

COMPETING OR NON-COMPETING: THE OVERLAPPING JURISDICTION OF THE PHILIPPINE COMPETITION COMMISSION AND OF PHILIPPINE TRANSPORTATION AGENCIES OVER SECTOR-SPECIFIC REGULATORY MATTERS AND COMPETITION ISSUES*

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ABSTRACT

Philippine transportation agencies, as sector regulators, and the Philippine Competition Commission (PCC), as the primary antitrust regulatory body of the Philippines, have overlapping jurisdiction over sector-specific matters and competition issues in the transportation industry. This jurisdictional dilemma is even reinforced by the vague wording of Section 32 of the Philippine Competition Act (“PCA”). The overlap became apparent when the Land Transportation Franchising and Regulatory Board (LTFRB) halted Uber’s operations despite the order of the PCC to continue pending its merger review; it was also evident when the LTFRB imposed a biker cap on Angkas to preclude monopolistic behavior. To properly delineate, Philippine transportation agencies should exercise jurisdiction over sector-specific matters involving the transportation industry, since jurisdiction over the same was explicitly vested, domain expertise is exclusive to them, and the PCC is unable to overturn the decisions of sector regulators. At the same time, the PCC should take cognizance of competition issues in the transportation industry, considering that the PCA has expressly granted it jurisdiction over competition issues and the

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PCC is the agency mandated to enforce national competition policy. This Note then presents recommendations consistent with the United Nations Conference on Trade and Development to prevent jurisdictional conflict between these agencies.

I. INTRODUCTION

In the Philippines, three sector regulators (collectively called “Philippine transportation agencies” hereunder) primarily exercise authority over the transportation industry: The Land Transportation Franchising and Regulatory Board (LTFRB) for land transportation,¹ the Maritime Industry Authority (MARINA) for water transportation (shipping),² and the Civil Aeronautics Board (CAB) for air transportation.³ Subsequently, in 2015, the Philippine Competition Act (“PCA”) was enacted.⁴ Through this law, the Philippine Competition Commission (PCC) was created and mandated to safeguard, protect, and promote competition and the competitive process.⁵ The PCC, as an independent and quasi-judicial body, was given the corresponding original and primary jurisdiction to hear and decide competition issues.⁶ Thus, not only is the transportation industry regulated by sector regulators through sector-specific regulatory enforcement on the one hand, but it is also regulated by competition authorities through competition enforcement on the other.

A. The Grab-Uber Controversy

The transportation industry was put under the spotlight due to the controversy surrounding the ride-hailing services of Grab and Uber (“Grab-Uber controversy”). On April 6, 2018, the PCC issued an Interim Measure Order (“IMO”), stating that Grab and Uber should keep their businesses separate and continuing pending review of the merger.⁷ This order was supposed to protect the credibility of the merger review that the PCC was conducting.⁸ Subsequently, however, the LTFRB decided in a hearing that

¹ Exec. Order No. 202 (1987), § 5. This creates the Land Transportation Franchising and Regulatory Board.

² Rep. Act No. 9295 (2004), § 8, 10. Domestic Shipping Development Act of 2004.

³ Rep. Act No. 776 (1952), § 10(A). The Civil Aeronautics Act of the Philippines.

⁴ Rep. Act No. 10667 (2015), § 2. Philippine Competition Act, Act No. 10667.

⁵ § 5. The Philippine Competition Commission (PCC) was created.

⁶ § 32.

⁷ *In re* Acquisition by Grab Holdings, Inc. and MyTaxi.PH Inc., of Assets of Uber B.V. and Uber Systems, Inc. (Interim Measure Order), PCC Case No. M-2018-001 (PCC Apr. 6, 2018).

⁸ *Id.*

Uber should shut down its operations—its basis grounded on purely noncompetition concerns.⁹ Specifically, the LTFRB brought up the following public interest considerations: (1) absence of accountability in case of accidents; (2) repeated violations of orders not to accept new applicants; and (3) grave lack of manpower and financial capacity.¹⁰ The LTFRB decision violated the PCC’s IMO and rendered the merger review of the PCC moot and academic because Uber’s operations would cease. Thus, although the PCC and the LTFRB were technically handling separate issues, these issues got mixed due to the problematic implementation of the PCC’s jurisdiction.

Another cause for concern comes from the PCC’s price conditions for the approval of the merger. In its decision, the PCC required Grab to commit to a reasonable pricing schedule pre- and post-Transaction, which would be monitored using a “Deviation Measure.”¹¹ However, it is the LTFRB alone that is expressly granted jurisdiction over price setting and regulation in the land transportation industry.¹²

The Grab-Uber controversy involves the PCC’s assumption of jurisdiction over two regulatory functions of the LTFRB in its exercise of its competition mandate: (1) entry and exit of market players and (2) price setting. These concerns on overlapping jurisdiction arise from the ambiguity and omission in Section 32(2) of the PCA.¹³ As regards the stoppage of Uber’s operations, although the PCC intervened in the hearings of the LTFRB,¹⁴ the question arises whether the PCC can not only act as an intervenor, but also order the LTFRB to defer its decision. As for Grab’s commitment to pricing, there is a question on whether the PCC can validly exercise jurisdiction over price regulation and setting, which is expressly granted by law to the LTFRB. To what extent does the PCC have jurisdiction over noncompetition matters

⁹ Mon Jocson, *LTFRB: Continued Uber ops may put passenger safety at risk*, UNTV NEWS & RESCUE, Apr. 10, 2018, at <https://www.untvweb.com/news/ltfbr-continued-uber-ops-may-put-passenger-safety-at-risk/>; Aika Rey, *Uber can only operate until April 15*, RAPPLER, Apr. 11, 2018, at <https://www.rappler.com/nation/ltfbr-order-uber-philippines-operations-april-15-2018>.

¹⁰ *Id.*

¹¹ Acquisition by Grab Holdings, Inc. and MyTaxi.PH Inc., of Assets of Uber B. V. and Uber Systems, Inc. (Comm’n Decision No. 26-M-12/2018) PCC Case No. M-2018-001 (PCC Aug. 10, 2018).

¹² Exec. Order No. 202 (1987), § 5(c).

¹³ Rep. Act No. 10667 (2015), § 32.

¹⁴ Reicelene Joy Ignacio, *LTFRB orders Grab to lower ‘surge rate’*, MANILA TIMES, Apr. 11, 2018, available at <https://www.manilatimes.net/2018/04/11/latest-stories/breakingnews/ltfbr-orders-grab-to-lower-surge-rate/391934>.

in mixed issues? The overlap in implementation is, indeed, a question of overlapping jurisdiction. Section 32 of the PCA states:

Sec. 32. *Relationship with Sector Regulators.* – The Commission shall have original and primary jurisdiction in the enforcement and regulation of all competition-related issues.

The Commission shall still have jurisdiction if the issue involves both competition and noncompetition issues, but the concerned sector regulator shall be consulted and afforded reasonable opportunity to submit its own opinion and recommendation on the matter before the Commission makes a decision on any case.

Where appropriate, the Commission and the sector regulators shall work together to issue rules and regulations to promote competition, protect consumers, and prevent abuse of market power by dominant players within their respective sectors.¹⁵

In instances where noncompetition issues, which are key sector-specific regulatory matters, are involved with competition issues, Section 32 of the PCA appears to instruct the PCC to assume jurisdiction over all issues involved. The Philippine transportation agencies are only given the right to comment, without reference to their jurisdiction over matters of sector-specific regulation. This provision omits the jurisdiction of Philippine transportation agencies over key sector-specific regulatory matters granted by their enabling and supplemental laws. In effect, the PCC assumes jurisdiction over the noncompetition matter of the issue even if they would be contrary to the actions of Philippine transportation agencies, including the MARINA and the CAB.

Despite the PCA's coverage over noncompetition issues, the PCA does not clarify the extent of the PCC's jurisdiction as to sector-specific regulation, only stating that "the [PCC] shall still have jurisdiction."¹⁶

Thus, the Grab-Uber controversy points to a legal issue on overlapping jurisdiction over noncompetition or sector-specific regulatory matters in the transportation industry. Specifically, there is an issue as to whose authority between the PCC and the Philippine transportation agencies should prevail over noncompetition issues when mixed or involved with competition issues.

