PCC sees onion 'cartel' probe done in 2-3 months

AN ongoing investigation into a possible onion cartel could be completed within two or three months, according to the new chairman of the Philippine Competition Commission (PCC).

"If it leads to nowhere, then there's no use prolonging it. But if the evidence is there, and I believe they (will be) able to find evidence, then it should be done within the next two or three months," Michael G. Aguinaldo said in a news conference in Quezon City on Monday.

"The investigation is ongoing. There are no firm results yet because they're still gathering a lot of information. The hearings in the Congress have provided also a great deal of information and so, our enforcement office is actually looking into it," he added.

The competition regulator said on Feb. 16 that it is looking into whether the alleged onion cartel is behind the surge in prices, which it said hit a high of P600 per kilogram in December.

According to Mr. Aguinaldo, the challenge for the PCC is to prove the existence of anti-competitive agreements causing onion prices to rise.

He added that there was a lack of physical evidence in the cold storage facilities examined by the PCC.

"The challenge when you talk about cartels or anti-competitive agreements like this (is that) it's quite difficult to prove because (of the need) to prove an agreement actually exists among major players and usually you won't find anything like that in writing," Mr. Aguinaldo said.

The PCC also provided updates on the refund process of transport network company Grab Philippines.

Lianne Ivy P. Medina, PCC officer-in-charge director for mergers and acquisitions office, said that the PCC is now studying the possibility of imposing another fine on Grab for being unable to provide the full amount to riders.

"The commission is now considering whether or not the circumstances or the reasons for which those refunds were not actually fully paid to the consumers would merit another fine to be imposed on Grab," Ms. Medina said.

"The PCC found that Grab has not yet fully refunded all of the amount that they were supposed to have given to the riders," she added.

However, Ms. Medina said that it does not necessarily mean that Grab Philippines is non-compliant on the refund.

"I would not say that it's non-compliance (on the refund), but there was a defect in the way they complied such that a portion of the amount that they should have refunded was not fully refunded to the consumers," she added.

According to Mr. Aguinaldo, Grab Philippines has refunded 70% of the amount but has yet to give back the remaining 30%, amounting P5 to P6 million.

The PCC ordered Grab to issue refunds to riders amounting to P5.05 million in November 2019, P14.15 million in December 2019, and P6.25 million in October 2020, totaling P25.45 million, due to breaches of the transportation firm's price monitoring commitment.

The PCC imposed a P63.7-million penalty on Grab in 2018 for violating its price and service quality commitments.

In March, the PCC said only 24.1% of the total refunds have been claimed as of June 2021.

"There are portions that they cannot comply with and they've given reasons for it. So now, before the commission, that issue is now being brought up," Mr. Aguinaldo said.

Grab Philippines has said that it cannot issue refunds where passengers did not complete the know-your-customer requirements, or undergo the identity verification process.

The transport firm added that it is "fully committed to complying with its undertakings and commitments with the PCC, and doing right by its stakeholders — especially its millions of users."

Separately, Mr. Aguinaldo said that the PCC's priority industries for 2023 include e-commerce and digital platforms, health and pharmaceuticals, energy and electricity, insurance, water, construction, telecommunications, food and agriculture.

In an e-mail, the PCC said that it has 16 active cases in the investigation stage, of which five have been made public. The five cases involve the industries of power, cement, shipping, telecommunication interconnection, and internet service provider (ISP) services in connection with property development.

A decision has been reached on the ISP case but it has yet to be released, it said.

It added that four are in the litigation stage or for decision by the Commission sitting en banc.

These cases involve the insurance, trade association, tourism, and medical services industries. — **Revin Mikhael D. Ochave**

Cebu BRT signals more 'innovative' transport solutions, Marcos says

PRESIDENT Ferdinand R. Marcos, Jr. said on Monday that the bus rapid transit (BRT) which he broke ground on in Cebu will herald more "innovative" transport solutions intended to boost economic activity.

He made the remarks at the groundbreaking of the first package of Cebu's P16.307-billion BRT.

"Rest assured that the National Government remains committed to improving economic activities in the many parts of our country through the introduction of innovative solutions to public transport and the improvement of mobility infrastructure, among others," Mr. Marcos said in a speech.

