

CHAPTER 16

Promoting Competition

As the country reels from the economic consequences of the pandemic, the need for competition policy to guide decisions and strategies in boosting market efficiency becomes more crucial. The issuance of Administrative Order No. 44, s. 2021 indicates an important development in the government's efforts to foster a culture of competition as it supports and targets a whole-of-government approach. AO 44 directs the adoption and implementation of the National Competition Policy (NCP) and gives more teeth to the Joint Memorandum Circular (JMC) No. 01-2020 issued by the National Economic and Development Authority (NEDA) and the Philippine Competition Commission (PCC). The JMC prescribes the guidelines for all national government agencies (NGAs), government-owned and -controlled corporations (GOCCs), and local government units (LGUs) in reviewing and formulating their respective regulations and policies towards the promotion of free and fair competition in all commercial economic activities.

The NCP complements the Philippine Competition Act (PCA) by providing a guiding framework for the government in the design of interventions to facilitate the entry of players into the market and ensure economic recovery of businesses in the post-pandemic new normal. With AO 44 in place, the NCP is expected to contribute more to making markets work better and improving consumer welfare. It is expected to address the remaining challenges confronting the implementation of market competition in the country.

ASSESSMENT

The Philippines made significant gains in competition-related indicators in the Global Competitiveness Index (GCI) despite missing the target for the overall GCI ranking. The country ranked 44th (Top 31%) among 141 countries covered in the 2019¹ GCI ranking on business dynamism,² achieving the 2020 target ahead of time. Likewise, the country ranked 52nd (Top 37%) on product market efficiency,³ reaching the target for 2020 a year earlier. These accomplishments signal the country's progress in enacting policy reforms that improved market competition in the last five years, which were perceived favorably by the business sector.⁴

Reforms to improve competition include the enactment of the Ease of Doing Business and Efficient

¹ Latest available data published by the World Economic Forum (WEF) is for the year 2019. The WEF paused its release of GCI rankings in 2020 due to the COVID-19 pandemic.

² GCI Business Dynamism measures the administrative requirements (i.e., cost and time to start a business) undertaken by businesses as well as the attitude and growth of entrepreneurs in an economy.

³ GCI Product Market Efficiency calculates the effect of taxes and subsidies on competition, competitiveness of different sectors, and trade openness of an economy.

⁴ The WEF conducts an Executive Opinion Survey as part of the calculation of the GCI. The survey captures the perception of business leaders on various aspects of the business environment in the country where they operate.

Government Service Delivery Act (RA 11032), the Philippine Innovation Act (RA 11293), the Tax Reform for Acceleration and Inclusion or TRAIN Law (RA 10963), and the Rice Tariffication Law or RTL (RA 11203). The recent enactment of the Corporate Recovery and Tax Incentives for Enterprises or CREATE Act (RA 11534), which progressively reduces corporate income tax for local and foreign enterprises, will further lend support to the country's achievement of end-of-plan targets in competition-related indicators.

Despite the positive developments on these fronts, the country's performance missed the 2019 targets for the overall GCI ranking (top 45% vs. target of top 38%) and GCI market size (top 22% vs. target of top 20%), and the 2020 target for the World Bank's starting a business (score of 71.3 vs. target score of 83).

DIMINISHING ANTI-COMPETITIVE PRACTICES

The NCP was issued. In July 2020, NEDA and PCC issued JMC No. 01-2020 on the NCP. Recognizing the need for a whole-of-government effort, the President subsequently issued AO 44, directing all NGAs, GOCCs, and LGUs to adopt and implement the NCP. These linked issuances will be instrumental in ensuring the support of the entire government in fostering market competition by anchoring their respective policies and interventions on these key elements: 1) pro-competitive policies and government interventions; 2) competitive neutrality; and 3) enforcement of competition-related laws and policies.

Accessibility of competition authorities improved. The PCC has started operating an investigation station (i-Station) in Baguio City in the last quarter of 2021, while groundwork has been initiated for setting up similar extension offices in Legazpi City, Cebu City, and Davao City. The i-Stations are expected to improve access to regional government offices and localities in the hopes of expanding coordination and reporting mechanisms in competition-related matters within the region.

