

INFRASTRUCTURE, TRANSPORTATION AND LOGISTICS ADVOCACY PAPER 2018



EU - PHILIPPINES
BUSINESS NETWORK

ABOUT EPBN



OUTREACH



SUPPORT SERVICES



ADVOCACY

The EU-Philippines Business Network (EPBN) established in January 2014, is a project co-funded by the European Union and implemented by a consortium of European business organizations based in the Philippines. Led by the European Chamber of Commerce of the Philippines (ECCP), partner chambers include the Belgian-Filipino Business Club, British Chamber of Commerce Philippines, French Chamber of Commerce of the Philippines, German-Philippine Chamber of Commerce and Industry, Italian Chamber of Commerce of the Philippines, Nordic Chamber of the Philippines, and Spanish Chamber of Commerce of the Philippines.

The overarching objective of EPBN is to support European companies, especially small-medium enterprises, to increase exports to and investments in the Philippines by facilitating market access and ensuring a level playing field for all companies.

Adopting a threefold approach of outreach, support services and advocacy, EPBN provides a strong support system at every stage of entry to the Philippine market for European businesses. In delivering these services, EPBN cooperates closely with its partner organizations in other Association of South East Asian Nation (ASEAN) countries to provide information on ASEAN as a market, promoting the Philippines as a gateway to the region.



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Positions expressed in the advocacy papers are the result of the activities of the 14 Sector Committees working under the EU-Philippines Business Network.

METHODOLOGY

The 2018 edition of the EPBN Advocacy Papers features issues and recommendations formed after extensive discussions between members of the EPBN sector committees, dialogues and meetings with representatives from the Philippine Government, the EU Delegation to the Philippines and other EU national chambers and embassies. The EPBN has also taken into consideration the information gathered from organizing different events, participating in numerous hearings and committee meetings in both chambers of the Philippine Congress, as well as in private sector consultations held by several executive and regulating agencies of the government.

Further, the recommendations stated in each paper were created based on the discussions during the quarterly sector committee meetings, most of which were conducted with a representative from a concerned government agency based on the issues to be discussed. In close cooperation with the sector committee leaders and members, the EPBN secretariat thoroughly analyzed every issue and advocacy recommendation to ensure that they are in line with EU business interests and priorities. Once the secretariat has finalized the first draft of each sector paper, it was then circulated to the Committee members, Market Access Team Meeting for consultation and subsequently, gathered inputs to be included in the final draft of the papers.

The assessment of the status of each recommendation included in 2017 EPBN Advocacy Papers were examined under the following criteria:

Completed/Substantial Progress: Recommended action has either been completed or there has been significant progress towards the realization of the recommendation.

Some Progress: Movement towards realizing the recommendation has been made, but substantial work still needs to be done to fully achieve and complete the proposed measure.

No Progress/Retrogression: Minimal progress or no movement towards attaining the recommended reforms were done, or the status of the issue has worsened and has evolve to an even bigger bottleneck for EU businesses in the former year.

ABOUT THE THEME



EU-PHILIPPINES BUSINESS SUMMIT

EU AND THE PHILIPPINES: Jointly Pursuing Competitiveness for Inclusive Growth

Since its launch in January 2014, the EU-Philippines Business Network (EPBN) has strived to create an attractive investment and trade environment for EU businesses in the Philippines.

This 2018, we look at how the current administration's initiatives and programs in line with its Socioeconomic Agenda and priorities have substantially progressed – Build, Build, Build Program, tax reform, ease of doing business, labor protection furthered through the Executive Order on Contractualization, sustainable development and climate adaptation, and universal healthcare, among many others. In addition, the Philippines' economy is maintaining steady growth, the EU continues to be one of the top trading partner of the Philippines, and the EU-Philippines Partnership Cooperation Agreement has been put into force – a major milestone for the EU-Philippine relations.

With this, the EU-Philippines Business Network (EPBN) is organizing the EU-Philippines Business Summit 2018 with the theme "EU and the Philippines: Jointly Pursuing Competitiveness for Inclusive Growth" on 18 October 2018, at Solaire Resort Hotel, Paranaque. During the Summit, EPBN will hand over the 4th edition of the EPBN Advocacy Papers which contains a wish list of reforms towards a competitive, fair and more inclusive economic environment. We sincerely hope that the EU-Philippine economic ties will be deepened further. Rest assured that European business community will remain as the Philippine government's partner in achieving competitiveness and inclusive growth.

