16 Leveling the Playing Field through a National Competition Policy

Chapter 16

Leveling the Playing Field through a National Competition Policy

Competition makes markets perform better and promotes inclusive economic growth. It induces producers to reduce costs, innovate, and widen the range of goods and services available to consumers. It allows a level playing field where small entrepreneurs and firms, besides larger players, may operate and grow. In the process, competition raises productivity, expands economic opportunities, increases people's real incomes, and improves overall welfare. Competition especially benefits the poor through job creation made possible by the entry, growth, and expansion of efficient firms; and through lower prices that result from greater variety and higher quality of goods and services.

Market competition does not operate in a vacuum. Its beneficial results depend on the prevailing environment. Experience has shown that competition may also lead to sub-optimal results, especially in cases where private and social interests diverge.[1] When competition intensifies, in the short term, less efficient firms are forced out of the industry, or firms may resort to anti-competitive or deceitful conduct.[2] Socially beneficial competition is also hindered when sellers can exploit consumers' imperfect information and human frailties.[3]

On the other hand, socially beneficial competition ensues when the right incentives are generated "for firms to improve their economic performance vis-à-vis their actual and potential rivals and in so doing deliver the best outcomes for their consumers and society as a whole."[4] Such is the basic rationale for a competition policy.

The Philippine Development Plan (PDP) 2017-2022 seeks to enhance market competition by fostering an environment that penalizes anti-competitive practices, facilitates entry of players, and supports regulatory reforms to stimulate investments and innovation.

The enactment of Republic Act (RA) No. 10667 or the Philippine Competition Act (PCA) on July 21, 2015 reinforces the efforts of the government to sustain inclusive economic growth. The PCA provides for the formulation of a National Competition

[1] Stucke, Maurice E. 2013. Is Competition Always Good? *Journal of Antitrust Enforcement*, 1(1): 162-197. doi: 10.1093/jaenfo/jns 008

[2] In competing for market share, ratings agencies in the US intentionally inflated their ratings of mortgage-related securities. Another study found that the pass rates for cars undergoing emission testing increased as the number of competitors in the emissions testing market increased (Stucke, 2013).

[3] Consumers have behavioral biases and limited cognitive skills. For example, firms may offer sets of more expensive bundled products that are difficult to assess, or credit card companies could exploit consumers' overestimation of their financial discipline (Stucke, 2013).

[4] World Bank Group and OECD. 2016. *A Step Ahead: Competition Policy for Shared Prosperity and Inclusive Growth.* (Conference Edition). Washington, D.C.: World Bank Group

Policy (NCP) that aims to steer regulations and administrative procedures of government agencies toward promoting competition, as well as to strengthen the enforcement of anti-trust laws and effectively ensure competitive neutrality. The PCA specifically provides for the creation of the Philippine Competition Commission (PCC) which will conduct inquiries, investigate, hear, and decide on cases involving anti-competitive agreements, abuse of dominant position, and anti-competitive mergers and acquisitions (M&As).

Competition law and the corresponding mechanism to enforce it is an essential component of a national competition policy. In formulating the NCP, the other equally essential components, such as policies relating to competitive neutrality, consumer protection, government regulations that do not impede competition, and removal of structural barriers are established, and that an effective institutional mechanism to coordinate and oversee the implementation these inter-related components is put in place.

Assessment and Challenges

This section provides a general assessment of the Philippines' standing relative to other countries and identifies the challenges that need to be addressed.

Despite the passage of the PCA, there are other laws and issuances that hinder competition. There are a number of government agencies with legislative charters that have dual regulatory and proprietary functions. An example is the Philippine Ports Authority. The lack of separation between the dual functions of these agencies may result in conflicts of interest and may have unintended negative impact on market outcomes.

Fragmented government regulatory functions also pose threats to competition. Often, regulatory agencies with related or similar functions over certain commodities operate in silos. This situation is aggravated by the decentralization of many regulatory functions to local government units by virtue of RA 7160, also known as the Local Government Code of 1991.

