

The Pitfalls of a Hybrid Institutional Model for Competition Enforcement: Lessons from the Philippines

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Introduction

The integrated agency model (also known as the administrative or inquisitorial model) of enforcing competition law is useful in ensuring independence, growing expertise, and promoting efficiency in decision-making. While it may be perceived to be unfair, this institutional design can help a new agency such as the Philippine Competition Commission (PCC) benefit from internal capacity-building to deliver enforcement outcomes, and consequently, establish its credibility in the country. This paper suggests that building on the strengths of this model, rather than aiming for a 'perfect' agency that blends the integrated model with the bifurcated agency model,¹ will allow PCC to learn from its experiences more quickly and better develop as an independent agency.

The history of establishing competition law in the Philippines was long and challenging. Republic Act (R.A.) No. 10667 or the Philippine Competition Act (PCA) is one of the longest running bills in the history of the country, having been pending in Philippine Congress for almost 30 years until it was passed in 2015.² Before then, Philippines had no comprehensive competition legislation nor a dedicated competition agency. Instead, some regulators were given competition mandates, which Congress found to have not been given priority in enforcement.³ Accordingly, the creation of PCC comes with great promises of an effective and efficient enforcement of competition law to protect consumer welfare.⁴

To deliver its aims and ensure the creation of an agency with full independence and expertise in competition law,⁵ Congress opted for an integrated model, which places in PCC the power to investigate, prosecute, and decide cases involving violations of the PCA.⁶ This institutional design necessarily highlighted due process concerns, which led PCC to create internal firewalls⁷ between its Enforcement Office, which investigates and prosecutes,⁸ and the commission proper (hereinafter, the "Commission", while "PCC" shall be used to refer to

* This paper was written by the author in her personal capacity for her Competition Enforcement module with Queen Mary University of London. It does not represent the views of the Philippine Competition Commission or of any of its offices or officials.

¹ Michael J. Trebilcock & Edward M. Iacobucci, 'Designing Competition Law Institutions: Values, Structure, and Mandate' (2010) 41 *Loy U Chi LJ* 455, 461.

² Senate of the Philippines, 'After Long Wait, Congress Ratifies Act Penalizing Cartels, Abuse of Dominant Positions' (Press Release, Manila, 2015) < https://legacy.senate.gov.ph/press_release/2015/0611_aquino1.asp> accessed 25 August 2022.

³ H. Vol. 2 No. 56, 16th Congress, 2nd Sess. (2015) 17.

⁴ *Ibid* 17-18, 21.

⁵ *Ibid* 17.

⁶ S 12(a).

⁷ Stella Luz Quimbo, 'PCC: Quasi-court in full swing' *Business Mirror* (Manila, 3 April 2018) < <https://businessmirror.com.ph/2018/04/03/competition-matters/>> accessed 20 August 2022; Johannes Benjamin R. Bernabe, 'Competition Policy and Quality of Institutions' (Forum on Competition in Developing Countries, Manila, 1 February 2018) < <https://youtu.be/ngBGXeATszY?t=11224>> accessed 22 August 2022.

⁸ 2017 Rules of Procedure of the PCC (the "Rules"), Rule II; Rule IV, s 4.1, 4.2, 4.5.

the agency itself) vested with the decision-making power. This appears to address two main issues: one, alleviate fears that PCC will abuse its independence by stepping on entities' due process rights;⁹ and two, strengthen PCC's independence by further insulating those who investigate and prosecute from external and internal political pressure. This also means that while Congress created an integrated model, PCC, in the exercise of its delegated rule-making authority,¹⁰ virtually built a bifurcated agency model. This paper assesses the success of this hybrid model by delving into the supposed advantages and disadvantages of the integrated model created by Congress and reflecting on how the provisions of the PCA and the 2017 Rules of Procedure of the PCC (the "Rules") seek to enforce this.

