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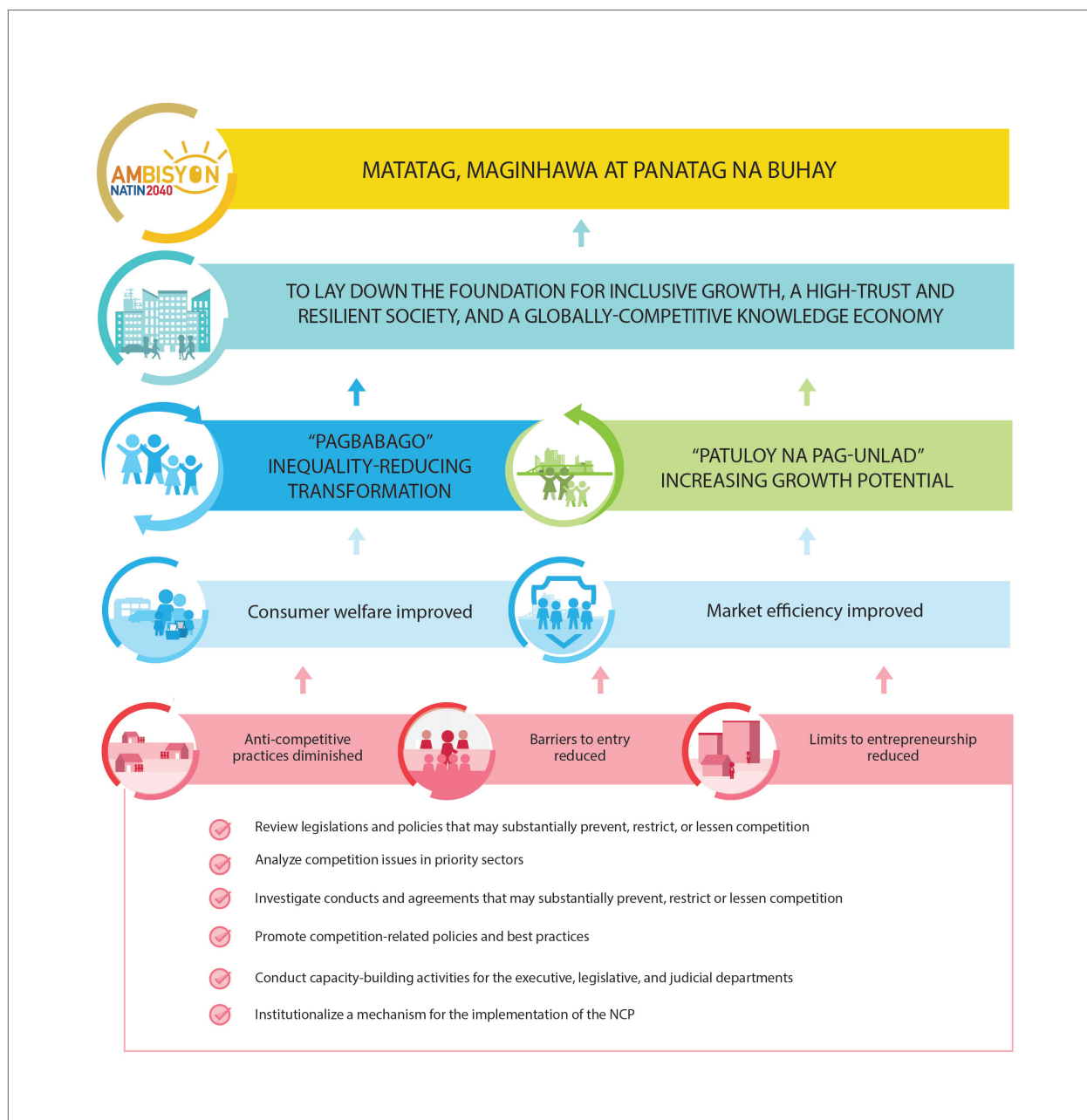
Leveling the
Playing Field
through a
National
Competition
Policy

LEVELING THE PLAYING FIELD THROUGH A NATIONAL COMPETITION POLICY

The recent enactment of the Ease of Doing Business and Efficient Government Service Delivery Act of 2018 is expected to improve the country's business environment towards greater competition. It will also be guided by the National Competition Policy, the country's competition policy framework, which is critical in implementing reforms for inclusive growth.