¹⁵ Rep. Act No. 10667 (2015), § 32. (Emphasis supplied.)

¹⁶ § 32.

B. The Angkas ‘Debacle’

Another issue is the Angkas “debacle,”¹⁷ where the LTFRB decided “to put a 10,000-rider cap on Angkas and force its 17,000 other riders to join motorbike-hailing app upstarts like Joyride and Movelt.”¹⁸ The LTFRB justified this policy “as a way to prevent Angkas from becoming a monopoly,”¹⁹—which appears to make it an LTFRB competition policy. Competition policy is arguably within the LTFRB’s jurisdiction because sector regulators are mandated by the Constitution to protect competition when public interest so requires.²⁰ The PCC, through PCC Commissioner Johannes Bernabe, commented that, “[b]eing big *per se* is not necessarily bad. It is the abuse of that dominant position [that is bad] [...] In a sense, you are taking away what Angkas has worked hard on obtaining, which is a driver base.”²¹ Simply put, the issue involves contrasting views, with an LTFRB competition policy on one side, and the PCC’s caution against the policy on the other.

Bernabe’s statement has been supported by lawmakers and courts alike. For one, Bagong Henerasyon Party-List Representative Bernadette Herrera called on the PCC to decide on the Angkas debacle because the PCC can act on its own without need for an initiatory petition.²² Herrera grounded her statement on the PCA, particularly the previously mentioned Section 32(1), which states that, “the [PCC] shall have original and primary jurisdiction in the enforcement and regulation of all competition-related issues.”²³ Moreover, the Quezon City RTC Branch 223 issued “a TRO [enjoining] the LTFRB from implementing its competition policy for a period of 20 days[.]”²⁴ affirming “the stand that several congressmen as well as the PCC took[.]”²⁴ Clearly, government bodies emphasize the need for the LTFRB to “learn and

¹⁷ Divina Nova Joy Dela Cruz, *Lawmaker to PCC: Probe Angkas ‘debacle’*, MANILA TIMES, Dec. 28, 2019, available at <https://www.manilatimes.net/2019/12/28/news/top-stories/lawmaker-to-pcc-probe-angkas-debacle/668109/>.

¹⁸ Krixia Subingsubing & Roy Stephen Canivel, *PCC cautions against Angkas cap*, INQUIRER.NET, Dec. 26, 2019, at <https://newsinfo.inquirer.net/1205918/pcc-cautions-against-angkas-cap>.

¹⁹ *Id.*

²⁰ CONST. art. XII, § 19.

²¹ Subingsubing & Canivel, *supra* note 18.

²² Dela Cruz, *supra* note 17.

²³ Edu Panay & Sheila Crisostomo, *PCC urged, Probe LTFRB cap vs Angkas*, PHIL. STAR, Dec. 28, 2019, available at <https://www.philstar.com/nation/2019/12/28/1980200/pcc-urged-probe-ltfrb-cap-vs-angkas>.

²⁴ MotoMag Phil., *QC Court issues 20-day TRO against Motorcycle Taxi Cap*, MOTOMAG PHIL., Jan. 10, 2020, at <https://www.motomagphilippines.com/2020/01/10/qc-court-issues-20-day-tro-against-motorcycle-taxi-cap/>.

accept the fact that land transport regulation is no longer its shared domain [only with] the Land Transportation Office.”²⁵

Thus, aside from the legal issue on overlapping jurisdictions over noncompetition or sector-specific regulatory matters raised through the Grab-Uber controversy, there is also an issue on the overlap in competition issues *per se* between the PCC and Philippine transportation agencies.

C. The Present Note

As can be seen in the Grab-Uber controversy and the Angkas debacle, the LTFRB, along with the MARINA and the CAB, shares the regulation of the transportation industry with the PCC, making it a fertile ground for legal issues on overlapping jurisdiction. To reiterate, the two legal issues raised by the scenarios discussed above are: (1) whose authority between the PCC and the Philippine transportation agencies should prevail over noncompetition issues when mixed with competition issues and (2) whose authority between the PCC and the Philippine transportation agencies should prevail over competition issues *per se* in the transportation industry.

Granted, issues of overlapping jurisdiction with the PCC have been previously raised, particularly regarding competition issues *per se*. For example, there is a pending case with the Supreme Court “on a suit challenging the validity of the ‘co-use agreement’ between the PLDT/Smart Communications, Inc. [...] and Globe Telecoms, Inc. for the use of certain frequencies, including the coveted 700 megahertz (MHz) frequency.”²⁶

Nonetheless, this Note is timely and essential because the need to address overlapping jurisdictions in the transportation industry is accentuated by the recent demand to resolve such overlaps following the Grab-Uber controversy and the Angkas debacle. Furthermore, this Note addresses the primary criticisms in regulatory overlap—duplication and conflict. First, duplication leads to waste of government resources.²⁷ In the case of the PCC and Philippine transportation agencies, these agencies commit duplicative actions in furtherance of their regulatory powers. Second, inconsistent decisions frustrate the legal dynamics of the relevant industry.²⁸ Conflicting

²⁵ Dela Cruz, *supra* note 17.

²⁶ Benjamin Pulta, *SC asks parties to comment on 700 MHz suit*, PHIL. NEWS AGENCY, Nov. 6, 2018, at <https://www.pna.gov.ph/articles/1053090>.

²⁷ Todd S. Aagaard, *Regulatory Overlap, Overlapping Legal Fields, and Statutory Discontinuities*, 29 VA. ENVTL. L. J. 238, 287 (2011).

²⁸ Louis J. Sirico, Jr., *Agencies in Conflict: Overlapping Agencies and the Legitimacy of the Administrative Process*, 33 VAND. L. REV. 101, 112 (1980).

decisions are possible when both the PCC and the Philippine transportation agencies claim jurisdiction through their supervisory powers.

There is also no express²⁹ or implied³⁰ repeal of the jurisdiction of the Philippine transportation agencies by the PCA. An implied repeal is not favored in the Philippines, unless there are irreconcilable provisions, and the laws are completely repugnant to each other.³¹ Note, however, that while overlapping jurisdiction is not disallowed, the previous discussion on duplication and conflict still apply as pressing issues of such an overlap.

Ultimately, without coordination and cooperation, “[r]egulations that conflict or work inconsistently create incoherence, undermine each other’s effectiveness, and increase compliance burdens on the targets of regulation.”³² Thus, in resolving the issues on overlapping jurisdiction mentioned above once and for all, this Note still emphasizes the need for coordination and cooperation between the PCC and the transportation industries.

Part II of this Note will discuss the jurisdictions, powers, and functions of the PCC and of Philippine transportation agencies, and the jurisdictional dilemma posed by section 32 of the PCA. Part III shall explain why Philippine transportation agencies should exercise jurisdiction over noncompetition issues as sector regulators, while Part IV shall elaborate on the rationale behind the PCC’s need to take cognizance of purely competition issues. In Part V, the principles discussed in the preceding sections shall be illustrated through the Grab-Uber controversy and the Angkas debacle. Subsequently, this Note shall present recommendations that can be done to prevent jurisdictional conflict.

²⁹ Rep. Act No. 10667 (2015), § 55.

³⁰ § 55.

³¹ *United Harbor Pilots’ Ass’n of the Phil, Inc. v. Ass’n of Int’l Shipping Lines, Inc.*, 391 SCRA 522, 532, Nov. 13, 2002.

³² Aagaard, *supra* note 27, at 287–88.

