, GR No L-46908, 17 May 1980

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?

Section 45 of the PCA provides that a private action for competition damages is a separate and independent civil action which may be instituted after the completion of the preliminary inquiry by the PCC. A separate civil action proceeds independently of the criminal proceedings instituted in relation to such action.^[18]

While enforcers may try to obtain a stay of the private action, enforcers will have to establish the requisites for the issuance of an injunction (discussed in item 3 above). This may be difficult due to the clear language of Section 45, which expressly allows a private claim for damages to proceed separately and independently.

[18] *People v. Lipata*, GR No. 200302, 20 April 2016

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?

The Rules of Court allow class actions 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 a class action, a number of persons with common or general interest, 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.

While class actions are a viable approach under Philippine law, they are not commonly filed in the Philippines (especially when compared to other jurisdictions such as the United States). Moreover, in a number of cases, the Philippine Supreme Court has dismissed class suits for failure of the plaintiffs to show that they adequately represent the class sought to be represented.

The Rules of Court also allow consolidation of actions involving a common question of law or fact.^[19] Consolidation is proper whenever the subject matter involved and the relief demanded in the different suits make it expedient for the court to determine all of the issues involved and adjudicate the rights of the parties by hearing the suits together.^[20]

To date, there have been no private actions, much less class actions or consolidated damages actions, in the Philippines involving violations of the PCA.

[19] Rules of Court, Rule 31, Section 1.

[20] *Deutsche Bank AG v. CA and Steel Corporation of the Philippines*, GR No. 193065, 27 February 2012

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

The following defences may be invoked against competition damages claims:

- a. *Leniency*. Under Section 35 of the PCA, the PCC may grant leniency to former or current cartel participants, in exchange for voluntary disclosure of information regarding the cartel. Leniency can be in the form of immunity from suit^[21] (which covers immunity from criminal and administrative liability under the PCA and from civil actions for damages initiated by the PCC on behalf of affected parties and third parties)^[22] or reduction of administrative fines.^[23]
- b. *Prescription*. Under Section 46 of the PCA, a civil action for damages must be filed within five years from the time the cause of action accrues, i.e., when the PCC has completed its preliminary inquiry on the violation of the PCA that would be subject of the civil action.^[24]

The burden of proving the existence of a defence is on the person invoking the same. Considering that enforcement of Philippine competition law is still in relative infancy, Philippine case law has not provided any further guidance on defences that may be unique to competition damages cases (such as pass on defences) or how these will be applied and appreciated.

[21] Rules of the Leniency Program of the Philippine Competition Commission ("Leniency Rules"), Section 3

[22] Leniency Rules, Section 1.

[23] Leniency Rules, Section 4

[24] PCA, Section 45.

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 (which would apply in a competition

damages claim) allow the presentation of expert witnesses in Court. Expert witnesses may express their opinion on matters requiring special knowledge, skill, experience, or training.[1] These expert witnesses are appointed by the parties.

The duties of experts have not been codified for Philippine litigation.

[25] Rules of Court, Rule 140, Section 49.

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?

Considering the early stages of enforcement of the PCA, there has not been any trial involving its violation. Nonetheless, based on civil proceedings, the trial will proceed following the general rules of procedure for civil cases.

The judge is the decision-maker at trial. Unless the court directs a different order for the presentation of evidence, the plaintiff shall first adduce evidence in support of his or her complaint through the presentation of witnesses and documents to prove his or her claim. The defendant shall then adduce evidence in support of his or her defense, counterclaim, cross-claim and third-party complaint through the presentation of witnesses and documents to prove his or her defense. The parties against whom any counterclaim or cross-claim has been pleaded, shall adduce evidence in support of their defense, in the order to be prescribed by the court. If allowed by the court, the parties may then respectively adduce rebutting evidence. Upon admission of the evidence, the case shall be deemed submitted for decision, unless the court directs the parties to argue or to submit their respective memoranda or any further pleadings.

For oral evidence, i.e. witness testimony, upon the termination of the direct examination, the witness may be cross-examined by the adverse party as to many matters stated in the direct examination, or connected therewith, with sufficient fullness and freedom to test his accuracy and truthfulness and freedom from interest or bias, or the reverse, and to elicit all important facts bearing upon the issue.