A number of challenges, however, still confront the sector. An in-depth analysis of the market structure of the Philippines shows it is more concentrated than other economies in the region, with a higher proportion of monopoly, duopoly, and oligopoly markets. Also, current trends, especially in the face of innovative technologies that have disruptive effects on the domestic and international markets, make the competition agenda even more challenging.

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



Assessment

While the Philippines' overall Global Competitiveness Index ranking improved marginally, rankings in key competition pillars have suffered a decline. The overall World Economic Forum (WEF) - Global Competitiveness Index (GCI) ranking of the Philippines improved, albeit slightly, from 56th in 2017 out of 137 countries (Top 41%) to 56th in 2018, placing the country in the top 40 percent of 140 countries. This was driven mainly by improvements in infrastructure, technological readiness, and market size.

The marginal improvement in the WEF-GCI overall ranking was accompanied by restrictiveness in the Philippine markets, higher than those in comparator countries, as reported in the Organisation for Economic Co-operation Development-World Bank Report on Product Market Regulation (PMR). Public ownership, administrative burdens to start-ups, and non-explicit barriers to trade and investment are three areas where PMR in the Philippines seems to create the most significant restrictions to competition.

It is noted that in 2018, the WEF-GCI modified its set of indicators incorporating new benchmarks to level the playing field for all economies. For this reason, this Report will only reflect modifications in the overall ranking. This Report will not reflect the 2018 achievements in business dynamism, goods market efficiency, and market size. The new GCI-WEF measures are planned to be incorporated in the Socioeconomic Report 2019 to provide a comparable annual assessment.

Table 16.1 Accomplishments vs. Targets in Leveling the Playing Field through a National Competition Policy

INDICATOR	BASELINE /VALUE	PLAN TARGETS						ACTUAL 2017	ACTUAL 2018
		2017	2018	2019	2020	2021	2022		
Global Competitiveness Index (GCI) ranking improved	Top 40% (2016)			Top 38%			Top 35%	Top 41%	Top 40%
Business Dynamisma	Top 60% (2016)			Top 50%			Top 40%	---	---
Goods Market Efficiency Improved	Top 72% (2016)			Top 69%			Top 65%	Top 75%	---
Market size expanded	Top 22% (2016)			Top 20%			Top 20%	Top 20%	---
Product Market Regulation (PMR) scoreb improved	2.36					2.16		Not available	2.36
Regulatory compliance costs incurred by firms reducedc	2018					TBD		No data	No data

^a No data on business dynamism in the GCI Report for 2017

^b Release of the Report by the WB-OECD for Philippines' score is indefinite

^c Methodology for this indicator is still being developed by the DTI

Diminishing anti-competitive practices

The Philippine Competition Commission (PCC) has progressively pursued its mandate as a competition regulator but faces challenges in implementing the Philippine Competition Act (PCA) and increasing people's level of awareness on competition. In 2018, the PCC received a total of 168 applications for mergers and acquisitions, cumulatively worth PHP2.6 trillion. PCC approved 159 (94.6%) of these transactions. The PCC exercised its power to review voluntary commitments and imposed remedies on various transactions deemed to have a negative impact on competition. The PCC imposed fines on entities found to have violated the compulsory notification requirement, as in the case of Chelsea Logistics Holdings Corporation's acquisition of Trans-Asia Shipping Lines, Inc. Meanwhile, the PCC also subjected Grab's acquisition of Uber to pricing and quality standards.

Since July 2018, in partnership with the Public-Private Partnership (PPP) Center, the PCC has been reviewing various projects in the country to flag anti-competitive schemes at the early stages of the bidding process. In the case of public-private partnership projects, the PCC can come in to ensure that certain services are not monopolized by a proponent and that services rendered by the government are low-cost but still of good quality.