The advantages: Independence, efficiency, and expertise

It is well-accepted that independence is at the core of good governance,¹¹ and more specifically, of effective competition enforcement.¹² Its overall goal is to ensure that the decision-making process of the competition agency is neutral, transparent, and based on objective evidence.¹³ Independence also supports the pursuit of prioritising consumer welfare, which the PCC finds more in line with the economic foundations of competition law,¹⁴ over other public interest objectives. According to Kovacic and Hyman, ideally, a competition agency is both autonomous and accountable.¹⁵ Having autonomy will allow it to pursue cases beholden to no one, while it remains accountable for its decisions and budgetary priorities.¹⁶ Conscious of this, Congress created the PCC as an "independent quasi-judicial body" empowered to implement the PCA.¹⁷ The five members of its Commission are appointed for a fixed and non-renewable term of seven years with security of tenure¹⁸ and exemption from salary standardisation in Philippine government service.¹⁹ While PCC is attached to the Office of the President for administrative purposes,²⁰ oversight of its functions is mainly vested with the Congressional Oversight Committee on Competition especially created from the relevant committees of Congress.²¹ Theoretically, this institutional design allows PCC to operate independently and efficiently, unattached to a political body, while remaining adequately accountable to the public.

⁹ 1987 Constitution, Art III, s 1.

¹⁰ PCA, s 50.

¹¹ UNCTAD secretariat, 'Independence and accountability of competition authorities' (Ninth session, United Nation Conference on Trade and Development, Geneva, 15-18 July 2008) <https://unctad.org/system/files/officialdocument/CCPB_IGE2014_UNCTADNOTE_EMCF_en.pdf> accessed 18 August 2022.

¹² Tay-Cheng Ma, 'Competition authority independence, antitrust effectiveness, and institutions' (2010) 30 International Review of Law and Economics 226, 227.

¹³ UNCTAD secretariat (n 11) [4].

¹⁴ Bernabe (n 7); H. Vol. 2 No. 56 (n 3).

¹⁴ Rules, Rule II; Rule IV, s 4.1, 4.2, 4.5.

¹⁵ William E. Kovacic and David A. Hyman, 'Competition Agency Design: What's on the Menu?' (2012) GWU Legal Studies Research Paper No. 2012-135 <<https://ssrn.com/abstract=2179279>> accessed 22 August 2022.

¹⁶ Ibid 5.

¹⁷ PCA, s 5.

¹⁸ PCA, s 7.

¹⁹ PCA, s 9. The exemption from salary standardization extends to all PCC personnel.

²⁰ PCA, s 5, 6, and 9.

²¹ PCA, s 49.

Independence, however, is a complicated concept. The United Nations Conference on Trade and Development (UNCTAD) recognises that an assessment of a competition authority's independence involves an examination not only of de jure independence or what is expressed in statutes, but also of de facto independence or what is in practice.²² Indeed, independence is not pursued as a goal in itself, but is the means with which PCC is supposed to maximally operate to achieve its competition mandate. In this regard, the best measure of its independence is arguably whether PCC delivers the goals envisioned by Congress and promised by its independence, which are primarily expertise in competition law and efficiency in delivering results.

Certainly, the independence of an institution depends on the appointees' personalities and unwritten political traditions as much as it does on the agency's legal structure.²³ The PCA tries to account for personalities by indicating that the members of the Commission be "of good moral character, of recognized probity and independence".²⁴ While this phrase typically appears in similar provisions in Philippine law,²⁵ there is no guidance as to what constitutes such characteristics. These same terms are likewise not defined in the Code of Conduct and Ethical Standards for Public Officials and Employees, which instead expounds on norms of professionalism, justness and sincerity, and political neutrality, among others.²⁶ At best, jurisprudence appears to find good moral character lacking when there is proven record of dishonesty.²⁷ Accordingly, the lack of guidelines in this area makes this requirement inadequate to judge the character of the appointees.

