

**COMPETITION ENFORCEMENT
OFFICE OF THE PHILIPPINE
COMPETITION COMMISSION,**

Complainant,

– versus –

**PHILIPPINE TAEKWONDO
ASSOCIATION,**

Respondent.

PCC CASE NO. E-2020-004

For: Violation of Section 15(b) of
Republic Act No. 10667

X-----X

COMMISSION DECISION NO. 03-E-004/2023

The Case

This case involves the alleged violation of Section 15(b)¹ of Republic Act No. 10667 or the Philippine Competition Act (PCA) by the Philippine Taekwondo Association (PTA) for abusing its dominant position in the market by imposing barriers to entry when it prohibited its members from participating in Taekwondo events organized by other associations, thereby limiting the options of its member-practitioners and precluding other Taekwondo event organizers from growing in the market.

The Parties

The Competition Enforcement Office (CEO) is the investigative and prosecutorial arm of the Philippine Competition Commission (PCC), principally tasked to conduct inquiries into possible violations of the PCA, its implementing rules, and other competition laws.

¹ Section 15. Abuse of Dominant Position -

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(b) Imposing barriers to entry or committing acts that prevent competitors from growing within the market in an anti-competitive manner except those that develop in the market as a result of or arising from a superior product or process, business acumen, or legal rights or laws;

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The PTA is a private non-stock, non-profit association established to propagate, encourage, promote, and develop Taekwondo in the country.² Its members include instructors, referees, Taekwondo practitioners, and Taekwondo clubs or gyms spread throughout the country.³

The Facts

On 29 December 2020, the CEO filed a *Statement of Objections* charging the PTA for violation of Section 15(b) of the PCA. The *Statement of Objections* assails the Memorandum issued by the PTA on 23 August 2019 (2019 Memorandum), which advised all its members to refrain from supporting or participating in unauthorized Taekwondo activities or those which were not coursed through the PTA.

The PTA's 2019 Memorandum was addressed to all PTA Instructors, Regional Management Committee, Referee Committee, and the Department of Education (DepEd) Committee, which reads:

"DATE : August 23, 2019

SUBJECT : UNAUTHORIZED TAEKWONDO ACTIVITIES

We have been informed that UNAUTHORIZED Taekwondo seminars, workshops and other related Taekwondo activities are being conducted by people that are not coursed through the Philippine Taekwondo Association (PTA).

Such UNAUTHORIZED Taekwondo activities are NOT recognized by the PTA and may not conform to the teaching standards of the PTA. Only PTA assigned lecturers can conduct Taekwondo seminars and courses in the Philippines.

The PTA is the only National Sports Association (NSA) recognized by the Philippine Olympic Committee (POC), Philippine Sports Commission (PSC), World Taekwondo Federation (WT), World Taekwondo Asia (WT Asia) and Kukkiwon (World Taekwondo Headquarters).

All PTA members are advised not to support or participate in these UNAUTHORIZED activities. It is the responsibility of all PTA RMCs, Committee Heads and Instructors to report such activities conducted in their respective

² CEO's *Statement of Objections*, pp. 1-2.

³ Philippine Taekwondo Association, *About*, available at <https://philippinetaekwondo.org/about/#>.

areas/regions. Sanctions can be imposed to anybody found violating the guideline."⁴

Further, the CEO also alleged that the 2019 Memorandum is a reiteration of an earlier memorandum dated 25 March 2014 (the 2014 Memorandum) which stated that PTA members who participate or join the events of other Taekwondo associations would face the penalties of one-year suspension, a fine of PHP 50,000.00, or termination of their membership.⁵ As a consequence, the members of the PTA, consisting of more than one million Taekwondo practitioners, chose not to join the events of other Taekwondo associations for fear of the sanctions. The CEO also claimed that the mentioned acts of the PTA prevented other Taekwondo associations from growing in the country and enabled the PTA to preserve its dominance in the relevant market.⁶

On 15 March 2021, the PTA filed its *Answer* denying the allegations made by the CEO for being false. The PTA asserts that it is outside the scope of the PCA because it is a non-stock, non-profit association and is not engaged in commerce or industry. The PTA confirms that it has more than one million members nationwide and has been the accredited National Sports Association (NSA) for Taekwondo for 37 years⁷ and that its Memoranda involve a purely sporting concern.⁸