II. JURISDICTION, POWERS, AND FUNCTIONS OF THE PHILIPPINE COMPETITION COMMISSION AND OF PHILIPPINE TRANSPORTATION AGENCIES

A. Philippine Competition Commission

The declaration of policy of the PCA recognizes previous laws that deregulated certain industries, including the transportation industry.³³ However, it also recognizes that these deregulation measures must be coupled with measures to safeguard competitive conditions.³⁴

In line with this policy, the PCC's powers and functions can be grouped into five classifications. First, the PCC has *investigatory* powers,³⁵ which allows the competition authority to (1) conduct inquiry, investigate, hear, and decide on cases involving any violation of the PCA and other existing competition laws;³⁶ (2) issue subpoena to require the production of documents relating to any matter relevant to investigation and personal appearance before the Commission;³⁷ and (3) undertake inspections of business premises and other offices, land, vehicles.³⁸

Second is the *merger review* of the PCC.³⁹ The PCC has the power to review proposed mergers and acquisitions (“M&As”); determine notification thresholds, requirements, and procedures; and prohibit M&As that will substantially lessen competition in the relevant market.⁴⁰

Third, the PCC has *policy review* powers.⁴¹ Specifically, nine powers fall under policy review: (1) monitor and undertake consultation with

³³ Rep. Act. No. 10667 (2015), § 2. “The efficiency of market competition as a mechanism for allocating goods and services is a generally accepted precept. *The State recognizes that past measures undertaken to liberalize key sectors in the economy need to be reinforced by measures that safeguard competitive conditions.* The State also recognizes that the provision of equal opportunities to all promotes entrepreneurial spirit, encourages private investments, facilitates technology development and transfer, and enhances resource productivity. Unencumbered market competition also serves the interest of consumers by allowing them to exercise their right of choice over goods and services offered in the market.” (Emphasis supplied).

³⁴ § 2.

³⁵ §§ 12(a), (f), (g).

³⁶ § 12(a).

³⁷ § 12(f).

³⁸ § 12(g).

³⁹ § 12(b).

⁴⁰ § 12(b).

⁴¹ §§ 12(c), (k)–(r).

stakeholders and affected agencies;⁴² (2) issue advisory opinions and guidelines on competition matters;⁴³ (3) monitor and analyze the practice of competition in markets affecting the Philippine economy and implement measures to promote accountability and ensure the PCA is adhered to;⁴⁴ (4) conduct, publish, and disseminate studies and reports on anti-competitive conduct;⁴⁵ (5) intervene or participate in administrative and regulatory proceedings requiring consideration of the provisions of the PCA;⁴⁶ (6) assist the NEDA in the preparation and formulation of a national competition policy;⁴⁷ (7) act as the official representative of the Philippine government in international competition matters;⁴⁸ (8) promote capacity building and the sharing of best practices with other competition-related bodies;⁴⁹ and (9) advocate pro-competitive policies of the government.⁵⁰

Fourth, the PCC has *enforcement* powers.⁵¹ Specifically, the PCC can (1) stop or redress anti-competitive conduct by applying remedies;⁵² (2) conduct administrative proceedings, impose sanctions, fines or penalties for noncompliance with the PCA and its IRR;⁵³ (3) issue adjustment or divestiture orders;⁵⁴ (4) deputize enforcement agencies of the government or enlist the aid of private agencies;⁵⁵ and (5) monitor compliance of person or entities concerned with the cease and desist order or consent judgment.⁵⁶

Fifth is the *administrative* power of the PCC.⁵⁷ The PCC can charge reasonable fees to defray the administrative cost of services rendered.⁵⁸

Section 32 of the PCA grants “original and primary jurisdiction” to the PCC over “all competition-related issues.” These competition issues can be divided into three groups: (1) anti-competitive agreements in Section 14,⁵⁹

⁴² § 12(c).

⁴³ § 12(k).

⁴⁴ § 12(l).

⁴⁵ § 12(m).

⁴⁶ § 12(n).

⁴⁷ § 12(o).

⁴⁸ § 12(p).

⁴⁹ § 12(q).

⁵⁰ § 12(r).

⁵¹ §§ 12(d), (e), (h)–(j).

⁵² § 12(d).

⁵³ § 12(e).

⁵⁴ § 12(h).

⁵⁵ § 12(i).

⁵⁶ § 12(j).

⁵⁷ § 12(s).

⁵⁸ § 12(s).

⁵⁹ § 14.

(2) abuse of dominant position in Section 15,⁶⁰ and (3) anti-competitive M&As in Sections 16 to 22.⁶¹

Section 14 of the PCC enumerates the prohibited anti-competitive agreements. The first group are agreements that are prohibited *per se*, which includes price fixing.⁶² The second group are those which “have the object or effect of substantially preventing, restricting, or lessening competition.”⁶³ The third portion is a catch-all provision which refers to “agreements other than those specified [in the two previous groups] of [the] section which have the object or effect of substantially preventing, restricting or lessening competition shall also be prohibited.”⁶⁴

The categories of abuse of dominant position under Section 15 of the PCC are exclusive, exploitative, and discriminatory. Exclusionary abuse involves practices that a dominant undertaking uses to establish entry barriers to remove or weaken competition.⁶⁵ Exploitative abuse involves the imposition of unfair trading conditions, such as unfair prices, which exploit customers or suppliers.⁶⁶ Discriminatory abuse involves price discrimination as the major discriminatory conduct where different consumers are charged different prices for the same product.⁶⁷

As for anti-competitive M&As, Section 20 of the PCA states that “[M&As] that substantially prevent, restrict, or lessen competition in the

⁶⁰ § 15.

⁶¹ §§ 16–22.

⁶² § 14. The provision enumerates agreements which are prohibited *per se*: “[R]estricting competition as to price, or components thereof, or other terms of trade” and “[F]ixing price at an auction or in any form of bidding including cover bidding, bid suppression, bid rotation and market allocation and other analogous practices of bid manipulation.”

⁶³ § 14. The provision also enumerates other prohibited agreements: “[S]etting, [l]imiting, or controlling production, markets, technical development, or investment” and “[D]ividing or sharing the market, whether by volume of sales or purchases, territory, type of goods or services, buyers or sellers or any other means.”

⁶⁴ § 14. “Agreements other than those specified in (a) and (b) of this section which have the object or effect of substantially preventing, restricting or lessening competition shall also be prohibited: Provided, Those which 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, may not necessarily be deemed a violation of this Act.”

⁶⁵ § 15.

⁶⁶ § 15.

⁶⁷ § 15.

relevant market or in the market for goods or services as may be determined by the Commission shall be prohibited.”⁶⁸

B. Philippine Transportation Agencies

1. Land Transportation Franchising and Regulatory Board (LTFRB)

The sector-specific regulatory matters that the LTFRB has jurisdiction over are expressly enumerated. Key powers of the LTFRB are: (1) prescribing and regulating routes,⁶⁹ (2) issuance and revocation of Certificates of Public Convenience (CPCs),⁷⁰ and (3) prescribing, approving, and adjusting fares and charges.⁷¹

The LTFRB also has quasi-judicial and investigative powers.⁷² Specifically, the LTFRB can issue injunctions⁷³ and subpoenas,⁷⁴ punish for contempt,⁷⁵ and conduct *motu proprio* investigations and hearings of complaints for violation of public service laws.⁷⁶ Other functions of the LTFRB include reviewing the decisions or actions of the Regional Franchising and Regulatory Office,⁷⁷ as well as providing rules and regulations on land transportation public utilities.⁷⁸

There is a catch-all provision on the powers and functions of the LTFRB under Section 5. It states that the LTFRB “can perform such other functions and duties as may be provided by law, or as may be necessary, or proper or incidental to the purposes and objectives of [EO 202].”⁷⁹

2. Maritime Industry Authority (MARINA)

Just like the LTFRB, the MARINA is given key powers and functions to issue and revoke CPCs⁸⁰ and establish routes.⁸¹ While rate setting has been

⁶⁸ § 20.

⁶⁹ Exec. Order No. 202 (1987), § 5(a).

⁷⁰ § 5(b).

⁷¹ § 5(c).

⁷² §§ 5(d)–(g).

⁷³ § 5(d).

⁷⁴ § 5(e).

⁷⁵ § 5(f).

⁷⁶ § 5(g).

⁷⁷ § 5(h).

⁷⁸ §§ 5(i)–(l).

⁷⁹ § 5(m).

⁸⁰ § 7.

