

# 16 Promoting Competition





# Promoting Competition

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, apart from larger players, may operate and grow. Competition raises productivity, expands economic opportunities, increases people's real incomes, and improves overall welfare. It especially benefits the poor through job creation and lower prices made possible by the entry, growth, and expansion of efficient firms and through greater variety and higher quality of goods and services.

The Philippine Development Plan (PDP) 2017-2022 reinforces 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.

As the country reels from the economic consequences of the COVID-19 pandemic, there is a need to refocus the government's strategies and interventions towards a healthy and resilient Philippines. Hence, this chapter outlines strategies and interventions that stimulate economic recovery and restore market efficiency to ensure a more resilient, inclusive, and competitive market.

## Assessment and Challenges

**Assessment:** The unrelenting efforts of the government and its proactive interventions to sustain healthy competition in the market have yielded positive results. The performance of the Philippines in terms of the Global Competitiveness Index (GCI) from 2016 to 2018 recorded an improvement, although with a slight drop in 2019. This notwithstanding, the country's performance in terms of product market efficiency and market size as well as business dynamism vis-à-vis the annual plan target for 2019 posted notable improvements. However, in the face of the COVID-19 pandemic, micro, small, and medium enterprises (MSMEs) had to temporarily close due to community quarantine restrictions, and their cash flow constraints have resulted in increased debt,

difficulty in covering overhead costs, and supply chain interruptions. While work-from-home arrangements and digitalization made it possible for business operations to continue, these worked for only a small percentage of firms in the country. Hence, in our transition to the new normal, the government needs to refocus its interventions to fast-track economic recovery to ensure that markets are resilient, inclusive, and competitive. Financial and technical support should be provided to firms especially MSMEs to help them recover from the adverse effects of the pandemic and be able to thrive in the market. Government interventions should be carefully considered to ensure a level playing field and avoid market distortions. The current regulatory framework should be reviewed

to ensure that government regulations do not pose a barrier for firms to enter and re-enter the market and hamper competition. Similarly, potentially anti-competitive agreements should be examined to prohibit price fixing, output limitation, market sharing, and activities that abuse dominant position.

**Challenges:** Advancing pro-competitive policies remains one of the challenges in leveling the playing field. The implementation of the National Competition Policy (NCP) requires a whole-of-government effort to ensure that government responses and interventions follow competition principles to address market failures and distortions especially those arising from the COVID-19 pandemic. To this end, the issuance of an Administrative Order (AO) by the President is being sought to lend more strength to the Joint

Memorandum Circular (JMC) on the NCP that was signed by the National Economic and Development Authority (NEDA) and the Philippine Competition Commission (PCC). Considering the economic consequences of the pandemic, improving the regulatory environment becomes even more crucial to help MSMEs enter or re-enter the market and thrive. Strong enforcement against cartels and other anti-competitive practices is also essential to ensure consumer welfare protection. Awareness of competition, especially in the regions remains low, thus continuous advocacy of the PCA should be pursued to increase public awareness, not only of the PCA but also of the vital role of PCC, in promoting competition.

# Targets

The remaining plan period is geared towards addressing the gaps and challenges in promoting and enforcing competition while taking into consideration the challenges arising from the new normal.

Table 16.1 presents the baseline values (2016) for each core indicator as well as the plan targets (in percentile rank) for 2020 up to the end of plan targets in 2022.

**Table 16.1 Updated Plan Targets to Promote Competition**

INDICATOR	BASELINE VALUE (YEAR)	TARGETS			
		2020 <sup>a</sup>	2021	2022	END OF PLAN
Global Competitiveness Index (GCI) ranking improved	59 (Top 41%) 2016	63 (Top 37%)	63 (Top 37%)	64 (Top 36%)	64 (Top 36%)
Business Dynamism improved <sup>b</sup>	62 (Top 38%) 2016	69 (Top 31%)	70 (Top 30%)	71 (Top 29%)	71 (Top 29%)
Product Market Efficiency improved	28 (Top 72%) 2016	63 (Top 37%)	62 (Top 38%)	65 (Top 35%)	65 (Top 35%)
Extent of Market Dominance improved <sup>c</sup>	17 (Top 83%) 2016	20 (Top 80%)	21 (Top 79%)	22 (Top 78%)	22 (Top 78%)
Market Size improved	78 (Top 22%) 2016	80 (Top 20%)	78 (Top 22%)	80 (Top 20%)	80 (Top 20%)
Burden of Government Regulation improved <sup>d</sup>	15 (Top 85%) 2016	29 (Top 71%)	32 (Top 68%)	35 (Top 65%)	35 (Top 65%)
Starting a Business Score improved <sup>e</sup>	68.56 2016	83	100	100	100

<sup>a</sup> 2020 targets were set prior to onset of the COVID-19 pandemic; 2021, 2022, and end of plan targets were adjusted to take into consideration the ill effects of the pandemic.

