

## ADVOCATING FOR SMALL AND MEDIUM ENTERPRISES AND COMPETITION POLICY

The Philippine Competition Commission (PCC) was created under the Philippine Competition Act (PCA). The PCA, or the Republic Act No. 10667, was enacted in July 2015 providing a basis for improving competition practice in the Philippines. The PCC is mandated to conduct inquiries, investigate cases involving anti-competitive agreements, abuse of dominant positions, and anti-competitive mergers and acquisitions. It is also within their remit to impose administrative sanctions for violation of the PCA and engage in competition advocacy.

This Policy Note is based on work completed under the *Capacity Building for Small and Medium Enterprises (SMEs) on Competition Policy and Law (CPL)* project sponsored by Asia-Pacific Economic Cooperation (APEC). The analysis is based on a literature review and focus group discussions (FGDs) conducted with government agencies and regulators, SME representative associations, and selected SME business owners. The opinions here are those of the authors and do not necessarily represent those of the PCC.

### Overview

The enactment of the Philippine Competition Act in July 2015 served as the first major piece of competition-specific legislation in the Philippines. It provides the basis for promoting economic efficiency, preventing economic concentration that stifles competition and penalizing anti-competitive conduct. It is intended as a means of enhancing economic growth, employment, poverty reduction and greater consumer welfare.

The Philippine Competition Act also provided the basis for establishing the Philippine Competition Commission (PCC). Reporting directly to the Office of the President, the PCC is mandated to conduct inquiries, investigate cases involving anti-competitive practice and engage in competition advocacy.

The Philippine Development Plan (PDP) 2017-2022 chapter, *Leveling the Playing Field through a National Competition Policy*,<sup>1</sup> provides an outline of the government priorities in the development of a national competition policy platform for improving the performance of the Philippines against key competition measures. The PCC has an important role to play in this.

The PCC is a new institution and to effectively fulfill its role and mandate, it will need to raise its profile and credibility. This is in addition to informing other government agencies, business operators and the public as to the purpose and benefits of effectively tackling anti-competitive practices and enhancing competition.

As a competition advocate, the PCC is mandated to advocate pro-competitive policies in government, review economic and administrative regulations to determine whether or not they adversely affect competition, and advise the concerned government agencies against such regulations.<sup>2</sup>

### The need for advocacy

SMEs can benefit from effective competition law and policy in a number of ways. These include:

- Removing government restrictions on registration lowers startup costs, encourages the establishment of legitimate business
- Appropriate taxation rates and collection procedures encourage SME growth and development
- Tackling private barriers to entry to markets and the abuse of unequal bargaining power allow SMEs to compete in new markets
- Eliminating cartels can reduce input costs and counter balance the monopsony buyer power of dominant counterparties
- Effectively tackling bid-rigging in public procurement can reduce business costs and increase the provision of vital basic infrastructure

While there is the potential for these benefits to be enjoyed by SMEs in the Philippines, a current low level of awareness of relevant competition issues is a significant limiting factor.

#### Basic awareness

FGDs confirmed that among the sample of SME associations and SME owners, there was little appreciation of competition policies, their impact or the nature of the legal prohibitions of anti-competitive conduct. While the establishment of the PCC can help address this, it needs to adopt a targeted policy to promote awareness of the purpose, function and legal powers, and the anticipated benefits of their work. This reflects the low level of awareness of competition issues in the Philippines, with government and SME association participants observing minimal awareness of SMEs on

<sup>1</sup> Government of Philippines, National Economic and Development Authority, (2017). *Philippine Development Plan 2017-2022*.

<sup>2</sup> PCA, Section 12 (r) and (l).

competition related policy issues and institutions.

### Credibility and legitimacy

An SME association noted that, “competition needs to become meaningful for businesses.” The PCC has a role to play in promoting this by taking effective enforcement action that raises awareness and provides appreciable benefits to SMEs and their customers. FGD participants noted that the PCC needs to achieve success in the short term to build credibility with government agencies, businesses and the general public. As reflected by one SME Association participant, “If we want the competition policy to be implemented and to be a priority for business and consumer, then PCC needs a big win.”

What constitutes a ‘big win’ was not clearly articulated, but the selection of an appropriate case and an immediate noticeable beneficial impact was implied. Such an outcome could flow from a high profile case, for example, the review of the current telecommunications case before the Supreme Court. Alternatively, significant strides could be made by promoting and implementing simplified systems and procedures for business registration and conduct.

## Targeted advocacy

As the lead competition-related institution in the Philippines, the PCC has a core responsibility to advocate for pro-competition policies, the suppression of anti-competitive conduct, and legal compliance by building relationships with different stakeholder groups to improve general awareness of competition policy. The PCC also needs to be seen as the lead competition advocate and policy coordinator between relevant government organizations. In doing so, the PCC should take on a multi-pronged approach. This includes advocating through internal government channels, as well as for particular issues in public through traditional and electronic media channels. The following section outlines areas which could be the focus of advocacy with different organizations.

### Government

As outlined in Policy Note 1: Government Restrictions of

Competition for SMEs, a number of the key challenges for SMEs relate to government processes and procedures. The cumulation of requirements for registration, taxation and permits across different parts and levels of government result in significant complexity for SMEs in establishing and running a business.

