PHILIPPINE COMPETITION COMMISSION
Ensuring businesses compete and consumers benefit

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COMPETITION ENFORCEMENT OFFICE OF THE PHILIPPINE COMPETITION COMMISSION,

Complainant,

– versus –

BORACAY BUSINESS ADMINISTRATION OF SCUBA SHOPS, ECLIPSE DIVE CENTER BORACAY, INC., UNDERWATERWORLD EXPLORER, INC., DIVEGURUS DIVING SERVICES, AQUALIFE DIVERS ACADEMY, FISHEYE DIVERS CORP., VICTORY DIVERS, BORACAY BIG BLUE DIVE RESORT CORP., BORACAY ISLAND NEW WAVE DIVERS, INC., BORACAY SCUBA INCORPORATED, CALYPSO SCUBA DIVING INTERNATIONAL, INC., EASY DIVE, GO DIVING, NEPTUNE DIVE CENTER, ISLAND STAFF DIVING & TOUR SHOPPE INC., KE & SAM DIVE CORP., LAPU-LAPU DIVING CENTER, LET'S GO DIVING, MARIO DIVING GROUP CO., MILKY'S DIVE CENTER & HELMET DIVING-SCUBA DIVING, OCEAN PHIL, PARADISE DIVE CENTER, PARTY HOUSE DIVING, SHARKY DIVING, SCOTTY'S SHANGRILA, SEA WORLD CORP., BORACAY VIKING DIVERS CENTER INC., WHITEBEACH DIVERS BORACAY, YAPAK K DIVE ACADEMY INC., YEGRINA DIVE CENTER, DIVER'S ADVENTURES, BLUE OCEAN, BLUE SEA DIVERS, BORACAY D5 DIVING CENTER, CALYPSO FRIDAYS, FROG DIVERS PROFESSIONAL TRAINING CORP., PROSCUBA DIVING, SCUBA CHAMP INC., SEA GAIA INC. DIVING RESORT, FREE WILLY DIVING CORP., AND SEA PARK DIVING INC.,

Respondents.

x----------x

PCC Case No. E-2021-001
For: Violation of Section 14(a)(1) of Republic Act No. 10667

COMMISSION DECISION NO. 01-E-2025

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THE CASE

Before the Commission is a Statement of Objections[1] (SO) filed by the Complainant, Competition Enforcement Office (CEO), against the Boracay Business Administration of Scuba Shops (BBASS) and its member-dive shops (collectively, Respondents).

The CEO alleged that Respondents agreed to set minimum prices for scuba diving services to prohibit other terms of trade in Boracay Island, Malay, Aklan (Boracay), in violation of Section 14(a)(1) of Republic Act No. 10667 or the Philippine Competition Act (PCA).

THE PARTIES

The Complainant CEO is the investigative and prosecutorial arm of the Philippine Competition Commission (PCC or the Commission).[2]

BBASS is a duly registered non-stock corporation in the Philippines established to regulate and protect the diving industry in Boracay as a means of livelihood for diving professionals as well as to represent the diving industry before local government bodies or entities in all matters related to the industry,[3] among others.

The following individual Respondents are the member-dive shops of BBASS (collectively, Respondents member-dive shops), which are all dive facilities[4] located in Boracay:

1. Eclipse Dive Center Boracay, Inc.
2. Underwaterworld Explorer, Inc.
3. Divegurus Diving Services
4. Fisheye Divers Corp.
5. Boracay Island New Wave Divers, Inc.
6. Boracay Scuba Incorporated
7. Calypso Scuba Diving International, Inc.
8. Island Staff Diving & Tour Shoppe Inc.

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1 Statement of Objections dated 13 December 2021 (SO).

2 PCA, Section 12. *Powers and Functions*. — [xxx]. The Commission shall exercise the following powers and functions:

> (a) Conduct inquiry, investigate, [xxx] involving any violation of this Act and other existing competition laws motu proprio or upon receipt of a verified complaint from an interested party or upon referral by the concerned regulatory agency, and institute the appropriate civil or criminal proceedings; [xxx]

3 SO, Annex A, Articles of Incorporation of BBASS.

4 *See* Rules and Regulations Governing the Business of Sport Scuba Diving in the Philippines, Chapter I, Section 1, a *dive facility* refers to any establishment engaged in any or all of the following activities: 1) selling scuba diving-related equipment, 2) renting out scuba diving-related equipment, 3) providing air fill service, 4) servicing and repair of scuba diving-related equipment, and 5) conducting scuba diving courses or underwater tours.

9. Ke & Sam Dive Corp.
10. Party House Diving
11. Sharky Diving
12. Boracay Viking Divers Center, Inc.
13. Yapak K. Dive Academy Inc.
14. Frog Divers Professional Training Corp.
15. Scuba Champ Inc.
16. Sea Gaia, Inc. Diving Resort (Sea Gaia)
17. Free Willy Diving Corp.
18. Sea Park Diving Inc.
19. Aqualife Divers Academy
20. Victory Divers
21. Easy Dive
22. Go Diving
23. Neptune Dive Center
24. Lapu-Lapu Diving Center
25. Milky's Dive Center & Helmet Diving – Scuba Diving
26. Ocean Phil
27. Paradise Dive Center
28. Sea World Corp.
29. Whitebeach Divers Boracay
30. Diver's Adventures
31. Blue Sea Divers
32. Yegrina Dive Center
33. Boracay Big Blue Dive Resort Corp.
34. Let's Go Diving
35. Mario Diving Group Co.
36. Scotty's Shangrila
37. Blue Ocean
38. Boracay D5 Diving Center
39. Calypso Fridays
40. Proscuba Diving

THE FACTS

On 14 December 2021, the CEO filed an SO[5] against BBASS and its member-dive shops for violation of Section 14(a)(1) of the PCA. The CEO alleged that BBASS and its member-dive shops agreed to set floor prices for various scuba diving services and prohibited the provision of freebies to their customers in any form, such as free dives, masks, shirts, meals, or photos.[6] The agreement is embodied in the 2016 BBASS Rules and Regulations (2016 BBASS Rules), the pertinent portion of which reads:

[5] Dated 13 December 2021.
[6] *Id.*

"ARTICLE IV
PROHIBITED ACTS, PRACTICES and ACTIVITIES

[xxx]

Section 4. In order to maintain the competitiveness of all dive shops in Boracay Island, all members shall **not be allowed to reduce or lower the prices** of diving services in utter violation of the Price Agreements mutually agreed upon by the members of the Association.

Section 5. Absolutely no "freebies" such as free dives, masks, shirts, meals, photos etc. shall be allowed by any members of the Association. Any violation of its *(sic)* provision shall be dealt with accordingly. *(Emphasis in original)*

[xxx]

ARTICLE VI
ADDENDUM TO THE ORIGINAL BY-LAWS
(BASED ON GENERAL MEETINGS AGREED UPON BY ALL ITS OFFICERS ANDMEMBERS PRESENT THEREIN)

[xxx]

Section 5. The **PRICE AGREEMENT** that must prevail and to be strictly implemented effective **December 15, 2016** between and among the dive shops members, instructors, assistant instructors and dive masters and the BBASS here endeavors by instrument of this agreement and pursuant to the powers granted to BBASS by **Municipal Ordinance 98-119** (Municipality of Malay) to achieve a status quo satisfactory for the majority of its members.

By abiding with this Price Agreement, all members benefit. Instead of on price, dive shops and dive professionals will compete in terms of quality of service so customers benefit thereby. In monetary terms, all dive shops and dive professional benefit from stable minimum prices. Should any one member break this agreement, all members will suffer. Therefore, if there are any violations of this Agreement, BBASS must get information quickly in writing in order to act and impose penalties. The undersigned agrees to provide the BBASS Officers with a written statement (using the BBASS Incident Report Form) on any violations observed. The undersigned also agrees to provide any inquiry by the BBASS Officers with complete and immediate information. Any untruth or discrepancy will also be considered an offense against BBASS Rules and Regulations and will be dealt accordingly.