<sup>b</sup> Business Dynamism is one of the 12 pillars of the GCI under "innovation and sophistication" sub-index measured, in terms of supplier quality and quantity and value chain breadth, among other indicators.

<sup>c</sup> Extent of Market Dominance is an additional indicator which the Planning Committee for Chapter 16 deems contributory in ensuring healthy competition in the country. Extent of market dominance is an index under product market efficiency pillar that captures the characteristics of corporate activity in a country; either dominated by few business groups or spread among many firms.

<sup>d</sup> Burden of Government Regulation is a substitute for the old indicator, "Product Market Regulation," which has been removed due to the issue in the regularity of its release. It measures government performance vis-à-vis existing regulations for businesses in complying with government administrative requirements (e.g., permits, regulations, reporting).

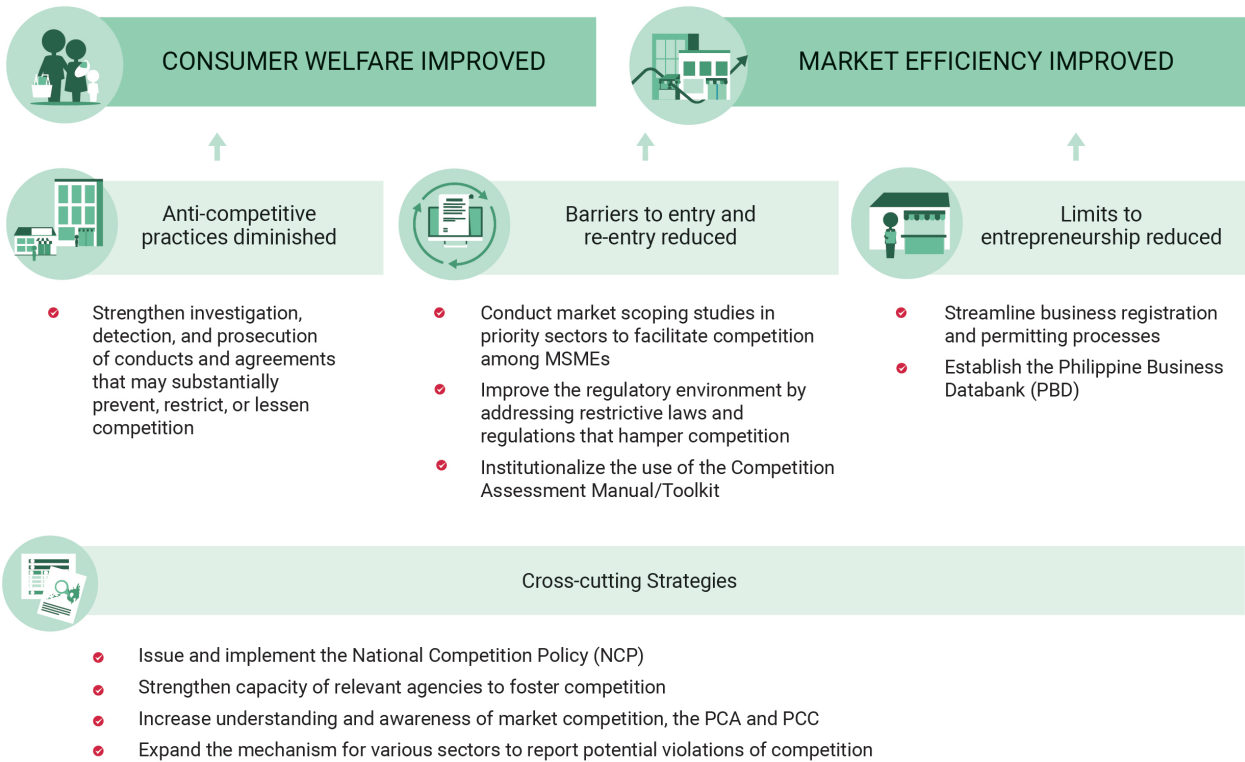
<sup>e</sup> Starting a Business is a substitute indicator for "regulatory compliance costs incurred by firms reduced (PHP)," which has been removed due to the absence of a standard methodology in measuring regulatory compliance cost. It is one of the World Bank's (WB) ease of doing business indicators and is deemed more appropriate in measuring the reduction of limits to entrepreneurship.