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?

As noted above, a civil action for damages may only be filed after the PCC has completed its preliminary inquiry. Under PCC Rules of Procedure, there is a 90-day period for the PCC Enforcement Office to complete a preliminary inquiry from its commencement.[26]

Once the civil proceedings are commenced, it may take around four to six months to get to trial. Trial court proceedings last approximately for two to five years.

On the other hand, the length of time from commencing proceedings to judgment varies greatly depending on the factual circumstances and complexities of a specific case, as well as interlocutory issues. Since competition law proceedings, by nature, tend to be complex, and the Philippines has yet to see civil proceedings in relation to the PCA, it may take a significant period of time to obtain a final judgment, especially for the first civil proceedings that will be filed under the PCA.

The Rules of Court provide for appeal on grounds of fact, mixed law and fact, and law, from all final decisions of the RTC. If the appeal raises questions of fact or mixed law/fact, the appeal is taken to the Court of Appeals. The decision of the Court of Appeals may be appealed to the Supreme Court.

If the appeal is based solely on questions of law, the appeal is taken directly to the Supreme Court.

The Supreme Court's review, whether in appeals directly from the RTC (on pure questions of law) or from the Court of Appeals (acting in its appellate jurisdiction), is discretionary. The appeal will proceed only if justified by special and important reasons, such as when the lower court (i) has decided a question of substance not decided before; (ii) has decided a question of substance in a way not in accord with law or authority; or (iii) has departed from the usual course of judicial proceedings, or sanctioned such departure by a lower court, as to call for the Supreme Court's exercise of its power of supervision.[27]

The duration of the appeal process varies depending on the nature of the appeal and the appellate courts involved, but is typically from three to five years.

[26] PCC Rules of Procedure, Rule II, Article I, Section 2.6

[27] Rules of Court, Rule 45, Section 6.

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

Under Section 35 of the PCA and Section 1 of the Leniency Rules, the PCC may confer immunity from private suit by affected parties as part of its Leniency Program for participants in prohibited anti-competitive agreements.

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?

The PCA does not set out specific guidelines on the quantification and assessment of loss and damages in competition cases. There is also no case law to provide guidance at this time.

Following the general provisions of the Civil Code, compensatory damages are recoverable, and awarded based on “pecuniary loss suffered [as] duly proved;” they cover the value of the loss suffered, as well as lost profits.^[28]

The PCA and Philippine case law do not provide any guidance on “umbrella effects”, which are damages that may have been incurred by purchasers of the competitors of the entity charged with violations of the PCA.

In the absence of case law involving the PCA at this time, we have yet to see whether courts will favour any particular economic methodology for civil actions for violations of the PCA. In general, under Philippine law, actual losses or damages will have to be proven with reasonable certainty through the best evidence available (e.g., receipts, invoices, vouchers).^[29]

In addition, the PCC and the courts are allowed to award treble fines for violation involving trade or movement of basic necessities and prime commodities (e.g., rice, corn, bread, dried and canned fish and other marine products, fresh pork, beef and poultry meal, eggs, processed milk, fresh vegetables, coffee, sugar).^[30]

Calculation of Interest

Under Philippine law, when an obligation, not constituting a loan or forbearance of money, is breached, the court may impose interest on the amount of damages awarded at the rate of 6% per annum. However, the court will not award interest on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. Where the demand is established with

reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially. Otherwise, the interest shall begin to run only from the date the judgment of the court is made. The actual base for the computation of legal interest shall, in any case, be on the amount of damages finally awarded by the court.

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

^[28] Civil Code, Article 2199.

^[29] *Oceaneering Contractors (Phils.), Inc. v. Nestor N. Barretto*, G.R. No. 184215, 9 February 2011.

^[30] PCA, Section 41.