MESSAGE FROM THE AMBASSADOR

H.E. Franz Jessen
Head of Delegation,
Delegation of the European Union of the Philippines



The EU sees trade and investment as part of the answer to challenges faced in the country in terms of inclusive and pro-poor growth. Indeed, the EU and its industries have a positive agenda that is values-based and comes with an open dialogue to ensure nobody is left behind in strengthening its trade relations. It also recognizes the importance of opening new markets that contributes to growth on both ends. This is why the EU has even in times of economic turmoil led global efforts to fight protectionism, and promoted open trade and investment at home and abroad.

The EU economy grew at its fastest rate in 10 years in 2017 at 2.4%. For the first time since 2007, all EU member states saw their economies expand. Robust growth is facilitating further reduction in government deficit now at less than 1% of GDP as well as debt levels and an improvement in labour market conditions with unemployment rate of 7.6% falling to almost the pre-crisis level. More important to our trading partners is the fact that our trade continues to grow strongly resulting to an 8% growth in EU imports and exports of goods to the world.

This shows that the EU economy is competitive, yet open and it will remain so and continue to benefit Philippines' development agenda. Philippines total trade with the EU increased by 16% in 2017 due to the remarkable 32% growth of PH exports to the EU market partly thanks to the increasing utilisation of the GSP+ preferences. Strong growth is particularly seen in sectors benefiting from GSP+ trade preferences, such as agri-food products. On top of this, sizable portion of all newly reported approved investments in the Philippines were sourced from the EU – contributing to the creation of more quality jobs.

The economic expansion in Europe is set to continue at a solid pace in 2018 and next, supporting further job creation. However, the EU also recognizes risks on the horizon. That is why the EU is working hard to make its economy even more resilient through many useful and necessary reforms – necessary to further improve productivity and investment as well as to ensure a more inclusive growth model.

I look forward continuing to work together to the benefit of effective value chains and supply chains so that the Philippines can take advantage of its position in the region and of its competitive skills and people. I warmly welcome this advocacy book as a good basis of our continued collaboration in our pursuit of enhancing and strengthening EU-Philippine trade and commercial relations.

MESSAGE FROM THE STEERING COMMITTEE CHAIRMAN

Mr. Guenter Taus
EPBN Steering Committee Chairman



The EU-Philippines Business Network (EPBN) is pleased to present to you the 4th edition of its Advocacy papers with the theme, “EU and the Philippines: Jointly Pursuing Competitiveness.” Pursuing competitiveness and sustainable growth has been at the front and center of our agenda.

The European business community has always looked towards close cooperation with the Philippine Government to achieve mutually beneficial goals, which strengthen the country’s investment and trade environment in support of increased competitiveness and long term, sustainable and inclusive growth.

Several positive reforms in 2018 were the Ease of Doing Business Act, the Build Build Build Program, the implementation of Universal Healthcare and the issuance of Memorandum Order No. 16, which eases restrictions on certain investment areas.

Despite these improvements, there are still several key barriers stifling EU-Philippine trade and investment. In particular, we look forward to passage of the Amendments to the Public Services Act of 1936 into law. These Amendments result in an open market coupled with stronger regulations which in turn will increase the quality of public services while lowering costs.

Moreover, we advocate for the reassessment of the licensing requirements from the Philippine Contractors Accreditation Board. A level playing field in infrastructure paves the path for the realization of the “Golden Age of Infrastructure” envisioned by President Duterte.

Finally, we strongly urge the government to consider the massive economic growth and job creation that fiscal incentives under the Philippine Export Zone Authority have brought about. An ambitious corporate income tax reduction in addition to other incentives will aid the Philippine in competing with other countries in the region.

These amendments would be a game-changer for the Philippines and they assist in EU investments contributing to Philippine development. It is in this context that the EPBN presents its recommendations towards a competitive, fair and more inclusive economic environment for the benefit of the Philippines and the EU.

MESSAGE

This is to convey my warmest salutations to the EU-Philippines Business Network (EPBN) on the publication of your advocacy paper containing wish list of reforms on economic liberalization and global competitiveness.