The country's competition environment remains weak. The country has started laying the groundwork for promoting competition and achieved the following accomplishments under the Philippine Development Plan 2011-2016: (a) creation of the Office for Competition (OFC) in 2011 under the Department of Justice (DOJ); (b) enactment of the PCA in 2015; (c) modernization of the Tariff and Customs Administration in 2016; (d) allowing the full entry of foreign banks in the Philippines in 2014; (e) amendment of the Cabotage Law in 2015;, and (f) ongoing conduct of Project Repeal.

As these are relatively recent reforms, findings from the Global Competitiveness Index (GCI) for 2016 to 2017 show the need to further improve business dynamism, product market efficiency, and market size.

Product Market Regulation (PMR) by the

Table 16.1 GCI Rankings of Nine ASEAN Member States

BUSINESS DYNAMISM		PRODUCT MARKET EFFICIENCY		MARKET SIZE	
Singapore	12	Singapore	1	Indonesia	10
Malaysia	21	Malaysia	12	Thailand	18
Brunei Darussalam	56	Thailand	37	Malaysia	24
Viet Nam	76	Indonesia	58	Philippines	31
Philippines	86	Brunei Darussalam	68	Viet Nam	32
Thailand	93	Lao PDR	72	Singapore	37
Indonesia	98	Cambodia	76	Cambodia	86
Lao PDR	129	Viet Nam	81	Lao PDR	108
Cambodia	131	Philippines	99	Brunei Darussalam	116

World Bank Group and the Organisation for Economic Co-operation and Development (OECD) puts the country at the bottom 40 percent.[5] The country's PMR score indicates a restrictive regulatory environment for competition largely due to high barriers to trade and investment, barriers to entrepreneurship, and state control. The Philippines appears to be worse than income comparators such as Colombia and South Africa.

The full enforcement of the PCA helps ensure a level playing field among firms, but there are challenges. Among these are: (a) achieving the right balance between efficiency of firms and market competition; and (b) ensuring government-owned and controlled corporations (GOCCs) and private firms compete on equal terms in the provision of goods and services.

For instance, in the banking sector, merger or consolidation of banks improves the stability of the financial system. It results in fewer but larger players. The case of a firm that buys out its only rival allows it to achieve a greater scale in production at a lower per unit cost. However, this situation benefits consumers only if the cost-savings lead to lower prices, better quality of products, or increased innovation. The merged or consolidated firm may not have ample incentives to do these unless properly regulated.

Preferential treatment by the government of GOCCs likewise poses risks because the practice is not compatible with the promotion of market competition. There is a need to ensure that GOCCs and private firms compete on equal terms. Currently, GOCCs enjoy tax exemptions and other incentives. As such, measures must be made to ensure that they are not given undue advantage when they directly or indirectly compete with firms in the provision of goods and services.

Government actions, while addressing important social objectives, potentially create market distortions by limiting the entry and expansion of current players and by protecting vested interests. These actions include: (a) government-owned monopolies; (b) government-authorized private monopolies; (c) government control of entry and expansion of market players;

[5] The Philippines PMR indicators is an output of a partnership between the WBG and the OECD to extend the initial OECD PMR data set to a number of developing economies and emerging markets, including the Philippines. PMR indicators are based on a qualitative analysis of the regulatory framework collected through a questionnaire that assesses regulations both economy-wide and in key sectors of the economy. Separate sectoral indicators are built for network industries. This statement is based on preliminary data only. Final PMR values for the Philippines will be available in 2017.

and (d) government provision of goods and services similar to those provided by private entities.

The existence of government-owned monopolies may be justified by the absence of private firms that could provide the necessary goods and services. However, if potential private providers are willing to enter the market, government action that precludes entry may be difficult to justify.

As for government-authorized private monopolies, the government could either create a GOCC to supply the good (a government-owned monopoly) or offer tax and market incentives to a private player (a government-authorized monopoly) to enter the undeveloped market and propel the capacity building stage. In the latter case, government grants a firm the legal authority to operate as a monopoly through either a legislative franchise, or an administrative franchise. These are common in electricity transmission, water distribution systems, and build-and-operate arrangements for transport facilities, including road services, railway, air and sea transport.

