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Competition and Inequality – contribution from the Philippines

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Competition and Inequality

- Contribution from the Philippines

1. Introduction

1. Competition law and policy play a crucial role in fostering economic fairness and efficiency. In developing countries, where economic disparities often persist, effective competition law can be a powerful mechanism to tackle inequality by ensuring that vulnerable groups have access to essential goods and services. In practice, economists use the Gini coefficient¹ to measure income distribution within a population. The Gini coefficient of the Philippines remains high at 40.7% as of 2021. Despite a decreasing trend,² the Philippines still has the highest inequality among its ASEAN neighbors with the largest economies.³ The bottom 50% of the population now constitutes only 14% shares of the total national income, while the top 1% already captures 17% shares of the total national income.⁴ The abovementioned indicator of high inequality translates into lower labor productivity, lower GDP growth rates in the long run, and increased concerns in public welfare.⁵ The national poverty incidence is estimated at 15.5% in 2023. This means 17.54 million Filipinos are unable to meet their basic needs, according to the Philippine Statistics Authority (PSA).⁶

¹ The Gini index measures the extent to which the distribution of income (or, in some cases, consumption expenditure) among individuals or households within an economy deviates from a perfectly equal distribution. This metric ranges from 0 to 1 (or 0% to 100%), where 0 represents perfect equality (everyone has the same income) and 1 indicates perfect inequality (one person holds all income while others have none).

² 2 Gini indices of 44.6% in 2015 and 42.3% in 2018 from World Bank Group Data.

³ World Bank Group, “World Development Indicators - Gini Index,” accessed October 18, 2024, <https://databank.worldbank.org/reports.aspx?dsid=2&series=SI.POV.GINI>

⁴ Nadia Belhaj Hassine Belghith, Francine Claire Chang Fernandez and Clarissa Crisostomo David, *Overcoming Poverty and Inequality in the Philippines: Past, Present, and Prospects for the Future* (English), (Washington, D.C.: World Bank Group), <https://documents1.worldbank.org/curated/en/099325011232224571/pdf/P17486101e29310810abaf0e8e336aed85a.pdf>

⁵ Supra footnote 3.

⁶ Philippine Statistics Authority, “Official Poverty Statistics of the Philippines,” August 15, 2023, https://www.psa.gov.ph/sites/default/files/phdsd/2023%20FY%20Official%20Poverty%20Statistics%20Publication_15August2024.pdf

2. Inequality in the business landscape is also evident in the Philippines. According to recent data, micro, small, and medium enterprises (MSMEs) make significant contributions to the Philippine economy, but they lack the ability to compete against large firms.

3. MSMEs make up 99.59% of all establishments in the country, while large enterprises represent just 0.41%. In terms of employment, MSMEs provide 65.10% of jobs, with the remaining 34.90% coming from large enterprises.⁷ According to the recent PSA Annual Survey of Philippine Business Industry, large enterprises generate 49.1% of the total business revenue of establishments in the Philippines, while MSMEs accounts for 50.9%. However, in terms of subsidies, including financial assistance and tax privileges, large enterprises receive 65.9% of these benefits, whereas MSMEs receive only 34.1%.⁸

4. Among 99.59% of MSMEs, micro enterprises stand out as the dominant force, comprising 90.49% of the total. This remarkable statistic translates to approximately 1,004,195⁹ micro enterprises in the Philippines, highlighting their significant presence in the entrepreneurial landscape. On the other hand, the number of small enterprises accounts for only 8.69%, or around 96,464¹⁰ small businesses. The disparity becomes even more pronounced when we consider the number of medium enterprises, which represent only 0.40% of the total, or 4,484¹¹ medium businesses. Nonetheless, compared to larger businesses, MSMEs are relatively more accessible to diverse sociodemographic groups, including individuals outside the formal labor force, such as undergraduates, out-of-school youth, housewives, and persons with disabilities.¹² However, despite their substantial role in the economy, MSMEs remain far less productive than large firms due to several challenges. These challenges include limited access to finance, technology, markets, and disruptive regulations.¹³ Competition law and policy can help address these challenges.