The PTA is recognized by the Philippine Sports Commission (PSC), the Philippine Olympic Committee (POC), International Olympic Committee (IOC), and the World Taekwondo Federation (WT) as the NSA for Taekwondo in the Philippines.⁹ This allows the PTA to have autonomy and exclusive technical control over the promotion and development of the sport.¹⁰

Even assuming that it was involved in an economic activity, the PTA emphasizes that it still did not abuse its market dominance as the 2014 and 2019 Memoranda were issued pursuant to PTA's responsibility and mandate as an NSA. The PTA explains that the issuance of the 2019 Memorandum was prompted by news of Korean missionaries conducting crash courses and seminars on Taekwondo, even certifying coaches and

⁴ CEO's *Statement of Objections*, pp. 5-6, Annex I.

⁵ CEO's *Statement of Objections*, pp. 2-8.

⁶ CEO's *Statement of Objections*, pp. 36-37.

⁷ PTA's *Answer*, p. 7.

⁸ PTA's *Answer*, pp. 21, 23.

⁹ PTA's *Answer*, p. 7, p. 14.

¹⁰ Republic Act No. 6847, *An Act Creating and Establishing the Philippine Sports Commission, Defining its Powers, Functions and Responsibilities, Appropriating Funds Therefor, and For Other Purposes*, Section 13 (National Sports Associations).

instructors.¹¹ Said Korean missionaries were allegedly using Taekwondo to promote the beliefs of their religious sect and entice people to join their Bible studies.¹²

The PTA is concerned that these coaches and instructors may pass on incorrect training to student athletes who might compete in tournaments against PTA students. The PTA claims that their students and practitioners follow clear protocols and competition rules to avoid injury, especially during competitions.¹³ Thus, it advised its members not to support or participate in these unauthorized activities. Further, the PTA maintains that they cannot guarantee the safety of the participants in these non-PTA events since there was no assurance that these would strictly conform to the standards of the World Taekwondo Federation which the PTA adheres to.¹⁴

The CEO filed its Reply¹⁵ on 5 April 2021. Thereafter, PTA submitted a Motion for Leave to Admit the Attached Rejoinder on 14 June 2021.¹⁶ Both pleadings reiterated their respective positions in the Statement of Objections and Answer.

On 13 July 2022, the Commission conducted a Clarificatory Hearing to clarify the activities of the PTA as an NSA, among others. Representatives from the Philippine Sports Commission were likewise present as resource persons. After the hearing, the parties submitted their respective position papers,¹⁷ and the case was subsequently submitted for decision.

Issues

- I. Whether or not the PCC has jurisdiction over the PTA.
- II. Whether or not the PTA may be held liable for violation of Section 15(b) of the Philippine Competition Act.

¹¹ PTA's *Answer*, p. 14.

¹² PTA's *Position Paper*, p. 20

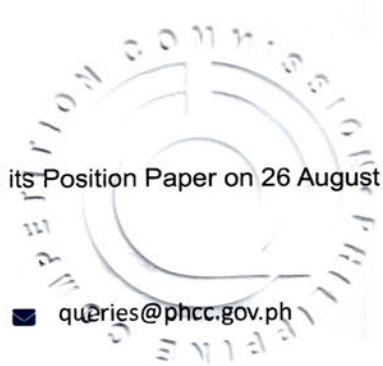
¹³ *Id.*

¹⁴ PTA's *Answer*, p. 9, p. 14.

¹⁵ CEO's *Reply* dated on 5 April 2021.

¹⁶ With the attached *Rejoinder* dated 4 June 2021.

¹⁷ The CEO filed its *Position Paper* on 12 August 2022, and the PTA filed its *Position Paper* on 26 August 2022.



First Issue

PCC's Jurisdiction over PTA

Section 3 of the PCA provides:

"Scope and Application – This Act shall be enforceable against any person or entity engaged in any trade, industry, and commerce in the Republic of the Philippines. It shall likewise be applicable to international trade having direct, substantial and reasonably foreseeable effects in trade, industry or commerce in the Republic of the Philippines, including those that result from acts done outside the Republic of the Philippines.

