

# PCC expects delayed rulings for medical services, tourism cases

By **Revin Mikhael D. Ochave**  
Reporter

THE Philippine Competition Commission (PCC) said it needs to delay rulings on active cases involving the medical services and tourism industries, due to the large number of respondents to be processed.

On the other hand, it expects to resolve by the end of the year active enforcement cases involving property developers who steer tenants to certain internet services; trade associations; cement; and insurance.

Johannes Benjamin R. Bernabe, PCC officer-in-charge chairman, said in an interview on the sidelines of the East Asia Conference on Competition Law and

Policy in Makati City last week that the delayed resolutions represent a downgrade in the PCC's estimate of completed enforcement actions to four by the end of the year from six.

The six-ruling target had been announced in July.

"We are having challenges on the cases related to medical services and tourism since they both have multiple respondents... When we have many respondents, we have to serve the summons to each one of them to inform that there's a complaint against their behavior. Then the PCC will wait for their answer, so it takes time," Mr. Bernabe said.

"We have scarce resources which are being shared across various projects. However, adjudication is our priority. That is our job. That is our main focus," he added.

Mr. Bernabe said the PCC is expected to issue more notices of investigation following the lowering of the threshold for the mandatory reporting of mergers and acquisitions.

"There are pre-notification consultations going on, which are entities asking if they're captured by the reversion to the more reasonable amount of the threshold. So, we would expect that there will be notifications coming in consistently again," Mr. Bernabe said.

"No updates has been made known to the commission as (of) yet, but I understand that the mergers and acquisitions office is beginning to buzz again," he added.

The PCC implemented the provisional thresholds beginning Sept. 16.

Mergers and acquisitions that reach a size of party (SoP) of P6.1 billion and a size of transaction (SoT) of P2.5 billion are required to give notice to the PCC for mandatory review.

"The SoP refers to the aggregate value of assets or revenue in the Philippines of the ultimate parent entity of one of the parties to a transaction, while the SoT refers to the value of assets or revenue of the acquired entity and the entities it controls," the PCC said.

The previous thresholds for SoP and SoT were P50 billion under Republic Act No. 11494 or the Bayanihan II Law, which expired on Sept. 15.

"These thresholds will remain effective until the approval of the Commission *en banc* of new thresholds for compulsory notification," the PCC said.

# Pace of recovery to hinge on consumer mobility in fourth quarter

A PRESIDENTIAL adviser said the economic recovery will depend largely on whether consumers enjoy a degree of mobility in the fourth quarter, the time of year when businesses generate outsized profits.

Jose Maria A. Concepcion III, Go Negosyo founder and member of the Marcos government's Private Sector Advisory Council, said the consumer spending surge late in the year is expected to be beneficial to micro-, small-, and medium-sized enterprises (MSMEs).

"We need people going out. If people don't spend, this will affect our economy. How will we attain the growth target that is needed to maintain our credit rating? The last quarter, beginning this October, is crucial for our MSMEs," Mr. Concepcion said in a statement on Sunday.

Mr. Concepcion said many of the factors affecting consumer spending, like inflation, are largely beyond the government's control.

"We cannot control rising prices and rising interest rates. External factors like the conflict in Ukraine are now affecting all of us," Mr. Concepcion said.

Mr. Concepcion also noted that remittances from overseas Filipino workers (OFWs) will help prop up the recovery following the depreciation of the peso.

"We are facing strong headwinds, but there are things that can help us sail through and come out with a strong economy by the first quarter. Hopefully OFW remittances will continue to buoy the economy, seeing that already the strong dollar is adding 10% to the value of dollar remittances," Mr. Concepcion said.

"What we can control is our own willingness to keep businesses active. There are actions that can be taken to mitigate the effects of rising prices so that the economy remains active throughout the holiday season," he added.

According to Mr. Concepcion, Filipinos should continue to be cautious about COVID-19, following the return of students to face-to-face classes and as protocols relax on the wearing of face masks outdoors.

He added that work-from-home (WFH) arrangements should be postponed to next year when possible, after prices stabilize and mobility no longer as critical to economic activity.

"Philippine Offshore Gaming Operators leaving the Philippines will have an effect on our

economic activity. If we push for 100% WFH in the information technology and business process outsourcing (IT-BPO) sector, this will greatly affect the economy, especially now that we are seeing more turbulence due to the Russia-Ukraine conflict," Mr. Concepcion said.