⁷ Philippine Statistics Authority, “2022 Philippine MSME Statistics in Brief and Philippine Statistics Authority and 2022 List of Establishments,” accessed October 19, 2024, <chrome-extension://efaidnbmninnibpcjpcglclefindmkaj/https://dtiwebfiles.s3.ap-southeast-1.amazonaws.com/MSME+Resources/2022+Philippine+SME+Statistics+in+Brief.pdf>

⁸ Philippine Statistics Authority, “2020 Annual Survey of Philippine Business and Industry (ASPBI) - All Establishments by Employment Grouping: Final Results,” November 28, 2023, <https://www.psa.gov.ph/content/2020-annual-survey-philippine-business-and-industry-aspbi-all-establishments-employment>

⁹ Micro enterprises represent 1,004,195 out of 1,105,143 MSMEs. In terms of employment, micro businesses employ around 2,816,091 employees, or 32.69% of the 65.10% jobs produced by MSMEs.

¹⁰ Small enterprises represent 96,464 out of 1,105,143 MSMEs. In terms of employment, small businesses employ around 2,183,667 employees, or 25.35% of the 65.10% jobs produced by MSMEs.

¹¹ Medium enterprises represent 4,484 out of 1,105,143 MSMEs. In terms of employment, medium businesses employ around 607,990 employees, or 7.06% of the 65.10% jobs produced by MSMEs.

¹² Ma. Victoria R. Raquiza, “Micro, small, and medium enterprise (MSME) sector financing,” UP-CIDS Political Economy Program, no. 1 (2021), 7, https://cids.up.edu.ph/discussion_paper/up-cids-discussion-paper-series-2021-01-micro-small-medium-enterprise-msme-sector-financing-issues-and-challenges/

¹³ Jamil Paolo S. Francisco, Tristan A. Canare, and Jean Rebecca D. Labios, “Barriers to internalization of Philippine SMEs,” Philippine Institute for Development Studies, no. 11 (2018), 1, <https://pidswebs.pids.gov.ph/CDN/PUBLICATIONS/pidspn1811.pdf>

Competition law can ensure that MSMEs can compete fairly and have access to finance and technologies, and by preventing larger firms from abusing their market power.

2. Competition Law Enforcement and Inequality in the Philippines

5. An antitrust provision is provided in the 1987 Philippine Constitution. Specifically, Section 19, Article XII provides that:

“The State shall regulate or prohibit monopolies when the public interest so requires. No combinations in restraint of trade or unfair competition shall be allowed.”

6. In the landmark case of *Tatad v. Secretary (1997)*,¹⁴ the Philippine Supreme Court addressed the constitutionality of Republic Act No. 8180, a law which aimed to¹⁴ deregulate the downstream oil industry to foster a truly competitive market. However, the same law implemented a tariff differential rate in favor of the three [3] existing dominant market players in the downstream oil industry. In *Tatad*, the Philippine Supreme Court ruled that Republic Act No. 8180 was unconstitutional. The Court determined that the provisions on tariff differentials discouraged fair competition, fostered monopolistic power, and disrupted natural market dynamics. Moreover, the Philippine Supreme Court found that the statute contravened the intent and spirit of Section 19, Article XII of the Constitution toward a free enterprise system. The role of a free enterprise system was to provide the means by which the Philippines would achieve its goals for the national economy as defined by Section 1, Article XII of the Constitution, which are: more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged. The Court also clarified that a free enterprise system does not equate to a marketplace characterized by pure and unregulated competition, nor does it endorse a strict hands-off policy approach that permits unscrupulous practices.

7. Eighteen (18) long years following the *Tatad* ruling, the Philippines finally passed into law the Philippine Competition Act (PCA). Embedded in Section 2 of the PCA are the constitutional objectives for the national economy, which states:

“Pursuant to the constitutional goals for the national economy to attain a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged x x x”

8. The PCA underscores the government’s objectives of protecting consumer welfare and advancing domestic and international trade and economic development by penalizing anti-competitive agreements, abuses of dominant positions, and anti- competitive mergers and acquisitions.¹⁵ In line with these objectives, enforcing competition law can help reduce inequality by improving access to lower-priced goods and services and enabling fair market competition for enterprises.

¹⁴ *Tatad v. Secretary of the Department of Energy et al*, G.R. No. 124360, November 5, 1997.

¹⁵ Section 2(c), PCA

2.1. Industry or Sector Prioritization

Pursuant to the PCA, the Philippine Competition Commission (PCC) aims to promote fair competition, market efficiency, and consumer welfare. However, a more focused or targeted approach is necessary in enforcing competition law due to PCC's limited resources. In determining the priority sectors, the PCC identifies industries that are essential for underprivileged populations to access and that provide goods and services critical to improving the quality of life for all. For the years 2024-2028, the PCC has identified six (6) priority sectors, namely: 1) Water;¹⁶ 2) Food and Agriculture;¹⁷ 3) Health and Pharmaceuticals;¹⁸ 4) Transportation and Logistics;¹⁹ 5) Telecommunications, Financial Services, and Digital Platforms;²⁰ and 6) Energy/Electricity.²¹ These priority sectors align with the enforcement cases currently before the Commission.