⁸¹ § 12(4).

deregulated, the MARINA can still intervene on prices set by operators over matters of public interest.⁸² Another key function of the MARINA is the accreditation of shipping enterprises and the development of policies and programs for such accreditation.⁸³ The MARINA can also adopt its own rules and regulations, including that of safety standards and financial capability.⁸⁴ Lastly, the MARINA has quasi-judicial⁸⁵ and investigative powers.⁸⁶ The MARINA can investigate, hear, and decide on cases involving violations of its enabling law and rules,⁸⁷ and impose corresponding fines and penalties.⁸⁸

3. Civil Aviation Board (CAB)

In the policy declaration of RA 776, as amended by PD 1462 and EO 217, the CAB must consider “regulation of air transportation in such manner as to recognize and preserve the inherent advantages of, assure the highest degree of safety in and foster sound economic conditions in such transportation, and to improve the relations between, and coordinate transportation by air carriers.”⁸⁹ Applying this policy to its powers and functions, the CAB regulates the economic aspect of air transportation.⁹⁰

The key functions of the CAB are issuance of Certificates of Public Convenience and Necessity (CPCNs)⁹¹ and regulating fares.⁹² Other specific powers and functions of the CAB include authorizing charters,⁹³ purchasing air carriers,⁹⁴ prescribing forms of accounts,⁹⁵ and inquiring into the business of and requiring reports from operators, including such operators’ officers and directors.⁹⁶

⁸² § 12(12).

⁸³ § 12(3).

⁸⁴ §§ 12(6)–(9), (11), (17).

⁸⁵ Exec. Order No. 1011 (1985). § 13. Establishing the Land Transportation Commission in the Ministry of Transportation and Communications, and for Other Purposes.

⁸⁶ Rep. Act No. 9295 (2004), §§ 12 (13)–(16).

⁸⁷ § 12(13), (15).

⁸⁸ § 12(14), (16).

⁸⁹ Rep. Act No. 776 (1952), § 4(C).

⁹⁰ § 10(A).

⁹¹ § 10(C)(1).

⁹² § 10(C)(2).

⁹³ § 10(C)(3).

⁹⁴ § 10(C)(4).

⁹⁵ § 10(C)(7).

⁹⁶ § 10(C)(8).

A peculiar power granted to the CAB is jurisdiction over a competition issue *per se*, particularly over merger review.⁹⁷ Such is peculiar as the LTFRB and the MARINA are not granted any jurisdiction over competition issues *per se* by their enabling laws.

The CAB also has quasi-judicial and investigative powers, meaning that the CAB can investigate upon complaint violations of Republic Act No. 776 (“R.A. No. 776”) and CAB’s rules and regulations.⁹⁸ The CAB can issue subpoenas pursuant to this function.⁹⁹

Other powers and functions of the CAB include appellate jurisdiction on any decision or order of the CAB’s Administrator.¹⁰⁰ The CAB also works with the Department of Foreign Affairs in negotiating any air agreements with foreign governments, taking into account relevant treaties, conventions, or agreements with foreign countries.¹⁰¹

Generally, R.A. No. 776 states that the CAB shall issue a permit authorizing, in whole or in part, the service covered by the application, if it finds (1) “that the applicant is fit, willing, and able to perform such service properly in conformity with the provisions of [R.A. No. 776] and the rules, regulations, and requirements issued thereunder,” and (2) “that such service is required by the public convenience and necessity.”¹⁰² “Otherwise the application shall be denied.”¹⁰³

C. Jurisdiction Over ‘Noncompetition’ Issues

Instances of overlapping regulation between the regulatory agencies are possible because they share the same regulatory space—the transportation industry. Therefore, theoretically, the regulatory agencies can overlap in as many possible combinations of their powers and functions.¹⁰⁴

In the transportation industry, noncompetition issues necessarily involve competition issues. As the Constitution prohibits unfair competition and protects Filipino enterprises against it, as a state policy, the Philippine

⁹⁷ § 10(E)(4).

⁹⁸ § 10(D).

⁹⁹ § 10(E).

¹⁰⁰ § 10(F) & (G).

¹⁰¹ § 10(H).

¹⁰² § 21.

¹⁰³ § 21.

¹⁰⁴ Amanda Shami, *Three Steps Forward: Shared Regulatory Space, and the Role of the Court*, 83 FORDHAM L. REV. 1577, 1589 (2014).

transportation agencies are mandated to promote competition between common carriers “when the public interest so requires.”¹⁰⁵

This state policy is also shown by the review of the enabling and supplemental laws of the Philippine transportation agencies, where matters of sector-specific regulation have been deregulated. Specifically, Republic Act No. 9295 deregulates fare rates for the MARINA,¹⁰⁶ while Executive Order No. 219 liberalizes entry and exit of market players for the CAB.¹⁰⁷ However, the land transportation industry has yet to be deregulated. Nonetheless, instances of overlapping regulation may still occur for sharing the same regulatory space with the PCC, since these regulatory matters are also within the sphere of antitrust regulation.

The 2014 Implementing Rules & Regulations of MARINA expounds on these laws’ instruction to liberalize such regulatory matters.¹⁰⁸ In fact, there is express mention of competition issues in such issuances. “Effective competition” involves addressing the competition issues of: (1) barriers to entry, (2) abuse of dominant position, and (3) price fixing.¹⁰⁹

In sum, the key sector-specific regulatory matters that also involve competition issues are those on: (1) *entry and exit of market players* and (2) *price determination or evaluation*. This discussion is summarized below:

TABLE 1. Overlapping Jurisdiction Over Entry and Exit of Market Players.¹¹⁰

Regulation	Competition Enforcement	Sector- Specific Regulation Enforcement		
Agency	PCC	LTFRB	MARINA	CAB

¹⁰⁵ CONST. art. XII, § 19.

¹⁰⁶ Rep. Act No. 9295 (2004), § 12 (12).

¹⁰⁷ Exec. Order No. 219 (1995), § 2.1. Establishing the Domestic and International Civil Aviation Liberalization Policy.

¹⁰⁸ Rep. Act No. 9295 Rules & Regs. (2014).

¹⁰⁹ § 3.

¹¹⁰ Erlinda M. Medalla, *Philippine Competition Policy in Perspective*, at 37 (Dec. 2002) (discussion paper for the Phil. Inst. for Dev. Studies).

<p>Relevant Powers and Functions</p>	<p>“Sec. 32. [...] The Commission shall still have jurisdiction if the issue involves both competition and <i>noncompetition</i> issues[.]”¹¹¹</p>	<p>Prescribes and regulates their routes or areas of operations;¹¹²</p> <p>Process, approve or deny franchise applications;¹¹³</p> <p>Issuance of CPC¹¹⁴</p>	<p>Prescribes and regulates their routes or areas of operations;¹¹⁵</p> <p>Accreditation of shipping enterprises;¹¹⁶</p> <p>Issuance of CPC¹¹⁷</p>	<p>Issuance of CPCN¹¹⁸</p>
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TABLE 1.2. Overlapping Jurisdiction Over Price Determination or Evaluation.¹¹⁹

Regulation	Competition Enforcement	Sector- Specific Regulation Enforcement		
Agency	PCC	LTFRB	MARINA	CAB
<p>Relevant Powers and Functions</p>	<p>“Sec. 32. [...] The Commission shall still have jurisdiction if the issue involves both competition and <i>noncompetition</i> issues[.]”¹²⁰</p>	<p>Fare rates determination and special permits¹²¹</p>	<p>Fare setting deregulated, but MARINA can evaluate and intervene in the interest of the general public¹²²</p>	<p>Determines rates of fares charged by air carriers¹²³</p>

III. JURISDICTIONAL DILEMMA OVER ‘NONCOMPETITION’ OR SECTOR-SPECIFIC ISSUES

As Section 32 of the PCA grants the PCC jurisdiction over an issue that involves competition and noncompetition matters, a jurisdictional dilemma arises between the aforementioned agency and sector regulators, i.e. Philippine transportation agencies, for noncompetition issues within the

¹¹¹ Rep. Act No. 10667 (2015), § 32. (Emphasis supplied.)

¹¹² Exec. Order No. 202 (1987), § 5(a).