The undersigned hereby agrees to the following conditions regarding pricing of diving services on Boracay Island, said Price Agreement being the wish and express demand of the majority of scuba diving professionals on Boracay Island are as follows:

- Introductory Dive or Discover Scuba Diving — Php 3,000 – Published rate
- Introductory Dive or Discover Scuba Diving — Php 2,500 – Net Rate
- PADI Scuba Diver or equivalent — Php 16,000
- Open Water Diver course or equivalent — Php 22,000
- Advanced Open Water Diver course — Php 17,000
- Rescue Diver course or equivalent — Php 21,000
- Enriched Air Nitrox Specialty course — Php 14,000

- Discover Nitrox Php 14,000
- Fun Dive rental equipment Php 1,800
- Fun Dive own equipment Php 1,400

Note: Absolutely no "freebies" which violate the intent of this Agreement are allowed, i.e., no free dives, masks, t-shirts, meals, photos, etc. (Emphasis in original)

[xxx]

Section 7. Any member dive shops or diving professional who shall violate any of the above cited provisions on **Price Agreements** shall suffer the penalty of cessation or closure of operation of your dive shop after thorough investigation is conducted and found guilty by the Board of officers of the BBASS. Anent thereto, a Closure Endorsement from the BBASS shall be forwarded to the Municipal Council or Office of the Mayor against erring members of the BBASS. *(Emphasis in original)*

[xxx]"[7]

In 1998, the Local Government Unit of Malay, Aklan (Malay LGU) enacted Municipal Ordinance No. 98-119[8] (1998 Municipal Ordinance) to regulate the operation of scuba diving shops, scuba divers, and other persons engaged in sea and water sports activities in Boracay. It prescribes the rules and regulations affecting operations, such as: (i) identification of dive sites; (ii) confined water sessions; (iii) proper loading and unloading of divers and diving equipment; (iv) coordination with the Philippine Coast Guard for night dives and day trips outside Boracay Island; and (v) regular inspection of diving equipment, diving boats, and breathing air compressor.[9] Section 1 of the 1998 Municipal Ordinance provides:

> "Section 1. – REQUIRING ACTS. No Scuba Diving Shops owner/operators is allowed to operate/and or engage in any diving activities within this Municipality without Mayor's Permit or Municipal License and shall be endorsed by the Boracay Association of Scuba Diving School (BASS)."

Pursuant thereto, all dive establishments automatically become members of BBASS (formerly the Boracay Association of Scuba Diving Schools or BASS) as soon as they start to operate in Boracay.[10] According to the CEO, the members were bound by the Rules and Regulations of the Boracay Association of Scuba Diving Schools dated 10 January 2003 (2003 BASS Rules and Regulations)[11] and the Price Agreement among Dive Shops, Instructors, Assistant Instructors, and Divemasters Effective 1 January 2009 (2009 Price Agreement),[12] which both preceded the 2016 BBASS Rules. BBASS

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7 SO, Annex F, BBASS 2016 Rules and Regulations dated 18 December 2016.
8 SO, Annex G, Municipal Ordinance No. 98-119, *An Ordinance Regulating the Operation of Scuba Diving Shops Scuba Divers, and Personnel Engaging in Sea and Under Water Sports, and Prescribing Penalties in Violation Thereof.*
9 *Id.*
10 White Beach Divers Boracay, et al.'s Consolidated Supplemental Answer, par. 21.
11 SO, Annex L, Rules and Regulations of the Boracay Association of Scuba Diving Schools dated 10 January 2003.
12 SO, Annex M, Price Agreement among Dive Shops, Instructors, Assistant Instructors and Divemasters Effective 1 January 2009.

also executed a Memorandum of Agreement (2014 Memorandum)[13] with each of the Respondents member-dive shops, where the latter agreed to abide by the rules and regulations of the association to maintain price regulation.

The CEO alleged that the prescribed floor prices of scuba diving services contained in the 2016 BBASS Rules were later on adopted in the **Price Agreement among Dive Shops, Instructors, Assistant Instructors and Divemasters Effective 15 January 2018** (2018 Price Agreement) [14] and subsequently adjusted through the **Price Agreement among Dive Shops, Instructors, Assistant Instructors and Divemasters Effective 1 February 2019** (2019 Price Agreement) (collectively, the Price Agreements).[15] In the 2018 and 2019 Price Agreements, Respondents declared that by abiding with the Price Agreements, it will enable dive shops and dive professionals to compete in terms of service quality instead of price and that "in monetary terms, all dive shops and dive professionals profit from the higher floor prices." [16] The 2018 and 2019 Price Agreements also stipulated a penalty of Php15,000.00 per customer per incident to be imposed on dive shops who will violate the price agreement.

The CEO alleged that the Price Agreements had been continuously implemented among dive shops in Boracay until their suspension[17] from 20 August 2019 to 19 August 2024.

On 16 December 2021, the Commission directed the issuance of summons upon the Respondents.[18] Following the service of summons, thirty (30) out of the forty-one (41) Respondents filed their Verified Answers.[19] The Respondents primarily argued that the

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[13] SO, Annex N, Memorandum of Agreement dated 30 December 2014.

[14] SO, Annex H, Price Agreement among Dive Shops, Instructors, Assistant Instructors and Divemasters Effective January 15, 2018.

[15] SO, Annex I, Price Agreement among Dive Shops, Instructors, Assistant Instructors and Divemasters Effective February 1, 2019.

[16] *Id.*; *See also supra* note 14.

[17] SO, Annex P, Boracay Business Administration of Scuba Shops Amended Price Agreement between Dive Shops Effective August 20, 2019.

[18] 2017 Rules of Procedure of the Philippine Competition Commission (PCC Rules of Procedure), Section 4.15. *Commission to issue summons*. - Within fifteen (15) days from the filing of the SO, the Commission may issue the corresponding summons with a copy of the SO to the Respondent or dismiss the SO outright on the ground that the same failed to state a violation cognizable by the Commission. [xxx]

[19] Respondents BBASS, Boracay Big Blue Dive Resort Corp., Blue Ocean, Blue Sea Divers, Boracay Viking Divers Center Inc., Divers Adventures, Easy Dive, Eclipse Dive Center Boracay, Fisheye Divers Corp., Frog Divers Professional Training Corp., Go Diving Studio, Island Staff Diving and Tour Shoppe, Inc., Lapu-Lapu Diving Center, Mario Diving Group Co., Milky's Dive Center & Helmet Diving-Scuba Diving, Neptune Dive Center, Ocean Phil Dive Center, Scuba Champ, Inc., Sharky Diving, Underworld Explorer, Inc., Whitebeach Divers Boracay, and Yegrina Dive Center individually filed their Verified Answers on 13 June 2022; Calypso Scuba Diving International and Calypso Fridays jointly filed their Verified Answer on 13 June 2022; Divegurus Diving Services, Aqualife Divers, Ke & Sam Dive Center, Paradise Dive Center, and Free Willy Diving, Inc. jointly filed their Verified Answer on 15 June 2022; Boracay Scuba Incorporated filed its Verified Answer on 24 June 2022.

Price Agreements were undertaken for the protection of consumers[20] and that they are deemed necessary to protect a vital industry in the country.[21] They averred that the agreements did not prevent, restrict, or lessen competition[22] and that the prices set are reasonable and consistent with prevailing market prices.[23] They emphasized that the Price Agreements imposed by BBASS are with the knowledge, acquiescence, and approval of the Malay LGU.[24]

During the pendency of the case, the Malay LGU enacted another ordinance, Municipal Ordinance No. 477, s. 2022 (2022 Municipal Ordinance),[25] which set the prices for all water sport activities, including scuba diving. The 2022 Municipal Ordinance took effect on 17 March 2022, superseding the 1998 Municipal Ordinance.

On 1 August 2023, Respondents member-dive shops Boracay D5 Diving Center, Boracay Island New Wave Divers, Sea Park Diving, Inc., Victory Divers, Yapak K. Dive Academy, Inc., and Sea World Corp. were declared in default[26] for failure to file their respective verified answers within the reglementary period. The case was dismissed against Respondent member-dive shop Sea World Corp. due to the death of its sole proprietor.[27] Respondents member-dive shops Party House Diving and Scotty's Shangrila were also declared in default on 1 August 2023,[28] while Respondents member-dive shops Let's Go Diving and Sea Gaia were declared in default on 14 January 2025.[29]

On 13 May 2025, the Commission afforded the CEO and the Respondents an opportunity to submit their Joint Written Proposals for settlement in accordance with Section 4.49 of the PCC Rules of Procedure (PCC Rules of Procedure).[30] However,

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[20] Verified Answers of Respondents Underwaterworld Explorer Inc., Fisheye Divers Corp., Boracay Big Blue Dive Resort Corp., Boracay Scuba Incorporated, Calypso Scuba Diving International, Inc., Easy Dive, Go Diving, Neptune Dive Center, Island Staff Diving, Lapu-Lapu Diving Center, Mario Diving Group Co., Milky's Dive Center, Sharky Diving, Ocean Phil, Boracay Viking Divers Center Inc., Whitebeach Divers Boracay, Yegrina Dive Center, Diver's Adventures, Blue Ocean, Blue Sea Divers, Frog Divers Professional Training Corp., Scuba Champ Inc.

