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Challenges Faced by Small Agencies and those in Developing Economies

Contribution from Philippines

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Challenges Faced by Small Agencies and those in Developing Economies: Advocacy within Government

-- Philippines --

1. Context

1. In recent years, the Philippine economy has been performing remarkably well. The country attained an average of 6.3% for its gross domestic product (GDP) growth rate from 2010-2016, the highest seven-year average in the last forty years. Among comparator ASEAN economies such as Vietnam (6.0%), Indonesia (5.6%), Singapore (5.4%), Malaysia (5.4%) and Thailand (3.6%), the Philippines recorded the fastest growth for this period and is considered as one of the fastest growing developing economies in the world today.

2. Despite its strong performance with respect to economic growth, the Philippines faces the policy challenge of sustaining this growth. In recent years, various indicators have pointed to the economy's relatively weak competitiveness, as evidenced by global competitiveness rankings. With respect to the same set of ASEAN member states, the Philippines only ranked higher than Vietnam in the Global Competitiveness Report 2016-2017¹ and placed last in the Doing Business Report 2017.²

3. Factors causing weak competitiveness or overall investment climate include inefficiencies in the functioning of various markets, including anti-competitive practices. This is illustrated by how the country ranks 99th out of 138 countries with respect to the pillar of product market efficiency in the Global Competitiveness Report 2016-2017. This indicator is concerned with the conditions of market competition and antitrust policies, aspects of trade, as well as taxes and subsidies, among others. Nevertheless, the country's performance in these indices have improved significantly over the years, with its ranking in the Global Competitiveness Report improving by 28 places in 2016 relative to 2010, and its ranking in the Doing Business Report improving by 49 places in 2016 relative to 2010.

4. Several factors contribute to the weak competitiveness and poor investment climate of the country. Various studies point to government policies and regulations, including administrative issuances and practices which have shaped market incentives over time and across space. The failure to identify potential conflicts in objectives and to coordinate these policies have led to longstanding inefficiencies in the market which act as binding constraints to sustainable growth.

5. With the passage of Republic Act 10667 or the Philippine Competition Act of 2015 (PCA), the government recognizes the need to reform current policies as sources of market inefficiencies and anticompetitive conduct. To address these constraints, the current administration developed a national game plan which includes the effective enforcement of competition policy as part and parcel of the development strategy to sustain growth and make it more inclusive.

¹ Published by the World Economic Forum.

² Published by The World Bank Group.

6. While competition policy is not a panacea to all the ills of the market economy, it is a crucial part of the country's development policy strategy. Effective competition enforcement and advocacy are expected to yield intermediate outcomes such as diminished anticompetitive practices, reduced barriers to entry and an improved business climate for entrepreneurs. In the process, market efficiency and consumer welfare are improved which then contribute to reducing inequality and increasing the growth potential of the economy. These channels ultimately lead to realizing the country's long-term vision of creating a high-trust and resilient society and a globally-competitive knowledge economy.

2. The Road to Mainstreaming Competition Policy

7. The country's journey to creating a competition law and implementing competition policy on a national scale was long and arduous. In the absence of this comprehensive law, the Philippine government and its stakeholders made use of fragmented rules every time competition-related issues were considered. Previous issuances and laws focused on government regulation on price-setting mechanisms implemented for certain commodities. The first competition bill in the country was filed in the Philippine Congress in the early 1990s.

8. Other members of the ASEAN already passed their own versions of the law and established independent competition authorities. After spending almost three decades in the legislative process, the Philippine Competition Act (PCA) was signed into law in 2015, in time with the creation of the ASEAN Economic Community. Notably, the country was behind among comparator countries in the ASEAN such as Thailand (established in 1999), Indonesia (1999), Singapore (2004), Vietnam (2004) and Malaysia (2010). In 2016, the Philippine Competition Commission (the "PCC" or the "Commission") was organized and members assumed office after having been appointed by the Philippine President.

9. Similar to other young enforcement agencies, various challenges emerge in the early stages of implementation. Since a comprehensive antitrust law is relatively new in the Philippines, there arises a problem of low awareness of competition law and policy and the role of the competition authority, even among government agencies.

10. In a recent nationally representative baseline survey of households conducted by the PCC, it was found that while 76% of survey respondents agreed that price-fixing is unfavorable, 74% wrongly believed that when competitors divide the market into territories, consumers benefit. Furthermore, 68% of respondents cannot say for sure if they prefer to have wider choices in the market. This illustrates how consumers are not yet fully aware of the benefits that market competition can bring to their lives.

11. The PCC has a broad policy mandate that covers the public and private sectors in all industries of the economy. As a new institution, it needs the support of established line-agencies to champion competition policy. The Commission recognizes that not much can be accomplished unless competition policy is mainstreamed into government decision-making.

12. In June 2017, the Philippine government under President Rodrigo Duterte launched its medium-term development plan which dedicated an entire chapter on the role of competition policy in leveling the playing field for businesses and consumers alike.

3. National Competition Policy Review

13. An effective competition policy, as with other government interventions, has to be evidence-based. The PCC's first order of business was to conduct a National Competition Policy Review in order to assess the state of market competition in different sectors. The PCC organized an Experts Review Team composed of an economist, lawyer and entrepreneur with the goal of assessing the Philippine competition landscape and identify key competition issues and enforcement priorities, including extant government regulations which restricted competition. Peer reviewers were also tapped in order to validate the findings of the Experts Review Team.