¹¹³ § 5(b).

¹¹⁴ § 5(b).

¹¹⁵ Rep. Act No. 9295 (2004), § 10(4).

¹¹⁶ § 10(3).

¹¹⁷ § 7.

¹¹⁸ Rep. Act No. 776 (1952), § 10(C)(1).

¹¹⁹ Medalla, *supra* note 110.

¹²⁰ Rep. Act No. 10667 (2015), § 32. (Emphasis supplied.)

¹²¹ Exec. Order No. 202 (1987), § 5(c).

¹²² Rep. Act No. 9295 (2004), § 12(12).

¹²³ Rep. Act No. 776 (1952), § 10(C)(2).

transportation industry. The law is silent as to whether the PCC and these Philippine transportation agencies have concurrent jurisdiction over such issues, but it is important to note that the same section provides that “the concerned sector regulator shall be consulted and afforded reasonable opportunity to submit its own opinion and recommendation on the matter before the Commission makes a decision on any case.”¹²⁴ Undeniably, a plain reading of the provision gives the impression that sector regulators—in this case, Philippine transportation agencies—were not explicitly granted jurisdiction over such issues, albeit the fact that they shall be consulted and given the opportunity to submit their opinion. This inevitably gives rise to a situation wherein the PCC shall seemingly decide on issues involving not only competition matters—but also noncompetition matters—which, pursuant to the charters creating Philippine transportation agencies, are within the ambit of their respective jurisdictions.

In an attempt to resolve this jurisdictional dilemma, it shall be examined in light of principles from existing laws, the nature and character of the PCC and of Philippine transportation agencies, pertinent jurisprudence, and the wisdom of the drafters of the country’s premier competition statute to determine which agency shall have jurisdiction over noncompetition issues in cases wherein both competition and noncompetition matters are involved.

A. Express Jurisdiction of Philippine Transportation Agencies and the Vagueness of PCC’s Jurisdiction Over Noncompetition Issues

It is a longstanding principle in administrative law that administrative agencies possess limited jurisdiction. These agencies only have such powers and authority as have been (1) specifically conferred upon them by the Constitution, (2) *specifically granted to them by their enabling statutes*, or (3) those as may be necessarily implied in the exercise thereof or incidental to the attainment of their purposes or objectives.¹²⁵ Given this, in determining which agency has jurisdiction over a particular regulatory matter, the laws creating the same agencies shall be referred to.

As pointed out earlier, two key sector-specific regulatory matters that are also within the realm of antitrust regulation are entry and exit of market players, and price determination and evaluation. The power to regulate the

¹²⁴ Rep. Act. No. 10667 (2015), § 32.

¹²⁵ HECTOR S. DE LEON & HECTOR M. DE LEON, JR., *ADMINISTRATIVE LAW: TEXTS AND CASES* 62 (2010). (Emphasis supplied.)

same was explicitly granted to Philippine transportation agencies, as enshrined in their respective charters. As to the entry and exit of market players, it is the Philippine transportation agencies that possess the authority to regulate the operations of common carriers, including prescribing routes and granting of franchises, among others. For instance, the LTFRB's power to authorize the operation of "motorized vehicles"¹²⁶ and to issue CPCs and permits was explicitly granted in the same through its charter. In the same manner, the MARINA was expressly vested with jurisdiction to issue CPCs that authorize vessel operations,¹²⁷ as well as to revoke the accreditation of the same.¹²⁸ As to the CAB, its power to issue and cancel CPCNs is provided for in the law that created it.¹²⁹

The same goes for price determination. That the LTFRB has the power "[t]o determine, prescribe and approve and periodically review and adjust, reasonable fares, rates and other related charges, relative to the operation of public land transportation services provided by motorized vehicles"¹³⁰ is expressly stated under its charter. MARINA is also vested with such power, particularly "to prescribe specific policies in the determination of just and reasonable passenger rates, freight rates and other charges"¹³¹ relating to vessel operations within the country. However, the domestic shipping has been deregulated in that domestic ship operators are authorized to fix their own rates, subject to the intervention of MARINA if due process and public interest necessitate.¹³² Similarly, the CAB is explicitly granted the power to fix or determine fares and rates.¹³³

On the other hand, the PCA is bereft of any provision that explicitly grants the primary antitrust regulatory agency of the country the jurisdiction to regulate the entry and exit of common carriers in the transportation industry—in a way that Philippine transportation agencies have the authority to issue and cancel the permits necessary for the operation of the same. Similarly, nothing in the aforesaid law vests in the PCC the authority to particularly determine the prices of fares or other charges that common carriers may collect. The only engine that keeps the PCC's ship afloat in relation to the present jurisdictional dilemma as to the entry and exit of market players and as to price determination and evaluation is Section 32, which

¹²⁶ Exec. Order No. 202 (1987), § 5(b).

¹²⁷ Rep. Act. No. 9295 (2004), § 10(2).

¹²⁸ § 10(3).

¹²⁹ Rep. Act. No. 776 (1952), § 10(C)(1).

¹³⁰ Exec. Order No. 202 (1987), § 5(c).

¹³¹ Pres. Dec. No. 474 (1974), § 6(d). Maritime Industry Decree of 1974.

¹³² Rep. Act. No. 9295 (2004), § 8.

¹³³ Rep. Act. No. 776 (1952), § 10(C)(2).

appears to be insufficient to claim jurisdiction vis-à-vis the express provisions found in the charters of and the laws pertinent to the LTFRB, MARINA, and CAB.

Hence, based on the provisions of the charters creating Philippine transportation agencies, on laws relevant thereto, and on the PCA, the sector regulators should have the jurisdiction over the entry and exit of market players and price determination and evaluation, notwithstanding the confusion posed by the rather vague wording of Section 32 of the PCA. To argue otherwise is to stand on weak legs, considering the ambiguity of the PCC's jurisdiction over such issues that is merely based on the same provision's mention of "noncompetition issues," which are necessarily attached to competition issues.

B. Domain Expertise of Philippine Transportation Agencies on the Transportation Industry

The Philippine transportation agencies possess the necessary domain expertise in regulating the specified matters. This can be attributed to their primary jurisdiction. Primary jurisdiction means:

[T]he courts cannot or will not determine a controversy involving a question which is within the jurisdiction of an administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience, and services of the administrative tribunal to determine technical and intricate matters of fact, and a uniformity of ruling is essential to comply with the purposes of the regulatory statute administered.¹³⁴

The Philippine transportation agencies have primary jurisdiction because recourse to an administrative agency over regulatory matters carries the assumption that such body is highly competent to address the technicalities and intricacies of such matters.¹³⁵ Although Philippine transportation agencies' jurisdictions are undefined by their enabling laws, they still exercise primary jurisdiction because the same can be express or implied.

¹³⁴ *Antipolo Realty Corp. v. Nat'l Hous. Auth.*, G.R. No. 50444, 153 SCRA 399, 406, Aug. 31, 1987, *quoting* Sps. Jose Abejo and Aurora Abejo v. Hon. Rafael dela Cruz, G.R. No. 63558, 149 SCRA 654, May 19, 1987.

¹³⁵ DE LEON & DE LEON, JR., *supra* note 125, at 356.

A review of the issuances by the Philippine transportation agencies implementing their enabling and supplemental laws shows that entry and exit of market players require determination of public need, while price determination requires technical information matters.¹³⁶ The Philippine transportation agencies' domain expertise allows them to address the regulatory matters that are within their specialization and thus within their jurisdiction. Given the intricacies of the transportation industry, the Philippine transportation agencies must maintain their primary jurisdiction over sector-specific regulatory matters.

C. Inability of the PCC to Overturn Decisions of Philippine Transportation Agencies Regarding Noncompetition Issues

1. Congressional Deliberations

A review of the Congressional deliberations on the PCA shows that sectoral regulation was not meant to be repealed by Section 32, even when competition issues are involved.¹³⁷ Senator Paolo Benigno Aquino IV was asked whether the PCC would have the power to inquire into the actions of other government agencies.¹³⁸ The LTFRB was used as an example, where such regulatory agency allegedly “impeded the competition” because “the carrying capacity in a given area [had] already reached the allowable limit because too many franchises have already been granted.”¹³⁹ In addressing the question, Aquino clarified the powers of the PCC. Aquino said that the powers of the PCC are generally limited “to penalize and to promote competition, as well as to advocate a competitive atmosphere, but could not technically file charges against government entities like the LTFRB.”¹⁴⁰ In other words, the power of the PCC to inquire into actions of other government agencies is limited to oversight.