[21] Verified Answers of Respondents Divegurus Diving Services, Aqualife Divers Academy, Boracay Big Blue Dive Resort Corp., Easy Dive, Ke & Sam Dive Corp., Paradise Dive Center, Whitebeach Divers Boracay, Frog Divers Professional Training Corp., Free Willy Diving Corp.,

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] An Ordinance Fixing and Setting the Guidelines in the Implementation of Tariff Rates of All Water Sports and Activities in the Municipality of Malay, and Imposing Penalties for Violations thereof; Respondents Whitebeach Divers Boracay, et. al's Consolidated Supplemental Answer dated 5 October 2022, Annex 5; Respondents Divegurus, et. al's Verified Answer dated 25 May 2022, Annex 19.

[26] PCC Rules of Procedure, Section 4.26. *Effect of failure to file a verified answer.* - If the Respondent fails to answer within the time allowed therefor, the Commission may, upon motion by the Enforcement Office, with notice to the Respondent and proof of such failure, declare the Respondent in default. [xxx]

[27] Resolution dated 18 October 2023.

[28] Order dated 1 August 2023.

[29] Order dated 14 January 2025.

[30] Notice dated 13 May 2025.

on 31 July 2025, the CEO manifested that it has not received any response or confirmation from the Respondents regarding their intent to enter settlement discussions.[31]

On 7 August 2025, the Commission submitted the case for decision.[32]

THE ISSUE

The issue before the Commission is whether the 2016 BBASS Rules and the 2018 and 2019 Price Agreements were executed and implemented by the Respondents in violation of Section 14(a)(1) of the PCA.

THE DISCUSSION

The Relevant Market

As a preliminary matter, it is necessary to determine the relevant market within which the alleged anti-competitive agreements existed.

The CEO alleged that the relevant market is the provision of scuba diving services in Boracay, Malay, Aklan (Boracay). The Commission agrees with the CEO's definition of the relevant market.

The relevant market is the market in which such a particular good or service is sold, and is a combination of the relevant product market and the relevant geographic market.[33] The Commission identifies the relevant product market[34] as the provision of scuba diving services and the geographic market[35] as Boracay.

To identify the relevant product market, the Commission looks into the substitutability or interchangeability of goods and services.[36] This case only involves scuba diving services. The relevant product market cannot be expanded to include other water recreational activities (e.g., parasailing, banana boat riding, fly fish, jet skiing, helmet diving, island hopping) as they are not substitutable with scuba diving.[37] Unlike other

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[31] CEO's Manifestation dated 31 July 2025.
[32] Notice dated 7 August 2025.
[33] PCA, sec. 4(k).
[34] A relevant product market comprises all those goods and/or services which are regarded as interchangeable or substitutable by the consumer or the customer, by reason of the goods and/or services' characteristics, their prices, and their intended use; PCA, sec 4(k)(1).
[35] The relevant geographic market comprises the area in which the entity concerned is involved in the supply and demand of goods and services, in which the conditions of competition are sufficiently homogenous and which can be distinguished from neighboring areas because the conditions of competition are different in those areas; PCA, sec. 4(k)(2).
[36] PCA, sec. 4(i).
[37] SO, p. 18.

water recreational activities, scuba diving is technical in nature. It requires proper training, use of specialized equipment and must be performed under the supervision of licensed professionals (i.e., divemasters, instructors) to ensure the safety of customers.

Dive shops offer a cluster of closely related scuba services. These include Discover Scuba Diving (DSD) Courses; Open Water Courses; Fun Dive Courses; Nitrox Courses; and other specialized courses, such as Rescue Diver Courses.[38] The dive shops in Boracay offer similar services relating to scuba diving services, such as: (i) Introductory Dive or DSD; (ii) Professional Association of Diving Instructors (PADI) Scuba Diver; (iii) Open Water Diver course and e-learning course; (iv) Advanced Open Water Diver course; (v) Fun Dives; (vi) Nitrox courses, including Enriched Air Nitrox, Dry Enriched Air Nitrox, and Discover Nitrox; and (vii) Rescue Diver course and e-learning course.[39]

These services form part of a single market for scuba diving services which are all regulated by the Philippine Commission on Sports Scuba Diving (PCSSD). Under Republic Act No. 9593, or the "Tourism Act of 2009,"[40] the PCSSD is mandated to undertake measures to provide the standard basic dive rules to all levels or kinds of divers; regulate scuba sports and technical diving in the country; and ensure the safety of scuba diving, including the regulation of the accredited scuba diving establishments.[41]

Therefore, the Commission identifies the provision of scuba diving services as the relevant product market for this case.

In identifying the relevant geographic market,[42] the Commission looks at the area where the entities operate and determines that the relevant geographic market is limited to Boracay.

While there are other recognized diving destinations in the Visayas, such as Cebu, Dumaguete, Siquijor, Bohol, Leyte, Antique, Iloilo, Negros Occidental, and Negros Oriental,[43] these locations are not substitutable for Boracay due to their distance. From the demand side, customers typically avail these services as part of their travel to Boracay, and do not treat other dive destinations in the Visayas as practical alternatives for price differences alone. On the supply side, switching locations would be difficult considering the cost of equipment and difficulty in transporting the same.

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[38] SO, p. 18.
[39] *Id.*
[40] Republic Act No. 9593 (2009), *available at:* https://www.officialgazette.gov.ph/2009/05/12/republic-act-no-9593/ (last accessed on 11 September 2025).
[41] Republic Act 9593, sec. 31.
[42] *Supra* note 36.
[43] Philippine Commission on Sports Scuba Diving, *Dive Destinations in the PH*, *available at:* https://www.divephilippines.com.ph/diving-in-the-ph-dive-destinations-in-the-ph/ (last accessed on 11 September 2025).

The Commission defines the relevant market as the provision of scuba diving services in Boracay.

Price Fixing Agreements under Section 14(a)(1)

Section 14(a)(1) of the PCA prohibits *per se* agreements between or among, competitors that restrict competition as to price, components thereof, or other terms of trade.

To establish a violation of Section 14(a)(1), the following elements must concur: (1) the existence of an agreement; (2) the agreement is one between or among competitors; and (3) the subject of the agreement entered into between and among competitors is the price, or components thereof, or other terms of trade.

Upon review and evaluation of the SO, the submissions of the Respondents, and the evidence on record, the Commission finds that **the 2016 BBASS Rules and the 2018 and 2019 Price Agreements are anti-competitive agreements that the Respondents executed and implemented in violation of Section 14(a)(1) of the PCA.**

First Element: Existence of an Agreement

An agreement is defined as "any type or form of contract, arrangement, understanding, collective recommendation, or concerted action, whether formal or informal, explicit or tacit, written or oral."[44] To establish the existence of an agreement under Section 14(a)(1), the CEO submitted the 2016 BBASS Rules and the 2018 and 2019 Price Agreements.

Article VI, Section 5 of the 2016 BBASS Rules provides, "the PRICE AGREEMENT [that] must prevail and to be strictly implemented effective December 15, 2016 between and among Dive Shop members, Instructors, Assistant Instructors and Divemasters." [45] The 2016 BBASS Rules expressly states that the rules and regulations therein are "just an integration and synthesis of all the agreements that were reached by the Association and the members,"[46] such that the implementation of floor prices and prohibition of freebies have been implemented and codified since the inception of BBASS' predecessor (i.e., BASS).[47]

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[44] PCA, sec. 4(b).
[45] *Supra* note 7.
[46] *Id.*, Preface.
[47] Such as the *Rules and Regulations of the Boracay Association of Scuba Diving Schools dated 10 January 2003* (SO, Annex L); *Price Agreement among Dive Shops, Instructors, Assistant Instructors and Divemasters Effective 1 January 2009* (SO, Annex M); and the *Memorandum of Agreement dated 30 December 2014 between Respondents* (SO, Annex N).