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

In the absence of case law at this time, and based on general civil cases in the Philippines, cartel participants may arguably be treated as joint tortfeasors, whose liability may be considered joint and several.^[31] In such a case, each of the defendants will be liable for the entire obligation, and each of the plaintiffs is entitled to demand the satisfaction of the whole obligation from any or all of the defendants.^[32] The defendant who paid the entire claim may claim from his co-defendants the share which corresponds to each.^[33] The entire claim will be divided equally among the co-defendants for purposes of computing each co-defendant’s share.^[34]

^[31] Civil Code, Article 2194.

^[32] *AFPRSBS v. Sanvictores*, GR No. 207586, 17 August 2016.

^[33] Article 1217, Civil Code.

^[34] Article 1208, Civil Code.

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

Based on general rules involving civil cases, a competition claim can be disposed of without a full trial under the following circumstances:

- **Default Judgment:** If the defendant fails to file an answer within the required period, the court may issue an order of default upon motion of the plaintiff. The court will then proceed to render judgment as the pleading may warrant, unless the court in its discretion requires the claimant to submit evidence.
- **Judgment on the Pleadings:** Where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading, the court may, on motion of that party, direct judgment on such pleading.
- **Summary Judgment:** Unless the court orders the conduct of a hearing, a summary judgment shall be if the pleadings, supporting affidavits, depositions and admissions on file, show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

A mandatory mediation procedure is also incorporated into civil actions before the RTC, and in the course of the pre-trial stage. This may help the parties arrive at an amicable settlement even before trial commences.

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

The PCA does not expressly provide for such a mechanism. In the absence of case law at this time, under Philippine law, parties are generally free to settle any claim they may have against any other party, as long as the settlement is not contrary to law, morals, good customs or public policy. Consequently, a settlement agreement may encompass competition damages claims, including as against those parties outside the Philippines.

21. 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)?

Confidentiality or Proprietary Information

The PCA and the PCC Rules of Procedure provide for confidentiality of "business information" received during investigations before the PCC.^[35] Confidential business information generally relates to information on a business' operations, identification of customers, inventories, or amount or source of any income, profits, losses, expenditures. These are not generally known to the public or to other persons who can obtain economic value from its disclosure or is liable to cause serious harm to the person who provided the information. To be deemed confidential business information, the information must also be subject of reasonable efforts to maintain its secrecy.^[36] However, the PCC may disclose confidential business information "when disclosure is required by a valid order of a court of competent jurisdiction", such as through a subpoena requiring an individual to testify on confidential business information or the production of documents. This ability of the PCC to disclose confidential information is also available in respect of leniency.^[37] Thus, a Regional Trial Court hearing a Section 45 civil action can, theoretically, require the disclosure of confidential business information.

An affected party may attempt to seek an order to protect confidential or proprietary information disclosure. However, this remedy has yet to be tested in an actual case.

Discovery

Discovery is available in Regional Trial Court proceedings. Discovery extends to material and relevant matters that are not privileged. This includes information on the existence, description, nature, custody, condition and location of any books, documents or other tangible things, and the identity and location of persons having knowledge of relevant facts.

Parties can also seek information and documents from third parties by requesting the court to issue subpoenas. A subpoena can be quashed if it is unreasonable or oppressive, or if the relevance of the documents is not shown.

Privilege may also be raised as justification to excuse compliance with a subpoena. Jurisprudence has consistently acknowledged the private character of trade secrets. There is a privilege not to disclose one's trade secrets.

^[35] PCA, section 34; PCC Rules of Procedure, Rule XI.

^[36] PCC Rules of Procedure, Rule XI.

^[37] PCC Leniency Rules, Section 10.

22. 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?

Philippine courts rarely award the actual costs of litigation. At most, Philippine courts may award attorney's fees in the concept of damages.

In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except, in limited instances, such as:

- 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 his interest;
- In case of a clearly unfounded civil action or proceeding against the plaintiff;
- Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
- In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

23. 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?

There is no specific Philippine law that allows or disallows third-party/alternative funding for competition litigation in the Philippines.