This Act shall not apply to the combinations or activities of workers or employees nor to agreements or arrangements with their employers when such combinations, activities, agreements, or arrangements are designed solely to facilitate collective bargaining in respect of conditions of employment."

In relation to the above, Section 4(h) of the PCA defines an entity as:

"... any person, natural or juridical, sole proprietorship, partnership, combination or association in any form, whether incorporated or not, domestic or foreign, including those owned or controlled by the government, engaged directly or indirectly in any economic activity."¹⁸

Based on the above-cited provisions, it is clear that the term "association" does not distinguish between a 'for-profit' association or a 'non-profit' association. An association may be considered non-profit following its nature, character, and tax treatment.

Insofar as competition law is concerned, there is no distinction between an entity that is established for profit and one that is not because generating profits is immaterial.

Economic Activity has been defined as, "any activity that consists in the offering of goods or services on a given market"¹⁹ and as long as an entity is engaged in an economic activity, it is subject to competition law. Thus, any combination or association of natural or juridical persons is covered under the PCA.

¹⁸ Republic Act No. 10667.

¹⁹ ECJ, Judgement of 01 July 2008, C-49/07, *Motosyklistiki Omospondia Ellados NPID v. Elliniko Dimosio* (2008). In the Philippine context, the term 'economic activity' has been used and interpreted to mean any activity from which an establishment receives cash and receivables for goods/products and by-products sold, and services rendered. The National Statistics Office (NSO) and the Philippine Statistics Authority (PSA) use the term 'economic activity' in the Census of Philippine Business and Industry (CPBI) to refer to an establishment's source of income; while income or revenue is defined as "cash received and receivables for goods/products and by-products sold, and services rendered." In the 1994 Philippine Standard Industry Classification, sporting activities were actually recognized as a type of economic activity and its classification included "the organization and operation of any kind of sports events outdoor or indoor for professionals or amateurs, as well as the operation of the facilities in which these sports are performed..."

In fact, in various cases, the European Commission has held that the status of an entity as a non-profit making body does not prevent it from engaging in any economic activity.²⁰ Neither does characterizing the activity of an entity, particularly a sports association, as “purely sporting in nature,” remove it from the application of the relevant competition laws.²¹ An association may be defined as an organization formed for a specific purpose that is engaged directly or indirectly in economic activity, whether it be for profit or not.

Contrary to the PTA's position, the Commission finds that the PTA is engaged in economic activity and the subject of their Memoranda is not a purely sporting concern. It bears noting that as an NSA, the PTA collects millions in revenues from donations, sales of event tickets, media rights, advertisements, sponsorships, and royalties, among others.

Its events and tournaments are usually sponsored by the MVP Sports Foundation, in partnership with Smart, Meralco, and PLDT.²² Fees are also required from members to remain affiliated with the association.²³

For the years 2016 to 2020,²⁴ Respondent PTA declared the following revenues in its financial statements:

Table 1. PTA's Annual Revenues for 2016 to 2020.²⁵

Yearly Revenue	Total
2016	PHP 51,217,558.00
2017	PHP 33,786,400.58
2018	PHP 34,448,206.36
2019	PHP 57,549,495.21
2020	PHP 19,249,692.20

As admitted by the PTA, it charges PHP 500.00 as registration fee for PTA-sanctioned competitions; around PHP 2,000.00 to PHP 2,500.00 for initial trainings and seminars for instructors, examiners, referees, and coaches; and PHP 1,500.00 for instructors who wish to accredit their own “dojos” or Taekwondo gyms. Referees and event organizers, on the other hand, receive around PHP 500.00 to PHP 1,000.00 when officiating PTA-sanctioned events.²⁶

²⁰ European Court of Justice's (ECJ) Judgment in Case C-244/94, *Fédération Française des Sociétés d'Assurance, Société Paternelle-Vie, Union des Assurances de Paris-Vie and Caisse d'Assurance et de Prévoyance Mutuelle des Agriculteurs y Ministère de l'Agriculture et de la Pêche* (16 November 1995).

²¹ ECJ Judgment in Case-519/04, *Meca-Medina and Majcen v. Commission of European Communities*, (18 July 2006).

²² CEO's *Position Paper*, p. 6.