In some cases, government also controls the entry and expansion of market players, hence causing prospective players to face non-economic and regulatory barriers to entry. There are constitutional and statutory provisions that limit foreign equity (e.g., mass media) and the practice of professions by foreigners. While other societal goals underpin these restrictions, they preclude the Philippines from fully taking advantage of global and regional capital and labor mobility such as those promoted under the ASEAN Economic Community Blueprint.

Other government regulatory barriers that either distort incentives or limit the full participation of local players in the market include regulation of retail rates charged by distribution utilities for the supply of electricity. This affects the incentives faced by generators, electricity distributors, and retailers. The Philippines still has one of the highest electricity rates in Asia *(see Chapter 19)*.[6]

The importation of rice and sugar is also controlled through licensing powers held by the National Food Authority (NFA) and the Sugar Regulatory Administration (SRA).

The participation of government in providing goods and services similar to private entities also limits competition. Normally, government participation can be justified only if the private sector cannot provide the goods and services. For example, the government renders health services also supplied by private hospitals, and government educational institutions offer services similar to those provided by private schools. Likewise, government-owned banks, such as the Development Bank of the Philippines (DBP) and the Land Bank of the Philippines (LBP) provide financial services similar to commercial banks.

There are laws and regulations that potentially render undue disadvantage to some firms within the same sector. These undue disadvantages include incentives to enterprises located in special zones in order to attract foreign investment, differential tax treatments between renewable and non-renewable sources of energy, and a wedge in taxation between domestic and foreign shipping vessels. Also, a few government regulations could inadvertently facilitate collusion among competing firms.

Geographic fragmentation can create natural barriers to competition, limiting the entry of players or allowing the creation of artificial markets. In the

[6] Energy Policy and Development Program. August 2016. (EPDP) Working Paper 2016-01R. Retrieved from http://www.upecon.org.ph/epdp/wp-content/uploads/2016/03/DP2016-01-Filipino-2040-Energy_Power-Security-and-Competitiveness.pdf

cement industry, for instance, transport cost represents a significant share of delivered cost from producer to market. Likewise, the absence of interconnection in the power grids of Luzon, Visayas, and Mindanao precludes the shifting of supply to high demand areas and potentially lowering the cost of power.

Strategic Framework

The NCP needs to be formulated and implemented in order to improve consumer welfare and market efficiency. This addresses two societal goals: reducing inequality and increasing potential growth. Competition will create a level playing field for MSMEs by removing barriers to entry and reducing costs so that they can actively participate in the market. It will likewise facilitate innovation and promote efficiency, thereby expanding economic opportunities and promoting economic growth. This will be done through: (a) diminishing anti-competitive practices; (b) reducing barriers to entry; and (c) reducing limits to entrepreneurship to allow micro, small and medium enterprises to thrive.

Targets

In leveling the playing field, the NCP aims to improve market efficiency and consumer welfare. The target will rely on the GCI ranking of the Philippines. From the country's ranking in 2016 at the top 40 among the 138 economies assessed, the midterm (2019) target is to be in the top-third (33%), and an end of plan target to be within the top 25 percent of all economies. Table 16.2 presents the targets, including those relating to intermediate outcomes.

Table 16.2 Plan Targets to Level the Playing Field through a National Competition Policy, 2017-2022