Independence can also be guaranteed by ensuring that the Commission has the necessary expertise to lead the institution. This should also facilitate Congress' goal of creating an integrated agency with the relevant expertise in the field.²⁸ In this regard, the PCA requires appointees to the Commission to be distinguished in the fields of economics, law, finance, commerce or engineering.²⁹ Despite this legal requirement, however, the context and culture under which these appointments are made need to be considered. The chairperson and commissioners are appointed by the President, who is directly elected by the people and who would have his own political agenda. As noted by Ditucalan, while the PCC does not directly report to the President, it can nonetheless be pressured through other means, such as by the President's allies in the Congress.³⁰

²² UNCTAD secretariat (n 11) [7].

²³ UNCTAD secretariat (n 11) [6].

²⁴ PCA, s 6.

²⁵ Versions of this phrase appear in the 1987 Constitution's provisions for appointment to the Judiciary (Article VIII, s 7), to the Ombudsman (Article XI, s 8), and to the governing board of the central bank (Article XII, s 20). It also appears in other statutes, such as R.A. No. 11215, s 6(d) on the appointment of doctors to the National Integrated Cancer Control Council.

²⁶ R.A. No. 6713, s 4.

²⁷ *Samson v. Caballero*, A.M. NO. RTJ-08-2138, 5 August 2009.

²⁸ H. Vol. 2 No. 56 (n 3) 17.

²⁹ PCA, s 5.

³⁰ Alizedney M. Ditucalan, 'Institutional Design of Philippine Competition Law' (2018) 8(1) KLRI Journal of Law and Legislation 29.

In the last six years of PCC's operation, it was called in congressional hearings to investigate alleged cartels in different industries,³¹ which led it to open some investigations³² despite minimal information from these congressional hearings on the anticompetitive practices involved. Even in its merger review, the PCC faced some issues. In 2018, after voiding a transaction of a close ally of the President,³³ a bill was proposed in the senate to increase PCC's merger threshold from PHP 1 billion to PHP 10 billion³⁴ virtually suspending its merger review powers. While how it handled these interventions can be a testament to PCC's competence,³⁵ the interference can take a toll on the agency's already limited resources, which then affects its ability to deliver results. Notably, two major cartel investigations in the agricultural sector opened by PCC in 2017 and 2018 due to the pressure from congressional hearings have yet to be concluded.³⁶ Despite its supposed expertise, PCC appears to be unable to fully dedicate its time and personnel to issues that in its professional belief are truly problematic. Even with its statutory independence, PCC suffers the consequences of becoming "too accountable" by spending a decent amount of time responding to public inquiries and legislative demands.³⁷

Managing these interventions becomes more challenging if it is considered that PCC still relies on Congress for funding.³⁸ Agency budgets are defended and deliberated in the House of Representatives and approved by the President.³⁹ In 2018, the Philippine Commission on Human Rights, a known critic of then President, was allocated a budget of

³¹ Examples from the agricultural sector include the alleged garlic and rice cartels. See Interaksyon, 'Antitrust agency may be called in to probe garlic 'cartel'' *Philippine Star* (Manila, 12 July 2017) < <https://interaksyon.philstar.com/breaking-news/2017/07/12/84405/antitrust-agency-may-be-called-in-to-probe-garlic-cartel/>> accessed 23 August 2022; Maris Federez, 'Lawmaker seeks PCC probe on abusive rice importers' Yahoo News (Manila, 4 September 2019) < <https://ph.news.yahoo.com/lawmaker-seeks-pcc-probe-abusive-022028453.html>> accessed 23 August 2022.

³² Elijah Joseph C. Tubayan, 'PCC looking into alleged cartel controlling garlic' *Business World* (Manila, 9 August 2017) < <https://www.bworldonline.com/economy/2017/08/09/24669/pcc-looking-alleged-cartel-controlling-garlic/>> accessed 23 August 2022; PCC, 'Notice of the Conduct of Full Administrative Investigation' (Rice 18-0018, Quezon City, 2018) < <https://www.phcc.gov.ph/ceo-fai-notice-18-0018/>> accessed 23 August 2022.