The 2016 BBASS Rules was approved by a majority of the Respondents member-dive shops, as evidenced by the BBASS Members Confirmation Sheet:

> "BBASS Members Confirmation Sheet:
>
> That we the **BASS MEMBERS come to agree with the Rules set forth by the ASSOCIATION** in order to have a better and harmonious relationship between and among BASS Members for the betterment of our business operation in the Island of Paradise Boracay. **Affixed herewith is our signature to signify our express consent and to abide the BBASS Rules thereto.**" (Emphasis supplied)

The Commission observes that while only thirty (30) out of forty (40) of the Respondents member-dive shops signed the 2016 BBASS Rules,[48] the absence of the signatures does not negate the existence of the agreement or its implementation among BBASS members.

Respondents member-dive shops Divegurus Diving Services, Aqualife Divers, Ke & Sam Dive Center, Paradise Dive Center, and Free Willy Diving, Corp. expressly stated in their Joint Verified Answer that they "do not in a way dispute the existence of price agreements, the BBASS rules and regulations and the contents expressed therein."[49] They also do not dispute that the agreements are between BBASS and dive shop operators in Boracay.[50] Meanwhile, the other Respondents member-dive shops did not specifically deny the existence of the Price Agreements in their Verified Answers.

Further, BBASS and its members did not deny that they regularly conduct meetings to discuss concerns in the diving industry, including the "price war" among the member dive shops.[51] The CEO correctly pointed out that the 2016 BBASS Rules were not the sole prerogative of BBASS but the result of meetings among the Respondents and which had been consistently implemented in prior years.[52]

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[48] The Respondents member-dive shops who *signed* are Eclipse Dive Center Boracay, Inc., Underwaterworld Explore, Divegurus Diving Services, Aqualife Divers Academy, Fisheye Divers Corp., Victory Divers, Boracay Big Blue Dive Resort Corp., Boracay Island New Wave Divers, Inc., Boracay Scuba Incorporated, Calypso Scuba Diving International, Inc., Easy Dive, Go Diving, Island Staff Diving & Tour Shoppe Inc., Lapu-Lapu Diving Center, Let's Go Diving, Mario Diving Group Co., Milky's Dive Center & Helmet Diving-Scuba Diving, Ocean Phil, Paradise Dive Center, Party House Diving, Sharky Diving, Scotty's Shangrila, Sea World Corp., Boracay Viking Diver Center Inc., Whitebeach Divers Boracay, Yapak K Dive Academy Inc., Yegrina Dive Center, Blue Sea Divers, Free Willy Diving Corp, and Sea Park Diving Inc.

The Respondents member-dive shops who *did not sign* are Neptune Dive Center, Ke & Sam Dive Corp., Diver's Adventures, Blue Ocean, Boracay D5 Diving Center, Calypso Fridays, Frog Divers Professional Training Corp., Proscuba Diving, Scuba Champ Inc., and Sea Gaia Inc. Diving Resort.

[49] Respondents Divegurus Diving Services, et al.'s Joint Verified Answer dated 25 May 2022, par. 32.

[50] *Id.*, par. 33.

[51] SO, Annex E, Transcript of Interview with Mr. Cirilo Tirol and Atty. Richard Fabila, pp. 28-30; SO, Annex D, Transcript of Interview with Mr. Michael Martillano, pp. 36, 41, 45-46, 64-67.

[52] CEO's Reply dated 15 December 2022, pars. 31-34.

All BBASS member-dive shops bound themselves to abide by the Respondent BBASS' rules and regulations, to wit:

> **"ARTICLE III**
>
> **RIGHTS, DUTIES and RESPONSIBILITIES OF MEMBERS**
>
> [xxx]
>
> Section 3. It shall be the duty of all members to comply with the by-laws and the provisions of the rules and regulations that may be adopted by the Association.
>
> [xxx]"[53]

The prices agreed upon for scuba diving services in the 2016 BBASS Rules were adopted and adjusted in the 2018 and 2019 Price Agreements. In effect, the Price Agreements remained in force even after the lapse of the two-year transitory period under Section 53 of the PCA.[54]

Taken altogether, there is actual evidence as to the existence of an agreement between and among BBASS and its member-dive shops.

Second Element: The Agreement is Among Competitors

The CEO claims that the Price Agreement is an agreement among competing dive shops in Boracay. BBASS counters that it has no goods or services being offered, and that it is not a competitor but a mere regulating entity.[55] Respondents member-dive shops, in turn, argue that they should not be treated as competitors because they are under the common control of BBASS and the Malay LGU.[56] The Respondents based

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[53] *Supra* note 7.

[54] PCA, Section 53. *Transitional Clause.* — In order to allow affected parties time to renegotiate agreements or restructure their business to comply with the provisions of this Act, an existing business structure, conduct, practice or any act that may be in violation of this Act shall be subject to the administrative, civil and criminal penalties prescribed herein only if it is not cured or is continuing upon the expiration of two (2) years after the effectivity of this Act: *Provided,* That this section shall not apply to administrative, civil and criminal proceedings against anticompetitive agreement or conduct, abuse of dominant position, and anti-competitive mergers and acquisitions, initiated prior to the entry into force of this Act: *Provided, further,* That during the said two (2)-year period, the government shall undertake an advocacy program to inform the general public of the provisions of this Act.

The PCA took effect on 8 August 2015. Affected parties had until 7 August 2017 to renegotiate agreements that may violate the PCA.

[55] BBASS' Verified Answer dated 5 June 2022, p. 3.

[56] The last paragraph of Section 14 of the PCA states: "An entity that controls, is controlled by, or is under common control with another entity or entities, have common economic interests, and are not otherwise able to decide or act independently of each other, shall not be considered competitors for purposes of this section."

their claim that the 2016 BBASS Rules is sanctioned by the 1998 Municipal Ordinance.[57]

Respondents member-dive shops are competitors

The term "competition" implies a struggle for advantage between two or more forces, each possessing, in substantially similar, if not identical degree, certain characteristics essential to the business sought.[58] It means an independent endeavor of two or more persons to obtain the business patronage by offering more advantageous terms as an inducement to secure trade.[59]

In the context of competition law, the term "competitors" refers to entities active on the same relevant market (i.e., offering substitutable or interchangeable goods or services within a particularly defined geographic area). [60] They also include potential competitors, or those likely to enter a relevant market within a short period of time considering additional investments or switching costs.[61]

Respondents member-dive shops are competitors under this definition. They operate within the same relevant market. They offer the *same* scuba diving services in the *same* geographic area and compete in terms of price and quality of services.

The Respondents' argument that common control by the Malay LGU negates their status as competitors is unfounded.

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[57] Boracay Scuba Inc.'s Verified Answer dated 5 June 2022, p. 4; Boracay Viking Diving Center Inc.'s Verified Answer dated 5 June 2022 p. 4; Calypso Scuba Diving International Inc. and Calypso Friday's Joint Verified Answer dated 5 June 2022, p. 4; Fisheye Divers Corp.'s Verified Answer dated 5 June 2022, p. 3; Frog Divers Professional Training Corp.'s Verified Answer dated 5 June 2022, p. 4; Island Staff Diving & Tour Shoppe Inc.'s Verified Answer dated 5 June 2022, p. 4; Scuba Champ Inc.'s Verified Answer dated 5 June 2022, p. 3; Sharky Diving's Verified Answer dated 5 June 2022, p. 3; Underworld Explorer Inc.'s Verified Answer dated 5 June 2022, p. 4; Boracay Big Blue Dive Resort Corp.'s Verified Answer dated 5 June 2022, p. 3; Blue Ocean's Verified Answer dated 5 June 2022, p.3; Mario Diving Group Co.'s Verified Answer dated 5 June 2022, p. 3; Blue Sea Divers' Verified Answer dated 5 June 2022, p. 3; Diver's Adventure's Verified Answer dated 5 June 2022, p. 3; Easy Dive's Verified Answer dated 5 June 2022, p. 3; Go Diving's Verified Answer dated 5 June 2022, p. 3; Lapu-Lapu Dive Center's Verified Answer dated 5 June 2022, p. 4; Milky's Center & Helmet Diving-Scuba Diving's Verified Answer dated 5 June 2022, p. 3; Neptune Dive Center's Verified Answer dated 5 June 2022, p. 3; Ocean Phil Dive Center's Verified Answer dated 5 June 2022, p. 4; Whitebeach Divers Boracay's Verified Answer dated 5 June 2022, p. 4; Yegrina Dive Center's Verified Answer dated 5 June 2022, p. 3; and Divegurus Diving Services, Aqualife Divers, Ke & Sam Dive Center, Paradise Dive Center, and Free Willi Diving, Inc.'s Joint Verified Answer dated 25 May 2022, pp. 20-22.