¹³⁶ See Land Transp. Franchising and Regulatory Bd. Mem. Circ. No. 19-35 (2019), § 2; Maritime Industry Auth. Mem. Circ. No. 93-80, (1993), § IV (2.3) (1993); Rep. Act No. 9295 Rules & Regs. (2014), Rule IV, § 11; Exec. Order No. 219 & 32 Rules & Regs. (2001), Rule III.1, § 1.1.

¹³⁷ S. Journal 12, 16th Cong., 2nd Sess., 186-87 (Aug. 26, 2014).

¹³⁸ *Id.* at 186.

¹³⁹ *Id.* at 186-87.

¹⁴⁰ *Id.* at 187.

2. Oversight Power

On the one hand, the PCC is an independent quasi-judicial agency attached to the Office of the President.¹⁴¹ On the other hand, the LTFRB is a sectoral office over which the Department of Transport (DOTr) exercises supervision.¹⁴² The MARINA¹⁴³ and the CAB¹⁴⁴ are also attached agencies over which the DOTr exercises policy review. However, the PCC also exercises oversight over the Philippine transportation agencies.¹⁴⁵

The jurisdiction of the PCC is one of oversight, which should be differentiated from supervision and attachment. Oversight is not the power to overturn the decisions of the Philippine transportation agencies. In clarifying this oversight power, Senator Aquino pointed out that the PCC can inquire into and even submit legal opinions to the DOTr on the regulatory actions of the Philippine transportation agencies.¹⁴⁶ However, such legal opinions do not have any legal effect because they do not amount to antitrust actions.¹⁴⁷ The DOTr is the authority that can either declare their acts illegal or *ultra vires* or initiate policy changes. Thus, the PCC shall only act as adviser to Philippine transportation agencies on these matters, and the actions of the Philippine transportation agencies cannot be directly overruled by the PCC despite having oversight powers.

IV. THE IMBRICATING JURISDICTION OVER PURELY COMPETITION ISSUES IN THE TRANSPORTATION INDUSTRY

It is clear from the preceding section that it is the Philippine transportation agencies, as sector regulators, which should possess jurisdiction over noncompetition issues. However, the other side of the coin is the possible assertion that Philippine transportation agencies must exercise jurisdiction over competition issues. For instance, if there is an allegation that a certain transport network company (“TNC”) abuses its dominance in the transportation market effectively compromising consumer welfare, the LTFRB is the agency that *should* decide on the matter given that it is the sector regulator responsible for public land transportation.

¹⁴¹ Rep. Act No. 10667 (2015), § 5.

¹⁴² Exec. Order No. 125 (1987), § 10.

¹⁴³ Exec. Order No. 546, § 13 (1979). Creating a Ministry of Public Works and a Ministry of Transportation and Communications.

¹⁴⁴ Exec. Order No. 125 (1987), § 18.

¹⁴⁵ S. Journal 12, 16th Cong., 2nd Sess., 187 (Aug. 26, 2014).

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

Notwithstanding this assertion, it is the main thrust of the PCA to “safeguard competitive conditions” through improving economic efficiency and “[promoting] [...] fair competition, preventing economic concentration,” and penalizing acts that compromise consumer welfare.¹⁴⁸ Hence, it is the statute that specifically governs competition issues, and the PCC—the country’s premier antitrust regulatory body—is the primary agency that is mandated to exercise jurisdiction over the same. This is consistent with rules of statutory construction in that “general legislation must give way to special legislation on the same subject, and generally is so interpreted as to embrace only cases in which the special provisions are not applicable” or *lex specialis derogate generali*.¹⁴⁹ Since the PCA is a special legislation governing competition issues, the PCC shall have jurisdiction over antitrust regulatory matters, and not the Philippine transportation agencies as sector regulators. Apart from the aforementioned rule, this part shall elaborately discuss the principles supporting the claim that it is the PCC that must exercise primary jurisdiction over competition issues. Nonetheless, this does not mean that sector regulators should be entirely excluded from deciding on these issues.

A. Express Grant of Original and Primary Jurisdiction to PCC over Competition Issues

On the one hand, the PCC has been expressly granted original and primary jurisdiction over all competition-related issues by the PCA.¹⁵⁰ Original jurisdiction is “jurisdiction to take cognizance of a cause at its inception, try it and pass judgment upon the law and facts,”¹⁵¹ while primary jurisdiction is defined alongside the doctrine of last resort, as previously discussed. Thus, the jurisdiction granted to the PCC means that the PCC shall take cognizance of all competition-related issues at its inception, and the other tribunals are to defer to the PCC’s primary jurisdiction.

On the other hand, the quantum of the Philippine transportation agencies’ jurisdiction over competition issues is undefined. Perhaps exclusive jurisdiction, which “precludes the idea of co-existence and refers to jurisdiction possessed to the exclusion of others,”¹⁵² is impliedly given by its enabling law. This possibility arises from the notion that express jurisdiction

¹⁴⁸ Rep. Act No. 10667 (2015), § 2.

¹⁴⁹ *Jalosjos v. Comm’n on Elections*, G.R. No. 205033, 689 SCRA 742, 762, June 18, 2013.

¹⁵⁰ Rep. Act No. 10667 (2015), § 32.

¹⁵¹ *Ong, Sr. v. Parel*, 156 SCRA 768, 776-77, Dec. 21, 1987.

¹⁵² *Id.*

can be impliedly granted,¹⁵³ and that the Philippine transportation agencies were previously the sole sector regulators in the transportation industry.

However, with the subsequent enactment of the PCA, the exclusive jurisdiction of the Philippine transportation agencies over competition issues is no longer a sound implication as the PCC now also has jurisdiction over such issues. Also, original jurisdiction cannot be impliedly given to the Philippine transportation agencies because the grant of original jurisdiction must be express.¹⁵⁴ Thus, exclusive and original jurisdiction are ruled out as definitions of the Philippine transportation agencies' jurisdiction over competition issues.

As to primary jurisdiction, this definition remains a possibility for Philippine transportation agencies as there is no rule stating that primary jurisdiction must be expressly granted. Because, sector regulators have long been established before the PCA came into effect in the Philippines, Philippine transportation agencies have already developed their technical and specialized competencies in their respective fields when the PCC was created. This is the reason why a balancing of competencies must be made.

While the Philippine transportation agencies have domain expertise in the transportation industry, it is submitted that the PCC's original and primary jurisdiction should prevail over the possibility of implied primary jurisdiction granted to Philippine transportation agencies because: (1) the PCC has jurisdiction over the implementation of the national competition policy and (2) the PCC has a deeper grasp of competition and trade.

B. PCC as the Enforcer of the National Competition Policy and as the Agency with Technical Expertise in Competition Law and Consumer Welfare

The need to supplement deregulation measures with a comprehensive national competition policy can be seen in the lack of competition enforcement in the Philippines.¹⁵⁵ This lack of enforcement can be divided into three points. First, having too many agencies may diffuse implementation of competition laws to the point that there will be no accountability to their

¹⁵³ DE LEON & DE LEON, JR., *supra* note 125, at 358, *citing* Republic v. Ct. of First Instance of Manila, 213 SCRA 222, Sept. 2, 1992.

¹⁵⁴ *Id.* at 153.

