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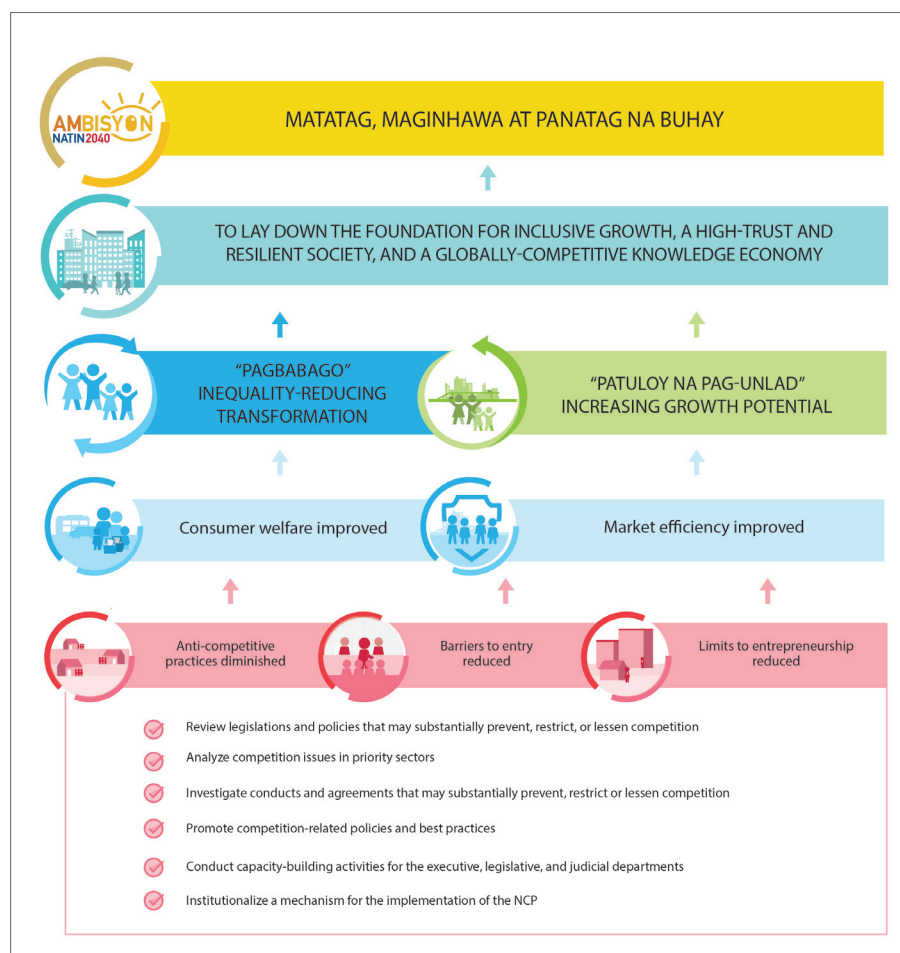
Leveling the
Playing Field
through a National
Competition Policy

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Market competition, as a new concept and chapter, was introduced in the Philippine Development Plan (PDP) 2017-2022. A year after the implementation of the Plan, several achievements and challenges in identifying competitive neutrality issues and reviewing anti-competitive policies have been recorded. Nevertheless, the government's goal of improving consumer welfare and market efficiency through competition remains.

The National Competition Policy intends to improve consumer welfare and market efficiency, thereby meeting the two goals of reducing inequality and increasing growth potential. Competition will facilitate innovation and promote efficiency, thereby expanding economic opportunities and speeding up economic growth. These will be done through: (a) diminishing anti-competitive practices, (b) reducing barriers to entry, and (c) reducing limits to entrepreneurship, as depicted in Figure 16.1.

Figure 16.1 Strategic Framework to Level the Playing Field through a National Competition Policy



Accomplishments

The country witnessed an improvement in the overall competitiveness ranking. The Global Competitiveness Index¹ (GCI) ranking of the Philippines improved from 57th in 2016 to 56th in 2017, putting the country at the top 41 percent of 137 countries. However, faster progress is needed as the government is targeting to be at the top 33 percent by 2019.

The GCI ranking on market size² improved from 31st (top 23%) in 2016 to 27th (top 20%) in 2017, achieving ahead of time the government's target for the Philippines to be at the top 20 percent by 2019. Meanwhile, the GCI ranking on goods market efficiency³ declined from 99th to 103rd. By 2019, the government intends to reach the top 60 percent for the Philippines in this subindex.

