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Voluntary Peer Review of Competition Policy: Philippines

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Structure of the Presentation



1. Foundations and History of Competition Policy



2. Legal Framework



3. Institutional Framework



4. Competition Advocacy



5. Summary and Recommendations

1. Foundation and History of Competition Policy



Basic Indicators



Archipelago of 7107 islands with more than 103 million people

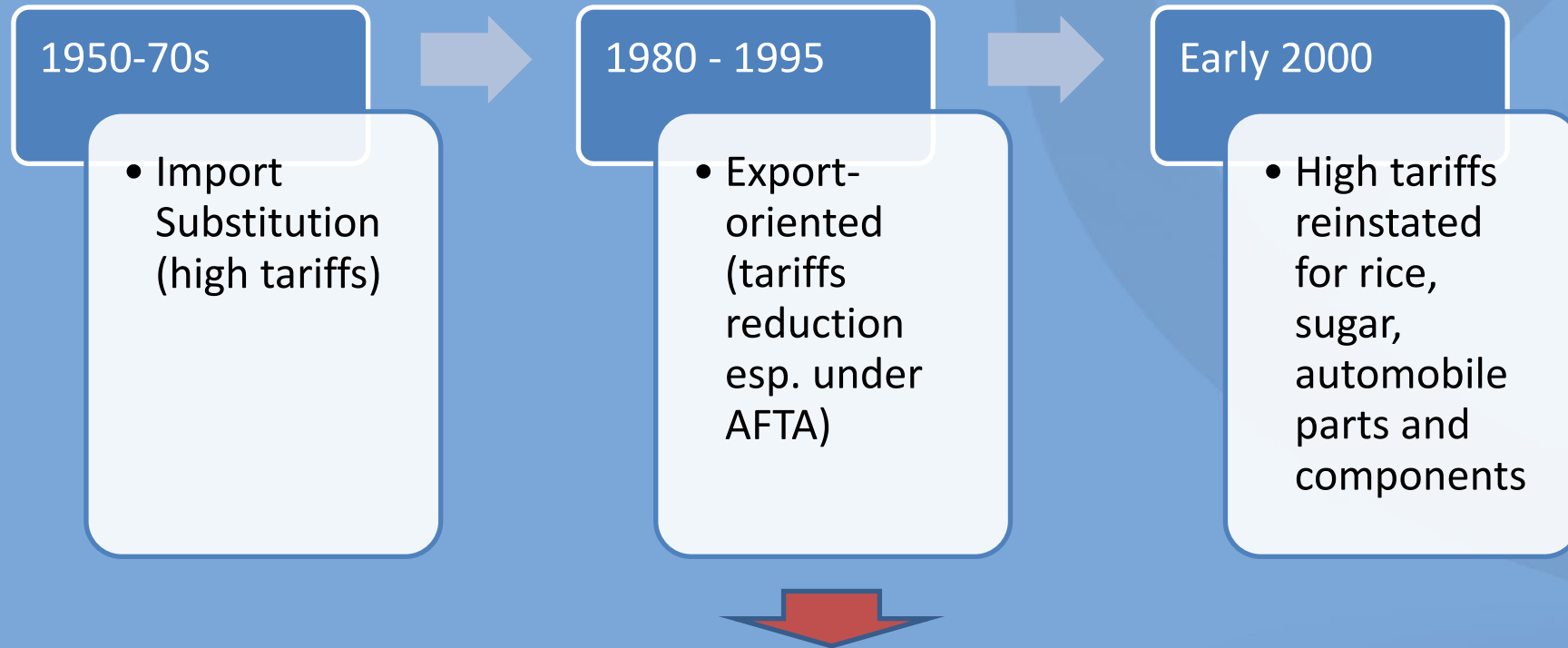
GDP per capita of USD 2701 – lower middle income country

GDP growth 6.8% - above ASEAN region @ 5.3%

Highest income inequality in ASEAN as wealth is concentrated in the hand of few families.