The PCC has also been keeping a close watch on various priority industries in the local manufacturing sector for possible anti-competitive practices. The Commission has conducted a scoping study to provide an overview of trends related to competition in manufacturing. It has also formulated a prioritization matrix to serve as a basis in its advocacy initiatives and selection of sectors for in-depth market studies.

To strengthen the enforcement of the PCA, the conduct of economic research should be expanded to support findings on anti-competitive behaviors and practices. This will be complemented by a capability building program within the PCC and other competition-related agencies.

Low awareness of the PCA was observed based on the result of the survey¹ conducted by the PCC among households. Limited understanding of the law is a major issue, restraining government agencies from contributing to the improvement of competition in the market and conducting economic research on their respective functions in relation to the PCA.

The mandate of the Department of Justice - Office for Competition (DOJ-OFC) has been refocused and strengthened. The PCC and the DOJ-OFC successfully inked a Memorandum of Agreement, which detailed the level of cooperation and coordination in the handling of competition cases, admission into the Witness Protection Program, and grant of leniency or immunity from suit. The Leniency Program aims to speed up preliminary inquiries and investigations on cartels, under which the PCC shall offer whistle-blowers immunity from suit or reduction in fines as long as they provide information and sufficient evidence about the reported anti-competitive agreements.

To facilitate a more streamlined procedure in the prosecution of cases, an Inter-Agency Technical Working Group was created to draft the appropriate guidelines in implementing the criminal provisions of the PCA, which include, among others, the rules on the implementation of criminal leniency. This endeavor will supplement the Leniency Program of the PCC on administrative competition cases.

¹ The survey on perception and awareness of household on Market Competition was conducted by the PCC in partnership with the Philippine Survey and Research Center (PSRC) in February 2017 to gather baseline information on the extent of knowledge, perception, and attitudes of households on market competition in the Philippines, laws and regulations governing business competition and the level of awareness of the PCA, as well as familiarity with PCC and its responsibilities. Result showed that only .4% of the respondents correctly understand Market Competition contrary to the 1% target of the PCC.

Reducing barriers to entry and limits to entrepreneurship

The National Competition Policy (NCP), which outlines competition strategies in harmony with the medium-term plan, has been submitted to the Economic Development Cluster (EDC). Pursuant to the PCA, the NEDA has led the formulation of the NCP to steer regulations and procedures toward promoting competition, strengthening the enforcement of anti-trust laws, and ensuring competitive neutrality. The NEDA submitted the NCP, in the form of an Executive Order (EO), to the EDC for endorsement to the President.

The NCP directs all national government agencies, offices and instrumentalities, government-owned or controlled corporations (GOCCs), and local government units (LGUs) to adopt the three pillars or elements of competition: (a) pro-competition regulations, policies, and government interventions; (b) competitive neutrality and non-distortive public aid support; and (c) effective competition law and anti-trust enforcement.

Pro-competition regulations, policies, and government interventions promote market efficiency and enhance consumer welfare. These do not distort competition by creating barriers to entry, promoting collusive market outcomes, or restricting trade, except when restrictions are proven consistent with the promotion of consumer welfare, or when the benefits to the community outweigh the costs.

Competitive neutrality and non-distortive public aid support ensure that GOCCs and private sector businesses compete on a level playing field. It ensures that GOCCs do not enjoy net competitive advantages or disadvantages over private sector businesses simply due to public sector ownership, unless it can be clearly demonstrated that the greater public interest will be served and the undertaking lacks commercial viability.

The first two pillars complement the last pillar on competition law and anti-trust enforcement. These will address abuse of dominant position by firms, anti-competitive mergers and acquisitions, and other anti-competitive behaviors.

The NCP mandates the said government institutions to amend or repeal anti-competitive laws and regulations and factor in market competition in the formulation of new policies and regulations. It likewise directs the same institutions to assist the PCC in the enforcement of the PCA.