# Strategic Framework

In light of the ill effects of the COVID-19 pandemic, the revised strategic framework presents strategies aimed at hastening economic recovery. Specifically, it focuses on sustaining promotion of competition and implementation of the PCA and other competition-related issuances to create a level playing field where small business

players alongside larger ones, may operate and thrive. Improving the regulatory environment to reduce barriers to entry and facilitate the re-entry of firms that may have closed down as a result of the community quarantine restrictions will likewise be pursued.

Figure 16.1 Strategic Framework to Promote Competition



# Strategies

## Improving consumer welfare

### Diminishing anti-competitive practices

**Strengthen investigation, detection, and prosecution of conducts and agreements that may substantially prevent, restrict, or lessen competition.** The investigation of potentially anti-competitive behavior while maintaining an environment where businesses and government-owned and controlled corporations (GOCC) can compete on a level playing field will be pursued. The impact of the actions of firms on market efficiency, competition, and consumer welfare will be quantified. This information will be useful to the public, as well as policymakers in understanding the seriousness of the competition problems, in certain sectors and of the benefits that could be derived from inhibiting anti-competitive practices.

Noting the likelihood of firms forming cartels in the guise of corporate re-structuring and forming monopolies by way of mergers or acquisitions during the pandemic, the PCC will strictly monitor the prevalence of acts in violation of the PCA and other competition-related laws and issuances to protect the welfare of firms and consumers. It will heighten efforts in addressing anti-competitive practices in the new normal to ensure that firms do not engage in cartelistic agreements, abuse of dominance, and other anti-competitive conduct.

On the other hand, collaborative efforts among competing firms to ensure more effective and efficient delivery of essential services and articles of prime necessity in the new normal may be considered, subject to the PCA and other competition-related laws and issuances.

Office for Competition (OFC) under the Department of Justice will gear towards a virtual platform for the conduct of training for prosecutors, investigators, and staff to better enhance institutional capacity. The OFC will fully implement the recently issued Rules Implementing the Criminal Provisions of the PCA, which includes provisions for electronic filing of complaints and applications for criminal leniency.

## Improving market efficiency

### Reducing barriers to entry and re-entry

**Conduct market scoping studies in priority sectors to facilitate competition among MSMEs.** Considering the economic consequences of the COVID-19 pandemic, the government will provide financial and technical support to MSMEs to enable them to thrive in a market participated in by larger and more established foreign and domestic players. For MSMEs to better respond to increasing customer expectations and competition in the market, digitalization of business processes, capacity building on formulating and implementing business continuity plans, and upskilling and retooling of the workforce should be adopted. The PCC, NEDA, and the Department of Trade and Industry (DTI) will continue to conduct market scoping studies in priority sectors that will provide comprehensive market analysis and identify concerns that need to be addressed. Other strategies to ensure the welfare and development of MSMEs are cross-referenced in Chapter 9.

**Improve the regulatory environment by addressing restrictive laws and regulations that hamper competition.** To increase the number of business players in the market and facilitate their entry and re-entry, especially MSMEs, the government will address barriers to entry that stem from government regulation, patent protection, start-up costs, education, licensing requirements, or technological challenges.

In the services sector, the government will open sectors to foreign players and consider the enactment of legislation that will ease requirements for the practice of professions in the country to not only increase competition but also push local players to further improve their goods and services. Opening the telecommunications sector, for instance, will ensure more reliable internet services in the country and digitalization of businesses, especially of small business players and MSMEs in the new normal.

In the construction sector, the government will address public restraints by reviewing regulations that hinder competition such as the nationality-based distinction, which creates an uneven playing field between local and foreign contractors. The subsequent strengthening of regulatory quality within the industry will effectively reduce the formal and informal costs of doing business that held back sector efficiency and performance far below its inherent potential for so long.

To address other technological challenges, the government will continue to support research and development efforts to further pursue technological advancements in the country.