"My administration resolutely supports you in exploring ways to improve our public transport systems and in forging partnerships that will help the Philippines keep up with the innovative interventions of other progressive countries."

Mr. Marcos urged the Department of Transportation (DoTr) to finish the Cebu Bus Rapid Transit project, which is being funded by the World Bank and French Development Agency, on time.

"I also want to take this opportunity (to call on) the DoTr and other stakeholders to finish this project within the target completion timeline," he said. "I think if we in fact start operations in December, that will be the best possible Christmas gift that we can give to Cebu."

The ceremony kicked off the civil works for the four stations under Package I of the project, which involves the construction of a 2.38-kilometer segregated bus lane with four bus stations, the Palace said.

It also involves the construction of a 1.15-kilometer pedestrian walkway, which will link the system to the port of Cebu.

Package I, which costs almost P1 billion, was awarded to the Chinese contractor Hunan Road and Bridge Construction Group Co. Ltd. in November.

Mr. Marcos urged the DoTr "to ensure the just compensation of the property owners who will be affected by the CBRT project."

The bus rapid transit project will "support economic development through travel time savings, environmental improvements, and reduction of accidents among residents and visitors," he said.

The project is modeled after the BRT systems in Bogota, Colombia, Curitiba, Brazil, Seoul, South Korea, and Guangzhou, China.

The 13.18-kilometer project "will not only reduce travel time between Cebu's north and south districts but also boost economic productivity in various communities through the efficient mobility of passengers, goods, and services," Transport Secretary Jaime J. Bautista said in a speech.

"The project likewise promises to provide better job security and working conditions for the PUV drivers and reduce vehicle and pedestrian accidents," he added.

The project consists of three packages, and can accommodate 83 12-meter buses by its opening year.

It is expected to be fully operational by the second quarter of 2025, Mr. Bautista said. It can accommodate as many as 160,000 passengers a day, he added.

The BRT "took 20 years before the project became a reality," the Palace said. — **Kyle Aristophere T. Atienza**

Senate raises questions over Maharlika foreign board membership

OBJECTIONS were registered in the Senate on Monday to foreign board representation in the proposed Maharlika Investment Fund (MIF), though a Treasury official said foreign representation on the board is unlikely.

Senator Maria Lourdes Nancy S. Binay told the banking committee, which is assessing a bill that will establish up the fund, that legislation should be clear about foreign ownership in the Maharlika Investment Corp. (MIC).

"Why don't we just specify that no foreign entity can be part of the board regardless of investment and make the composition of board members less vague?" she said at the hearing.

She said that if the bill establishing the fund is approved, the MIF's implementing rules and regulations should explicitly set limits on foreign ownership.

National Treasurer Rosalia V. de Leon said at the hearing that if the bill passes, the Maharlika Investment Corp. will be set up as a government-owned and -controlled corporation (GOCC), which will have a cap on how much foreign entities can invest in the fund.

"Because of the limits that would be imposed on foreign investors, they would not be represented on the board," she said.

She added that the company managing the MIF would also be subject to regular audits by the Commission on Audit.

Ms. Binay also floated the National Development Co. (NDC) as an alternative to the MIF.

NDC General Manager Antonio D. Mauricio told the hearing that the NDC could complement the proposed sovereign wealth fund by bringing in smaller-scale investments.

He clarified that the NDC is a GOCC completely owned by the government but handles subsidiaries that have foreign investors within the 40% limit.

"The Maharlika Investment Fund can hit the ground running with our help," Mr. Mauricio said.

Earlier this month, President Ferdinand R. Marcos, Jr. said that three Japanese private firms made commitments to invest in the proposed MIF.

At the same hearing, Senator Ana Theresia N. Hontiveros-Baraquel asked representatives from the Bangko Sentral ng Pilipinas (BSP) if they were willing to delay the timing of the bank's capital buildup to P200 billion to fund Maharlika.

"BSP can afford to provide dividends to the MIF temporarily for two years based on the recent five years of income incurred by the bank," Iluminada T. Sicat, BSP senior assistant governor, said at the same hearing.