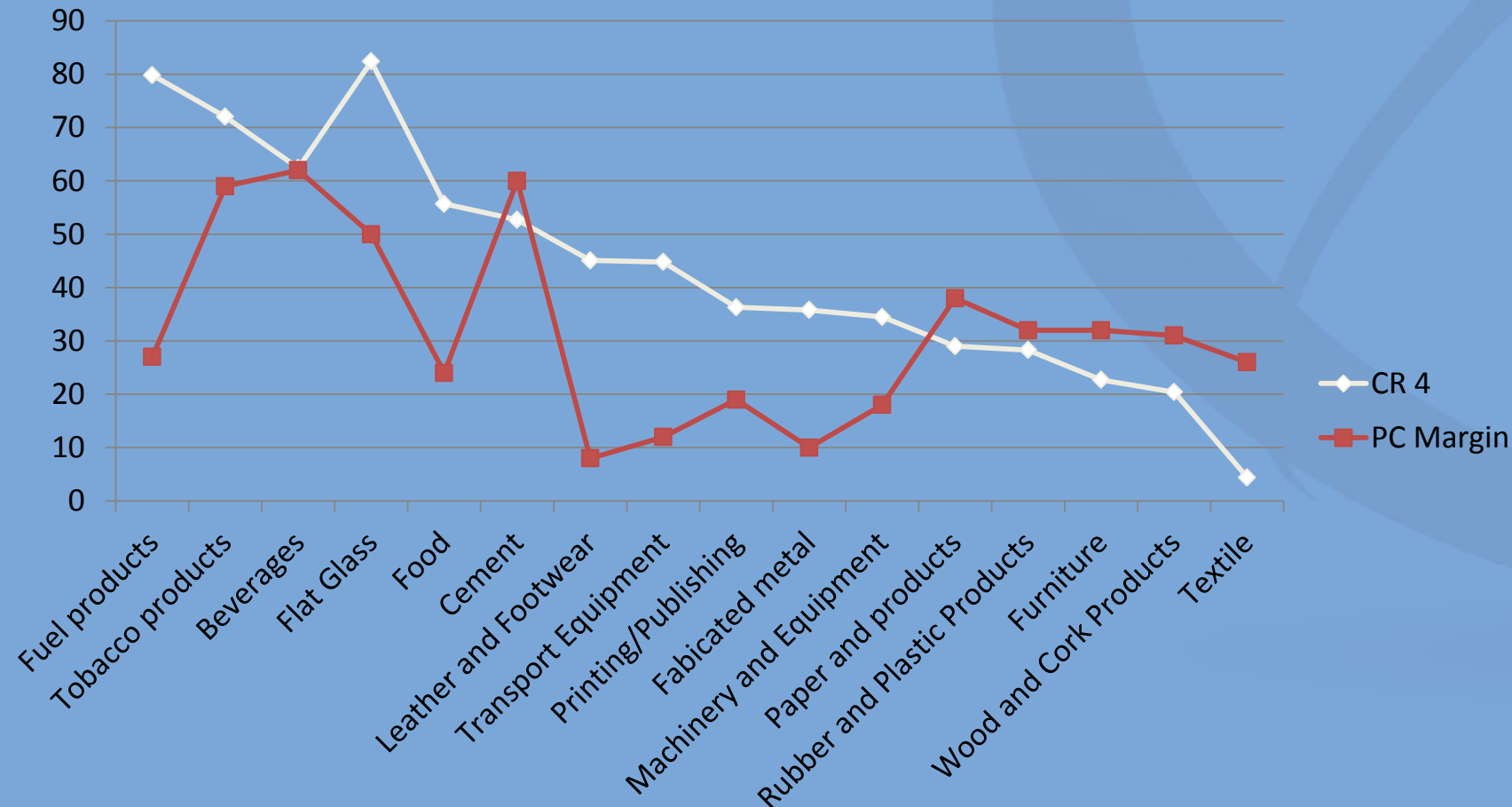
Economic Policy



Significant fall in CR4 except for certain industries

Aldaba, Rafaelita (2012), Trade Reform, Competition and Innovation in the Philippines, ERIA Discussion Paper Series 2012-5

Market Structure & Performance (2003)



Aldaba, Rafaelita (2008), Assessing Competition in the Philippines, Discussion Paper Series No. 2008-23