Since Day 1, the Duterte Administration is very keen in pushing for economic reforms and making sure that the inclusive growth is felt by everyone especially the poorest of the poor. This is why I am very grateful for the support of the European Chamber of Commerce of the Philippines (ECCP) in this endeavor by way of providing business opportunities to Small Medium Enterprises (SMEs).

To sustain these trade ventures, we launched the BUILD, BUILD, BUILD Program, a project envisioned to revolutionize the country's infrastructure and transportation sector. Some were doubtful in the beginning, but with thousands of jobs generated, and a clear promise of development at hand, the dream is now becoming a reality.

With strong political will, infrastructure projects in the aviation, maritime and road sector are now in full swing; even beating its target dates of completion. The Public Utility Vehicle Modernization Program, which will innovate and ensure a safer and better mass transport system, is gaining its momentum.

We likewise put premium in the anti-corruption drive of President Duterte. Not only have we eliminated rotten eggs in various agencies through our One Strike Policy, we also made sure that appropriate legal actions are taken against them.

We would like to assure the ECCP, EU and all our partners for change that the government is working double time to achieve a legacy of leadership and stability. Through our continued collaboration, nothing is impossible.

In this light, we wish to commend EU-PBN for their continued support to the European companies, especially SMEs, interested in exporting to or investing in the Philippines. Your investment of goodwill not only benefits the Philippine economy, but our people most importantly, who learn from the opportunities European companies provide.

In closing, allow me to thank you for inspiring us to be better every day in the delivery of honest, transparent and sincere public service.

Mabuhay!


ARTHUR P. TUGADE
Secretary
Department of Transportation

 
DOT-ROSC OUTGOING 18-01194

INTRODUCTION

The Philippines is weak on transport infrastructure compared to economies around the world and in the region. According to a joint report from the Department of Trade and Industry (DTI) and the World Bank, weak infrastructure means the Philippines has the **highest logistics costs in the surveyed Southeast Asian countries** amounting to **24-53% of wholesale prices** in addition to **shipping and port handling costs accounting for 8-30%**¹.

The Duterte Administration is determined to address these concerns via “Build Build Build”. The EU infrastructure sector is willing to contribute to “Build Build Build” and increase the Philippines’ competitiveness with long-term investments and innovative solutions. However, a level playing field must be ensured. To this end, restrictive policies that hinder economic growth or discourage private sector participation need to be reviewed.

In order to facilitate the development of transport facilities we make the following recommendations:

- Regular PCAB License for fully foreign-owned contractors
- Improvement of the PPP Program
- Transparency in public procurement
- Open public construction to competition through the passage of SB 1907
- Prevent predatory charging practices in shipping lines
- Increase the maximum amount of TNVS drivers



¹ World Bank, Department of Trade and Industry Competitiveness Bureau. (2017).

RECENT REFORMS AND INDUSTRY DEVELOPMENTS

Recent reforms in the Infrastructure Sector include the following:

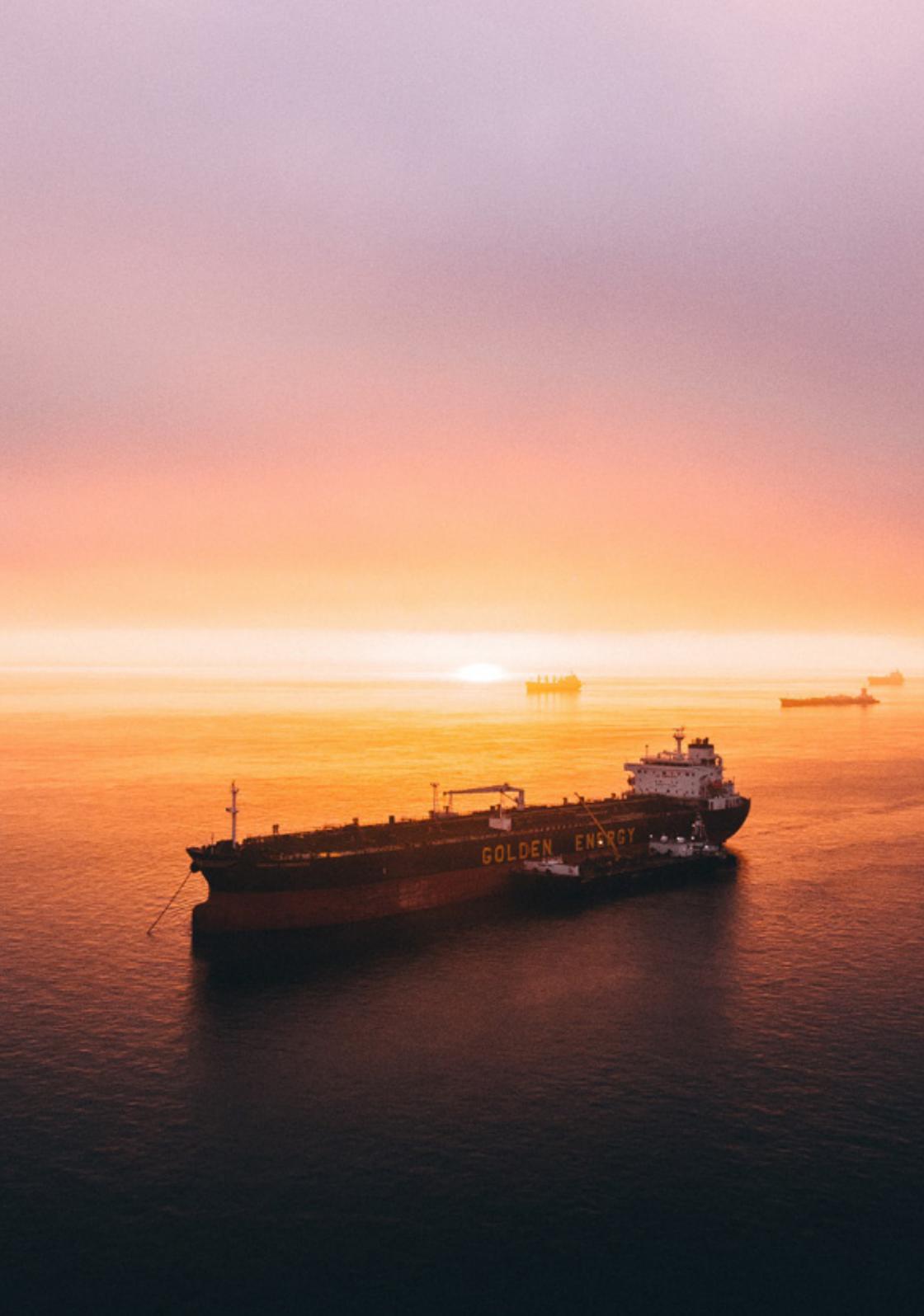
- Several government bodies recognize the need for equal treatment in terms of PCAB Licensing. President Duterte issued **Memorandum Order No. 16** directing the National Economic and Development Authority (NEDA) Board to exert utmost efforts to lift or ease restrictions on certain investment areas, including infrastructure. The Philippine Competition Commission (PCC) also supports this via an *amicus curiae brief* to the Supreme Court and the House of Representatives via **HR 898**.
- The nationality restrictions in **public procurement of goods** were removed with the passage of the Philippine Competition Act (R.A.10667). The Competition Act expressly repeals the Flag Law and R.A. 5183. Article 12 of the Government Procurement Reform Act (R.A. 9184)² explicitly states that **goods may be obtained from domestic or foreign sources**. The Government Procurement Policy Board released NPM No. 059-2015³ in support of this.
- Sen. Win Gatchalian filed **SB 1907** on 18 August 2018. For 78 years the Commonwealth Act No. 541 limited public construction to domestic companies, stunting growth of the public construction sector⁴. SB 1907 aims to **liberalize public services** to increase competition in public procurement, which is in line with the goal of the administration to develop infrastructure.
- **PPP Amendments** are moving forward with **HB 788** (PPP Rationalization Act) filed by Cong. Joey Salceda, which consolidates the separate PPP bills. HB 788 reduces the timetable for PPP approval; allows inclusion of unsolicited projects in the priority list; provides a more competitive challenge period; and providing fiscal incentives for selected PPP projects of national significance and inclusion of PPPs in the Investment Priority Plan among others. HB 788 is currently pending at the committee level.
- On **exorbitant freight costs**, DTI presented a study that discussed the pricing scheme of international shipping lines with questionable destination and origin charges. The scheme is seen to affect competitiveness of local industries and estimated to cost the Philippine economy about USD 2 billion to USD 5 billion per year⁵. The DTI Secretary himself asked the Philippine Competition Commission and the Bureau of Internal Revenue to look into the anti-competitive practices in the shipping sector.
- LTRFB limits the number of franchises given to Transport Network Vehicle Service drivers via **Memorandum Circular 2018-03**. The agency also ordered the suspension of additional per-minute charges imposed by Grab.