Competition agencies⁴ are on track in their target outputs. Competition agencies made significant gains, as shown by the achievement of their target major outputs in the PDP. Several major outputs identified in the Plan that have significant positive effect in promoting competition were delivered by competition agencies. These accomplishments include: a) 100 percent of all business-related issuances reviewed by the National Competitiveness Council (NCC); b) all mergers and acquisitions reviewed by the Philippine Competition Commission (PCC); and c) 137 corporate profiles of government-owned and controlled corporations (GOCCs) reviewed by the Governance Commission for GOCCs (GCG).

Directive to ease restrictions on certain investment areas issued. On November 21, 2017, the President issued Memorandum Order (MO) No. 16, s. 2017 directing the National Economic and Development Authority (NEDA) Board and its member agencies to exert utmost efforts to lift or ease restrictions on certain investment areas or activities with limited foreign participation. The NEDA Board was also instructed to do the same on existing restrictions on foreign participation in different investment areas, such as retail trade and domestic market enterprises, among others.

Moving Forward

Despite the abovementioned achievements, challenges in fostering competition remain. Competition in key economic sectors remain limited brought about by unnecessary regulatory burden, barriers to entry of firms in the market, lack of competitive neutrality concerning GOCCs, low awareness of competition law resulting in lack of market competition culture in the country, and inadequate capacity of the Executive and Judicial departments on market competition issues.

¹ According to the Global Competitiveness Report 2017-2018 of the World Economic Forum, the GCI is the measure of competitiveness among countries based on 12 distinct areas or pillars that are grouped into subindices, including competition-related indicators such as market size and goods market efficiency. Initially, the GCI ranking on business dynamism was part of this Chapter's Results Matrix. This pillar was eventually changed to business sophistication, whose factors are not directly related to anti-competitive practices, thus, the decision to exclude it in the succeeding reports on GCI ranking.

² In the GCI, market size captures: (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.

³ In the GCI, goods market efficiency measures: (a) intensity of local competition, (b) extent of market dominance, (c) effectiveness of anti-monopoly policy, (d) number of procedures to start a business, and (e) time to start a business.

⁴ Competition agencies are government agencies or institutions initially identified in the PDP 2017-2022 whose mandates affect market competition. These are the PCC, DTI-NCC, GCG, NEDA, and Department of Justice-Office for Competition (DOJ-OFC).

The following strategies need to be implemented in order for competition initiatives to progress:

Formulate the National Competition Policy (NCP). The NCP will be formulated in 2018. It aims to provide a holistic and comprehensive framework for competition and to complement the Philippine Competition Act. This is to ensure that the government and the private sector are working closely to boost market competition by addressing issues on competitive neutrality, anti-competitive behaviors, and unnecessary regulatory burdens. The Implementation Plan/Strategy of the NCP will also be crafted.

In addition, since the competition law does not exempt micro, small, and medium enterprises (MSMEs) from penalties due to anticompetitive behaviors, the NCP shall provide measures to ensure that they will thrive in a competitive market. An executive order will be issued within 2018 providing for the consolidation of state guarantee firms, such as the Agricultural Guarantee Fund Pool, Industrial Guarantee and Loan Fund, Home Guaranty Corporation, and Small Business Corporation into Philippine Export-Import Credit Agency (PhilExim). The PhilExim shall extend guarantee, insurance, credit, and technical assistance to viable enterprises to help them compete in the market.

Stakeholder consultations will be conducted, particularly in the formulation of institutional arrangements, to ensure that the appropriate competition agencies are involved.

Reduce unnecessary regulatory burdens to foster competition. Executive issuances that may substantially prevent, restrict, or lessen competition are being reviewed. While Project Repeal has created awareness in ensuring regulatory quality and started simplifying and streamlining initiatives, it merely delisted, amended, repealed, and consolidated existing regulations. This model needs refinement to take into account compliance cost, administrative costs, and costs of limited competition. In addition, Congress has started the review of primary laws or legislations and a similar approach should be applied.

Moreover, the passage of the Ease of Doing Business and Efficient Government Service Delivery Act, also known as Expanded Anti-Red Tape Act (EARTA) will establish the Anti-Red Tape Authority. The Anti-Red Tape Authority will formulate the National Policy on Ease of Doing Business.

Address barriers to entry of firms in the market. There is a need to foster competition in key economic sectors or areas that are crucial in achieving inclusive development.