Advocacy efforts to increase awareness on competition laws and institutions were ramped up. The result of the 2020 national survey conducted by the Philippine Statistics Authority (PSA) showed that only 32 percent of the surveyed government entities were aware of the PCC, and 24 percent were aware of the PCA. Meanwhile, only around 9.6 percent of sample households were aware of the PCC and only about 2.1 percent were aware of the PCA. An Online Learning Hub on Competition Law and Policy, which provides basic information on competition law and economics to the public, was launched. Online orientation forums on the PCA and on the functions of the PCC were mounted for select NGAs, LGUs, and law schools.

There were no criminal competition cases investigated in 2020 and 2021. While this may be due to effective enforcement of competition-related laws and policies, this may also indicate the public's low awareness.

Efforts to strengthen competition policy enforcement and enhance competencies of competition-related agencies continued. The PCC entered into memoranda of agreement with financial regulators,⁵ the Department of Agriculture, and the Department of Energy, among others, to simplify competition-related procedures (i.e., mergers and acquisitions), establish reporting channels (e.g., notification, investigation), and create other avenues for cooperation (e.g., joint task forces).

Bilateral cooperation was strengthened with more experienced competition authorities from other jurisdictions such as Hong Kong and Singapore. Collaboration continued with local and international learning institutions to support capacity-building activities on competition policy development, research, and enforcement.

REDUCING BARRIERS TO ENTRY AND RE-ENTRY

Barriers to entry in certain sectors were reduced. In 2020, the Supreme Court voided the nationality requirement in contractor licensing rules. Prior to the said ruling, regular licenses for multiple construction projects per year were reserved only for local firms, while foreign contractors were granted a special license per project only.

In October 2021, a JMC,⁶ was issued to streamline processes and requirements for the application of permits and clearances for the construction of telecommunications infrastructure.⁷ The JMC also prescribes the sharing of essential telecommunications infrastructure to reduce barriers to entry in the sector.

REDUCING LIMITS TO ENTREPRENEURSHIP

Efforts to further create a conducive business environment were initiated. Following the World Bank's discontinuation of its flagship Doing Business report, the pilot implementation of a localized version of the reporting and ranking system is being explored⁸ to promote efficiency of government services, improve regulatory quality, and streamline administrative processes.

⁵ Bangko Sentral ng Pilipinas, Philippine Deposit Insurance Corporation, Securities and Exchange Commission, and Cooperative Development Authority.

⁶ Issued by the Anti Red-Tape Authority (ARTA), Department of Information and Communications Technology, Department of the Interior and Local Government (DILG), Department of Public Works and Highways, Department of Human Settlements and Urban Development, Energy Regulatory Commission, National Electrification Administration, Civil Aviation Authority of the Philippines, National Telecommunications Commission, and Philippine Competition Commission.

⁷ Inter-Agency JMC on the Streamlined Guidelines for the Issuance of Permits and Clearances for the Erection of Poles, Construction of Underground Fiber Ducts and Installation of Aerial and Underground Cables and Facilities to Accelerate the Roll Out of Telecommunications and Internet Infrastructure.

⁸ A technical working group tasked to design and establish the "Philippine EODB Reporting System" was created in 20 September 2021. It is composed of the following members: EODB-ART Advisory Council, Department of Budget and Management, Development Academy of the Philippines, NEDA, UP Public Administration Research and Extension Services, Inc.-Regulatory Reform Support Program for National Development, and World Bank Group consultants.

IN FOCUS: JOBERT, ASPIRING ONLINE ENTREPRENEUR



Jobert lives with his wife and three children in a 5th class municipality, where he also runs a “tiangge” stall. Jobert aspires to scale up his small business by catering to new customers beyond his local community and establishing an online presence to earn more income for his family. He also intends to provide high-quality and innovative goods to distinguish himself from other players in the market.

However, Jobert is still reeling from negative cash flow and restricted mobility caused by the pandemic. His product offering is limited by the expensive items available from the sole supplier in his area.