The Ease of Doing Business and Efficient Government Service Delivery Act of 2018 (Republic Act No. 11032) has been signed into law. The EODB and EGSD Act of 2018 amending the Anti-Red Tape Act of 2007, which was signed into law on May 28, 2018, aims to enhance business competitiveness by reducing unnecessary regulatory burdens, correcting usual bureaucratic problems in government institutions, and reducing opportunities for corruption. It provides and standardizes procedures and timelines in the processing of all types of business and non-business government transactions that would make doing business in the Philippines easier. Furthermore, the law institutionalized among government agencies the undertaking of regulatory impact assessment (RIA) for all proposed regulations, as well as the conduct of compliance cost analysis and time and motion studies. Interventions to ease doing business and address barriers to entry of businesses in the country will enhance competition in the market; which in turn will boost business innovation and productivity and provide wider product options for the public. (*Refer to Chapter 5 regarding Ease of Doing Business to address bureaucratic problems in government institutions and reducing opportunities for corruption*).

Restrictions on foreign participation in selected sectors have been eased. The President issued EO 65 on October 29, 2018, providing for the 11th Regular Foreign Investment Negative List (RFINL). This is consistent with the policy to ease restrictions on foreign participation in certain investment areas and activities. The 11th RFINL facilitates opening up of the market and reducing barriers to entry of businesses, thus, promoting market competition.

The major changes from the previous RFINL pertain to allowing 100 percent foreign participation in the following areas:

- a. Internet businesses, which has been excluded from mass media;
- b. Teaching at higher education levels, provided the subject being taught is not a professional subject (i.e., included in a government board or bar examination);
- c. Training centers that are engaged in short-term high-level skills development that do not form part of the formal education system;
- d. Adjustment companies, lending companies, financing companies, and investment houses; and
- e. Wellness centers.

In addition, it allows up to 40 percent foreign equity in contracts for the construction and repair of locally-funded public works. However, this is subject to applicable regulatory frameworks and does not cover infrastructure or development projects under RA 7718, as well as projects which are foreign-funded or assisted and required to undergo international competitive bidding.

Agencies have shown continued commitment to review existing regulations under Project Repeal. The Competitiveness Bureau of the Department of Trade Industry (DTI), as the temporary secretariat of the Anti-Red Tape Authority (ARTA) spearheaded Project Repeal in 2018. The project aims to review irrelevant, burdensome, and unnecessary laws and issuances imposed on businesses and citizens, including those that affect the country's global competitiveness ranking and investment climate.

The repeal of various rules and regulations that are no longer responsive to technological advancements and prescribe unnecessary requirements for businesses or consumers have been recommended to address the challenge of limited number or range of suppliers of products and services. Project Repeal also conducts a review of existing regulations to stimulate innovation and improve product quality. This, thereby, enhances the ability of suppliers or service providers to compete in the market.

Initiatives have been undertaken to foster competitive neutrality of GOCCs. As of December 31, 2018, the Governance Commission for GOCCs (GCG) reviewed the mandates of 40 out of 120 GOCCs under its jurisdiction for competitive neutrality issues. Recommendations resulting from the review of 28 GOCCs conducted in 2018 will be made available in 2019 and may be re-evaluated for corrective actions. Of note is the recommendation to the President on the decoupling of the commercial and regulatory functions of Philippine Amusement and Gaming Corporation to address conflict of interest.

Relatedly, the PCC also conducted scoping studies in 2018 on manufacturing, rice, pharmaceuticals, and air transport to analyze competition issues in priority sectors.

Non-tariff barriers persist in the economy. Based on the GCI, the country's ranking dropped from 60th (top 43%) in 2017 to 64th (top 47%) in 2018. Non-tariff barriers, which include health and product standards, technical and labeling requirements, may limit the ability of imported goods to compete in the domestic market. While non-tariff barriers persist, some barriers have been removed particularly in the agriculture sector by virtue of Administrative Order No. 13.

Moving Forward

To address the above-mentioned challenges, the following actions are recommended for implementation in the remaining years of the Plan period:

Issue and implement the EO on NCP. To complement the PCA in creating a culture of competition, the issuance and implementation of the NCP is vital in directing all government agencies, instrumentalities, GOCCs, and LGUs to assess existing policies, as well as identify and issue alternative policies to promote market competition. Its implementation will address fragmented competition policies, anti-monopoly practices, anti-competitive laws, and non-tariff barriers.