[58] *Gokongwei, Jr. v. Securities and Exchange Commission*, G.R. No. L-45911, 11 April 1979.

[59] *Id.*

[60] European Commission, *Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreement,* Official Journal of the European Union, 14 January 2011; *Supra* note 33.

[61] *Id.*

The Commission recognizes that the Malay LGU exercises regulatory oversight over the Respondents member-dive shops. The Malay LGU's role is regulatory (e.g., issuance of licenses and permits, and compliance requirements). This does not amount to "control" within the meaning of Section 14 of the PCA,[62] which contemplates the ability to direct or determine the commercial decisions of another entity so that they act as a single economic unit. Here, Respondents member-dive shops are **independently operated** by their respective owners, **driven by distinct and separate economic interests**.[63]

As competitors, Respondents member-dive shops are supposed to compete for business advantage. Instead, they agreed to fix the rates of the services and other terms of trade.

The Role of BBASS as the Facilitator of the Agreements

The PCA does not prohibit the creation and operation of trade associations. However, these trade associations may only be formed to promote quality standards, address safety issues, and serve as a forum to discuss quality standards, efficiency, safety, security, productivity, competitiveness, and other matters of common interest involving an industry.[64] Section 48 of the PCA states that:

> "Nothing contained in this Act shall be construed to prohibit the existence and operation of trade associations organized to promote quality standards and safety issues; **Provided, That, these associations shall not in any way be used to justify any violation of this act:** Provided, however, That it shall not be illegal to use the association as a forum to discuss or promote quality standard, efficiency, safety, security, productivity, competitiveness and other matters of common interest involving the industry: **Provided, further, That such is done without any anti-competitive intent or effect.**"[65] (Emphasis supplied)

While the PCA recognizes that trade associations may serve legitimate business interests and strengthen industry standards, these trade associations should by no means be used as a vehicle to promote anti-competitive objectives or practices.

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[62] PCA, Section 14. *Anti-Competitive Agreements.* – [xxx] An entity that controls, is controlled by, or is under common control with another entity or entities, have common economic interests, are not otherwise able to decide or act independently of each other, shall not be considered competitors for purposes of this section.

[63] Section 14 refers to common economic interest.

[64] PCA, Section 48. *Trade Associations.* – Nothing contained in this Act shall be construed to prohibit the existence and operation of trade associations organized to promote quality standards and safety issues: *Provided,* That, these associations shall not in any way be used to justify any violation of this Act: *Provided, however,* that it shall not be illegal to use the association as a forum to discuss or promote quality standards, efficiency, safety, security, productivity, competitiveness and other matters of common interest involving the industry: *Provided, further,* That such is done without any anti-competitive intent or effect.

[65] *Id.*

In this case, BBASS acted as a facilitator to the anticompetitive agreement. BBASS was incorporated as a non-stock corporation with the purpose of regulating and protecting the diving industry in Boracay as a means of livelihood for diving professionals.[66] However, BBASS actively participated in facilitating, implementing, and ensuring that its member-dive shops adhered to the Price Agreements. It facilitated the adoption of the 2016 BBASS Rules and the 2018 and 2019 Price Agreements in meetings attended by the Respondents member-dive shops. These meetings served as forums where pricing concerns were discussed and agreements were made. It was BBASS that facilitated and implemented the Price Agreements among its competitor member-dive shops. Finally, BBASS made sure that member-dive shops comply with the agreements by including in the 2016 BBASS Rules a penalty clause for non-compliance which states:

> **"ARTICLE VI**
>
> **ADDENDUM TO THE ORIGINAL BY-LAWS**
>
> **(BASED ON GENERAL MEETINGS AGREED UPON BY ALL ITS OFFICERS AND MEMBERS PRESENT THEREIN)**
>
> [xxx]
>
> Section 7. Any member dive shops or diving professional who shall violate any of the above-cited provisions on **Price Agreement** shall suffer the penalty of cessation or closure the operation of your dive shop after thorough investigation is conducted and found guilty by the Board of officers of the BBASS. Anent thereto, a Closure Endorsement from the BBASS shall be forwarded to the Municipal Council or the Office of the Mayor against erring members of the BBASS;
>
> Section 8. An erring and delinquent members who constantly violating the agreed price and committing the same offense the erring members will suffer the consequences of a fine of **FIFTY THOUSAND PESOS (Php 50,000.00)** shall be imposed to the erring members and to the dive shop owner; The BBASS will execute a **LETTER OF ENDORSEMENT for CANCELLATION OF THE BUSINESS PERMIT** to the Office of the Mayor for such violation of the Municipal Ordinance. Furthermore, the **BBASS will not issue a BBASS ENDORSEMENT for its Mayor's Permit Renewal** for the succeeding year without securing a clearance from the LGU or Office of the Mayor that his/her dive shop is officially clear and settle such violation from the Office of the Mayor. (Emphasis in original)
>
> [xxx][67]"

While BBASS is not a market competitor in a strict sense as it does not provide scuba diving services, its membership is composed of all competing dive shops in Boracay. The incorporators, trustees, and officers of BBASS are owners of member-dive shops themselves. It is a recognized principle in competition law that competitors do not avoid antitrust liability by hiding behind or acting through third-party intermediaries, such as business, professional, trade, and sports organizations and associations if

[66] *Supra* note 3.
[67] *Supra* note 7.

their members demonstrate "a conscious commitment to a common scheme designed to achieve an unlawful objective."[68] Thus, a "facilitator" does not need to be active in the market on which products or services were subject to the cartel arrangement. To establish liability, it is sufficient to show that a facilitator actively and knowingly contributed to the anti-competitive scheme.[69]

In view of this, the Commission finds that the participation of BBASS was essential in ensuring the implementation of the agreements to fix the prices. To absolve BBASS of liability on the ground that it is not strictly a competitor may give rise to an absurd situation where trade associations or other entities could orchestrate collusive anti-competitive conduct and simply escape liability by claiming that they do not directly compete in the market.

The 2016 BBASS Rules and the 2018 and 2019 Price Agreements executed and implemented among Respondents member-dive shops, through BBASS, are therefore considered agreements among competitors, satisfying the second element of a Section 14(a)(1) violation.

Third Element: The Subject of the Agreements are the Price and other Terms of Trade in the Relevant Market for Scuba Diving Services in Boracay Island, Malay, Aklan

An agreement as to price and other terms of trade under Section 14(a)(1) is a type of horizontal agreement that is a *per se* violation. The mere existence of a price-fixing agreement is sufficient to establish a Section 14(a)(1) violation, without the need to prove any actual anti-competitive effects in the relevant market.

The provisions of the 2016 BBASS Rules and Price Agreements are clear that price and other terms of trade were the subject of these agreements.