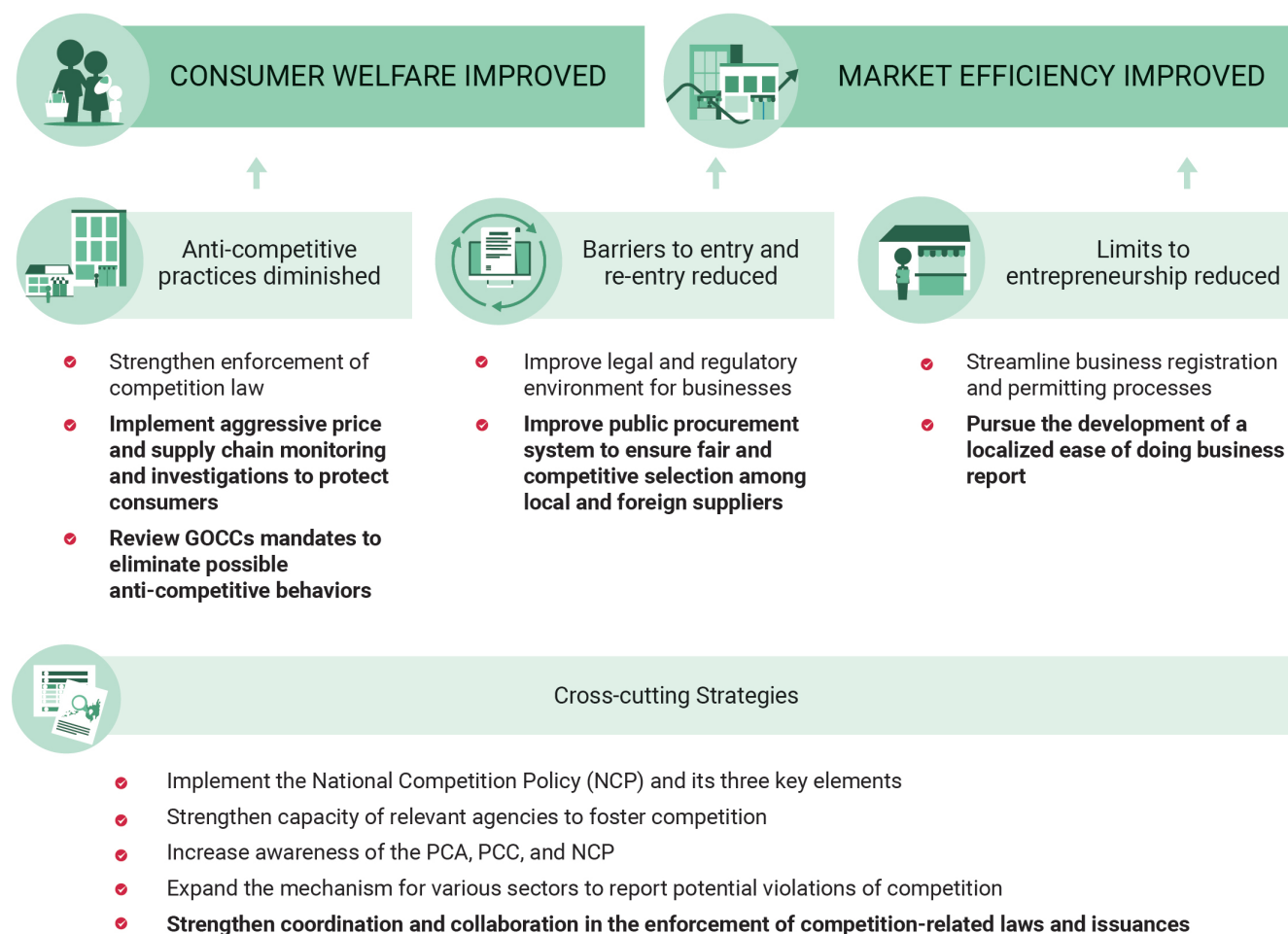
Jobert also faces costly and lengthy processes when registering and renewing his business permits. His area has poor access to the internet as well.

STRATEGIC FRAMEWORK

The challenges Jobert faces are shared by many Filipino entrepreneurs who work to expand their businesses in order to provide for their families. To support entrepreneurs in reaching their businesses' full potential even amidst the pandemic, it is important to foster an economic environment where businesses of any scale can easily and fairly participate and compete in the market. An economic environment that promotes innovation is likewise important to ensure high-quality goods and services are made available at the best price.