²³ CEO's *Position Paper*, p. 6-7, pp. 48-52

²⁴ CEO's *Position Paper*, p. 6

²⁵ CEO's *Position Paper*, p. 6, Annex F, F-1, F-2, and F-3

²⁶ Admissions made by PTA during the Clarificatory Hearing on 13 July 2022.

The collection of fees and generation of funds from varying sources draws the conclusion that PTA is an association engaged in economic activity, and within the ambit of the PCA.

Second Issue

PTA's Abuse of Dominance by Imposing Barriers to Entry

Section 15(b) of the PCA prohibits entities from abusing their dominant position by engaging in conduct that would substantially prevent, restrict, or lessen competition by imposing barriers to entry or committing acts that prevent competitors from growing within the market in an anticompetitive manner. Entities that develop in the market as a result of or arising from a superior product or process, business acumen, or legal rights are exempted from this prohibition.²⁷

The elements of Abuse of Dominant Position by imposing barriers to entry under Section 15(b) are:

- (1) One or more entities are dominant in the relevant market;
- (2) Said entity or entities abused their dominant position by imposing barriers to entry or committing acts that prevent their competitors from growing within the market in an anti-competitive manner and such barrier or act would substantially prevent, restrict or lessen competition; and
- (3) The barrier is not a result of or arising from a superior product or process, business acumen, or legal rights or laws.

Generally, a barrier to entry is any conduct or factor that constitutes a hurdle for potential competitors to enter the market. While this term has eluded precise definition, it has been commonly characterized as high sunk costs, poor access to key inputs and distribution outlets, regulations, economies of scale, network effects, and other exclusionary behavior.²⁸

In this case, the CEO primarily alleged that the PTA had violated Section 15(b) of the PCA through the issuance of the Memoranda that essentially restricted its members from participating in Taekwondo events organized by associations other than the PTA, thereby

²⁷ Republic Act No. 10667, Section 15(i).

²⁸ *Competition Law*, by R. Whish and D. Bailey, Oxford University Press (2021).

limiting the options of its member-practitioners and preventing its competitors from growing in the market.

Dominance in the Relevant Market

The PCA provides that dominance refers to a position of economic strength that an entity holds which makes it capable of controlling the relevant market independently from any or a combination of the following: competitors, customers, suppliers, or consumers.²⁹

The CEO contends that the relevant market is the market for organization of Taekwondo events nationwide.³⁰ Through these Taekwondo events, organizers derive commercial benefits through collection of fees (e.g., participation fees), sponsorships, and/or advertisements, among others.³¹

In this case, the PTA is considered dominant in the market for organizing Taekwondo events because it has complete virtual monopoly over the organization of all official Taekwondo events in the Philippines by virtue of its status as the NSA for Taekwondo. As the NSA for Taekwondo, it has the exclusive authority to select athletes, coaches, and other officials for the Philippine national team to compete in international events, such as the Olympics and the South East Asian Games.³² Hence, it organizes and promotes national and regional Taekwondo events that include promotion tests, seminars or trainings, and tournaments, where it collects registration or participation fees.³³

For comparison, the PTA has over one million members, while relatively newer associations, such as Philippine Taekwondo, Inc. (PTI) and Philippine Taekwondo Union (PTU) only have 3,000 and 1,000 members, respectively. Majority of the Taekwondo events being held in the Philippines per year are either organized or promoted by Respondent PTA.³⁴ In 2020 alone, the PTA was able to organize 50 events, the PTU managed to hold eight (8) events, while the PTI only had five (5) events.³⁵

In the various submissions by the PTA, it has not denied the CEO's allegation that it is dominant in the relevant market as it holds the most number of Taekwondo events in the country. This material allegation of dominance, therefore, is deemed admitted by the PTA.

²⁹ Republic Act No. 10667, Section 4(g).

³⁰ CEO's *Statement of Objections*, p. 10.

³¹ CEO's *Statement of Objections*, p. 10.

³² *Supra* note 10, Section 13(i).

³³ CEO's *Statement of Objections*, p. 3.

³⁴ CEO's *Statement of Objections*, p. 15.