³³ Chrisee Dela Paz, 'Dennis Uy's Udenna to challenge PCC decision or file notification' *Rappler* (Manila, 19 February 2018) < <https://www.rappler.com/business/196406-dennis-uy-udenna-corporation-options-pcc-decision/>> accessed 23 August 2022; Cliff Venzon, 'Philippines competition watchdog takes on Duterte's acquisitive friend' *Nikkei Asia* (9 July 2018) < <https://asia.nikkei.com/Economy/Philippines-competition-watchdog-takes-on-Duterte-s-acquisitive-friend#>> accessed 23 August 2022.

³⁴ Roy Stephen C. Canivel, 'Firm favors M&A threshold of P10B, but antitrust watchdog warns against it' *Inquirer* (Manila, 13 March 2018) < <https://business.inquirer.net/247571/firm-favors-ma-threshold-p10b-antitrust-watchdog-warns>> accessed 23 August 2022.

³⁵ The PCC was able to avoid having its merger threshold increased to PHP 10 billion by increasing it ahead to PHP 2 billion for the size of transaction and PHP 5 billion for the size of person, supported by its study under 'PCC Policy Statement 18-01: On the Adjustment of the Thresholds for Compulsory Notification of Mergers and Acquisitions' (Quezon City, 2018) < <https://www.phcc.gov.ph/pcc-policy-statement-18-01-adjustment-thresholds-compulsory-notification-mergers-acquisitions/>> accessed 23 August 2022.

³⁶ Enforcement, 'Closure of Investigations' < <https://www.phcc.gov.ph/category/news-updates/coi/>> accessed 23 August 2022.

³⁷ Kovacic and Hyman (n 15) 6.

³⁸ PCA, s 51.

³⁹ 1987 Constitution, Art VI, s 24, 27.

PHP 1,000 (roughly GBP 15 or USD 18).⁴⁰ This has undeniable chilling effect on other agencies, including the PCC, which can adversely affect the work that they pursue. UNCTAD highlights that inability to obtain funding affects the agency's enforcement activities as well as its ability to monitor the impact of its enforcement.⁴¹ Without ability to do the latter, PCC will find it even more challenging to leverage the public's support to its advocacies and defend its proposed budget in Congress.

In terms of the Commission's independence, although safeguards are in place to protect their tenure with the PCC, their response to these political pressures can affect their attractiveness to be appointed in another post in the future. As noted by Jenny, the pressure to mediate between different interest groups can distract appointees from maximising the use of their technical skills in competition enforcement.⁴² Other than its possible effects on how the Commission imposes penalties,⁴³ in the Philippines, this can mean delay in the Commission's decision-making to avoid offending the appointing authority, especially in enforcement cases. Notably, in the last six years, the Commission has only issued one decision⁴⁴ under the umbrella of its enforcement powers.⁴⁵ While the Commission's inability to be renewed in their posts in the competition agency can safeguard their ability to vote in some way, as noted in Brazil,⁴⁶ this can also reduce their stake in seeing through the success of the agency when they are concerned about getting appointed elsewhere after their term. There can be temptation to leave controversial matters behind for the next set of appointees to deal with. This is problematic in two important ways: one, it undermines PCC's goal of establishing its credibility by pursuing relevant cases, which is critical to a new agency with a heavily technical mandate; and two, it defeats the very purpose of Congress in creating an integrated agency that can efficiently implement the PCA. In its deliberations of the PCA, Congress noted the lack of judicial guidance in enforcing competition law.⁴⁷ Jurisprudence will not develop if the Commission continues to not issue any decisions.

Consequently, while appointment of its officials and approval of the agency's budget are useful tools to hold PCC accountable to the public,⁴⁸ these should not be used to frustrate its aims and forestall the benefits of having an independent competition authority. Understandably, there can be concerns regarding the use of fines to raise the agency's

⁴⁰ CNN Philippines Staff, 'House gives CHR ₱1,000 budget for 2018' CNN Philippines (Manila, 12 September 2017) <<https://www.cnnphilippines.com/news/2017/09/12/Commission-on-Human-Rights-CHR-House-budget.html>> accessed 23 August 2022.