At a Feb. 15 hearing, BSP Deputy Governor Francisco G. Dakila, Jr. said that the central bank could take 14 years to reach its target capitalization if it is designated the main source of the MIF's capital.

Meanwhile, Philippine Stock Exchange Chief Executive Officer Ramon S. Monzon said the fund's profits should be re-invested in long-term projects.

"This will defeat the objectives of growing the fund to a size sufficient to build intergenerational wealth," he said. — **John Victor D. Ordoñez**

OPINION

BIR transfer pricing audits — the next wave?

LET'S TALK TAX
KYLE BENEDICT C. PARIS

The Bureau of Internal Revenue (BIR) and the Department of Finance (DoF) have expressed a shared goal to increase taxes collected as a percentage of GDP from 14.6% in 2022 to 17.1% by 2028. They confidently expect to meet this goal as it will be driven primarily by economic growth and by offering taxpayers convenience through tax digitalization programs. While it is accurate to claim that the BIR will derive more revenue with a stronger economy and by providing more convenient avenues for taxpayers to pay their dues, taxpayers know well what this means — an upsurge of BIR assessments across all industries.

On Jan. 9, the BIR announced that the Commissioner met with the Japan International Cooperation Agency (JICA) to discuss JICA's proposal for setting up a dedicated transfer pricing team in the BIR. The Commissioner also noted "leakage in transfer pricing" causing the Bureau to lose significant amounts of revenue from international transactions. This begs the question: are transfer pricing (TP) audits the next wave of incoming assessments?

The answer is yes, and it's just a question of when. It wouldn't hurt to plan for what may lie over the horizon. To guide taxpayers, let's look at Revenue Audit Memorandum Order (RAMO) No. 1-19, the current regulations set by the BIR when it comes to TP audits.

TP AUDIT SELECTION PROCESS

As a general rule, all taxpayers are candidates for a tax audit. However, for a TP audit, the BIR lays down the selection process (i.e., gather and review BIR Form 1709, perform risk assessment, identify high-risk TP issues and select the entity or transaction subject to audit).

The Revenue Officer (RO) will kickstart the process with a review and analysis of the information contained in BIR Form 1709 (Information Return on Transactions with Related Party) submitted by taxpayers. This form aims to improve and strengthen the BIR's TP risk assessment and audit.

Next, the RO will perform TP risk assessment and make an informed decision, at an early stage, whether to conduct a thorough review or audit of a particular entity or transaction. The BIR will focus its audit and commit its resources only to the most important or high-risk TP issues. The RO will give due consideration to the level of profit and tax paid in the Philippines. Then comes the selection of high-risk entity or transaction that will undergo the audit.

TP AUDIT PHASES

A TP audit is conducted to test the compliance in fulfillment of tax obligations of a taxpayer with related party transactions. The audit procedure on TP consists of preparation, implementation, and reporting.

In the preparation phase of the audit, the RO collects and studies a taxpayer's data in respect of special relations with their related parties. This is done by reviewing the annual income tax return (AITR), audited financial statements (AFS), tax treaty relief applications, and prior year's tax audit, among others. The RO will schedule a meeting with the taxpayer to gain an understanding of the general background of the business, product/service flow, value chain, worldwide structure, rationale for conducting the transaction, functions, assets and risks, and TP policy. The meeting is also conducted and designed to gather information about the worldwide effective tax rate, sources of income, transactions with related parties domiciled/located in countries or economic zones with low or zero tax rates, a determination whether the taxpayer's net operating profit is lower than that of other companies in the same industry, and whether the taxpayer suffered losses over several years.

Implementation of the TP audit comprises the following: (1) Determination of the characteristics of the taxpayer's business; (2) Selection of the TP method; and (3) Application of the arm's length principle (ALP).

The reporting phase of the TP audit provides a summary of the factual background and functional analysis of the taxpayer and the transaction/s at issue, a summary of the taxpayer's proposed economic analysis for the transaction at issue, a critique of taxpayer's methodology and analysis of the transaction at issue, the RO's determination of arm's length price based upon economic analysis, and summary and conclusion.