² R.A. 9184 entitled "An Act Providing For The Modernization, Standardization, And Regulation Of The Procurement Activities Of The Government And For Other Purposes" was signed on 22 July 2002.

³ Government Procurement Policy Board. (09 October2015). *Non-Policy Opinions*. Retrieved from http://www.gppb.gov.ph/opinions/view_nonpolicy.php?id=1270

⁴ Seventeenth Congress of the Republic of the Philippines. (2018). S.B. No. 1907

⁵ DTI Export Development Council. (2017). *International Shipping Fees*.



EPBN ADVOCACY

1. IMPROVEMENT OF THE PUBLIC PRIVATE PARTNERSHIPS (PPPs) PROGRAM

The “Golden Age of Infrastructure” will only be possible with the passage of legislation favorable to PPPs with the private sector being the main engine for growth and development. The use of PPPs offers alternative financing solutions to the Philippines’ infrastructure needs and contributes to free up public resources that can be used in social services.

- **SET A PREFERENCE FOR A SINGLE CONTRACT TO DESIGN, BUILD, FINANCE, OPERATE AND MAINTAIN AN INFRASTRUCTURE PROJECT.**

EPBN recommends the generalized use of a single contract for the design, building, financing, operation, and maintenance of infrastructure projects so that the responsibility of a project, from construction to operation and maintenance, lies with a single contractor. The Administration would deal only with one party and that contractor would design and build the facility at optimal cost, taking into account the duration of the contract.

- **AMEND THE LEGISLATIVE FRAMEWORK THAT GOVERNS PRIVATE SECTOR PARTICIPATION IN INFRASTRUCTURE DEVELOPMENT TO ENHANCE COMPETITIVENESS AND TRANSPARENCY OF THE PPP PROCESS.**

We recommend amending the legislative framework that governs PPPs in order to enhance the competitiveness and transparency, especially concerning unsolicited proposals. We support the efforts of the House Committee on Public Works to consolidate the PPP bills filed in the 17th Congress. We highlight the provisions of HB No. 348, which seeks to prohibit the issuance of temporary restraining orders against PPP projects, to remove the 50% cap on government participation, and to increase the threshold amount of PPP projects to be approved.

2. PCAB LICENSING FOR FULLY FOREIGN OWNED CONTRACTORS

EPBN reiterates the sentiments of the Philippine Competition Commission and the Department of Justice that the nationality distinction in PCAB licensing reinforces unfair competition. We recommend the amendment of Rule 3.1 of the IRR of RA No. 4566 that reserves the use of regular licenses to Filipino firms of at least 60% equity. We believe that this nationality distinction should be removed, allowing foreign firms to acquire regular licenses (AAA category) under the same conditions as local contractors.

The lifting of the restrictions on foreign contractors, promoting fair competition, and creating a level playing field for both domestic and foreign players will only bring positive benefits to the economy. The Philippine Competition Commission estimates an additional PHP 6 Billion increase in foreign direct investments.

3. OPEN THE PUBLIC CONSTRUCTION SECTOR TO COMPETITION THROUGH THE PASSAGE OF SB 1907

The preference for domestic companies enshrined in CA No. 541 acts as a strong barrier to competition. This negatively affects the Philippine public by limiting public works contractors to a few large domestic companies. In this context, the EU-Philippines Business Network welcomes SB 1907: “An Act Amending Investment Restrictions in Commonwealth Act No. 541”. Liberalization of the public construction sector is expected to increase foreign direct investments and enable the government to deliver much-needed infrastructure developments.

