

## Chapter 16

# Levelling the Playing Field Through a National Competition Policy

Inclusive economic development requires an environment where entrepreneurs and firms are free and unhindered to enter the market to produce goods and services. Consumers benefit when there are more producers, and are negatively affected when the market is controlled by one or by the collusion of a few producers. The economy works best, both for producers and consumers, when government implement policies that 'level' the playing field.

In recent years, the Philippine government has implemented initiatives to improve competition through its economic reform programs. Market mechanisms were introduced and a shift from a protectionist stance to a more open economy was pursued through liberalization, deregulation, and privatization. It addressed trade barriers, barriers to entry of new firms, and market failures. But a level playing field cannot be achieved by free interaction of market forces alone, some form of government regulation is required, and current regulations need to be harmonized.

In 2015, the Philippine Competition Commission (PCC) was established through Republic Act (RA) 10667 known as the Philippine Competition Act. The PCC is mandated to protect and promote free and fair competition in the Philippine market. The PCC is tasked, in cooperation with the National Economic and Development Authority (NEDA), to formulate a National Competition Policy (NCP). The NCP will guide the country's initiatives to level the playing field for firms, and ensure that consumers are protected from colluding businesses, and benefit from competition through lower prices, high quality goods and services, and wider variety of choices.

This chapter describes the current state as well as the strategies and programs to be implemented to improve competition among key economic players in the region.

## Assessment and Challenges

Borrowing from the Philippine Development Plan (PDP), the following paragraphs provide a general assessment of the current state of competition

among industries in the country and identify the challenges that need to be addressed. These issues and challenges confront and are relevant to the regions and therefore need to be addressed at the regional level as well.

**Despite the passage of the Philippine Competition Act, other laws and issuances hinder competition.** There are a number of government agencies with legislative charters that have dual regulatory and proprietary functions. Examples are the Philippine Coconut Administration (PCA) and Philippine Ports Authority (PPA). 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 Philippine Competition Act 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; and e) amendment of the Cabotage Law.

**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; 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.

**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 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.

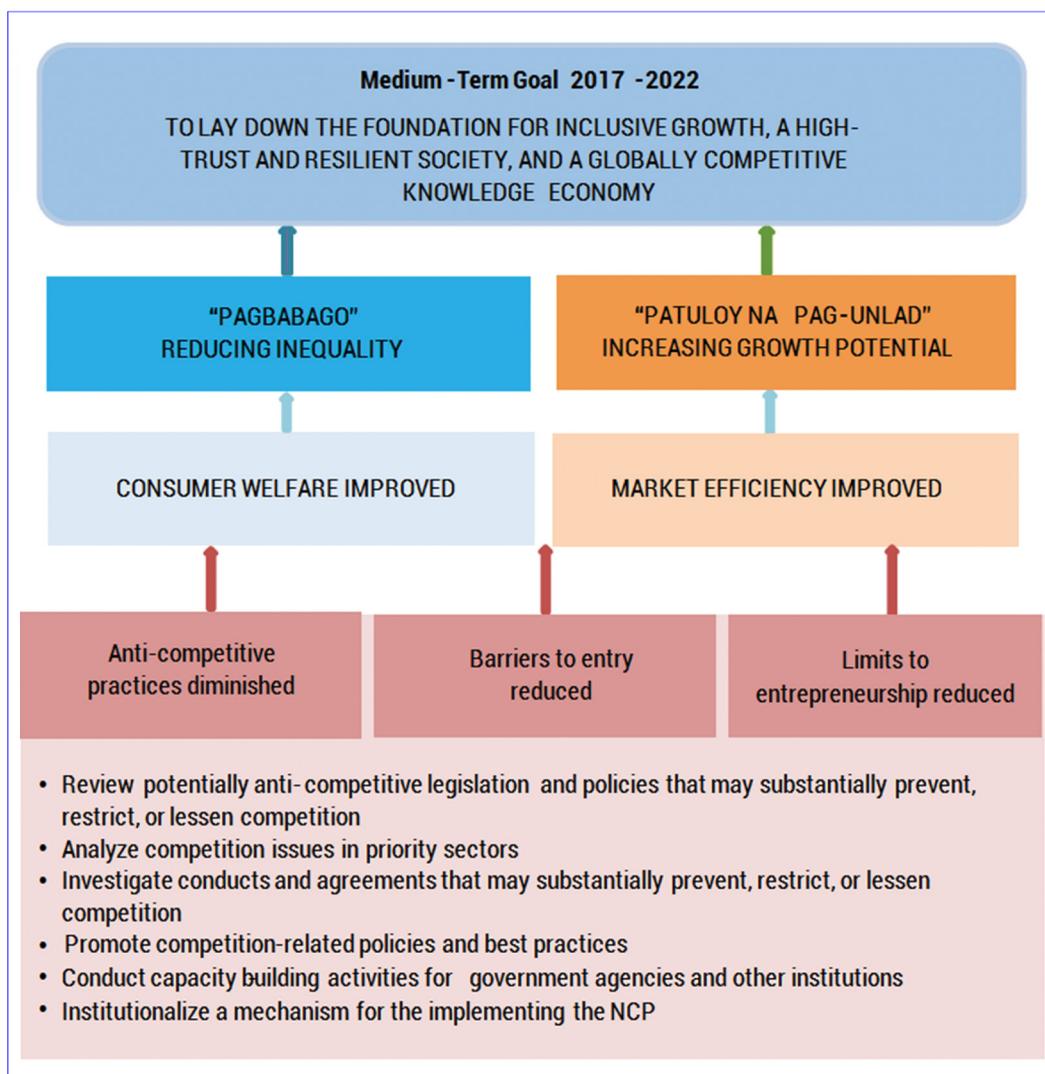
**Geographic fragmentation can create natural barriers to competition, limiting the entry of players or allowing the creation of artificial markets.**

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

## Strategic Framework

At the national level, the NCP needs to be formulated and implemented to address 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.