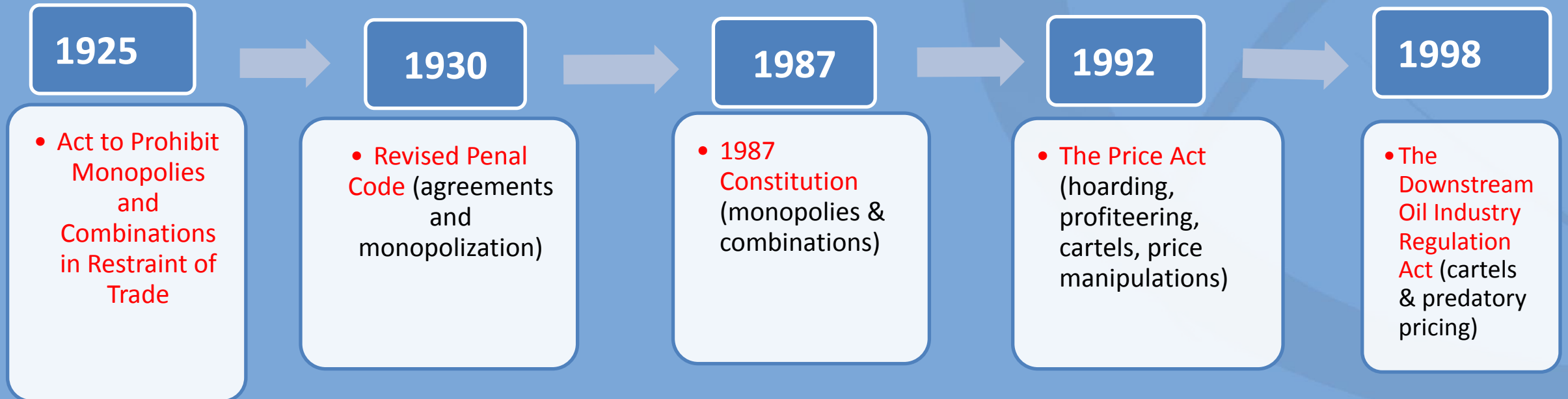
“Weak competition is one of the fundamental factors that explain limited growth, productivity and employment in the economy”

Philippines Institute of Development Studies (2008), Assessing Competition in the Philippines Markets, Discussion Paper Series 2008-23

2. The Legal Framework



Development of Competition Laws



1886 – 1930: Spanish Penal Code

2011 – Executive Order No.45
Establishment of Office for Competition (OFC)



Consistency with ASEAN Regional Guidelines

ASEAN Regional Guidelines	Existing Laws	Proposed Law
Prohibition against anti-competitive mergers	✗	✓
Merger regime – with power to suspend	✗	✓
Prohibition against collusive agreements	✓	✓
Leniency policy	✗	✓
Prohibition applying to vertical conduct	✗	✓
Prohibition against unilateral conduct	✗	✓
Criminal Sanctions	✓	✓
Private rights	✓ (for individuals only, not corporation)	✓