⁴¹ UNCTAD secretariat (n 11) 14.

⁴² Frederic Jenny, 'The institutional design of Competition Authorities: Debates and Trends' (2016) ESSEC Business School < <https://ssrn.com/abstract=2894893>> accessed 24 August 2022.

⁴³ Ibid 37.

⁴⁴ Competition Enforcement Office of the PCC vs. Urban Deca Homes Manila Condominium Corporation and 8990 Holdings, Inc., Commission Decision No. 01-E-001/2019, 30 September 2019; see also 'Commission Decisions' < <https://www.phcc.gov.ph/category/news-updates/phcc-decisions/>> accessed 23 August 2022, where most decisions are merger-related and subject to statutory deadlines under PCA, s 17.

⁴⁵ This refers to the investigation and prosecution of anti-competitive agreements and abuse of dominance cases under the Rules, s 1.3 cf. PCA, Ch 3, as opposed to its merger review powers under PCA, Ch 4.

⁴⁶ Ana Paula Martinez and Mariana Tavares de Araujo, 'Decision-Making Powers and Institutional Design in Competition Cases: The Brazilian Experience' (2014) 10(1) Competition Policy International 179, 188.

⁴⁷ H. Vol. 2 No. 56 (n 3) 18.

⁴⁸ Kovacic and Hyman (n 15) 5.

budget, as it may lead to more type 1 errors or to the inflation of fines.⁴⁹ However, it is not uncommon in the Philippines to grant an agency with fiscal autonomy or to indicate in its enabling law that the agency's budget cannot be reduced to less than that of the previous year.⁵⁰ The latter option ensures that the agency will at least be able to continue its work, even as its enforcement priorities may not coincide with that of the Congress. Moreover, as PCC gains more experience, it may be able to better serve its mandate and maximise its talent pool if its commissioners are appointed from career service personnel who rose from the ranks of the agency. Nonetheless, to avoid PCC's isolation from the government's policy decisions, its chairperson can remain to be an appointee of the President, with possibility of renewal for one term. This arrangement will give PCC's leadership a stake in ensuring the long-term success of the agency, while relieving them of the pressure of vying for their next appointment.

Indeed, PCC also needs to mature as an agency and develop a culture and reputation that will earn the respect and deference of the appointing body and the legislature. Giving it more independence at this early stage certainly comes with its own risks. However, a theoretically independent competition agency that toes the line due to the idiosyncrasies in its design will not be able to fully deliver on any of the promises of both autonomy and accountability. Choosing its battles early on will at least allow the PCC to learn and grow from the independent exercise of its powers and functions.

The disadvantages: Fairness, accountability, and transparency

A known disadvantage of the integrated model is the perception of procedural unfairness, which can then undermine the agency's legitimacy.⁵¹ Arguably, this concern should be mitigated by the pseudo-bifurcated agency model that PCC adopted in its Rules.⁵² This arrangement should also further insulate PCC's Enforcement Office, which handles the investigation and prosecution of anti-competitive conduct under a firewall,⁵³ from the possible political pressure to its Commission. On paper, this is a candidate for a perfect hybrid of autonomy and accountability.

There are however complications to simply combining two different institutional models. For one, despite this structure and the alleged firewall, it is the Commission that decides whether a complaint proceeds to preliminary inquiry, or the first stage of the investigation process.⁵⁴ At this point, the Commission already elects whether it must dedicate agency resources to pursue a matter. This then already triggers certain biases. Forrester notes that policy bias arises from the desire "to show a high level of enforcement activity".⁵⁵ The temptation for PCC to prove its worth as a new agency, along with its funding concerns and

⁴⁹ This is akin to concerns on the importance European Union's DG Competition places on the amounts of fines it imposes, as noted in Ian S. Forrester, 'Due process in EC competition cases: A distinguished institution with flawed procedures' (2009) 34 E.L. Rev. 817, 836-837.