¹⁵⁵ *See* H. Rec. 2-56, 16th Cong., 2nd Sess. (Mar. 3, 2015).

regulatory actions.¹⁵⁶ Second, some sector regulators might not have the necessary expertise in the enforcement of competition laws.¹⁵⁷ Third is the possibility that the industry regulates the sector regulator because of the regulator's lack of information compared to market players.¹⁵⁸

Given these reasons, the PCC was created as the corresponding authority to implement the national competition policy. To carry on this task, the PCC was intended to be a powerful agency, evidenced by the provisions of the PCA. First, the salaries of the members of the PCC are exempted from the coverage of the Salary Standardization Act.¹⁵⁹ Second, the rank of the Chairperson and the Commissioners of the PCC are equivalent to that of a cabinet secretary and undersecretary, respectively.¹⁶⁰ These officers have a fixed term of office, enjoy security of tenure, and shall only be suspended or terminated for just cause as provided by law.¹⁶¹

The power of the PCC can also be seen from its character as an independent agency. Its attachment to the Office of the President was meant to put the agency at the highest level of the Executive Department.¹⁶² This way, the officers of the PCC can be ensured to have specialized competencies and adequate compensation, while protecting the agency from regulatory capture.¹⁶³

As previously discussed, the goal of the national competition policy is to protect competition and consumer welfare. In pursuit of this goal, the PCC generally has a deeper grasp of competition and trade, having sufficient expertise in the form of guidelines and training over competition issues.

Philippine transportation agencies must promote competition only “when the public interest so requires.”¹⁶⁴ They are driven by public interest considerations in its review of such issues. While public interest may be too broad a standard because it has no exact definition, in the context of the transportation industry, public interest means protecting the riding public and the investments of the operators alike.¹⁶⁵ Thus, if Philippine transportation

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ Rep. Act No. 10667 (2015), § 9.

¹⁶⁰ § 6.

¹⁶¹ § 7.

¹⁶² S. Journal Sess. 11, 16th Cong., 2nd Sess., 174 (Aug. 20, 2014).

¹⁶³ *Id.*

¹⁶⁴ CONST. art. XII, § 19.

¹⁶⁵ *Kilusang Mayo Uno Lab. Ctr. v. Garcia*, 239 SCRA 386, 391, Dec. 23, 1994.

agencies were allowed to rule on competition issues based on public interest, there is a possibility of an inconsistent application of the law.

C. Utilizing the Philippine Transportation Agencies' Domain Expertise

Despite the clear vesting of jurisdiction to the PCC over competition issues by virtue of existing laws and its nature as an administrative agency, entrusting competition issues thereto would not necessarily exclude Philippine transportation agencies from the entire process of antitrust regulation in the transportation industry. In fact, the domain expertise of the Philippine transportation agencies should still be utilized despite the PCC's jurisdiction prevailing. This thrust for cooperation and coordination finds basis in the provisions of the PCA, which provides that the PCC can deputize government enforcement agencies or "enlist the aid and support of any private institution [...] in the implementation" of the law.¹⁶⁶ In other words, Philippine transportation agencies will stand as the adviser to the PCC on matters requiring its domain expertise, although the PCC shall still be the first agency to take cognizance of competition issues in the transportation industry, and ultimately be the one with the last say.

V. AS APPLIED TO RECENT ISSUES INVOLVING TRANSPORTATION REGULATIONS

The two recent issues mentioned earlier demonstrate the jurisdictional conflict between the PCC and the Philippine transportation agencies. The discussions in Parts III and IV shall be applied to these issues to concretely illustrate the interplay of these agencies and the exercise of their respective jurisdictions.

A. LTFRB's Closure of Uber's Operations and PCC's Decision Requiring Price Commitments

This Note acknowledges that Congress intended to recognize both sector-specific regulation and regulation by competition as valid means of regulating the different industries in the Philippines. However, Congress was not able to accommodate both means on the level of specificity presented by scenarios such as the Grab-Uber controversy, which involved the PCC's

¹⁶⁶ Rep. Act No. 10667 (2015), § 12(i).

assumption of jurisdiction over the regulatory functions of sector regulators in its exercise of its competition mandate. First, the PCC may argue that it has jurisdiction to overturn the LTFRB's decision to halt Uber's operations because it is related to a competition case—its review of the merger between Uber and Grab. Second, the PCC, in its decision approving such merger, assumed jurisdiction in the regulation of prices set by Grab despite price determination expressly being granted to the LTFRB.

Applying the analysis to the Grab-Uber controversy, the PCC acted within its legal right to act as intervenor in the LTFRB hearings on the accreditation of Uber because the merger review might be rendered moot.

However, it should be emphasized that the LTFRB still has the final say on its hearing regarding Uber's exit from the transportation industry. For one, the entry and exit of market players and price determination are express powers and functions granted to the LTFRB by its enabling law, while the PCC's jurisdiction over such matters is unclear. It follows that these matters fall within the domain expertise of the LTFRB. Also, the PCC does not have the jurisdiction to overturn the LTFRB's decision even in the exercise of its competition mandate, as pointed out by Congressional deliberations. This may be what the PCC meant when it stated that it “[was] aware that there [were] many factors that led to the shutdown of the Uber app. This development may have rendered the review conditions to be less than ideal, however, this move shall not derail the *motu proprio* review of the Grab-Uber transaction.”¹⁶⁷ As to the PCC's decision on the merger, the PCC should not encroach on the LTFRB's jurisdiction over price regulation. Rightfully, “in the event the LTFRB [allows] fare increases, the PCC shall adjust its deviation.”¹⁶⁸

Nonetheless, there is a distinction between ordering and overturning on the one hand and agreement on the other. The former encroaches upon the jurisdiction of the Philippine transportation agencies, while the latter does not. The LTFRB and the PCC can agree on measures that will address or prevent future instances of conflict in implementation as long as such agreement is within the metes and bounds of the jurisdiction of each agency. In fact, such agreement is encouraged to avoid court action, which should be

¹⁶⁷ PCC, *Press Statement: Grab-Uber Motu Proprio Review*, PCC WEBSITE, Apr. 16, 2018, at <https://www.phcc.gov.ph/press-statements/press-statement-grab-uber-motu-proprio-review/>.

¹⁶⁸ Ted Cordero, *PCC slaps Grab with P6.5-M fine for filing incorrect data*, GMA NEWS ONLINE, Jan. 25, 2019, at <https://www.gmanetwork.com/news/money/companies/682725/pcc-slaps-grab-with-p6-5-m-fine-for-filing-incorrect-data/story/>.

the last resort because of possible lengthy proceedings and use of government resources.

Finally, after the LTFRB gives out its decision on the closure of Uber's operations or if the PCC considers LTFRB's price regulations to be inadequate, the PCC can file a legal opinion or even a proposed competition policy to the DOTr in response to such decision or regulation (although merely recommendatory).

B. LTFRB's Biker Cap on Angkas and the Entry of Third Players in the Motorcycle Taxi Industry

LTFRB's imposition of a biker cap on Angkas drew public flak as it appeared to have implemented a regulation that is inherently antitrust in nature, among other things.¹⁶⁹ The LTFRB allegedly did so to "prevent Angkas from being a monopoly."¹⁷⁰ Because of this, the PCC was called on to look into the aforementioned regulation as it is the competent agency with the proper jurisdiction to deal with competition issues.¹⁷¹ Rep. Bernadette Herrera, a member of the 18th Congress of the Philippines, emphasized that the PCC concurrently plays a pivotal role in transportation regulation ever since the enactment of the PCA in 2015.¹⁷²

Considering the circumstances surrounding the biker cap imposed on Angkas, the regulation falls squarely within the ambit of the PCC's jurisdiction as the primary competition law agency of the country. The ground on which the cap was based—to preclude monopolistic behavior—is essentially an antitrust issue that the PCC should take cognizance of. Notwithstanding the fact that it is the LTFRB that mainly regulates the operations of motorcycle taxi companies as the agency responsible for land transportation regulation, the premise of the biker cap is a regulatory matter specifically governed by the PCA. Applying the extensive discussion in Part IV, although there seems to be an imbrication of jurisdiction between the LTFRB and the PCC, since the rationale behind the regulation is to ensure market competition in the interest of consumer welfare, the LTFRB is not the primary agency that should decide on the issue.

¹⁶⁹ Panay & Crisostomo, *supra* note 23.

¹⁷⁰ Subingsubing & Canivel, *supra* note 18.

¹⁷¹ Panay & Crisostomo, *supra* note 23.