9. For instance, investigating and dismantling cartels in the agricultural sector plays a crucial role in reducing poverty and inequality as it lowers prices for basic commodities. Pursuant to Section 12(a) of the PCA,²² the PCC, through its Competition Enforcement Office (CEO), commenced a *motu proprio* investigation into onion traders. This is due to an unprecedented surge in the price of onions from PHP 70.00²³ to PHP 700.00²⁴ per kilogram. The CEO filed a case alleging that onion importers colluded to divide and allocate the market, resulting in distorted prices. This sharp rise in onion prices negatively impacted many Filipino consumers, as onion is considered a staple ingredient in Filipino dishes. The price increase of onions raised food costs for low-income households and small food businesses. The traders can possibly continue limiting the supply in the market and, in effect, increase the price of onions if competition law is not enforced. This case is pending before the PCC.

10. Another case pending before the PCC is an abuse of dominance case against a rice miller. The complainant alleged that the rice miller was buying rice from farmers at an unfairly low price. This is a possible violation of Section 15(g) of the PCA, which states that an entity abuses its dominant position by:

¹⁶ Potable water is an essential basic commodity that all must have access to at the lowest price possible.

¹⁷ The Philippines is mainly an agricultural country. Families that consider themselves “poor” belong to the agricultural sector.

¹⁸ The price of medicines in the Philippines are very high compared to other countries in Southeast Asia and countries with comparable income.

¹⁹ Transportation and logistics facilitate commerce such that they are crucial in domestic and international trade.

²⁰ The scope of the sectors encompasses transactions, investments, and communications, which significantly contribute to economic growth. Digitalization allows MSMEs to participate in the market. Moreover, technology and digitalization are priorities in the current Philippine Development Plan.

²¹ The Philippines has the highest energy costs in Southeast Asia at \$0.18 per kWh.

²² Section 12(a), PCA – “Conduct inquiry, investigate, and hear and decide on cases involving any violation of this Act and other existing competition laws *motu proprio* or upon receipt of a verified complaint from an interested party or upon referral by the concerned regulatory agency, and institute the appropriate civil or criminal proceedings.”

²³ Equivalent to \$1.22 or €1.11.

²⁴ Equivalent to \$12.80 or €11.07.

“Directly or indirectly imposing unfairly low purchase prices for the goods or services of, among others, marginalized agricultural producers, fisherfolk, micro-, small-, medium-scale enterprises, and other marginalized service providers and producers”

11. According to the CEO, this case is of great importance because rice farmers in the Philippines are among the underprivileged in the country. Filipino farmers remain one of the poorest sectors in terms of poverty incidence, at 30%.²⁵ Farmers are deeply in debt to traders who provide financing to buy seeds, fertilizers, and other essentials before planting.²⁶ The same traders will buy the produce at below market prices, and the farmers have no choice but to sell at below market prices because they need to pay their debts and have no capacity to deliver their goods to the market.²⁷ Enforcing competition law can protect farmers who have low bargaining power compared to rice millers or traders, who may impose unfair prices when purchasing rice. This protection can indirectly improve farmers' incomes.

12. The PCC can have a broader, indirect impact on reducing inequality by concentrating its competition enforcement efforts on industries or sectors where underprivileged groups are actively involved. By targeting these sectors, competition law can help balance market power within the industry, ultimately strengthening the bargaining position of underprivileged groups.

2.2. Advocate Pro-competitive Laws and Regulations

13. The PCA is clear that one of its objectives is protecting consumer welfare. However, consumer welfare, in certain cases, must yield to public interest. Although the PCA has adopted the fundamental policy of the State in the Philippine Constitution, which states that “the State shall regulate or prohibit monopolies when the public interest so requires,”²⁸ the PCC has yet to decide on a case in which it invoked public interest considerations.