⁵⁰ This is the case for the Judiciary under the 1987 Constitution, Art VIII, s 3 and the Bangko Central ng Pilipinas (central bank) under R.A. No. 7653, s 1.

⁵¹ Kovacic and Hyman (n 15) 11-12.

⁵² Rules, Rule II; Rule IV, s 4.1, 4.2, 4.5.

⁵³ Quimbo (n 7).

⁵⁴ Rules, s 2.3.

⁵⁵ Forrester (n 49) 836-837.

the pressure from elective officials, can provoke a possible policy bias to open investigations that indulge PCC's stakeholders from the government. This is not necessarily corrupt nor unethical, as competition agencies must also be fully informed of the political, regulatory, and market contexts where they operate.⁵⁶ However, it can consume the time and resources PCC can otherwise dedicate to cases it found from an impartial examination of the market. This possible policy bias can also cloud PCC's consideration of the value of the information from these legislative interventions considering the technical and complex nature of competition law and its novelty in the Philippines.⁵⁷

The effect of hindsight bias in the internal operations of an agency with PCC's hybrid institutional design also cannot be underestimated. Hindsight bias arises in an effort "to justify one's past efforts" particularly to outsiders and supervisors.⁵⁸ According to Trebilcock and Iacobucci, one advantage of the integrated model is its ability to capitalise on the more frequent interaction between its investigators and adjudicators.⁵⁹ This arrangement should allow the agency's officials and personnel to learn from each other more efficiently towards developing the agency's expertise.⁶⁰ However, the self-imposed firewall adopted by the PCC hinders this open communication between the Commission and the Enforcement Office. Hence, while the Commission decides what matters to investigate, it is expected to cede control of the investigations it opened to one of its subordinate offices. This is despite the fact that the Enforcement Office technically remains under the Commission's effective control and supervision.⁶¹

According to the Commission, the interaction between itself and the Enforcement Office is limited to progress reports to ensure that timelines are kept with.⁶² Jenny warns that the lack of meaningful feedback in this type of arrangement can lead to the "suboptimal use of resources and/or an ineffective process if the two parts of the administrative agency do not share the same vision of the goals of the institution".⁶³ In PCC's case, the possibility of conflict is also apparent. Opening the investigation already triggers a hindsight bias on the part of the Commission. Insulating it thereafter makes it more challenging for both parties to reach an understanding, and more importantly, to benefit from each other's point of view openly. The arrangement also fails to consider the profound effect of external pressures on the Commission to deliver on what it set out to do.

⁵⁶ UNCTAD secretariat (n 11) [52]; Philip Lowe, 'The design of competition policy institutions for the 21st century — the experience of the European Commission and DG Competition' *Competition Policy Newsletter* (No. 3, Brussels, 2008) < https://ec.europa.eu/competition/publications/cpn/2008_3_1.pdf > accessed 18 August 2022.

⁵⁷ UNCTAD secretariat (n 11) [9].

⁵⁸ Forrester (n 49) 836-837.

⁵⁹ Trebilcock and Iacobucci (n 1) 470.

⁶⁰ Ibid.

⁶¹ For one, 30% of the score that determines the final ranking of PCC's delivery units, including the Enforcement Office, for the purpose of granting the staff's performance bonus is based on the score to be given by the members of the Commission. See Office Circular No. 2019-10-001 on the 'System of Ranking PCC Delivery Units for the Grant of the FY 2019 Performance-Based Bonus (PBB)' dated 1 October 2019 < <https://www.phcc.gov.ph/wp-content/uploads/2019/10/9.1-OC-2019-10-001.pdf> > accessed 24 August 2022. This is the latest version available on PCC's website.

⁶² Bernabe (n 7).

⁶³ Jenny (n 42) 25-26.