To sustain recovery efforts from the economic consequences of the pandemic and to address the remaining challenges that hinder improvement in market efficiency and consumer welfare, the government will anchor its strategies on the following outcomes: 1) anti-competitive practices diminished; 2) barriers to entry and re-entry reduced; and 3) limits to entrepreneurship reduced. Given the issuance of AO 44, the government will also consider the NCP and its three key elements in the design of government interventions.

Figure 16.1 Strategic Framework to Promote Competition



Note: Text in bold are revised/new strategies to address the challenges identified in the sector.

STRATEGIES

TO IMPLEMENT CROSS-CUTTING STRATEGIES

Implement the key elements of the NCP. With the issuance of AO 44, the government will ensure that all its policies, rules, regulations, and interventions support the objectives of the NCP and its three key elements. To ensure compliance, AO 44 directs the integration, as far as practicable, of the NCP in the good governance criteria for the grant of performance-based bonus to government personnel and in the conferment of the Seal of Good Local Governance to local governments.

Strengthen coordination and collaboration in the enforcement of competition-related laws and issuances. Cooperation between the PCC and various government agencies and regulators will be strengthened to streamline competition-related procedures (e.g., investigation, notification) and clarify their respective roles and responsibilities. The government will also continue to strengthen bilateral cooperation with competition authorities of other jurisdictions, as regards transfer of expertise, data sharing, enforcement, capacity building, and market research.

Strengthen capacity of relevant government agencies to foster competition. Through the linkages with foreign and local partners, the government will continue to build the institutional capacity of its agencies and the competence of key personnel in the field of competition. The PCC, NEDA, the Department of Justice-Office for Competition (DOJ-OFC), the Office of the Solicitor General, and other beneficiary agencies will maximize the opportunities provided under the Capacity Building to Foster Competition Project.⁹

Increase awareness on competition laws, policies, and institutions. The PCC and NEDA will expand advocacy activities to create more awareness and understanding of the advantages of market competition. Advocacy activities will include the conduct of briefings and roadshows, and the use of social and digital media.

TO DIMINISH ANTI-COMPETITIVE PRACTICES

Strengthen enforcement of competition law. The government will strengthen the enforcement of the PCA, including its criminal provisions.¹⁰ The PCC will strengthen its presence in the provinces by scaling up the operations of established i-Stations and creating similar satellite offices in Legaspi City, Cebu City, and Davao City. These i-Stations will serve as temporary stations until permanent regional offices are created through an Executive Order or an amendment to the PCA.

⁹ The Capacity Building to Foster Competition Project or Loan 3878-PHI is a long-term capacity building project that aims to support strengthening institutional and individual capacities of PCC and other agencies with competition-related mandates in order to create strong knowledge base for the effective enforcement of the Philippine Competition Act.

¹⁰ DOJ Circular No. 016 was issued in 17 June 2021. It prescribes the framework in implementing the criminal provisions of the PCA, including rules on the conduct of preliminary investigation and prosecution of competition cases, and the grant of immunity to witnesses under the Leniency Program administered by the DOJ-OFC.

Implement aggressive price and supply chain monitoring and investigations to protect consumers. The PCC will strengthen monitoring and prevention of overpricing and intentional supply chain disruptions. It will sustain the conduct of investigation on possible cartels or collusions that control prices of major commodities, including pork. It will also ensure that big and small business players are given equal opportunities in the issuance of import permits.

Relatedly, the Department of Trade and Industry (DTI) will pursue the amendment of the Price Act (RA 7581) to ensure that consumers can avail basic commodities at reasonable prices even during emergencies, including tea, cereal, ready mixed coffee, alcohol, hand sanitizers, disinfectants, infrared body thermometers, and personal protective equipment such as face masks, gloves, coveralls, hair caps, shoe covers, face shields, and goggles.

Review mandates of GOCCs to eliminate possible anti-competitive behaviors. The government will review the mandates of GOCCs and interventions such as grants, subsidies, tax and tariff exemptions, exclusive purchase privileges, and debt guarantees. These measures will ensure that GOCCs do not have undue advantages over the private sector.

In addition, a Public Enterprise Reform Agenda will be formulated to develop policy mechanisms to decouple conflicting commercial and regulatory functions of GOCCs, including the Philippine Ports Authority and the Civil Aviation Authority of the Philippines.