Recently, the Fiscal Incentives Review Board announced that registered IT-BPO firms situated within economic zones may implement 100% WFH arrangement while still enjoying fiscal incentives by transferring their registration from the Philippine Economic Zone Authority to the Board of Investments.

In a statement over the weekend, the Philippine Chamber of Commerce and Industry (PCCI) said it hopes to meet with the government's economic managers to discuss ways of sustaining economic growth at this stage of the pandemic.

PCCI President George T. Barcelon said the business community is looking forward to talks with government officials during the 48<sup>th</sup> Philippine Business Conference & Expo (PBC&E) on Oct. 19-20 at the Manila Hotel.

"While we had courtesy visits done earlier, the PBC&E is a much bigger platform where our members and partners could directly engage with government on issues that affect business and learn first-hand from our economic managers on their plans to address them," Mr. Barcelon said.

Perry A. Ferrer, 48<sup>th</sup> PBC&E chairman, said the easing of economic restrictions can aid the economic recovery, following the two-year slowdown caused by the pandemic.

"We should take this opportunity to work on certain policies and programs that would renew the trust and confidence of businessmen in doing business and investing in the country," Mr. Ferrer said.

Some of the confirmed speakers during the 48<sup>th</sup> PBC&E include Finance Secretary Benjamin E. Diokno, Socioeconomic Planning Secretary Arsenio M. Balisacan, Information and Communications Secretary Ivan John E. Uy, Trade Secretary Alfredo E. Pascual, Tourism Secretary Maria Esperanza Christina G. Frasco, Transportation Secretary Jaime J. Bautista, Environment Secretary Maria Antonia Yulo Loyzaga, and Interior Secretary Benjamin C. Abalos.

— **Revin Mikhael D. Ochave**

# NGCP transmission rate reset process starts

THE Energy Regulatory Commission (ERC) said on Sunday that it has initiated the process of resetting the transmission system rate for the National Grid Corp. of the Philippines (NGCP).

"The long delay in the reset has not been fair in many respects. Consumers and grid users, on one hand, have become increasingly skeptical of the reasonableness of the rates that continue to be charged," Monalisa C. Dimalanta, ERC chairperson and chief executive officer, said in a statement.

The ERC said it promulgated Resolution No. 08, series of 2022 or the Amended Rules for Setting Transmission Wheeling Rates (RTWR), governing the rate reset process for the NGCP.

Transmission wheeling rates are the direct charge for the use of transmission facilities for the delivery of electricity.

As of July, the NGCP said that average transmission rate for Luzon was P0.9911 per kilowatt-hour.

The ERC said that the RTWR determines how much the

national transmission utility should be allowed to charge users of the high-voltage system.

According to the ERC, the last transmission rate reset was for the regulatory period of 2010 to 2015. The amended RTWR will set the rules for the rate reset process covering 2023-2027.

Ms. Dimalanta said that the review process will consider the actual expenditures and actual performance of the NGCP.

"The Commission will also consider in its determination the expert studies procured by ERC

on the components of the reset, including for the Weighted Average Cost of Capital (WACC) and the valuation of the Regulatory Asset Base (RAB)," the ERC said.

The ERC said that the amended RTWR will eliminate over-recoveries, double compensation, and redundant inflationary considerations.

The ERC said the rules also include enhanced criteria for the Performance Incentive Scheme and clarify reporting requirements and penalties for non-compliance. — **Ashley Erika O. Jose**

# PHL grid lags ASEAN in accommodating variable RE power sources

THE Philippine grid is not as able as its counterparts among the major economies of the Association of Southeast Asian Nations (ASEAN) to accommodate a large proportion of variable renewable energy (RE), according to the Southeast Asia Information Platform for the Energy Transition (SIPET).

A SIPET ranking gave the Philippines 1.9 in terms of grid integration, lagging Indonesia, which posted a score of 3.6; Thailand 4.7 and Vietnam 5.9.

SIPET said its ranking system scores grids between 0 and 10 points, with a 10 in the integration category reflecting a high ability to deal with the transition to alternative power sources.

SIPET, a platform developed by the German government-backed Clean, Affordable, and Secure Energy for Southeast Asia (CASE) project, aims to aid coordination as the region's power industry shifts to more sustainable sources of energy.

According to the Department of Energy (DoE), system flexibility will be a factor in making variable RE cost-effective.

Some sources of RE like solar and wind are intermittent, making them unsuitable for reliable, always-on baseload power given their current state of technological development.