**Institutionalize the use of the Competition Assessment Manual/Toolkit.** The PCC will adopt the Competition Assessment Manual/Toolkit in identifying and reviewing potentially anti-competitive laws and regulations that address several development objectives but have unwarranted consequences on market competition. This manual/toolkit will be a capacity-building tool for government agencies to enhance their understanding of pro-competition interventions. It will enable government agencies to determine the impact of these laws and regulations on market competition, and possibly develop alternative regulations that are able to achieve development goals with the least harm to competition. To ensure improvement of the quality of regulations, the principles and steps under the manual/toolkit will be integrated into the Regulatory Impact Assessment (RIA) manual being formulated by the Anti-Red Tape Authority (ARTA).

## Reducing limits to entrepreneurship

**Streamline business registration and permitting processes.** To minimize the number of transactions and physical contact with various government agencies during business registration and submission of business-related requirements, the ARTA will continue to promote the establishment and implementation of one-stop shops and adoption of online registration system across the government. The ARTA will continue to coordinate with the Department of Information and Communications Technology (DICT) and monitor the development

and implementation of the Central Business Portal (CBP), as mandated by the Ease of Doing Business and Efficient Government Service Delivery (EODB-EGSD) Act of 2018. The CBP will facilitate faster and more convenient ways of registering, as well as securing and submitting other business-related permits. It will promote interconnectivity, integration, and linkage of the systems developed by the national government agencies (NGAs) and the local government units (LGUs).

The ARTA will be strengthened in terms of regulatory management practices to include reducing unnecessary regulatory burdens and requirements. To achieve this, the ARTA will continue coordinating with relevant government agencies for the implementation of Program NEHEMIA (National Effort for the Harmonization of Efficient Measures of Inter-related Agencies), which commenced in the first quarter of 2020. NEHEMIA is an interagency program that aims to streamline and reengineer inter-agency processes affecting priority sectors of economic and social significance. The priority sectors for the 2020 cycle of Program NEHEMIA are: (a) food and pharmaceuticals, (b) telecommunication towers, (c) power/energy, (d) housing and construction, and (e) logistics.

**Establish the Philippine Business Databank (PBD).** The PBD will be established pursuant to the EODB-EGSD Act to provide the government a single point of access to data and information of registered business entities to verify their existence, validity, and other relevant information. It will include the Philippine Standard Industrial Classification, a detailed classification of industries prevailing in the country according to the kind of productive activities undertaken by establishments. With this in place, the PBD will serve as a medium in implementing a more streamlined and uniform procedure for the issuance of business-related licenses, clearances, permits, certifications, or authorizations. It will facilitate online submission of documentary requirements and processing of requests. This arrangement will facilitate ease of doing business, enticing more firms to participate in the market at the local level. It also enhances the zero-contact policy, curbing corruption, and ensuring public health and safety in view of the COVID-19 pandemic.



## Cross-cutting Strategies

**Issue and implement the NCP.** A Joint Memorandum Circular embodying the NCP has been issued by the NEDA and the PCC. However, to ensure a whole-of-government effort and support to promote competition, the issuance of an AO by the President will be sought.

The NCP prescribes guidelines to steer regulations and administrative procedures of government agencies to level the economic playing field. It will direct and guide all NGAs, GOCCs, and LGUs to ensure that all policies, rules and regulations, actions, and interventions are not anti-competitive.

The NCP highlights three key elements: Pro-competitive Policies and Government Interventions; Competitive Neutrality; and Enforcement of Competition-related Laws and Issuances.

Under Pro-competitive Policies and Government Interventions, the government will ensure that all policies, laws, rules and regulations, issuances, and other interventions do not unnecessarily distort competition. It will amend or repeal anti-competitive laws and regulations and factor in market competition in the formulation of new policies. The adoption of this element in the design of government interventions will reduce barriers to entry and re-entry as well as reduce limits to entrepreneurship. This will be beneficial in facilitating the market participation of more firms, especially MSMEs, which are among the most affected by the COVID-19 pandemic.

Under Competitive Neutrality, the government will ensure that the GOCCs and private sector businesses compete on a level playing field. Unless it can be clearly demonstrated that greater public interest will be served and the undertaking lacks commercial viability, the GOCCs will not enjoy net competitive advantages or disadvantages over private sector businesses simply because of public sector ownership. To promote competitive neutrality, the Governance Commission for GOCCs (GCG) and the Department of Budget and Management (DBM) will continue to review the mandates of the GOCCs within their respective jurisdictions and make

appropriate recommendations to the President to ensure, among others, the separation of proprietary and regulatory activities. Moreover, the GCG and the DBM will lead in the drafting of guidelines on the grant of subsidies in favor of GOCCs based on an assessment of the nature, form, extent, and costs and benefits of these government subsidies and interventions and their impact on the business environment. They will also implement regulatory and non-regulatory measures to neutralize any advantage or disadvantage that may accrue due to public sector ownership.