TO REDUCE BARRIERS TO ENTRY AND RE-ENTRY

Improve legal and regulatory environment for businesses. The government will pursue the amendment of the Magna Carta for MSMEs (RA 9501) to address limitations and challenges confronting MSMEs especially during periods of heightened economic uncertainty. It will also ensure that adequate government support (e.g., interest-free loans, tax incentives) and technical support (e.g., trainings) are available to help MSMEs thrive even during emergencies.

To reduce barriers to entry, the review of policies and regulations using the Regulatory Impact Assessment Manual, which was launched in October 2021, will be advanced. Initiatives to mainstream and implement the National Policy on Regulatory Management System, the Philippine Good Regulatory Principles, and the Philippine Business Regulations Information System will also be pursued. Meanwhile, amendments to the Consumer Act of the Philippines (RA 7394) will be proposed to enhance consumer protection, particularly in e-commerce transactions.

Improve public procurement system to ensure fair and competitive selection among local and foreign suppliers. The government will work towards the elimination of procurement rules giving preference to local over foreign bidders. This will ensure that the government will procure at the least cost the relevant level of quality through competitive public bidding. On the other hand, mechanisms to detect, prevent, and report anti-competitive conduct in public procurement (such as collusion through bid-rigging) will be put in place.

TO REDUCE LIMITS TO ENTREPRENEURSHIP

Streamline business registration and permitting processes in key sector industries. Regulatory agencies will continue to review relevant policies, rules, and regulations to eliminate burdensome administrative procedures. They will promote standardization and harmonization of varying rules and procedures in the issuance of business permits and licenses. In the telecommunications sector, for instance, the Common Towers and Pole Policy will eliminate multiple permit requirements.

Pursue the development of a localized ease of doing business report. The government will pursue the development of a localized version of the Doing Business report to improve service efficiency and regulatory quality, which includes addressing barriers to entry. A third-party evaluator will be engaged to ensure the integrity of data and rankings in the localized report.

RESULTS MATRIX

Table 16.1 Results Matrix

INDICATOR	BASELINE VALUE (2016)	TARGETS				ACTUAL		
		2019	2020	2021	2022	2019	2020	2021
Chapter Outcome 1: Consumer Welfare Improved Chapter Outcome 2: Market Efficiency Improved								
Global Competitiveness Index (GCI) score/ranking improved	59 (Top 41%)	62 (Top 38%)	63 (Top 37%)	63 (Top 37%)	64 (Top 36%)	55 (Top 45%)	N/A	N/A
Sub-chapter Outcome 1: Diminishing anti-competitive practices								
GCI Business Dynamism improved	62 (Top 38%)	50 (Top 50%)	69 (Top 31%)	70 (Top 30%)	71 (Top 29%)	69 (Top 31%)	N/A	N/A
GCI Product Market Efficiency improved	28 (Top 72%)	31 (Top 69%)	63 (Top 37%)	62 (Top 38%)	65 (Top 35%)	63 (Top 37%)	N/A	N/A
GCI Extent of Market Dominance improved	17 (Top 83%)	N/A	20 (Top 80%)	21 (Top 79%)	22 (Top 78%)	19 (Top 81%)	N/A	N/A
Sub-chapter Outcome 2: Reducing barriers to entry and re-entry								
GCI Market Size improved	78 (Top 22%)	80 (Top 20%)	80 (Top 20%)	78 (Top 22%)	80 (Top 20%)	78 (Top 22%)	N/A	N/A
GCI Burden of Government Regulation improved	15 (Top 85%)	N/A	29 (Top 71%)	32 (Top 68%)	35 (Top 65%)	27 (Top 73%)	N/A	N/A
Sub-chapter Outcome 3: Reducing limits to entrepreneurship								
Doing Business Starting a Business score improved	68.56	N/A	83	100	100	69.3	71.3	N/A ^a

Note: 2020 targets were set prior to onset of the COVID-19 pandemic and retained in the midterm update. 2021, 2022, and end-of-plan targets were adjusted to take into consideration the effect (Schwab 2019)s of the COVID-19 pandemic.

^a On September 16, 2021, the World Bank announced its discontinuation of the Doing Business Report due to data irregularities.