Implement the Leniency Program, Rules on Forbearance, and Rules on Inspection Orders. To improve the enforcement of the PCA and hasten investigations on anti-competitive behaviors and practices beginning 2019, the PCC is set to implement the Leniency Program to speed up preliminary inquiries and investigations on cartels. Under this program, the competition body offers the whistle-blowers immunity from suit or reduction in fines as long as they provide information and evidence about the reported anti-competitive agreements.

In addition to this, the PCC will also start implementing Rules on Forbearance and Rules on Inspection Orders to strengthen and complete its enforcement framework. The Rules on Forbearance provides the Commission the authority to forbear from applying PCA provisions for a limited time on an entity or group of entities that have met certain conditions. The Rules on Inspection authorizes the PCC to search business premises and other offices where it reasonably suspects that documents or records related to investigations are being kept. These rules, which will be for Supreme Court's consideration and adoption, aim to hasten investigations on anti-competitive practices and abuse of dominant position by firms.

Improve the regulatory environment by reducing restrictiveness in key areas. Reforms aimed at eliminating restrictions on foreign investors, streamlining burdensome administrative processes for business to facilitate market entry, reducing state involvement in state-owned enterprises, and ensuring competitive neutrality should be continuously pursued.

While the PCA provides for the general principles of market competition, this mainly focuses on the PCC's regulation of anti-competition behavior of the private sector. To address this gap, the NCP covers competitive neutrality issues to ensure that all enterprises, whether state-owned or private, are competing on equal terms.

The GCG is set to complete the review of the mandates of all 120 GOCCs under its jurisdiction and recommend appropriate actions to be undertaken for those with identified competitive neutrality issues, particularly on the grant of subsidies that distort competition. This will be done in close coordination with the PCC, DOJ-OFC, DTI, and the National Economic and Development Authority. In the review, the GCG also intends to recommend and initiate privatization or transfer of regulatory functions to the appropriate government agency.

In implementing the Ease of Doing Business Act, which also institutionalizes the RIA among government agencies and instrumentalities, the use of a regulatory sandbox may also be explored to address the proliferation of innovative yet disruptive technologies. With this mechanism, novel products, technologies, and business models, such as the use of financial technology mechanisms and cellular phone applications, can be tested under a set of rules, supervision requirements, and appropriate safeguards.² In a study by the United Nations, a regulatory sandbox lowers the cost of innovation, reduces barriers to entry, and allows regulators to collect important information before deciding if further regulatory action is necessary.

Establish a National Quality Infrastructure (NQI) in the country. The DTI, through the European Union-Philippines Trade Related Technical Assistance (TRTA) Project 3, spearheads the country's drive towards a Philippines' NQI. NQI is a unified national system of quality infrastructure that will set strategy for companies to implement recognized best practices, access foreign markets, develop ways of cost-effective production, and improve overall standard of quality. NQI aims to improve competition ability of goods in the domestic market and at the same time provide proper protection for products and services produced in the Philippines. This is a significant step to address the declining ranking in the sub-index on the prevalence of non-tariff barriers. Hence, the government should push for NQI to integrate and coordinate activities such as standardization, testing, accreditation, and certification, among others.

Expand the understanding and awareness of market competition and the PCA. Competition agencies are encouraged to conduct advocacy initiatives in the regions to deepen awareness of the PCA and NCP throughout the country among the micro, small, and medium enterprises, large firms, and consumers. The PCC should also provide guidance to concerned agencies on PCA enforcement.

Enhance the existing curriculum on economics and related degrees to include competition and market regulation. To enhance capability-building initiatives of the government and to properly equip existing and future workforce for the competition agencies, the government should enhance the existing curriculum on economics, competition, and market regulation. This will also help expand awareness of PCA as one of the goals of the government.

² United Nations – Stakeholder Group on Ageing, 2017.