While a healthy disagreement can be beneficial in any institution, the strong possibility of conflict tugs on three important issues for a new agency. One is staff retention. The frustration that can arise from disagreeing without an appropriate venue to discuss it can lead to high levels of staff attrition that is already a problem in new competition agencies for other reasons, such as lower pay compared to the private sector.⁶⁴ Second is efficiency. As observed in France, the inability of the board to deal with unsatisfactory investigation can lead it to send back the charge to its investigators without telling them where it is lacking.⁶⁵ Investigators can then be prompted to file several remotely related charges to avoid missing out on anything important.⁶⁶ This possibility can put a strain on PCC's time and resources, which it is much less able to handle as a young agency from a developing country. To have its four or five investigators working on cases that cannot be finalised in four to five years is neither sustainable nor productive. Finally, the firewall puts PCC in a weaker position to advocate for competition law. Instead of being able to put a united front, both the Enforcement Office and the Commission will be careful to speak on PCC's enforcement activities in fear of disclosing information that will violate its Rules. This in turn leads to lack of transparency and failure to communicate its capabilities to the public, which are important for it to establish its credibility.

Despite the issues with PCC's hybrid model, it was certainly created with good intentions, primarily to address concerns of procedural fairness in an integrated model.⁶⁷ It is likewise important to acknowledge that procedural fairness is critical in establishing PCC's legitimacy early on.⁶⁸ However, PCC must reflect on the deeper reason for the public's concerns. As noted by one critic of the European Union model, the issue with integration relates more to the "perceived unfairness of the intellectual process of reaching a decision".⁶⁹ This doubt can be worse in the Philippines, which ranks 117th over 180 countries in the Corruption Perception Index, indicating widespread perception of corruption in the country.⁷⁰ In this regard, a set of rules distinguishing the investigative and prosecutorial functions of the agency from its adjudicative function would have limited impact, especially if the possibility of bias can already be sensed from the moment the Commission directs the opening of an investigation. Arguably, insisting on the presence of a firewall while sharing the same office can contribute to the perception of the agency's lack of transparency, thereby undermining the purpose for building the firewall.

There is certainly no perfect design that can guarantee fairness and accountability. Some proponents of the integrated model therefore argue that "It is better to have potentially biased experts than to have independent, but uninformed, adjudicators".⁷¹ This statement however underestimates the value of awareness. It is possible that the first step a new agency can take towards fairness is to acknowledge the weaknesses in the system and attempt to directly address it one by one. In the case of PCC, it can recognise that procedural

⁶⁴ UNCTAD secretariat (n 11) [14].

⁶⁵ Jenny (n 42) 25-26.

⁶⁶ Ibid 25-26.

⁶⁷ Bernabe (n 7).

⁶⁸ Kovacic and Hyman (n 15) 11.

⁶⁹ Forrester (n 49) 841.

⁷⁰ 'Corruption Perceptions Index' (Transparency.org, 2021) <
<https://www.transparency.org/en/cpi/2021/index/ph>> accessed 24 August 2022.

⁷¹ Trebilcock and Iacobucci (n 1) 470.

due process in administrative proceedings principally include the right to a notice and hearing and to a finding based substantial evidence.⁷² All of these are already provided in its Rules.⁷³ Denying itself the benefits of integration therefore adds little to PCC's cause. Whereas, becoming forthcoming with the pros and cons of its integrated institutional design will allow PCC to convey more transparency and accountability than a set of rules can.

Conclusion

No institutional design can completely deliver the benefits of competition law in the same way that competition law is not a 'cure-all'. PCC's hybrid model, while sound in theory, neglects to maximise the potential of the integrated model while also falling short in establishing the agency's legitimacy and fairness. As a young agency, PCC's credibility can benefit from having steadfast experts and advocates and from delivering efficient outcomes—both strong features of the integrated model. In the end, there is no greater showing of independence and accountability possible than maximising one's strengths while remaining open to learning from the consequences of one's imperfections.

⁷² *Vivo v. PAGCOR*, G.R. No. 187854, 12 November 2013.

⁷³ S 2.7, 2.9, 2.10; s 4.4, 4.7, 4.15; art IV-VI; art IX, among others.