2016 BBASS Rules and Regulations

Rather than freely competing with one another, Respondents collectively sought to limit competition and eliminate pricing as a competitive pressure. Respondents agreed to set prices for scuba diving services that they offer and prohibit any form of freebies. The objective of the Respondents to agree on restricting prices and other terms of trade is clearly seen in the following provisions of the 2016 BBASS Rules:

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[68] *Relevent Sports, LLC v. United States Soccer Federation, Inc., et al.*, No. 21-2088 (2d Cir. 2023).
[69] *Id.*

(i) Article IV, Section 4 which prohibits the reduction or lowering of prices of diving services in violation of the Price Agreements;[70]
(ii) Article VI, Section 5 which fixes the prices of dive services;[71]
(iii) Article IV, Section 5 and Article V, Section 1 which prohibit the member-dive shops from offering freebies;[72] and

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[70] Article IV, Section 4, which provides:
"Section 4. In order to maintain the competitiveness of all dive shops in Boracay Island, all members shall not be allowed to reduce or lower the prices of diving services in utter violation of the Price Agreement mutually agreed upon by all members of the Association;"

[71] Article VI, Section 5, which provides:
"By abiding with this Price Agreement, all members benefit. Instead of on price, dive shops and dive professionals will compete in terms of quality of service so customers benefit thereby. In monetary terms, all dive shops and dive professional benefit from stable minimum prices. Should any one member break this agreement, all members will suffer. Therefore, if there are any violations of this Agreement, BBASS must get information quickly in writing in order to act and impose penalties. The undersigned agrees to provide the BBASS Officers with a written statement (using the BBASS Incident Report Form) on any violations observed. The undersigned also agrees to provide any inquiry by the BBASS Officers with complete and immediate information. Any untruth or discrepancy will also be considered an offense against BBASS Rules and Regulations and will be dealt accordingly.

The undersigned hereby agrees to the following conditions regarding pricing of diving services on Boracay Island, said Price Agreement being the wish and express demand of the majority of scuba diving professionals on Boracay Island are as follows:

- Introductory Dive or Discover Scuba Diving — Php 3,000 – Published rate
- Introductory Dive or Discover Scuba Diving — Php 2,500 – Net Rate
- PADI Scuba Diver or equivalent — Php 16,000
- Open Water Diver course or equivalent — Php 22,000
- Advanced Open Water Diver course — Php 17,000
- Rescue Diver course or equivalent — Php 21,000
- Enriched Air Nitrox Specialty course — Php 14,000
- Discover Nitrox — Php 14,000
- Fun Dive rental equipment — Php 1,800
- Fun Dive own equipment — Php 1,400"

Note: Absolutely no "freebies" which violate the intent of this Agreement are allowed, i.e., no free dives, masks, t-shirts, meals, photos, etc."

[72] Article IV, Section 5, which provides:
"Section 5. Absolutely no "freebies" such as free dives, masks, shirts, meals, photos, etc. shall be allowed by any members of the Association. Any violation of its provision shall be dealt with accordingly;"
Article V, Section 1, which provides:
"Section 1. (Art. IV Section 5) Absolutely no "FREEBIES" such as FREE dives, masks, shirts, meals, photos, etc. shall be allowed by any members of the Association. Any violation thereto any erring members shall be dealt with accordingly. This rule applies to all signages, brochures, Internet publications and promos, price lists, or marketing devises which offer "FREE" items, even if the dive shops published rate is higher than the minimum price set forth and detrimental to the other members and can be considered unfair business competition."

(iv) Article VI, Section 6 which limits the commissions allowed.[73]

The mandatory nature of these provisions was intended to ensure control of pricing as well as to limit the competitive behavior of all the dive shops in Boracay.

The 2018 and 2019 Price Agreements

The 2018 Price Agreement adopted the prices agreed upon for scuba diving services in the 2016 BBASS Rules. A comparison of the 2018 and 2019 Price Agreements (**Table 1**) shows the adjustments made in the agreed prices in February 2019 for several scuba diving services. These price adjustments indicate that BBASS and its member-dive shops have an ongoing practice of price setting.

Table 1. The 2018 and 2019 Price Agreements.[74]

Price Agreement among Dive Shops, Instructors, Assistant Instructors and Divemasters Effective 15 January 2018	**Price Agreement among Dive Shops, Instructors, Assistant Instructors and Divemasters Effective 1 February 2019**
The undersigned hereby agrees to the following conditions regarding pricing of diving services on Boracay Island, said Price Agreement being the wish of and upon express demand of the majority of scuba diving professionals in Boracay Island. **First Condition:** The following floor prices for diving services have been agreed upon effective 15 January 2018: • Introductory Dive or Discover Scuba Diving – PHP 3,000 • PADI Scuba Diver or equivalent – PHP 16,000 • Open Water Diver course or equivalent – PHP 22,000	The undersigned hereby agrees to the following conditions regarding pricing of diving services on Boracay Island, said Price Agreement being the wish of and upon express demand of the majority of scuba diving professionals in Boracay Island. **First Condition:** The following floor prices for diving services have been agreed upon effective 01 February 2019: • Introductory Dive or Discover Scuba Diving – PHP 3,000 • **PADI Scuba Diver or equivalent – PHP 20,000** • **Open Water Diver course or equivalent – PHP 25,000**

[73] Article VI, Section 6, which provides:
"Section 6. No commission exceeding Ten (10%) (ten percent) of the above prices only on all courses mentioned above may be paid to any entity (travel agents, on internet booking, tour guides, commissioners, resorts, hotels, booking agents etc.) on Boracay Island for bookings made by customers on the Island. Written records must be kept to document transactions, signed by customers and/or agent regarding fees paid."

[74] *Supra* note 14; *See also supra* note 15.

• Advance Open Water Diver course or equivalent – PHP17,000 • Rescue Diver course or equivalent - PHP 21,000 • Enriched Air Nitrox Specialty Course – PHP 14,000 • Discover Nitrox – PHP 3,000 • Fun Dive rental equipment – PHP 1,800 • Fun Dive own equipment –PHP 1,400 **Note: Absolutely no "freebies" which violate the intent of this Agreement are allowed, i.e., no free dives, masks, t-shirts, meals, photos, etc.* **Second Condition (agreed upon 03 August 2013)** The following penalty will apply and be enforced by BASS rigorously and without favoritism. • PHP 15,000 per customer per incident. **Third Condition (agreed upon 10 July 2014)** No commission exceeding 10% (ten percent) of the above prices may be paid to any entity (travel agents, tour guides, commissioners, resorts, hotels, booking agents, etc.) on Boracay Island for bookings made by customers on the island. Written records must be kept to document transactions signed by customers and/or agent regarding fees paid.	• Open Water Learning course – PHP 20,000 • **Advance Open Water Diver course or equivalent – PHP20,000** • **Advance Open Water Diver Learning course – PHP16,000** • **Rescue Diver course or equivalent – PHP 25,000** • **Rescue Diver Learning PHP20,000** • Enriched Air Nitrox Specialty course – PHP 14,000 • Dry Enriched Air Nitrox Course – PHP 10,000 • Discover Nitrox – PHP 3,000 • **Fun Dive rental equipment – PHP 2,000** • **Fun Dive own equipment – PHP 1,600** **Note: Absolutely no "freebies" which violate the intent of this Agreement are allowed, i.e. no free dives, masks, t-shirts, meals, photos etc.* **Second Condition:** The following penalty will apply and be enforced by BASS rigorously and without favoritism. **PHP 10,000 per customer per incident.** **Third Condition (agreed upon 10 July 2014):** No commission exceeding 10% (ten percent) of the above prices may be paid to any entity (travel agents, tour guides, commissioners, resorts, hotels, booking agents, etc.) on Boracay Island for bookings made by customers on the island. Written records must be kept to document transactions signed by customers and/or agent regarding fees paid.

These provisions clearly eliminate price competition among the Respondents member-dive shops, removing the core dimension of rivalry in the market.

As mentioned earlier, BBASS incorporated in Article VI, Sections 7 and 8 of the 2016 BBASS Rules a mechanism for reporting any violation and imposing penalties for non-observance of the rules and Price Agreements.

Evidence on record shows that BBASS strictly enforced the Price Agreements among its member-dive shops. In a Price Dropping Incident Report dated 15 April 2019,[75] Respondent member-dive shop Free Willy Diving, Corp. reported an incident where Respondent member-dive shop Sharky Diving offered a guest a discount for a dive. BBASS, in an email sent to Sharky Diving's manager, issued a Notice of Violation dated 23 April 2019[76] informing them of the incident report and requiring them to attend a meeting to clarify the issue.

Further, BBASS notified Respondent member-dive shop Go Diving Studio through an email[77] of a report stating that the latter issued a PADI open water certification to a tourist and offered a dive to an airplane wreck for free, which is not allowed under the Price Agreements.