In the telecommunications sector, a major barrier is the restriction on foreign investments in public utilities. The Constitution requires public utilities to be at least 60 percent owned by Filipinos. At present, electricity (transmission and distribution), water, transportation, telecommunications, and other essential services are considered public utilities. There is a need to amend the Public Service Act to redefine public utilities to open up the competition and improve service delivery.

In addition, a Philippine Institute for Development Studies (PIDS) study⁵ showed that even when it is complemented by a competition framework, the regulatory environment is ineffective unless a high-level of regulatory authority with the right mandate is established. PIDS also cited the need for a regulatory mandate over interconnection rates and universal access of service. Currently, interconnection rates are still negotiated only between parties (service providers), and the National Telecommunications Commission (NTC) only becomes involved when the parties fail to reach an agreement.

⁵ Ortiz K., et.al, (2017). Rebooting Philippine Telecommunications Through Structural Reform, Published by PIDS

To address these challenges, there is a need to:

- Eliminate any discriminatory practice in the application of financial or technical criteria against foreign-owned firms when evaluating public procurement tenders.
- Regulate local loop unbundling prices.
- Review the mandates of the NTC, the PCC and the Department of Information and Communications Technology (DICT) to fully address recurring issues (including interconnection) in the sector to ensure complementary powers and functions of the three agencies, and to boost competition in the market.
- Restructure the NTC to ensure its independence, through diversifying its funding sources and setting more appropriate fines to erring service providers.
- Add penal provision in the amendment of Republic Act No. 7925, s. 1995 or the Public Telecommunications Policy Act of the Philippines.

In the maritime transport industry, a joint study by the PIDS and the World Bank (WB) revealed the need to address barriers to domestic and international trade integration.⁶ These hindered countryside development due to the high cost of transporting people and goods, which stunted efforts to improve productivity and competitiveness of exports and tourism. In addition, the domestic shipping industry remained to be very concentrated with a few shipping companies resulting in delays in the shipment of cargos.

There is a need to review the effectiveness of the amended Republic Act No. 10668, s. 2015 or the Cabotage Act to address the said barriers to the development of the maritime transport industry.

In public procurement, there is a margin of preference for domestic suppliers. Given this, there is a need to review the 15-percent margin of preference for local suppliers under the Government Procurement Reform Act (GPRA). Moreover, there is a need to fully implement MO 16, s. 2017 to ease or lift restrictions on foreign participation in certain investment areas or activities, including contracts for the construction and repair of locally funded public works. This will address restrictions on foreign participation in the construction industry that limit competition in the procurement of public infrastructure projects. Additionally, the government needs to work on eliminating unnecessary requirements that hinder competition in public procurement.

Promote competitive neutrality concerning GOCCs. Continuous review of the GOCC corporate profiles and evaluation of the mandate and services of the GOCCs will be done to ensure competitive neutrality, such that government-owned and private businesses can compete on a level playing field. This is an important element of the broad competition policy framework of a country and essential in using resources effectively within the economy to achieve growth and development.⁷

In the Philippines, there is a need to rationalize the government's involvement in business operations. Based on the 2017 WB study on Product Market Regulation (PMR),⁸ the three areas where the Philippines should address significant restrictions to competition are: scope of state-owned enterprises (i.e., GOCCs); governance of state-owned enterprises; and antitrust exemptions.

⁶ Llanto, G.M, E. Basilio & L. Basilio. "Competition Policy and Regulation in Ports and Shipping." PIDS-World Bank Competition Policy Project

⁷ Fostering Competition in the Philippines: The Challenge of Restrictive Regulations, World Bank Group

⁸ PMR score indicates the level of regulatory environment restriction of a country based on three major indicators: state control, barriers to entrepreneurship, and barriers to investment and trade. According to the World Bank, the PMR indicators constitute only a preliminary diagnostic tool as further analytical work in specific pillars sector would be necessary to design and prioritize interventions according to their expected effects and feasibility.

For example, in the maritime industry, the Philippine Ports Authority (PPA) is the developer, operator, and regulator of ports in the country. This setup disadvantages non-PPA ports and leads to limited competition in the industry.⁹

Hence, there is a need to:

- Review the mandate of PPA and Maritime Industry Authority (MARINA) to separate regulatory from proprietary functions, as well as address anticompetitive behaviors in the shipping industry.
- Review the 10-year Maritime Industry Development Program led by the Department of Transportation (DOTr) and MARINA to ensure that reforms in the mandates of PPA and MARINA are in place.
- Ensure competitive neutrality between public and private firms in the freight/cargo and passenger markets.

