



Republic of the Philippines
National Economic and Development Authority
Philippine Competition Commission

JOINT MEMORANDUM CIRCULAR NO. 01-2020
30 JULY 2020

FOR : All Heads of National Government Agencies, including Departments, Bureaus, Offices, Government-Owned and Controlled Corporations, and Local Government Units

SUBJECT : THE NATIONAL COMPETITION POLICY OF THE PHILIPPINES

1.0 BACKGROUND AND RATIONALE

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 (a) job creation made possible by the entry, growth, and expansion of efficient firms, and through (b) 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. 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." Such is the basic rationale for competition policy.

As the country reels from the economic consequences of the COVID-19 pandemic, the need for competition policy to guide decisions and strategies in restoring market efficiency is even more crucial.

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Interventions such as grants, subsidies, bank guarantees, and other government support need to be carefully studied to avoid competition distortions and an uneven playing field between businesses that receive and do not receive aid.

During the pandemic, the likelihood of firms forming cartels in the guise of corporate re-structuring may increase. This can lead to price fixing, output restriction, or capacity reduction, and must be addressed by the government to prevent consumer and micro, small, and medium enterprise (MSME) exploitation.

2.0 POLICY STATEMENT

The Philippine Development Plan (PDP) 2017-2022 reinforces Republic Act (RA) No. 10667 or the Philippine Competition Act (PCA) through strategies that aim to foster an environment that penalizes anti-competitive practices, facilitates entry of players, supports regulatory reforms, and improves trade policies to stimulate investments and innovation, and boost competitiveness.

In line with the government's continuing efforts to improve consumer welfare and market efficiency, the National Economic and Development Authority (NEDA) and the Philippine Competition Commission (PCC) developed the National Competition Policy (NCP) for steering regulations and administrative procedures of government agencies to level the economic playing field. With the NCP, all government agencies need to adopt and comply with pro-competitive policies and government interventions, competitive neutrality, and enforcement of competition-related laws and issuances.

This policy, which complements the PCA and aims to guide the design of government interventions to ensure the economic recovery of small business players and MSMEs in the new normal, shall apply to all government policies, rules and regulations, actions, and interventions to foster a culture of competition.

3.0 PURPOSE

The Joint Memorandum Circular (JMC) is being issued to prescribe the guidelines on the adoption and implementation of the NCP.



4.0 COVERAGE


This Circular covers all national government agencies (NGAs), including departments, bureaus, offices and instrumentalities, and government-owned or -controlled corporations (GOCCs), and local government units (LGUs). For purposes of this JMC, the term "GOCC" shall include government instrumentalities with corporate powers, government financial institutions, and government corporate entities as defined by RA No. 10149 or the GOCC Governance Act of 2011.

5.0 THE NATIONAL COMPETITION POLICY

5.1 Key elements of the NCP

In the exercise of their respective functions, all government agencies shall adopt and must be guided by the following key elements of the NCP:

1. *Pro-competitive policies and government interventions.* – All policies, laws, rules and regulations, issuances and other interventions shall promote market efficiency and enhancement of consumer welfare, and shall not distort competition by creating barriers to entry, promoting collusive market outcomes, e.g., cartels, or restricting trade, except when the restrictions are proven consistent with the promotion of consumer welfare, or when the benefits to the community outweigh the costs, or when the objectives of the policies and government interventions can only be achieved by restricting competition;
2. *Competitive neutrality.* – GOCCs shall not enjoy net competitive advantages or be subjected to disadvantages over private sector businesses simply by virtue of public sector ownership, unless it can be clearly demonstrated that the greater public interest will be served and there is lack of commercial viability; and
3. *Enforcement of competition-related laws and issuances.* – All government agencies shall uphold the original and primary jurisdiction of the PCC over the enforcement and implementation of the provisions of the PCA.