**Figure 16.1 Strategic Framework for Levelling the Playing Field, 2017-2022**



## Targets

In levelling the playing field, the NCP aims to improve market efficiency and consumer welfare. The target will rely on the Global Competitiveness Index (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 percent), and an end of plan target of within the top 25 percent of all economies.

## Strategies

To achieve the outcomes and the corresponding targets, the Regional Development Plan (RDP) adopts the strategies outlined in the PDP. A regional dimension or perspective is however added.

**Review potentially anti-competitive legislation and policies that may substantially prevent, restrict, or lessen competition.** The Regional Development Council (RDC) shall examine anti-competitive policies/ issuances and determine if they still fulfill their intended objectives. The RDC Secretariat

**Table 16.1 Plan Targets to Level the Playing Field, 2017-2022**

INDICATOR	BASELINE		END OF PLAN
	YEAR	VALUE	TARGET
<b>Consumer welfare and market efficiency improved</b>			
Global Competitiveness Index (GCI) <sup>1</sup> ranking improved	2016	Top 40%	Top 25%
<b>Anti-competitive practices diminished, barriers to entry and limits to entrepreneurship reduced</b>			
Business dynamism improved <sup>2</sup>	2016	Top 60%	Top 40%
Product market efficiency improved <sup>3</sup>	2016	Top 70%	Top 50%
Market size expanded <sup>4</sup>	2016	Top 22%	Top 20%
Product Market Regulation (PMR) improved <sup>5</sup>	2016	To be determined	To be determined
Regulatory compliance costs incurred by firms reduced	2017 <sup>6</sup>	To be determined	To be determined

and other capable institutions shall be commissioned to do a study and recommend appropriate policy actions and amendments.

The national government shall cascade to the regions and/or local government units (LGUs) the Project Repeal which is directed at repealing unnecessary regulations. LGUs shall be guided in amending current legislations that promotes barriers to entry of MSMEs in their localities. The

RDC shall likewise recommend to the national government which legislations at the local level and regulations enforced by line agencies require changing.

**Analyze competition issues in priority sectors.** With the assistance of the RDC, concerned line agencies shall assist and work together with provincial/local governments to conduct studies on competition issues in their respective priority sectors.

<sup>1</sup> The GCI assesses the competitiveness of 138 economies based on: a) enabling environment; b) human capital; c) markets; and d) innovation ecosystem.

<sup>2</sup> 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.

<sup>3</sup> GCI product market efficiency measures the following: a) extent of market dominance; b) effectiveness of antitrust policy; c) competition on professional services; d) competition on retail services; e) competition in network services; f) prevalence of non-tariff barriers; g) trade tariffs; h) complexity of tariffs; i) burden of customs procedures; j) service trade restrictiveness; k) total non-labor tax rate; and l) distortive effect on competition of taxes and subsidies.

<sup>4</sup> 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.

<sup>5</sup> 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 merging markets. PMR indicators are based on a qualitative analysis of the regulatory framework both economy-wide and in key sectors of the economy. Final PMR values for the Philippines will be available in 2017.

<sup>6</sup> The DTI-NCC is developing a model for computing the regulatory compliance cost incurred by firms.

**Investigate conduct and agreements that may substantially prevent, restrict, or lessen competition.** The RDC and concerned line agencies shall work with the PCC to investigate potentially anti-competitive behavior of firms in the region.

**Promote competition-related policies and best practices.** The RDC in cooperation with the PCC shall conduct activities that promote awareness building of competition-related policies and best practices in the region.

**Conduct capacity-building activities for government agencies and other institutions.** The RDC shall take the lead in improving the institutional and technical capacity of government units under the Executive, Legislative and Judicial departments that are mandated to promote market competition in the region.

The RDC, through the Regional Development Research Committee (RDRC), shall also collaborate with academic and research institutions in strengthening programs on competition law and economics.

**Institutionalize a mechanism for implementing the NCP.** The RDC shall take the lead in implementing and institutionalizing the NCP in the region. The NCP, which will provide guidelines for government agencies that issue rules and regulations that hamper competition, will guide the RDC in monitoring the status of competition in the region as well as the compliance of the regulating entities such as LGUs and RLAs and the business community.

## Legislative Agenda

Table 16.2 presents the legislative agenda to be pursued at the national level which is deemed to benefit the region as well.

**Table 16.2** *Legislative Agenda for Levelling the Playing Field*

LEGISLATIVE AGENDA	RATIONALE
Amended Public Service Act	Ease or lift restriction on foreign investments in certain industries by amending or repealing provisions that limit foreign participation in certain economic activities. Subsequently, this will amend the Foreign Investment Negative List 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. ( <i>See also Chapter 9</i> ).
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.