Increase awareness of the competition law to foster a culture of strong market competition. There is a need to intensify information campaigns on market competition to increase awareness of MSMEs, large firms, and the consumers on competition law. A 2017 nationwide survey¹⁰ conducted by the PCC shows that only 4.2 percent of households have heard or read about the PCA and only 0.4 percent correctly understand it.

More advocacy campaigns must be undertaken to promote a culture of competition in the private sector and to enhance compliance with the law. Communication plans must be crafted to increase awareness of consumers on the competition policy and law. Case studies must also be conducted to broaden knowledge and document good practices on competition in the country.

Strengthen the capacity of the Executive and Judicial departments to enforce the competition law. While the PCC and the DOJ-OFC have conducted trainings and workshops on competition, there is still a need to further strengthen the capacity of the executive and judicial arms of government towards the effective criminal, civil, and administrative enforcement of the PCA and other competition-related laws.

Implement more collaborative undertakings among competition agencies. Intra-government cooperation and communication in addressing competition concerns in different sectors must be formed to align initiatives among competition agencies and sector regulators. This will ensure that potential overlaps in jurisdiction are averted. Memoranda of agreement may be signed between and among competition agencies to address challenges in enforcing the Philippine Competition Act.

⁹ Llanto, G.M, E. Basilio & L. Basilio. "Competition Policy and Regulation in Ports and Shipping." PIDS-World Bank Competition Policy Project

¹⁰ PCC conducted a Survey on Awareness of Households on the Philippine Competition Act and the Philippine Competition Commission nationwide. It was participated by 1,500 households, with respondents both male and female head of households. Through a multistage probability sample, they have analyzed the data gathered with 2.53 margin of error. Both rural and urban households were part of the survey.

Recommendations

While the PDP 2017-2022 has provided key strategies in ensuring a level playing field through the NCP, new strategies are recommended to be prioritized in the near-term:

Table 16.1 Supplemental Strategies to Level the Playing Field through a National Competition Policy

CHALLENGES	RECOMMENDED STRATEGIES	IMPLEMENTING AGENCIES
<ul style="list-style-type: none"> Limited competition in key economic sectors Lack of market competition culture in the country 	<ul style="list-style-type: none"> Draft and recommend an Executive issuance on the National Competition Policy (NCP). Craft the Implementation Plan/Strategy of the NCP. Create the inter-agency body on the implementation of the NCP. 	NEDA, PCC
<ul style="list-style-type: none"> Unnecessary regulatory burdens for businesses hamper competition Existing barriers to the entry of firms in the telecommunications industry: <ul style="list-style-type: none"> A major barrier is the restriction on foreign investments 	<ul style="list-style-type: none"> Enact the Ease of Doing Business and Efficient Government Service Delivery Act, also known as EARTA. Create the Anti-Red Tape Authority. Review the mandates of the NTC, DICT, and the PCC to fully address recurring issues (including interconnection) in the sector, to ensure complementary powers and functions of the three agencies, and to boost competition in the market. Restructure the NTC to ensure its independence, through diversifying its funding sources and setting more appropriate fines to erring service providers. 	Congress, NEDA, NTC, DICT, PCC, Government Procurement and Policy Board
<ul style="list-style-type: none"> The margin of preference for domestic suppliers and restrictions on foreign participation limit competition in the procurement of public infrastructure projects. 	<ul style="list-style-type: none"> Review the 15-percent margin of preference for local suppliers under the GPRA. 	Congress, GPPB
<ul style="list-style-type: none"> Competitive neutrality issues exist among GOCCs, for example in the Maritime Transport industry. The domestic shipping industry remained to be very concentrated with a few shipping companies, resulting in delays in the shipment of cargos. 	<ul style="list-style-type: none"> Review the 10-year Maritime Industry Development Program led by the DOTr and MARINA to ensure that reforms in the mandates of PPA and MARINA are in place. 	NEDA, DOTr, PPA, MARINA, GCG
<ul style="list-style-type: none"> Rapid globalization of economic activities has raised challenges for competition authorities and in international trade integration. 	<ul style="list-style-type: none"> Form stronger linkages and partnerships with international organizations and development partners, such as the Association of Southeast Asian Nations, Asian Development Bank, International Competition Network, Organisation for Economic Co-operation and Development, and United Nations Conference on Trade and Development. 	Competition agencies

