Voluntary Peer Review of Competition Policy: Philippines

Report by Ms. Deunden Nikomborirak and Mr. Bob Weymouth
Expert for UNCTAD

The views expressed are those of the authors and do not necessarily reflect the views of UNCTAD
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

1950-70s
- Import Substitution (high tariffs)

1980-1995
- Export-oriented (tariffs reduction esp. under AFTA)

Early 2000
- High tariffs reinstated for rice, sugar, automobile parts and components

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

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

2. The Legal Framework
Development of Competition Laws

1925
- Act to Prohibit Monopolies and Combinations in Restraint of Trade

1930
- Revised Penal Code (agreements and monopolization)

1987
- 1987 Constitution (monopolies & combinations)

1992
- The Price Act (hoarding, profiteering, cartels, price manipulations)

1998
- The Downstream Oil Industry Regulation Act (cartels & predatory pricing)

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

1886 – 1930: Spanish Penal Code
### Consistency with ASEAN Regional Guidelines

<table>
<thead>
<tr>
<th>ASEAN Regional Guidelines</th>
<th>Existing Laws</th>
<th>Proposed Law</th>
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<tbody>
<tr>
<td>Prohibition against anti-competitive mergers</td>
<td>✗</td>
<td>✔</td>
</tr>
<tr>
<td>Merger regime – with power to suspend</td>
<td>✗</td>
<td>✔</td>
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<tr>
<td>Prohibition against collusive agreements</td>
<td>✔</td>
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<tr>
<td>Leniency policy</td>
<td>✗</td>
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<tr>
<td>Prohibition applying to vertical conduct</td>
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<tr>
<td>Prohibition against unilateral conduct</td>
<td>✗</td>
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<tr>
<td>Criminal Sanctions</td>
<td>✔</td>
<td>✔</td>
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<tr>
<td>Private rights</td>
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*Note: Private rights are for individuals only, not corporations.*
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

Department of Justice
OFFICE FOR COMPETITION
Organizational Chart

WORKING GROUPS
1. Advocacy and Partnerships
   (Tariff Commission)
2. Business and Economics
   (Securities and Exchange Commission)
3. Enforcement and Legal
   (Bureau of Internal Revenue)
4. Consumer and Protection and Welfare
   (Department of Trade and Industry)
5. Policy and Planning
   (Philippine Institute for Development Studies)

ECONOMIC DIVISION
ENFORCEMENT DIVISION
LEGAL DIVISION
ADMINISTRATION DIVISION

OFFICE OF THE DIRECTOR
   Director IV
   State Counsel III
   Administrative Officer V

SECTOR REGULATORS COUNCIL (SRC)

DEVELOPMENT PARTNERS
## Role of the Competition Regulator

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<tr>
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<tr>
<td>Investigate violation of completion laws &amp; prosecute</td>
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<tr>
<td>Enforce competition policies and laws</td>
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<tr>
<td>Supervise competition in the markets</td>
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<td>Promote transparency and accountability in markets</td>
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<tr>
<td>Prepare, publish and disseminate studies and reports on competition</td>
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<tr>
<td>Promote international cooperation and strengthen trade relations</td>
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</table>
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

• 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.
Recommendations

Legislators

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Future Challenges

- Enacting a comprehensive competition law
- Delivering most effective institutional model
- Building enforcement capacity
- Building public confidence
- Progressing to a stage where penalties are not just “cost of doing business”
- Getting enforcement balance right
- Overcoming ingrained corruption