The DoE hopes to increase the share of RE in the power mix to 35% by 2030 and 50% by 2040.

The Philippines scored 5.3, third-best in the region, in the investment environment category. SIPET said the investment environment reflects investors' risk appetite to participate in the power transition.

Vietnam was first with a score of 7.7 and Thailand second with seven. Indonesia was at the bottom with a score of two.

The Philippines was second in the market entry category, with a score of 5.6. The scoring system here measures the ease of introducing renewable energy technologies.

According to SIPET, this includes permit risks, grid access, and market or regulatory barriers.

Vietnam took the top spot with a score of six; while Thailand came in third at 3.2; while Indonesia placed in the last spot with a score of 1.9. — **Ashley Erika O. Jose**



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## OPINION

# What to expect when BIR tax audits resume

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LoAs are generally be issued/served until further instructions from the CIR.

Thus, in recent weeks we have seen numerous Notices of Discrepancies (NoDs) in connection with prescribing cases being served as the respective Investigating Offices comply with RMC No. 121-2022.

Some taxpayers who have multiple existing LoAs covering prescribing cases have, in fact, received NoDs one after the other. Tax professionals are also frantic after having to deal with multiple, sometimes simultaneous, deadlines for the respective replies to the NoDs due to the numerous cases being handled.

This has raised the eyebrows of some taxpayers who feel that the periods given to respond to audit notices, especially when a NoD is already served, have been abbreviated considering that the nature of the issues usually raised by the BIR require tedious reconciliation procedures, collation of voluminous supporting documents, and the drafting of protest letters.

In one of the breakout sessions in the recently concluded 1<sup>st</sup> SGV Tax

Symposium held on Aug. 19, the author facilitated a discussion on BIR audits in which participants were refreshed on the assessment process. It also focused on taxpayer remedies and periods to file replies or protest letters, as well as a discussion on the latest court decisions relevant to BIR audits.

Receiving a NoD, or any kind of assessment notice for that matter, can be overwhelming. Imagine addressing multiple assessment notices at the same time. In such situations, having a deep understanding of the tax assessment rules, procedures, and remedies, as well as periods and deadlines, will significantly help ease the stress and pressure of managing simultaneous BIR audits.

Consider, for example, how a taxpayer who is not familiar with the deadlines under the rules might react with panic once he or she receives a NoD, particularly upon reading the standard statement in the NoD that the presentation of a response, in a Discussion of Discrepancy (DoD), is needed within five days from receipt. A five-day period to respond is admittedly too short to prepare the necessary reconciliations and supporting documents, which may involve massive piles of paper receipts and invoices.

However, those who understand the rules will know that taxpayers are af-

forded a 30-day period for the DoD. And while taxpayers can maximize this full 30-day period, they should also coordinate closely with the handling examiner on the proposed schedule of discussions. Generally, it is better to settle as many issues as possible at the NoD level or at the earliest stage of the audit.

Taxpayers may also consider pursuing discussions with the handling examiner and submitting documents, reconciliations, and position papers with factual and legal bases in tranches as they become available. In this way the handling examiner will have a better chance of appreciating the taxpayer's submissions.

Taxpayers who are subject to audit should understand just how fast-paced the response time for all types of assessment notices can be. Given such a short window of time to prepare response letters and supporting documents, it would greatly benefit taxpayers to proactively prepare for tax audits. They can do this by carrying out advance reconciliation work. Another thing taxpayers can also do is to keep accurate, detailed and easily accessible records of transactions and documents so they can quickly and easily address any questions from the BIR. These and many other areas are where a robust and experienced tax team or the support of trusted tax

professionals can make a significant difference in reducing time, costs, and anxiety overall.

Given the BIR's intent to transform the way it conducts audits with digital transformation, such as with the use of electronic invoicing and receiving systems (EIS), taxpayers will also need to quickly evolve their strategy and approach to handling BIR audits. These are possibilities we generally see in the future of tax audits. For now, taxpayers who have already received NoDs will be under pressure to act quickly to timely respond to the BIR. At the same time, taxpayers who have not received a NoD should not be complacent. As we approach the close of the calendar year and the lifting of audit suspensions, we can expect the BIR to go full throttle very soon.

*This article is for general information only and is not a substitute for professional advice where the facts and circumstances warrant. The views and opinions expressed above are those of the author and do not necessarily represent the views of SGV & Co.*

THYRZA F. MARBAS is lawyer and a tax partner of SGV & Co.