¹⁷² Dela Cruz, *supra* note 17.

In addition to this, when he “appealed” to the LTFRB and “cautioned” against said biker cap, PCC Commissioner Bernabe explained that “being big *per se* is not bad,” and what is potentially perilous is if there is abuse of such dominant position in the market.¹⁷³ He further elaborated that Angkas’ size as a motorcycle taxi company was not a result of acquiring its competitor—unlike that of Grab—instead, it “grew out of its own efforts,” and the subject regulation basically removes from it the “driver base” that it has established by its own work.¹⁷⁴ These are theories that the LTFRB cannot be expected to have technical expertise of; it is the PCC that has a greater grasp of competition law and antitrust regulation.

As to the entry of third players in the motorcycle industry, this is well within the jurisdiction of the LTFRB. As explained in Part III, this power was explicitly granted to the same by virtue of its charter.¹⁷⁵ It has the authority to approve franchise applications of companies that aim to enter the motorcycle taxi industry. As the sector regulator of land transportation, the LTFRB rightfully exercised its jurisdiction to allow the entry of third players into the said industry. The PCC is devoid of jurisdiction over the same, since the entry of new motorcycle taxi companies is not necessarily a competition law issue.

VI. RECOMMENDATIONS

The United Nations Conference on Trade and Development (UNCTAD), wherein the Philippines is a member state,¹⁷⁶ created a Model Law on Competition.¹⁷⁷ After surveying and consolidating the regulation-competition interfaces of different countries, the UNCTAD suggested five different approaches countries may adopt in resolving overlapping authority between competition authorities and regulatory bodies:

- I. To combine technical and economic regulation in the sector specific regulation and leave traditional competition law

¹⁷³ Subingsubing & Canivel, *supra* note 18.

¹⁷⁴ *Id.*

¹⁷⁵ Exec. Order No. 202 (1987), § 5(b).

¹⁷⁶ U. N. Conference on Trade and Development, Membership of UNCTAD and membership of the Trade and Development Board, at 3, U. N. Doc. TD/B/INF/241 (Oct. 16, 2018).

¹⁷⁷ U. N. Conference on Trade and Development, Model Law on Competition, ch. VII, TD/RBP/CONF.7/L.7 (2007).

issue, such as the prohibition of anti-competitive conduct and merger control, to the competition law;¹⁷⁸

II. To combine technical and economic regulation in the sector specific regulation and include as well some or all traditional competition law aspects;¹⁷⁹

III. To combine technical and economic regulation in the sector specific regulation and include as well some or all traditional competition law aspects, while ensuring that the sector regulator performs its functions in coordination with the competition authority;¹⁸⁰

IV. To organize technical regulation as a stand-alone function for the sector regulator and include economic regulation into the general competition law;¹⁸¹

V. Rely solely on competition law enforced by the competition authority.¹⁸²

This Note recommends that the first approach be followed in the transportation industry. Under the Organization for Economic Co-Operation and Development Policy Roundtable on Relationship between Regulators and Competition Authorities, majority (10 out of 18) of the countries who filed their reports expressly stated their observance of the first suggestion.¹⁸³ Their reasons for adopting this approach include experiential and functional considerations,¹⁸⁴ clear “division of labor” corresponding to “profound knowledge of technical peculiarities,”¹⁸⁵ avoidance of complex problems,¹⁸⁶ and “legal security.”¹⁸⁷

The first approach leaves sector-specific regulation to sector-specific regulators, while regulation through competition is left with competition authorities. At the same time, the first approach does not preclude the PCC

¹⁷⁸ United Nations Conference on Trade and Development, Best Practices For Defining Respective Competences and Settling of Cases Which Involve Joint Action Of Competition Authorities and Regulatory Bodies, 5, TD/B/COM.2/CLP/44/Rev.1 (Nov. 2004).

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ Organization for Economic Co-Operation and Development, Policy Roundtable on Relationship between Regulators and Competition Authorities, at 141-261, (June 1998). These countries are Finland, Germany, Hungary, Italy (except the banking sector), Japan, Korea (except some sectors), Mexico, Norway, the United States, and the United Kingdom (only over merger control).

¹⁸⁴ *Id.* at 144, 166.

¹⁸⁵ *Id.* at 144.

¹⁸⁶ *Id.* at 155.

¹⁸⁷ *Id.* at 161.

from serving as an oversight authority, which can monitor but cannot overturn the decisions of the Philippine transportation agencies. The PCC can then submit legal opinions to the DOTr on the actions of Philippine transportation agencies. The PCC can even administer the enforcement of competition laws as the intervenor in hearings conducted by the Philippine transportation agencies. This way, the primary jurisdiction of Philippine transportation agencies over sector-specific regulatory matters will be upheld, while allowing the oversight jurisdiction of the PCC as compliance with needed counterchecks. Finally, the first approach also does not preclude Philippine transportation agencies from acting as advisor to the PCC regarding competition issues. In sum, through the first approach, there will be a delineation of powers and functions, while accommodating coordination and cooperation between regulatory agencies.

Following the first approach recommended by the UNCTAD , this Note also recommends that the PCA, specifically Section 32 on the PCC's relationships with sector regulators, be amended. Section 32 of the PCA should be altered to reflect the jurisdiction of sector regulators granted by their enabling and supplemental laws over sector-specific regulatory matters, involved in competition issues. Furthermore, the PCA should be amended to include definitions of what constitutes competition and noncompetition issues to avoid ambiguity in the PCC's mandate. Finally, the PCC should also coordinate with the Philippine transportation agencies in furtherance of their respective mandates.

To achieve coordination and cooperation among regulatory agencies, this Note proposes the execution of a joint administrative circular by the PCC and the Philippine transportation agencies. A joint administrative circular is the appropriate administrative issuance because it is "applicable to individuals and organizations outside the Government,"¹⁸⁸ and it is jointly published by the concerned regulatory agencies, making it available to the public.¹⁸⁹ However, the amendment of the PCA is still necessary before the joint administrative circular can be issued because joint administrative circulars are "promulgated pursuant to law."¹⁹⁰ Thus, without first addressing overlapping jurisdictions through the amendment of the PCA, a joint administrative circular that best resolves overlapping jurisdictions cannot prosper.

¹⁸⁸ REV. ADM. CODE, bk. IV, § 50(1).

¹⁸⁹ § 53(2).

¹⁹⁰ § 50(1)

VII. CONCLUSION

The PCC, which acts as the primary antitrust regulatory body of the country,¹⁹¹ and the Philippine transportation agencies—the LTFRB, the MARINA, and the CAB—seem to have overlapping jurisdiction over issues involving both competition and non-competition regulatory matters (e.g., entry and exit of market players and price determination and evaluation). However, through an examination of the charters of these agencies, other laws pertinent thereto, and the legislative intent behind the PCA, as well as through the application of existing legal principles, this Note suggests that non-competition matters are well within the jurisdiction of the sector regulators, i.e., the Philippine transportation agencies. As to purely competition issues, the PCC shall take cognizance. This was illustrated in the Grab-Uber controversy and the Angkas debacle that showed the legal implications of the overlapping jurisdiction of the antitrust regulatory agency and the sector regulators.

This Note also presented recommendations that can “cure” the overlapping jurisdiction of the PCC and the Philippine transportation agencies, in conformity with the UNCTAD Model Law on Competition. Nonetheless, to eliminate problems in implementation of their mandates, these agencies may release a joint administrative circular to ensure more cohesive and coordinated regulations on the transportation industry about issues that involve both competition and non-competition regulatory matters.

This Note does not in any way purport the total exclusion of the PCC from sector-specific issues, nor does it imply that Philippine transportation agencies are completely devoid of any opportunity to participate in competition issues involving the transportation industry. Instead, this Note delineated the jurisdiction of these agencies with the goal of avoiding jurisdictional conflicts between the two sectors and improving policy-making and implementation. In the end, what should be achieved is regulatory coherence—for the benefit of the people whose rights are ought to be safeguarded by the PCC and Philippine transportation agencies alike.

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¹⁹¹ Rep. Act. No. 10667 (2015), § 5.