4. COMPREHENSIVE, EFFICIENT, PRO-GROWTH INFRASTRUCTURE DEVELOPMENT

- **DESIGNATE A LEAD AGENCY WHERE ALL INFORMATION ON BUILD BUILD BUILD CAN BE OBTAINED.**

This will make participation in infrastructure projects more accessible thus increasing competition, quality and efficiency. Developments to the Build Build Build website such as further details on procurement guidelines and procedures would also be a welcome addition.

- **INCLUDE MANUFACTURING INCENTIVES IN THE STRATEGIC INVESTMENTS PRIORITY PLAN**

Concerns about the Philippines’ growing balance-of-payment deficits can be addressed by stimulating the expansion of the local manufacturing industry. To this end, EPBN recommends the inclusion of corporate tax incentives for manufacturing in the Board of Investment’s Strategic Investment Priority Plan. EPBN also recommends further incentives for manufacturing exports.

- **DEVELOP ADEQUATE TRANSPORTATION INFRASTRUCTURE ACROSS THE COUNTRY THAT WILL ENHANCE AND SUSTAIN ECONOMIC GROWTH**

We welcome the increase in infrastructure investment, which is vital to the economic growth of the Philippines. We also support the National Logistics Master Plan of the National Competitiveness Council (NCC) that includes infrastructure and policy development, which is essential to improve the capacity and quality of the transport infrastructure, to strengthen regulatory and institutional capacity, and to develop the appropriate policies aimed at enhancing connectivity, trade, and investment.

5. PREVENT PREDATORY CHARGING PRACTICES IN SHIPPING LINES

High logistics costs are exacerbated by questionable destination and origin charges imposed by international shipping lines on local importers and exporters. These charges are then passed onto Filipino consumers, driving up prices of goods. The scheme is seen to affect competitiveness of local industries and estimated to cost the Philippine economy about USD 2 billion to USD 5 billion per year⁶.

⁶ DTI Export Development Council. (2017). *International Shipping Fees*.

- **APPOINTMENT OF A GOVERNMENT BODY IN CHARGE OF LOGISTICS**

As a country heavily dependent on imports, the Philippine government should recognize the important role of logistics. To this end, EPBN advocates designating an existing government body to cover issues related to logistics. This can be done by passing legislation in Congress to clarify the jurisdiction of the government entity in charge for logistics.

- **ABIDE BY INTERNATIONAL CONVENTIONS ON LOGISTICS**

Industry players should also ensure that international norms and rules such as International Commerce Terminology (INCO Terms) are respected. International shipping companies should be prevented from imposing charges under duress without contract. EPBN exhorts importers to insist on freight quotations under INCO terms to be complete and include all “origin charges” and “destination charges”; and for importers to take control of their supply chain cost by buying on freight collect terms instead of fake “prepaid terms”.

- **STRENGTHEN IMPLEMENTATION OF COMPETITION LAWS AND TAX REGULATIONS**

With the mandate provided by the Philippine Competition Act, EPBN encourages the Philippine Competition Commission to investigate possible violations of antitrust laws, prevent cartel-like behavior of shipping lines, and promote ethical and unrestricted competition. Further, the EPBN urges the Bureau of Internal Revenue and the Bureau of Customs should investigate the negative impact of these excessive fees on VAT and duty collections.

6. REVISE LTFRB POLICY ON MAXIMUM TNVs

The Philippine public transportation system cannot keep up with the growing population. The Metro Rail Transit 3 (MRT 3) and the Light Rail Transit 1 (LRT 1) are serving double (190% and 150%) their designed daily capacity⁷, causing frequent service breaks for repairs. The dismal state of public transportation systems in the Philippines cost an estimated PHP 3.5 Billion per day⁸. With this in mind, LTFRB’s overzealous regulation of TNCs further burdens Philippine commuters⁹.

Memorandum Circular 2018-003 in particular mandates each Transport Network Vehicle (TNV) to procure its own franchise and limits the amount of TNVs. EPBN maintains that this MC cripples Transport Network Corporations and renders them unable to serve the growing demand for TNVs. We urge the LTFRB to reconsider this policy and suggest that the agency instead set standards and guidelines for TNCs in accrediting drivers.