BBASS took advantage of the endorsement requirement prescribed under the 1998 Municipal Ordinance to advance an anti-competitive pricing arrangement among its members. BBASS' meetings were used to discuss and respond to "price dropping" practices in the market,[78] where certain dive shops would offer lower prices in contravention with the "internal agreement" prevailing among dive shops in Boracay.[79] Through BBASS, a *status quo* was established, under which member-dive shops were expected to comply with the Price Agreements.

Section 14(a)(1) is not subject to an efficiencies defense

The Respondents claim that the Price Agreements were intended to protect consumers and the scuba diving industry from abusive practices committed by illegal commissioners around Boracay Island; and that the Price Agreements were only a means to regulate its dive shop members.[80]

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[75] SO, Annex O, Price Dropping Incident Report dated 15 April 2019.
[76] SO, Annex O-1, Notice of Violation dated 23 April 2019.
[77] SO, Annex O-2, Email dated 21 March 2019.
[78] SO, par. 81, The March 2019 Meeting included the 2nd agenda item on the "issue of BBASS on price dropping of some dive shops which affected the prices of all other dive shops in Boracay Island."
[79] SO, Annex E, Transcript of Interview with Mr. Tirol and Atty. Fabila, pp. 49-50.
[80] Boracay Scuba Inc.'s Verified Answer dated 5 June 2022, pp. 4-6; Boracay Viking Diving Center Inc.'s Verified Answer dated 5 June 2022 pp. 4-5; Calypso Scuba Diving International Inc. and Calypso Friday's Joint Verified Answer dated 5 June 2022, pp. 4-6; Fisheye Divers Corp.'s Verified Answer dated 5 June 2022, pp. 4-5; Frog Divers Professional Training Corp.'s Verified Answer dated 5 June 2022, pp. 4-6; Island Staff Diving & Tour Shoppe Inc.'s Verified Answer dated 5 June 2022, pp. 4-6; Scuba Champ Inc.'s Verified Answer dated 5 June 2022, pp. 4-5; Sharky Diving's Verified Answer dated 5 June 2022, pp. 4-5; Underworld Explorer Inc.'s Verified Answer dated 5 June 2022, pp. 4-6; Boracay Big Blue Dive Resort Corp.'s Verified Answer dated 5 June 2022, pp. 4-5; Blue Ocean's Verified Answer dated 5 June 2022, pp. 4-5; Mario Diving Group Co.'s Verified Answer dated 5 June 2022, pp. 4-5; Blue Sea Divers' Verified Answer dated 5 June 2022, pp. 4-5; Diver's Adventure's Verified Answer dated 5 June 2022, pp. 4-5; Easy Dive's Verified Answer dated 5 June 2022, pp. 4-5; Go Diving's Verified Answer dated 5 June 2022, pp. 4-5; Lapu-Lapu Dive Center's Verified Answer dated 5 June 2022, pp. 4-6; Milky's Center & Helmet Diving-Scuba Diving's Verified

The Commission is not persuaded. To reiterate, agreements that fix prices among competitors falling under Section 14(a)(1) are *per se* prohibited. Such agreements are not subject to justification based on efficiencies nor on consumer benefits. Liability attaches upon proof of the mere existence of the anti-competitive agreement, regardless of any underlying justification claimed by the Respondents.

Based on the Bicameral Conference Committee discussions on the PCA, Section 14(a)(1) treats price-fixing as inherently harmful to competition.[81] The mere fact that competitors enter into an anti-competitive agreement is already a violation under Section 14(a)(1).[82] The Price Agreements are examples of the type of conduct that Section 14(a)(1) seeks to prevent. These Price Agreements undermine the basic principle of free market competition by restricting independent pricing decisions among competing dive shops.

Respondents' Price Agreements cannot, in any way, be justified as a regulatory measure aimed at promoting the scuba diving services industry in Boracay. In the same vein, Respondents cannot invoke the 1998 Municipal Ordinance as a justification. While said ordinance requires endorsement of BBASS for diving shops to operate within the Municipality of Malay, it does not grant BBASS with the regulatory authority over the industry nor does it authorize BBASS to fix or regulate prices for scuba diving services. The requirement of endorsement is administrative in nature and does not confer the power to control market prices in the industry.

On its face, and as clearly established by the totality of evidence, the 2016 BBASS Rules and Price Agreements constitute price-fixing arrangements prohibited under Section 14(a)(1).

In an attempt to absolve themselves from liability, nine (9) Respondents[83] brought to the attention of the Commission the passage of 2022 Municipal Ordinance.[84] The 2022 Municipal Ordinance sets tariff rates for various water sports activities within the Municipality of Malay, including scuba diving services, which are similar with the Price Agreements, which reads:

"(e) TARIFF RATES OF BORACAY BUSINESS ASSOCIATION OF SCUBA DIVING SHOP.

Answer dated 5 June 2022, pp. 4-6; Neptune Dive Center's Verified Answer dated 5 June 2022, pp. 4-5; Ocean Phil Dive Center's Verified Answer dated 5 June 2022, pp. 4-6; Whitebeach Divers Boracay's Verified Answer dated 5 June 2022, pp. 4-6; and Yegrina Dive Center's Verified Answer dated 5 June 2022, pp. 4-5.

[81] Transcript of the Bicameral Conference Committee on the Disagreeing Provisions of Senate Bill No. 2282 and House Bill No. 5286 (Fair Competition Act of 2015) dated 5 June 2015, p. 8.

[82] *Id.*

[83] Respondents member-dive shops 1) Divegurus Diving Services, 2) Aqualife Divers Academy, 3) Ke & Sam Dive Corp., 4) Paradise Dive Center, 5) Free Willy Diving, Corp., 6) Whitebeach Divers Boracay, 7) Boracay Big Blue Dive Resort Corp, 8) Easy Dive, and 9) Frog Divers Professional Training Corp.

[84] Respondents Divegurus, et. al's Verified Answer dated 25 May 2022; Respondents Whitebeach Divers, et.al's Consolidated Supplemental Answer dated 5 October 2022; The ordinance took effect on 17 March 2022, superseding the 1998 Municipal Ordinance.

DESCRIPTION	NET RATES	PUBLISH RATES
1) Introductory Dive or Discover Scuba Diving		3,000.00
2) Introductory Dive or Discover Scuba Diving		2,500.00
3) PADI Scuba Diver Course or equivalent		16,000.00
4) Open Water Diver or equivalent		22,000.00
5) Advanced Open Water Diver Course		17,000.00
6) Rescue Diver Course or equivalent		21,000.00
7) Enriched Air Nitrox Specially (sic) Course		14,000.00
8) Discover Nitrox		3,000.00
9) Fun Dive Rental Equipment		1,800.00
10) Fun dive Own Equipment		1,400.00"

The defense raised by the Respondents is unavailing. The passage of the 2022 Municipal Ordinance does not in any way legitimize the execution and implementation of the Price Agreements in question. The 2022 Municipal Ordinance has no retroactive effect, thus the implementation of the 2016 BBASS Rules as well as the 2018 and 2019 Price Agreements remain to be prohibited under Section 14 (a)(1) of the PCA.

As a matter of fact, the PCC issued an Advisory Opinion to the Malay LGU in 2023 discussing the impact of the 2022 Municipal Ordinance on competition in the water sports activities in the locality. The uniform rates and penalties imposed adversely affect consumers' choice and welfare under the guise of protecting the quality of services through regulation. Thus, the Commission encourages the Malay LGU to revisit its 2022 Municipal Ordinance to promote free and fair competition in these markets in accordance with the PCA's objectives. The 2022 Municipal Ordinance is also inconsistent with the National Competition Policy, which is an administrative order signed by the President.[85]

Fines

Section 29(a) of the PCA, in relation to Section 6.1, Article I, Rule VI of the PCC Rules of Procedure, provides that entities found to have violated Section 14(a)(1) are subject to a fine in an amount up to One Hundred Ten Million Pesos (PHP 110,000,000) for the first offense.[86]

The Commission determines the amount of fines starting with the basic fine based on the Relevant Turnover of the Respondents.[87] The basic fine is then adjusted based on the duration of the infringement in years and other attending factors.[88] However, Rule VI Section 6.7 of the PCC Rules of Procedure provides that the Commission may, in its discretion, depart from the general methodology for the setting of fine in the interest

[85] NEDA-PCC Joint Memorandum Circular No. 01-2020, s. 2020 dated 30 July 2020; Administrative Order No. 44, s. 2021, *Directing the Adoption and Implementation of the National Competition Policy*.
[86] As amended by PCC Memorandum Circular No. 21-001, *Adjusting the Schedule of Fines for Violations of the Philippine Competition Act (PCA) of the 2017 Rules of Procedure of the Philippine Competition Commission and the Rules of Merger Procedure*.
[87] PCC Rules of Procedure, sec. 6.2 and 6.3.
[88] PCC Rules of Procedure, sec. 6.4.

of substantial justice, equity, and fairness. In this case, there were no sufficient documents relating to the Respondents' relevant turnover that can be used to compute the fines. In lieu thereof, the Commission sets the fines based on the factors on record, including: (i) the nature of the infringement (price-fixing and restrictions on non-price terms); (ii) BBASS's role as facilitator and enforcer; (iii) the Respondents member-dive shops' status as micro, small, and medium enterprises (MSMEs); [89] and (iv) the need for deterrence.