14. Public interest is a broad concept that does not have a clear-cut definition under Philippine law and jurisprudence. The Philippine Supreme Court described public interest as a matter in which the public, the community at large, has some pecuniary interest or some interest by which their legal rights or liabilities are affected.²⁹ Individual rights may be adversely affected by the exercise of police power to the extent only — and only to the extent — that may fairly be required by the legitimate demands of public interest or public welfare.³⁰

²⁵ Philippine Statistics Authority, “Fisherfolks and Farmers Remain to Have the Highest Poverty Incidences Among the Basic Sectors in 2021,” March 24, 2023, <https://www.psa.gov.ph/content/fisherfolks-and-farmers-remain-have-highest-poverty-incidences-among-basic-sectors-2021>

²⁶ Boo Chanco, “Food Inflation and Poverty”, Philippine Institute of Development Studies, December 18, 2023, <https://www.pids.gov.ph/details/news/in-the-news/food-inflation-and-poverty>

²⁷ Ibid.

²⁸ Article XII, Section 19, Philippine Constitution

²⁹ Palad vs. Solis, G.R. No. 206691, 03 October 2016

³⁰ Bureau of Immigration vs. Yuan Wenle, G.R No. 242957, 28 February 2023

15. In the case of *E.I. Dupont v. Francisco* (2016),³¹ the Philippine Supreme Court ruled against reviving Dupont's patent application for losartan,³² citing potential harm to public interest and market competition. At that time, a competitor, Therapharma, Inc., had already entered the market, increasing competition and lowering the prices for losartan products. Given that hypertension affects 25% of adults in the Philippines,³³ affordable medication is crucial,³⁴ especially for low-income households. The Court noted that more Filipinos could afford losartan when Therapharma entered the market, which also prompted Dupont to adopt more competitive pricing. The Court further held that reviving Dupont's patent could lead to monopolistic control, potentially raising prices and limiting access for low-income households. Thus, to protect public interest and maintain competition, the Court ultimately denied the revival of Dupont's patent application. This case illustrates the delicate balance between safeguarding public interest and fostering competition.

16. Further, public interest is mainly considered when the State enacts laws, rules, and regulations and may impose trade restrictions. To recall, Section 19, Article XII of the Constitution provides that “[t]he State shall regulate or prohibit monopolies when the public interest so requires.” In line with this, the government may enact laws and regulations that restrict competition in the market in favor of public interest considerations. For instance, legislators and sector regulators would sometimes impose price caps as an effective tool in addressing inequality. An example is Executive Order No. 39, series 2023 (E.O. 39, s. 2023), which temporarily mandated the imposition of a price ceiling on rice, a staple in the Philippines. The rationale for issuing E.O. 39, s. 2023 is to address a market failure, i.e., the surge in retail prices of rice, which placed a considerable economic strain on Filipinos, particularly those who are underprivileged and marginalized. Similarly, Executive Order No. 155, series of 2021 (E.O. 155, s. 2021), imposed a maximum retail price and maximum wholesale price for selected essential drugs and medicines. The prices of medicines in the Philippines are higher compared to other Southeast Asian countries. The main policy of E.O. 155, s. 2021 aims to improve access to affordable and quality medicine and reduce health-related out-of-pocket expenses of Filipinos.

17. As part of its mandate, the PCC actively engages in the legislative process, particularly in laws that may affect consumer welfare and facilitate free and fair competition. The Legislative Liaison Office of the PCC actively monitors legislative developments in the House of Representatives and the Senate. The PCC regularly submits position papers that express its support or opposition to proposed legislation. These position papers reflect the PCC's thorough examinations of proposed laws through the lens of competition policy.

18. One key piece of legislation that PCC supported is the Amendment of the Public Service Act or Republic Act No. 11659 (R.A. 11659). R.A. 11659 lifted the nationality requirements for public services not classified as public utilities (e.g., telecommunications, expressways, and airports). R.A. 11659 aims to operationalize the policy of the State to

³¹ *E.I. Dupont De Nemours. v. Francisco*, G.R. No. 174379, 31 August 2016

³² An invention related to the treatment of hypertension and congestive heart failure.

³³ In its decision, the Supreme Court of the Philippines referenced a World Health Organization study indicating that 25% of adults aged 21 years and older in the Philippines suffer from high blood pressure. Further, the Court found that according to the Department of Health of the Philippines, heart disease continues to be the top cause of death in the country.

³⁴ In its decision, the Supreme Court of the Philippines also cited a study by the Philippine Institute for Development Studies, which stated that "the affordability of drugs remains a serious problem" in the Philippines. The study found that the high cost of drugs makes them inaccessible for low-income households and is "even more prohibitive for the unemployed and indigent."

encourage private enterprise and expand the base of investment in the country, with the goal of providing efficient, reliable, and affordable basic services to all, especially the underprivileged.