7 Metro Transit 3. (2018). *MRT Train Troubles*.

8 Japan-International Cooperation Agency. (2018). *6th Joint Meeting of the Japan-Philippines Economic Cooperation Committees*.

9 Grab Philippines said it has an undersupply of vehicles to meet passenger demand, with only 35,000 drivers available for 600,000 bookings made per day.

EPBN INTERVENTIONS

In pursuit of these advocacies, EPBN has conducted the following:

- Participated in the meeting with the Executive Director of the PPP Center, Ferdinand Pecson, on 08 November 2017. We reviewed the pending and future PPPs which are predominantly addressing the infrastructure and transportation field and discussed the absorptive capacity of government agencies and LGUs.
- Attended a meeting with the Secretary of the Presidential Legislative Liaison Office on 10 November 2017 in which EPBN and the PLLO presented their respective Legislative Agendas. 89 bills were identified as a priority by the newly created Cabinet Clusters.
- Coordinated with the Philippine Competition Commission (PhCC) through meetings and position papers which were taken into consideration by the PhCC in the drafting of its Policy Note on the anti-competitive case of the Philippine construction sector.
- Participated in HR No. 898 consultations sponsored by Deputy Speaker. Arthur Yap on the desired policy direction of the country in liberalizing the construction sector. In line with this, EPBN submitted a Position Paper to the House Economic Affairs Committee in January 2018. The House Economic Affairs Committee has drafted a resolution which is pending approval.



ASSESSMENT OF RECOMMENDATIONS

Advocacy	Recommendations	Completed	Substantial Progress
Removal of foreign ownership restrictions	Reform the Government Procurement Reform Act to remove provisions subjecting the procurement of goods and services to the Flag Law of 1936		The Philippine Competition Act expressly repeals the Flag Law (CA 138) and removes the preference for goods from domestic entities in the Government Procurement Reform Act
Improvement of the PPP program	Set a preference for a single contract to design, build, finance, operate and maintain an infrastructure project		
	Provide for increased transparency and efficiency in the procurement process.		
	Amend the BOT Law to strengthen the PPP program		
	Update the IRR of the BOT Law and the PPP Governing Board policy circulars		
	Establish the use of the Swiss challenge for unsolicited proposals		The Duterte Administration is open to using the Swiss Challenge for unsolicited PPP proposals though the government's preference for ODAs as the primary source of funding for "Build Build Build" remains
PCAB licensing for fully foreign owned contractors	Amend the IRR of PCAB to allow regular licenses to be issued to fully foreign owned contractors		House Resolution (HR) No. 898 seeks to amend the restriction of foreign participation in construction activities. The House Committee on Economic Affairs has drafted a resolution on the PCAB amendments

Some Progress	No Progress	Retgression
<p>DOF Sec. Dominguez stated in November 2017 that the government remains open to collaborations with the private sector</p>		
<p>Some bills increasing transparency in government procurement have been filed in Congress such as SB 459</p>		
<p>A new PPP Bill (HB 788) was filed by Cong. Joey Salceda in the House of Representatives which consolidates previously filed bills</p>		
	<p>∅</p>	

Comprehensive, pro-growth infrastructure development	Develop adequate transportation infrastructure across the country that will enhance and sustain economic growth		During the fiscal year 2017, there has been an increased in infrastructure investment amounting to 5.3% of the country's GDP. Infrastructure is the biggest allotment by far in the 2018 budget with a total of PHP 717.1 Billion
	Designate a central agency to coordinate project proposals for "Build Build Build"		
	Include manufacturing incentives in the strategic investments priority plan		
Open the public construction sector to competition	Liberalize the public construction sector		
Prevent predatory charging practices in shipping lines	Appointment of a government body in charge of logistics		
	Abide by international conventions on logistics		
	Strengthen implementation of competition laws and tax regulations		
De-regulate transport network companies	Revise policy to allow TNCs to accredit their own drivers		

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SB 1907 liberalizing the public construction sector was filed before the Senate in August 2018		
DTI has acknowledged the problem of exorbitant international shipping fees. The PCC and the BIR are also looking into this issue		
LTFRB has allowed an additional 10,000 TNVS units to operate. This is a step forward for transportation however it is still not enough to address demand		







EU-PHILIPPINES BUSINESS NETWORK



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