

02 March 2020

**REPRESENTATIVE SHARON S. GARIN**

Chairperson  
Committee on Economic Affairs  
House of Representatives  
Batasan Complex, Batasan Hills  
Quezon City

Dear **Representative Garin**:

We are pleased to submit the Department's position on House Bill No. 5906, entitled:

**An Act Amending Provisions of Republic Act 10667, Otherwise Known as  
'An Act Providing for a National Competition Policy Prohibiting Anti-Competitive Agreements, Abuse of Dominant Position and Anti-Competitive Mergers and Acquisitions, Establishing the Philippine Competition Commission and Appropriating Funds Therefor'**

This is without prejudice to the Department's submission of additional inputs.

With my best regards.

Very truly yours,



**RAMON M. LOPEZ**  
Secretary

OFFICE OF THE SECRETARY

DTI Position on

**House Bill No. 5906**

**An Act Amending Provisions of Republic Act 10667, Otherwise Known as 'An Act Providing for a National Competition Policy Prohibiting Anti-Competitive Agreements, Abuse of Dominant Position and Anti-Competitive Mergers and Acquisitions, Establishing the Philippine Competition Commission and Appropriating Funds Therefor'**

The Department supports the objective of the bill in enhancing the mandate of the Philippine Competition Commission (PCC), particularly in investigating cartels, bid rigging, market foreclosure, and other anti-competitive conduct. Doing so would further promote fair market competition and advance consumer welfare in PH, gearing towards a vibrant and inclusive economy.

The Department expresses its views on other provisions of the bill, to wit:

<b>Proposed Provision</b>	<b>DTI Position</b>
<p>SECTION 1. Section 4 of Republic Act 10667 shall be amended to read as follows:</p> <p>"SEC. 4. Definition of Terms. – As used in this Act:</p> <p>xxx</p> <p>(g) <i>Dominant position</i> refers to a position of economic strength that an entity or entities hold which makes it capable of controlling the relevant market independently from any or a combination of the following: competitors, customers, suppliers, or consumers. FOR PURPOSES OF THIS ACT, DOMINANT POSITION SHALL ALSO MEAN SIGNIFICANT MARKET POWER;</p> <p>xxx"</p>	<p>The Department suggests that the term "significant market power" be defined further, whether it will be determined by market share, control of bottleneck infrastructure, technological superiority, consumer power, economies of scale and scope, or vertical integration, among others.</p>
<p>SECTION 6. Section 12 of Republic Act 10667 is hereby amended to read as follows:</p> <p>xxx</p> <p>(g) [Upon order of the court,] [u] Undertake BY ITSELF OR THROUGH ITS DEPUTIZED LAW ENFORCEMENT AGENCY, TO SEARCH AND INSPECT [inspections of] business premises and other offices, STRUCTURES, SPACES,</p>	<ul style="list-style-type: none"> <li>• We view that this provision, which will allow PCC or its deputized law enforcement agency to search and inspect businesses without a court order, should be carefully considered given that certain issues may arise, such as: <ul style="list-style-type: none"> <li>○ PCC's guidelines on formulating reasonable grounds for suspicion;</li> <li>○ PCC's conduct of search/inspection without notice to the target party; and</li> </ul> </li> </ul>

<p>land and vehicles, as used by the entity, where it reasonably suspects that relevant [books, tax records, or other documents] DATA AND INFORMATION which relate to any matter relevant to the investigation are kept [in order to prevent the removal, concealment, tampering with, or destruction of the books, records, or other documents] AND EXAMINE, COPY, PHOTOGRAPH, RECORD OR PRINT THE SUCH INFORMATION;</p>	<ul style="list-style-type: none"> <li>○ Protecting information covered under the protection of Legal Professional Privilege (LPP),<sup>1</sup> among others.</li> <li>• The Department notes that Supreme Court Administrative Matter (AM) No. 19-08-06-SC,<sup>2</sup> which took effect on 16 November 2019, authorizes commercial courts to issue inspection orders on companies suspected of violating the Philippine Competition Act (PCA) within 24 hours upon its filing.<sup>3</sup> The ruling is expected to bolster PCC's role as a regulatory agency and increase the number of prosecutions of competition law offenses. Due consideration must be given whether AM No. 19-08-06-SC is sufficient in addressing PCC's concerns in the implementation of its regulatory functions.</li> <li>• Notwithstanding, we defer to the Department of Justice (DOJ) with regard to the proposed provision's constitutionality and the National Privacy Commission (NPC) on its adherence to data privacy laws.</li> </ul>
<p>SECTION 13. A new Chapter VI is added to Republic Act 10667 to read as follows, and all subsequent provisions are to be renumbered accordingly:</p> <p>xxx</p> <p>"CHAPTER VI GOVERNMENT INCENTIVES</p> <p>xxx</p> <p>SEC. 24</p> <p>SEC. 25. RECOMMENDATION ON GOVERNMENT INCENTIVES. - FOR INCENTIVES WHICH THE COMMISSION DEEMS TO HAVE ADVERSELY AFFECTED</p>	<ul style="list-style-type: none"> <li>• It should be noted that House Bill (HB) No. 4157 or the Corporate Income Tax and Incentives Rationalization Act (CITIRA), which was approved by the House on 13 September 2019, has a provision on expanding the functions of the Fiscal Incentives Review Board (FIRB), giving them the power to grant and cancel incentives.</li> </ul>

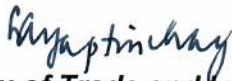
<sup>1</sup> Also known as attorney-client privilege. Under Rule 21.03 of the Code of Professional Responsibility, "A lawyer shall not, without the written consent of his client, give information from his files to an outside agency seeking such information for auditing, statistical, bookkeeping, accounting, data processing, or any similar purpose."

<sup>2</sup> Rule on Administrative Search and Inspection under the Philippine Competition Act

<sup>3</sup> If the court finds reasonable grounds to suspect that the information sought is kept, found, stored, or accessible at the premises indicated in the application; the information relates to any matter relevant to the investigation; and the issuance of the order is necessary to prevent the removal, concealment, tampering with, or destruction of the books, records, or other documents to be inspected.

COMPETITION IN THE RELEVANT MARKET OR IN THE MARKET FOR GOODS AND SERVICES ACCORDING TO SECTION 24, THE COMMISSION SHALL ISSUE A RULING ON THE FISCAL INCENTIVES REVIEW BOARD, INCLUDING A RECOMMENDATION FOR REMEDIES SUCH AS THE REVISION OR REVOCATION OF SUCH INCENTIVE SCHEME AND THE RECOVERY OF INCENTIVES WITH INTEREST."

The DTI reiterates its favorable position on the proposed bill while seeking due consideration on the abovementioned comments and suggestions.



**Bureau of Trade and Industrial Policy Research**

**02 March 2020**

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