As discussed above, the Commission considers that BBASS acted as a facilitator of the price-fixing scheme. This role is akin to an instigator, an aggravating circumstance under Section 6.4(a)(1) of the PCC Rules of Procedure.

For the Respondents member-dive shops, the Commission observes that all the Respondents member-dive shops belong to the MSME sector. The Commission recognizes, as a mitigating circumstance, the fact that the issuance of the license to operate a dive shop is hinged on accepting the terms of the 2016 BBASS Rules and the Price Agreements. Further, the Commission also recognizes the vital role that the Respondents member-dive shops play in rebuilding the tourism industry in Boracay island, post-pandemic. However, it shall not exempt erring trade associations and MSMEs from compliance with competition law.

ACCORDINGLY, the Commission finds the Boracay Business Administration of Scuba Shops and Respondents member-dive shops liable for violation of Section 14(a)(1) of the PCA and holds them to pay a total fine of **TWO MILLION ONE HUNDRED SEVENTY THOUSAND PESOS (PHP 2,170,000.00)** computed as follows:

i. Respondent Boracay Business Administration of Scuba Shops is liable to pay a **FINE** in the amount of **ONE MILLION PESOS (PHP 1,000,000.00)** in accordance with Section 6.4(a)(1) of the PCC Rules of Procedure.[90]

ii. Respondent dive shops members, namely: Eclipse Dive Center Boracay, Inc., Underwaterworld Explorer, Inc., Divegurus Diving Services, Aqualife Divers Academy, Fisheye Divers Corp., Victory Divers, Boracay Big Blue Dive Resort Corp., Boracay Island New Wave Divers, Inc., Boracay Scuba Incorporated, Calypso Scuba Diving International, Inc., Easy Dive, Go Diving, Neptune Dive Center, Island Staff Diving & Tour Shoppe Inc., Ke & Sam Dive Corp., Lapu-Lapu Diving Center, Let's Go Diving, Mario Diving Group Co., Milky's Dive Center & Helmet Diving – Scuba Diving, Ocean Phil, Paradise Dive Center, Party House Diving, Sharky Diving, Scotty's

[89] *See* Republic Act No. 8289, *An Act to Strengthen the Promotion and Development of, and Assistance to Small and Medium Scale Enterprises, amending for that purpose Republic Act No. 6977, otherwise known as the 'Magna Carta for Small Enterprises' and for other purposes*, sec. 1.

[90] PCC Rules of Procedure, Section 6.4. *Factors affecting the Final Fine.* –
(a) Aggravating factors. – The Commission may consider the following as aggravating factors, among others:
(1) That the Respondent is the leader or instigator of the violation; [xxx]

Shangrila, Boracay Viking Diver Center, Inc., Whitebeach Divers Boracay, Yapak K. Dive Academy Inc., Yegrina Dive Center, Diver's Adventures, Blue Ocean, Blue Sea Divers, Boracay D5 Diving Center, Calypso Fridays, Frog Divers Professional Training Corp., Proscuba Diving, Scuba Champ Inc., Sea Gaia, Inc. Diving Resort, Free Willy Diving Corp., and Sea Park Diving Inc. are ***each*** liable to pay a **FINE** in the amount of **THIRTY THOUSAND PESOS (PHP 30,000.00).**

BBASS and Respondents member-dive shops are hereby **ORDERED** to pay the total fine within fifteen (15) days from receipt of this Decision. They are further **DIRECTED** to immediately cease and desist from implementing the *Boracay Business Administration of Scuba Shops (BBASS) Rules and Regulations dated 18 December 2016, Price Agreement between Dive Shops, Instructors, Assistant Instructors and Divemasters Effective January 15, 2018,* and the *Price Agreement between Dive Shops, Instructors, Assistant Instructors and Divemasters Effective February 1, 2019*, and any similar agreements or arrangements that fix the prices for scuba diving services in Boracay.

Failure to comply with this Decision may result in the imposition of additional fines, which shall accrue for each day of non-compliance pursuant to Section 29(b) of the PCA.[91]

SO ORDERED.

11 September 2025.

[91] PCA, Section 29. *Administrative Penalties.* – [xxx] (b) *Failure to Comply with an Order of the Commission.* – An entity which fails or refuses to comply with a ruling, order or decision issued by the Commission shall pay a penalty of not less than fifty thousand pesos (₱50,000.00) up to two million pesos (P2,000,000.00) for each violation and a similar amount of penalty for each day thereafter until the said entity fully complies. Provided that these fines shall only accrue daily beginning forty-five (45) days from the time that the said decision, order or ruling was received; Schedule of fines was adjusted to fifty-five thousand pesos (PHP 55,000.00) up to two million two hundred thousand pesos (PHP 2,200,000.00) per violation pursuant to PCC Memorandum Circular No. 21-001 (19 January 2021).

[redacted]

MICHAEL G. AGUINALDO
Chairperson

[redacted]

MARAH VICTORIA S. QUEROL
Commissioner

[redacted]

MICHAEL B. PELOTON
Commissioner

[redacted]

LOLIBETH RAMIT-MEDRANO
Commissioner

[redacted]

FERDINAND M. NEGRE
Commissioner

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Respondent
President, Boracay Business Administration of Scuba Shops
Owner/Manager, Neptune Dive Center
[redacted]

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[redacted]

RAMIL C. IGNACIO
Manager/Operator of Respondents Blue Ocean and Yegrina Dive Center
[redacted]

FAITH S. MAMING
Manager/Operator of Respondents Blue Sea Divers and Milky's Dive Center and Helmet Diving Scuba
[redacted]

BORACAY D5 DIVING CENTER
Respondent
[redacted]

MARNITA LYNETTE DIXON BOONE
President of Respondent Boracay Island New Wave Divers, Inc.
[redacted]

NINA DON
Manager/Operator of Respondent Boracay Scuba Incorporated
[redacted]

GERALDINE D. JAQUE
Manager/Operator of Respondents Boracay Viking Divers Center Inc. and Diver's Adventure
[redacted]

GIAN CARLO M. EJARES
Manager of Respondents Calypso Scuba Diving International, Inc. and Calypso Fridays
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[redacted]

ADRIMAR S. NUQUI
Manager/Operator of Respondent Island Staff Diving & Tour Shoppe, Inc.

[redacted]

CIRILO T. TIROL
Manager/Operator of Respondent Lapu-Lapu Diving Center
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PARTY HOUSE DIVING
Respondent
[redacted]

RAINER DIEMHARD
Person-in-charge of Respondent Proscuba Diving
[redacted]

SCOTTY'S SHANGRILA
Respondent
[redacted]

PHILIP C. CALIZO
Owner/Manager of Respondent Scuba Champ, Inc.
[redacted]

SEAPARK DIVING, INC.
Respondent
[redacted]

AGATON NEPOMUCENO MAMING
Owner of Respondent Sea World Corp.
[redacted]

TERESITO T. TASOY
Manager of Respondent Sharky Diving
[redacted]

RUBEN FUENTES
Owner of Respondent Underwaterworld Explorer, Inc.
[redacted]

GELLFRED FRANZ PRESILLAS PREGLO
Owner of Respondent Victory Divers
[redacted]

JUNG MOON SIK
President of Respondent Yapak K. Dive Academy Inc.
[redacted]

LET'S GO DIVING
Respondent
[redacted]

SEA GAIA INC. DIVING RESORT
Respondent
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