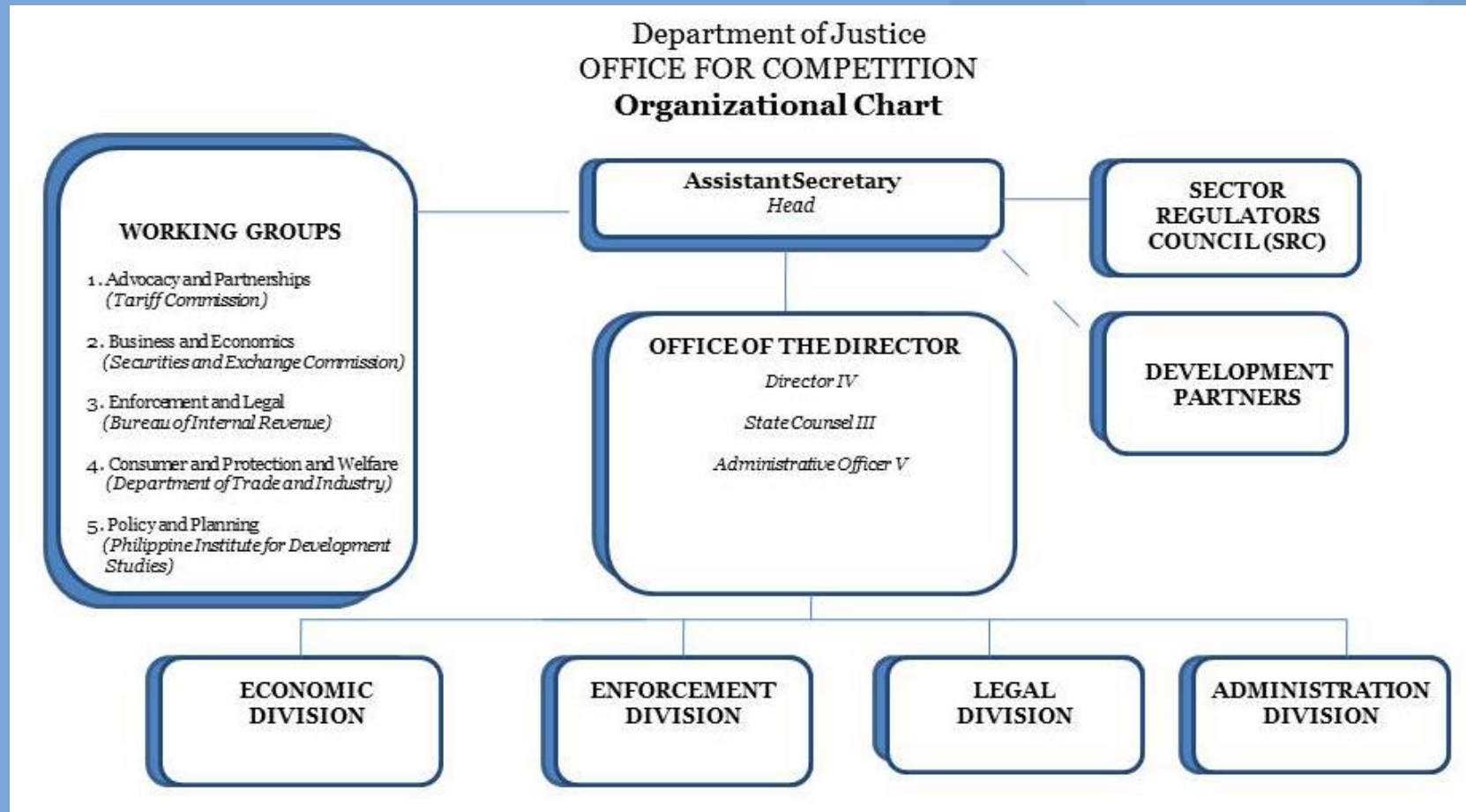
Scope for new laws

- President Aquino commenced his current tenure in 2010 with a call for passage of anti-trust laws
- A range of bills have been tabled in virtually every congress since the mid 1980's.
- The 15th congress concluding in mid 2013 was noteworthy for the existence of a substantial comprehensive competition law. The bill failed to pass the two houses
- The current 16th congress has a bill tabled (almost same as that filed previously in 15th congress)
- President Aquino urged the new (16th) congress to progress anti trust legislation
- Chamber of Commerce and Industry publicly support passage of anti trust laws
- ASEAN goal to have comprehensive policy and law by 2015

3. Institutional Framework



OFC Structure



Role of the Competition Regulator

-  Investigate violation of completion laws & prosecute
-  Enforce competition policies and laws
-  Supervise competition in the markets
-  Promote transparency and accountability in markets
-  Prepare, publish and disseminate studies and reports on competition
-  Promote international cooperation ad strengthen trade relations

The Competition Regulation Landscape

Office for Competition (Department of Justice)

- Investigate and all cases involving violation of competition laws
- Enforce competition laws: The Revised Penal Code, The Price Act, Downstream Oil Industry Deregulation Act

Sector Regulators

- Enforce sector-specific competition provisions

Bureau of Trade Regulation and Consumer Protection (Department of Trade and Industry)

- enforce laws related to consumer protection
 - Consumer Act
 - Price Act
 - Price Tag Law

The Sector Regulators

Philippines Port
Authority

Operation

Regulation

- No specific anti-trust provision

National
Telecommunications
Commission

Regulation

- General provision to foster fair market conduct and protect against unfair and quasi-monopolistic powers

Energy Regulatory
Commission

Regulation

- Prohibits anti-competitive behaviour and unfair trade practices
- ERC passed rules governing agreements, misuse of market power and mergers

Relationship between Sectoral Regulators and the OFC

ASEAN Guidelines on Regional Competition Policy: *Balancing Sectoral Regulation with National Competition*