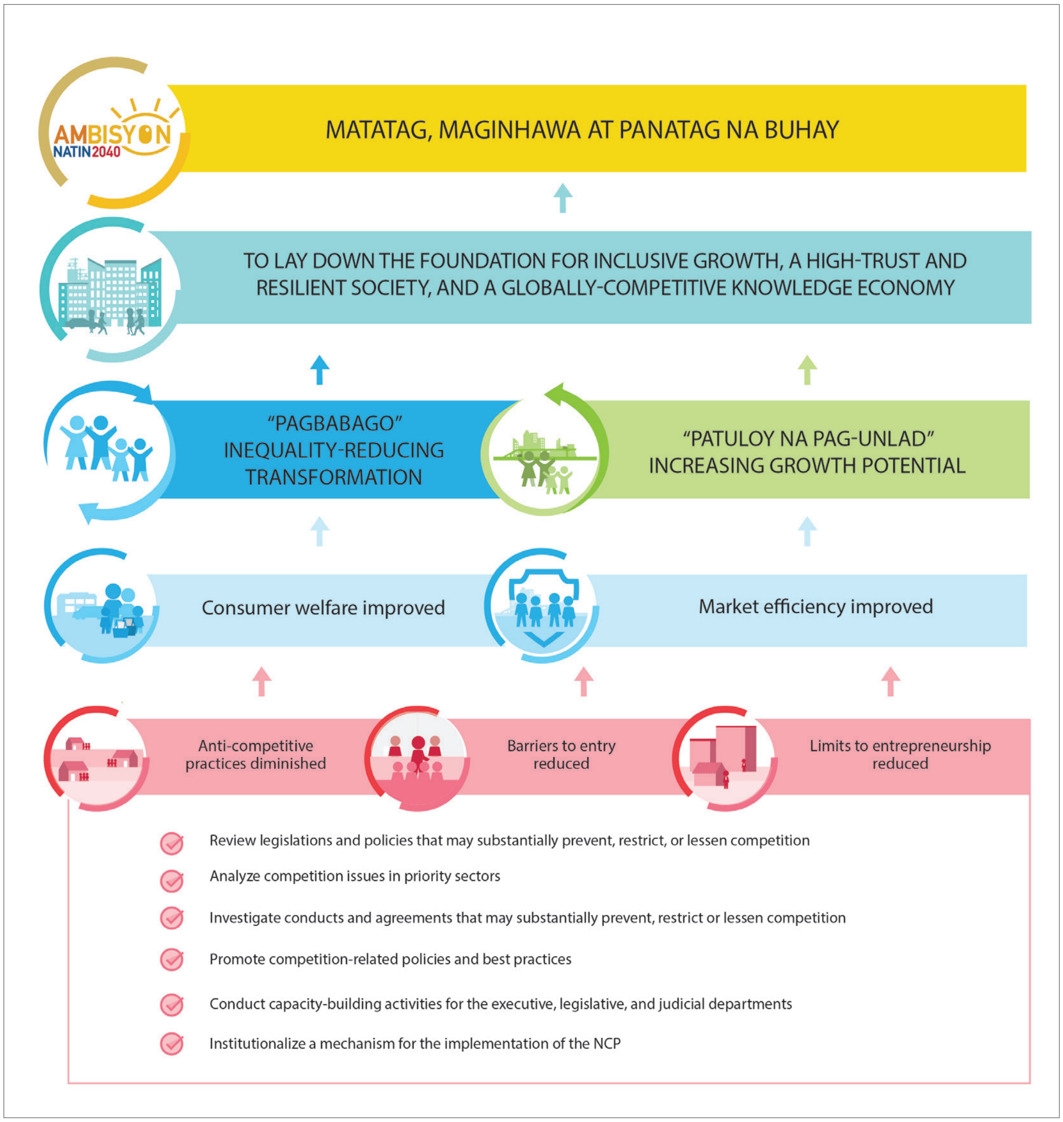
OBJECTIVES/ RESULTS	INDICATOR	BASELINE		END OF PLAN TARGET
		YEAR	VALUE	
Outcome 1: Consumer welfare improved **Outcome 2:** Market efficiency improved	Global Competitiveness Index (GCI)[7] ranking improved	2016	Top 40%	Top 25%
Intermediate Outcome 1: Anti-competitive practices diminished **Intermediate Outcome 2:** Barriers to entry reduced **Intermediate Outcome 3:** Limits to entrepreneurship reduced	Business dynamism improved [8]	2016	Top 60%	Top 40%
	Product market efficiency improved [9]	2016	Top 70%	Top 50%
	Market size expanded [10]	2016	Top 22%	Top 20%
	Product Market Regulation (PMR) improved [11]	2016	To be determined	To be determined
	Regulatory compliance costs incurred by firms reduced	2017 [12]	To be determined	To be determined

Strategies

The following are the strategies to achieve the outcomes and the corresponding targets. Given limited resources, a system of prioritizing strategies will be laid out based on spillover effects to other markets, contribution to a regulatory environment that is conducive to competition, and the feasibility of reform.