Lastly, under Enforcement of Competition-related Laws and Issuances, the government will uphold the original and primary jurisdiction of the PCC over issues involving cartel agreements, abuse of dominance by firms, anti-competitive mergers and acquisitions, and other anti-competitive behaviors. In support of the mandate of the PCC, all government agencies will identify specific actions within their areas of responsibility to promote competition and eliminate anti-competitive behavior and undue regulatory burdens on competition.

**Strengthen capacity of relevant agencies to foster competition.** The PCC and the OFC will continue to implement capacity-building programs aimed at strengthening the technical competencies of the government in developing interventions and measures to address anti-competitive and other pernicious practices affecting the supply, distribution, and movement of goods and services, especially during emergencies. These programs will be made available through in-person training and classes (subject to strict physical distancing protocols) or through distance learning such as online courses and webinars.

**Increase understanding and awareness of market competition, the PCA and the PCC.** Household surveys show there is still low appreciation and awareness of market competition, including the PCA and the PCC. While it has conducted regional roadshows before the COVID-19 pandemic, the PCC will sustain its grassroots campaign. It will form strategic partnerships with education institutions, among others, and utilize traditional

as well as social media to conduct advocacy initiatives that can help increase awareness on market competition and its benefits to the public. Through these campaigns and advocacy initiatives, the PCC will also engage citizens to play an active role in monitoring and reporting anti-competitive practices through a complaint desk via trunkline and online platform.

**Expand the mechanism for various sectors to report potential violations of competition.** the PCC will sustain its implementation of the Leniency

Program, which offers immunity from suit or reduction of administrative fines to any entity that participates in an anti-competitive agreement<sup>1</sup> but offers to provide information and full cooperation during the investigation and prosecution of the violation. As one of the tools used by competition agencies in detecting cartels, this program facilitates the reporting of cartel members of their anti-competitive conduct to aid the PCC and the OFC in the investigations and prosecution. Citizens will also be encouraged to report violations of competition to the said agencies.

## Legislative Agenda

To strengthen the country’s promotion of market competition, the government will work towards the passage of the following key legislation:

*Table 16.2 Legislative Agenda to Promote Competition*

LEGISLATIVE AGENDA	RATIONALE
Amendment of the Public Service Act (Commonwealth Act No. 146)	<p>This measure will define “public services” and “public utilities,” which have been used interchangeably, to distinguish the former from the latter. The 1987 Philippine Constitution limits the operation of a public utility to citizens of the Philippines or to corporations or associations, at least 60 percent of whose capital is owned by Filipinos.</p> <p>It will also lift foreign equity restrictions in certain sectors that offer services not under the scope of public utilities, such as those engaged in the telecommunication services. This will encourage potential investors to participate, reducing the market power of incumbent firms.</p>
Amendment of the Foreign Investments Act (FIA) of 1991 (Republic Act [RA] 7042)	The proposed amendments will ease restrictive provisions in the FIA to address procurement restrictions and lengthy procedures that hamper foreign investment and participation of foreign bidders in local procurement. It will also include provisions to ease restrictions on the practice of professions in the Foreign Investment Negative List.
Amendment of the Consumer Act of the Philippines (RA 7394)	<p>This measure will facilitate the growth of e-commerce and ensure that firms respond to the requirements in the new normal and thrive in the digital economy. It will regulate ecommerce to protect both firms and consumers from fraudulent schemes.</p> <p>E-commerce will play a big role in the new normal as businesses and consumers increase the use of online transactions (see Chapter 9).</p>
Amendment of the Magna Carta for MSMEs (RA 9501, amending RA 6977)	The proposed measure will promote the growth and development of MSMEs by addressing challenges, such as limits to entrepreneurship and lack of access to finance and markets, among others. It will also increase access of MSMEs to financing, such as extending credit window to recover from the economic consequences of the COVID-19 pandemic.

<sup>1</sup> PCC, Rules of the Leniency Program of the PCC, December 27, 2018.