5.2 Responsibilities of government agencies

1. To initiate and implement pro-competitive policies and interventions, all government agencies shall:
 - a) Review relevant policies, rules and regulations, issuances, and other interventions to determine whether they restrict, prevent, or lessen competition or render undue advantage to some firms within the same sector or industry, and where appropriate, amend or eliminate these policies and interventions. In the case of relevant laws, recommend their revision or repeal to Congress;
 - b) Remove impediments to foreign trade and investment, especially in sectors where competition between domestic and foreign players would prospectively remain viable, subject to the provisions of the Constitution and other relevant laws;
 - c) Formulate and implement strategies that reduce, mitigate, avoid, or eliminate potential harm to competition;
 - d) Provide measures to address the potential anti-competitive effects of legal, policy, and regulatory instruments;
 - e) Provide easy access to information on all policies, rules, and regulations that may affect the private sector and their investments;
 - f) Ensure that all incentives do not distort the level playing field and that access to these incentives is open to qualified participants in the market or across the industry; and
 - g) Ensure open, transparent, impartial, and competitive selection process and equal treatment among qualified local and foreign suppliers participating in public procurement.
2. To promote competitive neutrality, the Governance Commission for GOCCs (GCG) and Department of Budget and Management (DBM), in consultation with GOCCs' respective parent-agencies, shall:

- a) Review the mandates of GOCCs within their respective jurisdictions and recommend appropriate action to the President, subject to the provisions of the GOCC Governance Act of 2011;
 - b) Recommend structural measures to address any identified anti-competitive behavior relating to the mandate and/or operations of GOCCs;
 - c) Recommend the separation of proprietary and regulatory activities of GOCCs;
 - d) Assess and monitor the nature, form, extent, costs and benefits, and impact on the business environment of existing subsidies and state interventions in favor of GOCCs, in consultation with the Department of Finance (DOF) and other relevant government agencies;
 - e) Establish guidelines on the grant of subsidies in consultation with DOF and other relevant government agencies; and
 - f) Implement regulatory and non-regulatory measures necessary to neutralize any advantages or disadvantages that may accrue due to public sector ownership, in consultation with appropriate government agencies.
3. To assist PCC in enforcing the national competition policy and attain the objectives and purposes of the PCA, all government agencies shall:
- a) Identify specific actions in their areas of responsibility to promote competition, eliminate anti-competitive behavior, and undue regulatory burdens on competition;
 - b) Establish channels of communication and cooperation with PCC, especially concerning initiatives relating to promoting competition;
 - c) Extend assistance in the enforcement of orders and decisions of PCC; and

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- d) Use the Competition Assessment Manual, and comply with the guidelines and issuances of PCC.

6.0 BUDGET ALLOCATION FOR THE IMPLEMENTATION OF THE NCP

Implementing agencies shall allocate in their annual budget resources to ensure compliance with the provisions of NCP.

7.0 REPORTING, MONITORING, AND EVALUATION

By virtue of its attachment, PCC shall annually submit a report to the Office of the President on or before June 30 reflecting the progress of its programs, projects, and policies, number of investigations and their outcomes or decisions, decisions on mergers, and abuse of dominance or cartels.

Pursuant to the PCA, PCC shall monitor and analyze or evaluate the practice of competition in the Philippines and ensure adherence to prohibitions and requirements of competition laws.

PCC shall annually submit to NEDA on or before June 30 a detailed report of its accomplishments and challenges in implementing the NCP and the PCA, which shall serve as input in the latter's monitoring of the implementation of the PDP and the formulation of the annual Socioeconomic Report.

8.0 ISSUANCE OF GUIDELINES AND INTERPRETATION OF PROVISIONS

NEDA and PCC shall provide guidelines, as may be necessary, to carry out the objectives of the NCP.

The interpretation of the provisions of this JMC or guidelines issued hereafter shall be referred to NEDA and PCC for the joint resolution.

9.0 SEPARABILITY CLAUSE

If any provision of this JMC is declared invalid or unconstitutional, the other provisions not affected thereby shall remain valid and subsisting.

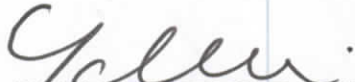
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10.0 REPEALING CLAUSE

All policies and issuances or parts thereof inconsistent with the NCP are hereby repealed or amended accordingly.

11.0 EFFECTIVITY

This JMC shall take effect immediately.



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ARSENIO M. BALISACAN

Chairperson
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