However, Philippine rules on legal ethics prohibit "champertous" agreements between lawyers and clients, where the lawyer contracts with his client for part of the matter in litigation in exchange for conducting the case wholly at the lawyer's expense. This is designed to prevent the lawyer from acquiring an "additional stake in the outcome of the action which might lead him to consider his own recovery rather than that of his client or to accept a settlement which might take care of his interest in the verdict to the sacrifice of

that of his client in violation of his duty of undivided fidelity to his client's cause." This should be distinguished from a contingent fee arrangement (which is permitted in the Philippines), where the client still pays for litigation expenses.

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

At this point, the main obstacle in litigating competition damages claims is the fact that Philippine competition law is still in relative infancy. As such, there is a lack of precedents and jurisprudential guidelines, which may provide guidance to potential claimants, and judges hearing claims for competition damages. For example, there is still limited experience in completing the preliminary inquiry by the PCC, which is needed prior to the filing of the competition damages claim. An untrained judge may be hesitant to proceed hearing a case if the PCC proceedings are pending, even if the PCC has completed its preliminary inquiry because of the possibility of conflicting decisions. There is also a need for capacity building and training of judges that will handle competition cases.

Another obstacle is the protracted nature of Philippine court proceedings. As discussed above, it may take several years before a litigation can be finally resolved, and thus may be costly and discouraging on the part of the litigants.

Finally, since filing fees are computed by a percentage of the damages claimed, the filing fees increase as the amount of damages claimed likewise increases. Thus, persons who have suffered significant damages may be dissuaded from a filing a civil case, because it will have to incur more expenses in filing fees in order to recoup such damages and there is still uncertainty in the measure of damages that a court may award in a competition damages claim.

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

Competition law enforcement, particularly private enforcement actions, is an emerging field of law in the Philippines. Practitioners certainly look forward to the first civil action under Section 45 of the PCA, as it will clarify several outstanding procedural and substantive issues, such as the nature of the action (i.e., can it be based on tort?); the powers of the court vis-à-vis the

PCC, particularly on the scope of disclosure; applicable defenses (such as passing-on); and available remedies and recoverable damages.

The PCC and the Philippine Department of Justice has also recently enacted competition-related rules which are among the likely developments that will be significant within the next 5 years.

On 18 January 2019, the PCC's Rules of the Leniency Program (the "**Leniency Rules**") took effect. The Leniency Rules offer persons and entities that are former or current participants in cartels (i.e., horizontal arrangements involving price-fixing, bid-rigging, output restriction and market sharing) immunity from suit or reduction of administrative fines, in exchange for voluntary disclosure of information regarding the cartels. The Leniency Rules implement a "first to file" program, which may allow only one beneficiary of immunity from suit and one beneficiary of reduction of fines for each reported violation.

The Philippine Supreme Court also recently issued the "Rules on Administrative Search and Inspection under the Philippine Competition Act" (the "**Dawn Raid Rules**"), which took effect on 16 November 2019. The Dawn Raid Rules govern the procedure for the application, issuance, and enforcement of, inspection orders for administrative investigations of violations of

the PCA. Under the Dawn Raid Rules, the PCC may apply to a court for an inspection order authorizing the search and inspection of business premises, land, and vehicles and to examine, copy, photograph, record, or print information relevant to an investigation (i.e., dawn raid). Refusal to comply with an inspection order may be considered contempt of court, which may result in the imposition of fines and the imprisonment of the responsible officer of the entity subject to the search.

On 17 June 2020, the Philippine Department of Justice Office for Competition ("**DOJ-OFC**") issued the rules implementing the criminal provisions of the PCA ("**DOJ-OFC Rules**"). The DOJ OFC is authorized to conduct preliminary investigation and undertake prosecution of all criminal offenses arising from the PCA. The DOJ-OFC Rules, among others, provide that an entity charged in a criminal proceeding may enter a plea of Nolo Contendere by which such entity neither accepts nor denies responsibility for the charges but accepts punishment as if a plea of guilt has been entered. The plea cannot be used against such entity in a suit for civil liability arising from the criminal action or in another cause of action; Provided, that a plea of Nolo Contendere may be entered only up to arraignment and subsequently, only with the permission of the court. The DOJ-OFC Rules also contain the requirements for the leniency program for criminal proceedings.

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