[7] The GCI assesses the competitiveness of 138 economies based on: (a) enabling environment; (b) human capital; (c) markets; and (d) innovation ecosystem.
[8] GCI business dynamism captures the entrepreneurial spirit and the ways businesses respond to opportunities. It measures the following: (a) cost required to start a business; (b) time required to start a business; (c) cost of bankruptcy proceedings; (d) strength of insolvency framework; (e) attitudes toward entrepreneurial risk; (f) growth of innovative companies; and (g) willingness to delegate authority.
[9] GCI product market efficiency measures the following: (a) extent of market dominance; (b) effectiveness of antitrust policy; (c) competition in professional services; (d) competition in retail services; (e) competition in network services; (f) prevalence of non-tariff barriers; (g) trade tariffs; (e) complexity of tariffs; (f) burden of customs procedures; (g) service trade restrictiveness; (h) total non-labor tax rate; and (i) distortive effect on competition of taxes and subsidies.
[10] In the GCI, market size captures the following: (a) real market potential; (b) cost required to start a business; (c) time required to start a business; (d) cost of bankruptcy proceedings; (e) strength of insolvency framework; (f) attitudes toward entrepreneurial risk; (g) growth of innovative companies; and (h) willingness to delegate authority.
[11] The Philippines' PMR indicators is an output of a partnership between the World Bank Group and the OECD to extend the initial OECD PMR data set to a number of developing economies and emerging markets. PMR indicators are based on a qualitative analysis of the regulatory framework collected through a questionnaire that assesses regulations both economy-wide and in key sectors of the economy. Final PMR values for the Philippines will be available in 2017.
[12] The DTI-NCC is developing a model for computing the regulatory compliance cost incurred by firms.

Figure 16.1 Strategic Framework to Level the Playing Field through a National Competition Policy, 2017-2022



Review potentially anti-competitive legislations and policies that may substantially prevent, restrict, or lessen competition. It is important to examine government policy actions and determine whether they fulfill their intended objectives. Policy options available are to *retain* the existing government market intervention if there is sufficient public benefit that outweighs its negative effects, notwithstanding its impact on market competition; *recalibrate* the intensity or form of the government market intervention, if such form has limited effectiveness or public benefit; *replace* or modify the intervention if there are better, more effective alternatives available that address the same social ends without the uncompetitive by-product; *remove* the government intervention if the market structure is sufficient to ensure market competition; or conduct further *review* when additional data needs to be obtained, additional research needs to be undertaken, or additional discussions need to be made among stakeholders in order to reach a consensus.

The OFC will be reorganized and restructured in view of the enactment of the PCA and the establishment of the PCC.

The scope of Project Repeal will also be expanded. Repealing unnecessary regulations will reduce barriers to entry and stimulate more competition. Restrictions on competition will be kept only if they are consistent with public interest.

A review of the mandate, quality of services, and specific markets of GOCCs will also be continued to ensure that their proprietary activities do not conflict with their regulatory functions, and that procedures are streamlined.

Analyze competition issues in priority sectors. In addressing market competition issues, government will prioritize sectors where the largest impact on consumer welfare and market efficiency is expected. Specific sectors will be identified after a comprehensive market scoping is completed. In selecting priority sectors, the government will consider improvement in the variety and quality of goods and services that are essential to poverty reduction, generation of new livelihood and employment opportunities, spillover effects on other sectors in the economy, and indications of lack of competition.

In agriculture, market competition in key inputs to production (e.g., fertilizer, seeds) will be reviewed. If enhanced, market competition effectively widens the range of options available to producers and lowers the cost of inputs, and even small farmers have much to gain.

There is also a need to review government programs that distort market competition for land and that potentially affect small farmers' access to credit and preclude their ability to benefit from economies of scale.

In the industry sector, lack of competition may be due to limited market, limited access to raw materials, high cost of research and development, monopolies created by patent protection, and the tendency to perceive price as a sign of quality. The market studies to be conducted will identify important competition issues in different industry subsectors and recommend measures to encourage market competition. *See also Chapter 9.*

Since the Philippine economy is to a great extent open, the industry sector, particularly manufacturing, is already subject to global market discipline through imports of goods. This means that abuse of market power through high prices is curbed directly by the importation of raw materials, and intermediate or final goods. However, this may not happen if importation is heavily controlled through quantitative restrictions or import permits.