³⁵ CEO's *Position Paper*, pp. 8-9

Imposing Barriers to Entry or Committing
Acts that Prevent their Competitors from
Growing within the Market

Under Section 26 of the PCA, to determine whether an entity has engaged in acts that can be considered anti-competitive, it shall be established whether there is an actual or potential adverse impact on competition in the relevant market caused by the entity's conduct. There must also be a determination of whether the impact is substantial and if it outweighs the actual or potential efficiency gains that result from the conduct.³⁶

According to Section 6 of Rule 133 of the Revised Rules on Evidence, in cases filed before administrative or *quasi-judicial* bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.³⁷ Pertinently, the burden of proof to establish the charges rests upon the complainant.³⁸ In order for the Commission to reach a determination that there has in fact been a violation of the PCA, the CEO must establish the existence of each element of the violation by submitting substantial evidence.

In this case, the CEO has failed to establish with substantial evidence the anti-competitive impact of the PTA's conduct of prohibiting its members from participating in the activities and events by non-PTA sanctioned Taekwondo associations. The CEO insists that the issuance of the Memoranda has effectively limited other Taekwondo associations' access to Taekwondo practitioners and has adversely affected their chances of breaching the market and led to their lack of exposure to the public. However, after a careful review of the submissions of the CEO, the Commission finds that the CEO has failed to establish that the Memoranda has the object or effect of substantially preventing, restricting, or lessening competition in the relevant market. The CEO failed to provide substantial evidence to prove the actual or potential adverse impact on market competition.

To be clear, the Commission does not disregard the possibility that the Memoranda may have, in some way, made organizing events/competition and conducting classes more challenging for PTI, PTU, and other Taekwondo associations. However, the Commission took notice of the circumstances that led to the issuance of the Memoranda and gave credence to the explanation of the PTA that it was acting in accordance with its mandate as an NSA for Taekwondo. Having exclusive technical control over the development of the sport for which they are organized,³⁹ the PTA saw it proper to enact the policies

³⁶ Republic Act No. 10667, Section 26(b).

³⁷ Revised Rules on Evidence, Section 6 Rule 133.

³⁸ *National Bureau of Investigation v. Najera*, G.R. No. 237522, June 30, 2020

³⁹ *Supra* note 12.

embodied in the Memoranda to prevent the sport from being exploited, and at the same time ensuring the safety and well-being of the practitioners of the sport.

The PTA's Mandate as an NSA

The Commission also recognizes that, as the NSA for Taekwondo, the PTA has exclusive control over the development and promotion of the particular sport for which they are organized.⁴⁰ In accordance with this mandate, the Commission agrees that it is the PTA's responsibility to maintain standardized and high quality competition rules and education that conform to international Taekwondo standards and prevent risk of physical and psychological injuries to the athletes, most of which are children.

However, this does not give the PTA and other NSAs unbridled authority to impose conditions on their members that effectively limit the latter's chances to explore other opportunities available in the market. NSAs are not beyond the purview of the PCA. Thus, NSAs are reminded that while they may have the power to control their respective sports and its practitioners, they must exercise caution and be mindful of the possible effects that their actions may have on their members and non-members alike.

The enactment of the PCA serves as a deterrent to practices of exploitation that may have not been thought of as abuses before, but are now considered as anticompetitive acts – for instance, those acts that prevent the entry of and membership in other associations, acts that prevent the growth of other associations, and those that limit and restrict the provision of services and the market therefor contravene the PCA. The PCC will not hesitate to enforce the full purview of the PCA against those entities that violate the law.

WHEREFORE, the *Statement of Objections* dated 29 December 2020 is hereby **DISMISSED**. Respondent PTA must be reminded that, while the Commission recognizes its status as the NSA for Taekwondo, it should refrain from performing acts and issuing directives that have the object and effect of preventing, restricting, or limiting the growth of other Taekwondo Associations.

The foregoing shall not prevent the Commission from pursuing measures that would promote fair competition as provided in the Philippine Competition Act.

SO ORDERED.

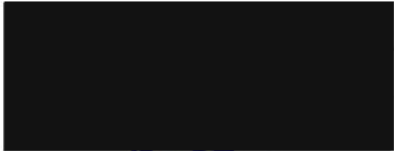
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⁴⁰ *Supra* note 10.



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