14. The output of this initial assessment included: (1) the identification of industries with serious competition challenges; (2) a broad understanding of market inefficiencies in different sectors; (3) the identification of products and sectors with political-economy considerations; and (4) the identification of areas with a potentially large impact on consumer welfare. These findings guided the Commission in the prioritization of its enforcement and advocacy activities.

15. Section 12, paragraph (o) of the PCA states that the PCC must assist the National Economic and Development Authority, in consultation with relevant agencies and sectors, in the preparation and formulation of a national competition policy. The paper that was developed from the National Competition Policy Review served as the key document used by PCC in drafting the National Competition Policy Chapter of the Philippine Development Plan (PDP) 2017-2022.

4. Leveling the Playing Field through a National Competition Policy

16. The PDP 2017-2022 serves as a blueprint for the country's development in the medium-term. It is a document created from the collaboration of different government agencies in providing inputs and comments on sectoral objectives and plans. As the country's national development strategy, the PDP 2017-2022 determines priorities for resource allocation and policy direction of government agencies. It serves as a compass for different government agencies since it contains measurable outcome indicators by which government performance will be gauged.

17. There are five priority sectors for competition analysis and enforcement identified through the National Competition Policy Review and the inputs of other government agencies: agriculture, manufacturing, power/electricity, telecommunications and transportation/logistics. This is the first development plan in the country's socioeconomic planning history to have adopted a dedicated chapter on competition policy.

18. This early success of the PCC was anchored on securing the support and commitment from the Philippine President and the leadership of line-agencies of government. By including competition policy in the national development plan, the Philippine government effectively recognizes the need to consider the competition lens in the crafting of laws, regulations and issuances in its pursuit of inclusive socioeconomic development.

5. Coordinating Implementation and Building Enforcement Capacity

19. As a new law, awareness about the implications of the PCA and the role of the PCC remains limited, even within the government. This hinders the PCC whenever it engages with these entities during investigation in aid of competition enforcement and merger reviews, activities which often require coordination with sector regulators. The PCC also faces risks caused by overlapping or conflicting mandates with other agencies, considering that the Commission is primarily tasked to promote market efficiency and safeguard competition.

20. However, with the guidance of the national development strategy, sector regulators and other government agencies recognize the importance of considering the competition lens in formulating policy and of working with the PCC to avoid jurisdictional and enforcement conflicts.

21. To harmonize its working relationship with other agencies, the PCC has prepared and executed several memoranda of agreement (MOA). The salient features include agreements for: (1) policy coherence, (2) streamlining of procedures, and (3) sharing of information and technical expertise. For example, the PCC has executed a MOA with the Philippine Securities and Exchange Commission (SEC) to mainstream PCC merger approval process into the SEC's own process. The PCC also has a MOA with the Commission on Audit to ensure information exchange in the review of transactions, especially for potential cases related to bid rigging.

22. The MOAs with other government agencies such as the *Bangko Sentral ng Pilipinas*, Insurance Commission, Department of Trade and Industry, Office of the Ombudsman, Land Transportation Franchising and Regulatory Board, and the Department of Justice – Office for Competition focus on the joint obligation of the parties to notify each other of any actual or potential competition concerns coming into their attention. The parties are also required to provide each other investigation and enforcement support, as their resources would allow, and to provide access to information and documents, subject to existing rules on confidentiality and privilege.

23. Moreover, Section 12, paragraph (r) of the PCA gives the PCC the power to review economic and administrative regulations, *motu proprio* or upon request, as to whether or not they adversely affect relevant market competition; and the power to advise the Executive Branch on the implications of government actions, policies and programs on competition and market efficiency. To provide an example, the PCC has contributed inputs to and coordinated with the Department of Information and Communications Technology in the development of the National Broadband Plan. Likewise, the PCC also provided comments and suggestions for policy reform for the Department of Trade and Industry's practice of issuing Suggested Retail Prices (SRPs).

24. The PCC has also provided inputs in technical working groups and legislative hearings, as well as through position papers, in order to mainstream competition objectives into the key policy reform bills drafted by the Philippine

Congress. The PCC's participation in these hearings allow the Commission to raise possible issues related to competition and to ensure that future implementation of these laws gives due consideration to the objective of market efficiency.

25. In building up enforcement capacity, the PCC taps into the assistance of international experts from development partners and other jurisdictions. External partners provide training not just for the staff members of PCC, but also for the staff of concerned government agencies. This is in line with the PCC's vision of becoming a world-class authority in fair market competition and its mission of fostering business innovation, increasing the country's global competitiveness and expanding consumer choices to improve public welfare.

6. Lessons from a Young Agency

26. From its experience as a young competition authority, the PCC recognizes that competition policy advocacy within the government promises high payoffs.

27. In order to make a significant and sustainable impact in the country's socioeconomic development, competition policy has to be mainstreamed into the government's development strategy and decision-making.

28. Empirical evidence, when it can be obtained, adds confidence and credibility in the design and enforcement of competition policy.

29. Mobilizing champions of competition policy within the government, especially among the leadership, is key to delivering more results in the face of resource and information constraints.

30. Law enforcement and policy implementation require coordination and collaboration with, not isolation from, other government agencies and development partners. Partnerships facilitate the sharing of information and expertise, both of which bolster enforcement capacity.