Sectors with own regulator may be exempt from competition law



Concurrent regulation with national competition

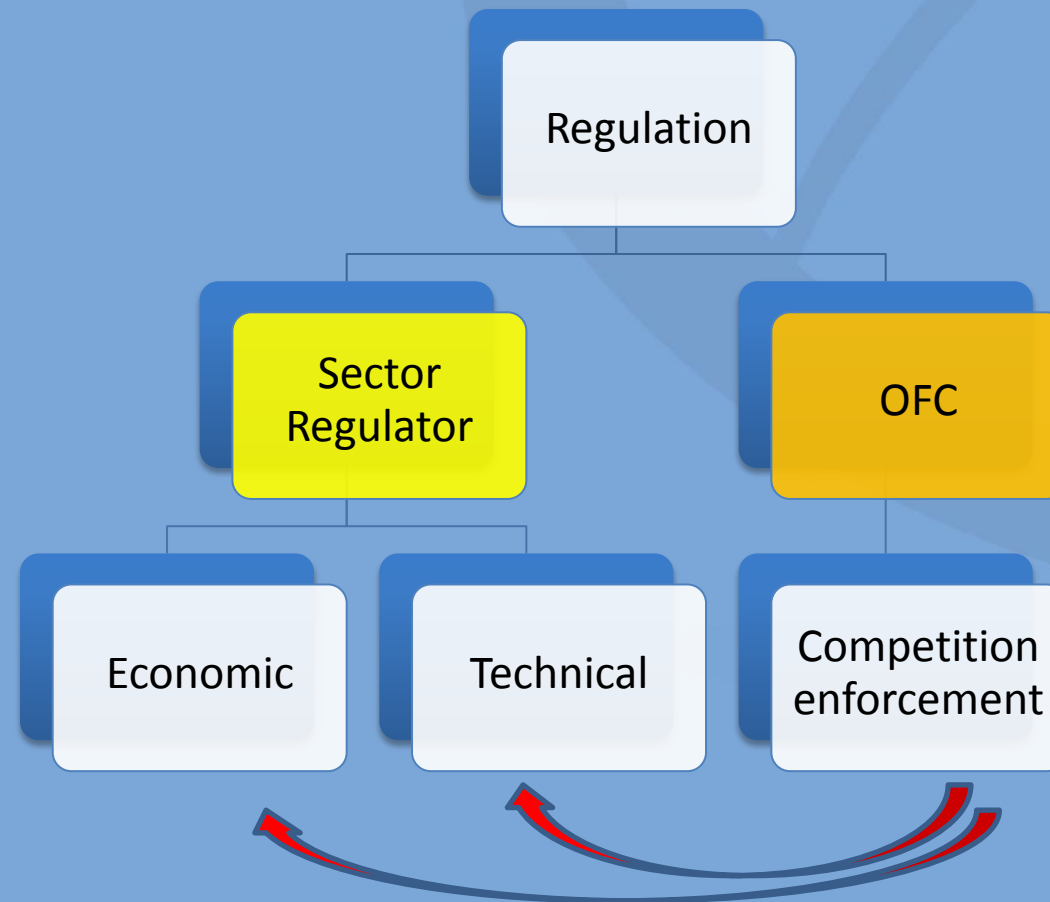


Member countries may impose or recommend consultation/coordination between sectoral regulator and competition authority

Guidelines to Govern the relationship between the Office of Competition and Sector Regulators



In case of regulatory capture, national interest or national emergencies as instructed by the President of Secretary of Justice



Enforcement Record



Launched investigation into alleged price manipulation in the wholesale electricity market (2006)



Approved merger between 2 of the 3 telcos resulting in a duopoly (2010)



NO COMPETITION CASE BROUGHT TO COURT BY ANY REGULATORY BODY THUS FAR

4. Competition Advocacy

ASEAN Regional Guidelines for “Advocacy & Outreach”

- Educating businesses, judges, civil society, etc. to build competition culture
- Advising gov’t on policies relating to competition, in particular, regulatory barriers.

The OFC

- Executive Order No. 45 does not spell out advocacy role
- The office worked with judges and public prosecutors, other state agencies and businesses
- not so much with other stakeholders such as civil society and consumers

5. Recommendations & Future Challenges



Recommendations

Legislators



- Promulgate a comprehensive competition law which applies to all sectors of the economy and with minimal exemptions at the earliest opportunity
- New regulatory authority should be (1) adequately funded (2) perceived as effectively independent from political influence within the UNCTAD Model Law on Competition (3) have access to full range of enforcement options to ensure compliance
- The new law should (1) contain a provision prescribing joint and several liabilities against directors, executive officers, partners, etc. (2) include a leniency regime, whistle blower protection and an offence for attempted anti-competitive conduct.

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Future Challenges