19. The PCC’s mandate in advocating pro-competitive policies also covers the Executive Branch. The PCC and the National Economic and Development Authority issued the National Competition Policy of the Philippines. The President issued Administrative Order No. 44, series of 2021, which adopted the National Competition Policy (NCP) and directed national government agencies, government-owned or -controlled corporations, and local government units to comply with the NCP. The NCP requires government agencies to adopt pro-competitive policies and government interventions, adhere to competitive neutrality, and assist in the enforcement of competition-related laws and issuances. Implementing a whole-of-government approach in the implementation of competition law and policy may deter the issuance of very restrictive rules that may stifle competition and further increase inequality.

20. Under the NCP, the PCC assists and trains government agencies in conducting competition impact assessments of their existing rules and regulations. These rules and regulations being self-assessed by government agencies include regulatory requirements for businesses. Stringent requirements can result in regulatory barriers that may affect the entry and expansion of businesses, particularly MSMEs. By applying a competition lens to the existing rules and regulations, the PCC hopes that government agencies will be able to balance public interest with consumer welfare, promote local and international trade, and amend regulations that unnecessarily limit free trade.

21. The Competition Chapter of the Philippine Development Plan (PDP) of 2023-2028 recognized that genuine competition and enhanced regulatory efficiency will not only encourage investments and improve infrastructure but also enable businesses— especially MSMEs—to enter and compete in the market. In turn, market competition and ease of doing business will expand consumer access to affordable, innovative, and high-quality goods and services.³⁵ The PDP also recognizes the ability of MSMEs to compete with big firms, particularly in digital markets. It prioritizes the implementation of open access and competition-enhancing programs to ensure affordable broadband access for MSMEs all over the country. Importantly, it mandates sector regulators to actively consult with the PCC when creating a comprehensive spectrum policy.³⁶

22. Overall, pro-competitive policies can help facilitate the entry of MSMEs in various markets, enhance their ability to compete against large firms, and reduce the concentration of market power in certain industries. Another practical illustration of these pro-competitive policies is the PCC’s refund mechanism for consumers discussed below.

2.3. Refund to Consumers

23. The PCC implemented an innovative policy for compensating consumers. Instead of paying the fines, the firm will refund the amount to the customers. When Grab acquired Uber, it virtually became a monopoly. To address competition concerns, Grab offered to include pricing commitments in its voluntary commitments. The fine imposed on Grab for violating the pricing commitment will be given to riders as a refund instead of paying to the PCC. During the extension period of Grab’s commitment, Grab added a provision for disgorgement. This provision requires Grab to return part of its earned commissions to

³⁵ Chapter 10 PDP <https://pdp.neda.gov.ph/wp-content/uploads/2023/07/Chapter-10.pdf>.

³⁶ Ibid.

riders for Grab's non-compliance with its pricing commitments. Due to these refunds, Grab directly compensates the affected consumers for the loss or damages they may incur due to the commitment breach.

2.4. Challenges

24. The PCC continues to face challenges in implementing competition law in the Philippines. As a young competition agency, the PCC has limited capacity that can hinder the effective enforcement of competition law. Political influence can also be a challenge. Economic interests may have significant interests in policymaking, which can lead to the weakening of competition law and policy in favor of large firms. Finally, there is a very low level of awareness about competition law among the business enterprises, sector regulators, and the public at large.

3. Concluding Remarks

25. Competition law can help create a more equitable economic environment by promoting fair competition, enhancing consumer welfare, and addressing anti-competitive behaviors of large firms. While competition law alone may not fully resolve societal inequalities, competition authorities can help lessen that gap. Through effective competition law enforcement, consumers from poor households benefit from access to essential goods and services. Competition law can also help support MSMEs by ensuring that they have the resources and opportunities to compete effectively against large firms.

26. In its enforcement and advocacy actions, the PCC upholds consumer welfare and the promotion of free trade, aiming for fair social outcomes and market efficiency that help curb inequality. The PCC not only prohibits anti-competitive practices among market players and actively enforces competition laws but also collaborates with legislators and sector regulators to create laws and regulations that would balance consumer welfare with public interest. This collaborative approach ensures that MSMEs can compete on a level playing field, contributing to a more equitable economic environment for all.

27. However, the PCC must continue to evaluate its implementation of competition law. The conduct of continuous evaluation will ensure that competition law is enforced for its intended purposes. PCC's commitment to strengthen its competition enforcement will be vital in establishing a more inclusive economy for the Philippines.