In the services sector, the tradable goods sector's performance (including manufacturing and agriculture) relies heavily on the competition environment in services that feed into it. These ancillary services include power generation, electricity distribution, transportation (air, land, and water), telecommunications, and human capital. If the services sector is inefficient, the tradable goods sector (especially manufacturing) will suffer. Hence, enhancing competition in services, especially telecommunications and power, will be prioritized. *See also Chapter 9.*

Research outputs will inform legislation and policymaking, and support advocacy initiatives to make consumers, firms, and government agencies better understand the importance of market competition.

Investigate conduct and agreements that may substantially prevent, restrict, or lessen competition. The enforcement of the PCA requires the investigation of potentially anti-competitive behavior while maintaining an environment where businesses can compete on a level playing field.

The impact of the actions of firms on market efficiency, competition, and consumer welfare will be quantified. This information will be useful to the public as well as policymakers in understanding the seriousness of the competition problems in certain sectors and of the benefits that could be derived from inhibiting anti-competitive practices.

Promote competition-related policies and best practices. The promotion of market competition is a cross-cutting concern that affects all consumers and producers regardless of size. Fostering a culture of strong competition in the country requires concerted efforts among relevant government agencies and other sector regulators, with support from the executive, legislative and judiciary branches. Government will also collaborate with development partners and competition authorities from other jurisdictions. Activities will be conducted to help consumers better comprehend the terms of services offered by firms.

Conduct capacity-building activities for government agencies and other institutions. The government recognizes the importance of strengthening both institutional as well as individual capacities and creating a knowledge base for the effective implementation of the PCA. Considering that competition policy is a relatively new concept in the Philippines, the government will ensure that capacity-building efforts within its ranks are enhanced and that any gaps and needs are addressed immediately. There will be sustained support to improve the institutional and technical capacity of PCC as well as the other government units under the executive, legislative, and judicial departments that are mandated to promote market competition. Government will collaborate with academic and research institutions in strengthening programs on competition law and economics.

Institutionalize a mechanism for implementing the NCP. The government will uphold the principle of *competitive neutrality* and adopt policies that establish a level playing field where GOCCs and firms compete. The NCP will also provide guidelines for government agencies that issue rules and regulations that hamper competition.

A subsidiarity analysis on GOCCs, spearheaded by the Governance Commission for Government Owned and Controlled Corporations (GCG), will be done to determine actions that must be undertaken. The GCG is set to continue reviewing the mandate and performance of the other entities it oversees.

Meanwhile, a responsive regulatory management system will be institutionalized to monitor impact, ensure cohesiveness, and improve the quality and flexibility of government regulatory frameworks. A whole-of-government approach to regulatory reform will be implemented in reducing the burdens imposed by regulations, ensuring that no new anti-competitive laws and regulations are passed, and institutionalizing transparency in the regulatory management processes.

As the NCP will be comprehensive and will require a whole-of-government approach, an inter-agency mechanism to formulate and coordinate the implementation of the national policy will be instituted. Among others, the NEDA, DTI, PCC, DOJ, and GCG will be part of this oversight and coordinative mechanism.

Legislative Agenda

Regulatory reforms will be pursued to complement the national competition policy. The government will work toward the enactment of the following legislation within the PDP 2017-2022 period.

Additional items in the legislative agenda will be drawn following the review of potentially anti-competitive laws and policies that substantially prevent, restrict, or lessen competition.

Table 16.3 Legislative Agenda to Level the Playing Field through a National Competition Policy, 2017-2022

LEGISLATIVE AGENDA	RATIONALE
Amended Public Service Act	Ease or lift restrictions on foreign investments in certain industries by amending or repealing provisions that limit foreign participation in certain economic activities. Subsequently, this will amend the FINL to encourage foreign direct investments (FDI). Higher FDI boosts economic growth, fosters more competition, facilitates technology transfer, generates more jobs, and provides wider choices for consumers. See also Chapter 9.
Regulatory Management System Act	The government will push for the passage of a law on regulatory management system to establish a more competitive and coherent regulatory environment. A central body will be created to ensure that there is an evidence-based approach to formulating laws, rules, and regulations.