DOCUMENTARY REQUIREMENTS

The RO will require the taxpayer to prepare and submit the following annexes which are attached to RAMO No. 1-19:

- Annex 3 - Related Party Transaction
- Annex 4 - Segmented Financial Statements
- Annex 5 - Supply Chain Management Analysis
- Annex 6 - Functions, Assets and Risks Analysis (FAR)
- Annex 7 - Characteristics of business
- Annex 8 - Comparability analysis

The taxpayer is required to submit these within five days from the date of receipt of the request. It is worth noting that most of the information contained in the annexes listed above are also present in transfer pricing documentation (TPD). The TPD, on the other hand, must be submitted to the RO within 30 days from the date of receipt of the request.

TP AUDIT IMPLEMENTATION

The RO is expected to perform the audit in a three-step implementation phase, as discussed below.

1. Determination of the characteristics of the taxpayer's business

In this step, the RO will identify the characteristics of the related party transaction in question by studying several sources of information as earlier discussed in the preparation phase.

A functional analysis will also be performed by the RO by taking into account the economically significant activities and responsibilities undertaken, assets used or contributed, and risks assumed by the parties to the transaction. The more functions, assets, and risks associated with the taxpayer concerning the tested transaction, the higher level of profit it is expected to generate. As a result of the functional analysis, the RO should be able to come to a conclusion as to the taxpayer's characterization, which may take the form of toll manufacturing, contract manufacturing, fully fledged manufacturing, fully fledged distributor, limited risk distributor, commissionaire, commission agent, service provider, or others.

2. Selection of transfer pricing method

Next, the RO will identify available comparables, whether internal or external. Internal comparables are obtained when the tested party engages in transactions with unrelated parties. Meanwhile, external comparables may include, but are not limited to, the market price of commodity products, BSP rates, the SEC database, and commercial databases.

Thereafter, the most appropriate transfer pricing method is chosen from traditional transaction-based methods and transaction profit-based methods. These methods are used to compute the "arm's-length price." Traditional transaction-based methods include the comparable uncontrolled price method, resale price method, and cost-plus method. On the other hand, transaction profit-based methods include transactional net margin method and profit split method.

3. Application of arm's-length principle

The crux of a TP audit lies in the performance of comparability analysis, wherein the controlled and uncontrolled transactions are weighed against each other. This step aims to answer the main question of whether the tested transactions are conducted at arm's length.

The RO arrives at a conclusion whether the tested transaction was conducted at arm's length based on the audit. If the relevant conditions of the controlled (e.g., price or margin) are within the arm's length range of price or profit, no adjustment should be made.

However, if the relevant conditions of the controlled transaction fall outside the arm's length range asserted by the RO, the taxpayer should have the opportunity to present arguments that the conditions of the controlled transaction satisfy the ALP, and that the result falls within the arm's length range (i.e., that the arm's length range is different from the one asserted by the RO). If the taxpayer is unable to establish this fact, the RO must determine the point within the arm's length range to which it will adjust the conditions of the controlled transaction.

A TP adjustment will be proposed by the RO as part of his findings in an assessment when:

a. The consideration for the sale of services/goods is less than the arm's-length price; or

b. The consideration for the purchase of services/goods is higher than the arm's-length price; or

c. No consideration has been charged to the related party for the supply of goods/services.

TAKEAWAY

TP audits have yet to be fully integrated in most tax assessments as TP rules and regulations are relatively fresh and ROs are unfamiliar with their concepts. However, with JICA proposing to institutionalize an intensive transfer pricing team in the BIR, we can reasonably assume that regular TP audits are looming for multinational companies.

The TPD will serve as the main line of defense for taxpayers in the event of a TP audit as it has essentially pre-performed the procedures that are expected to be conducted by the BIR. This allows the taxpayer to re-evaluate its transfer pricing policies before an audit is conducted. If TP audits are the next wave of assessments from the BIR, the TPD serves as a surfboard and allows the taxpayer to ride the waves, be they calm or rough.

Let's Talk TP is a weekly newspaper column of P&A Grant Thornton that aims to keep the public informed of various developments in taxation. This article is not intended to be a substitute for competent professional advice.

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