An FGD participant engaged in a social enterprise noted various challenges in the entry and innovation of SMEs in biotech industries. The social enterprise assists farmers and fisherfolk produce marketable products from the country’s marine and plant resources through the use of biotechnology. The FGD participant noted that, in addition to the basic registration and permit requirements across businesses, it needed to meet specific requirements for marine and plant resource development imposed by the Department of Environment and Natural Resources, Department of Agriculture, and Food and Drug Administration, among others. Some of the requirements are repetitive, while others are too costly for individual SMEs (especially farmers and fishermen). This creates a situation where the SME has access to raw materials, has the necessary skill sets or has access to technology support to develop biotech products, but is burdened by the administrative cost imposed by government regulations on entry into the business. This regulatory burden creates a disincentive to entry and enterprise innovation.

Given the immediate impact to entry and innovation of the aforementioned government regulations, the focus of PCC advocacy for government should be on these internal processes and issues. One such role could be in promoting greater understanding of what competition law can and cannot do, and how competition impediments can be remedied by either administrative or statutory changes undertaken by various government departments. This would involve highlighting to government stakeholders that the cumulative effects of overlapping mandates is restrictive of SME formation and growth and impacts negatively on the wider economy. For this type of advocacy to be successful, the PCC will be required to build strong networks with other agencies and collaborate across a range of tasks.

Advocacy with government would require a clear distillation of what is, and is not, within the scope of the PCC.

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## SME Associations and Owners

The FGDs highlighted the participants' limited knowledge of the PCA or the PCC, and a limited understanding of how these work or are relevant to businesses.

There are certain legal prohibitions of the PCA which are of greater significance to SMEs, specifically, the legal prohibitions of cartel activities<sup>3</sup> and related punishments. Within the FGDs, there was no basic understanding of the issues and there were clear risks that SMEs could engage in such activities without any intent for wrongdoing. Raising awareness of these issues through the channels for SME engagement, such as trade fairs, chambers of commerce and other industry associations, the Department of Trade and Industry (DTI) and/or other government SME support services could be beneficial.

In relation to the benefits from the PCA and PCC, advocacy should highlight that they provide SMEs protection from anti-competitive conduct and avenues to address the issue if they feel they have suffered from anti-competitive conduct. Effectiveness of this measure hinges on having adequate information and education of what anti-competitive conduct constitutes.

In line with advocacy, the PCC will need to ensure that it clearly articulates its role as a competition regulator, rather than an SME focused institution.

## General Public

The current low level of awareness of competition, and more specifically the PCA and PCC, should be the focal point of advocacy activities targeted at the general public. This includes not only highlighting the legal prohibitions related to certain anti-competitive practices, but also the broader benefits a more competitive market could bring to the Philippines.

As with SMEs, PCC needs a targeted campaign to help the public or at least a segment of the public to appreciate the purpose and beneficial effects of competition law. At a broad level, the PCC should emphasize a positive approach, as part of highlighting the benefits of the core scope of the PCC mandate. As one SME owner raised after the FGDs, "PCC is making sure everyone has the fair opportunity to compete; to allow people into the market". Drawing on this type of

narrative could be valuable.

In relation to targeting resources, focusing on specific practices such as bid-rigging<sup>4</sup> and, if appropriate, linkages with corruption in public procurement, could provide good focal points.

FGD participants noted that trust in government is a significant issue within the Philippines. This re-emphasizes the importance of building the credibility and reputation of the PCC through a significant enforcement win or reducing general government restrictions on competition in the SME sector. While such an activity would provide a basis to build the reputation of the PCC, public trust may still take a significant time to be consolidated.

## Conclusion and recommendations

The introduction of the PCA and establishment of the PCC provide a strong basis for achieving better competition policy and law outcomes in the Philippines. This will have social and economic benefits in relation to economic growth, employment and consumer welfare. However, the lack of awareness and understanding of not only the PCA and PCC, but also competition policy more broadly, is a problem. This manifests in different ways within government, among SME associations and owners, and in the general public.

The PCC has an important but targeted role to play in engaging in a range of advocacy activities to address the issue of a lack of awareness. This is an activity that will be most successful if done in collaboration with other stakeholders, and specifically drawing on their networks and credibility to promote market competition. PCC must be selective and build strategic alliances with groups to assist advocacy efforts to SMEs and the public. In the context of scarce resources, the PCC should prioritize and focus where they are able to generate greatest initial change and promote their brand.

We recommend that a starting point for advocacy with government stakeholders could be the conduct of a competition audit.<sup>5</sup> While the purpose would be to identify the overlapping issues of regulatory burden placed upon SMEs and the inhibitory consequences for activity in the market, the engagement of

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<sup>3</sup> A cartel is an organization created from a formal agreement between a group of producers of a good or service to regulate supply in an effort to regulate or manipulate prices

<sup>4</sup> Bid-rigging is a form of fraud in which a commercial contract is promised to one party, even though several other parties also present a bid for the sake of appearance

<sup>5</sup> A competition audit would be a review of government agencies' policies and practices to identify efficiency issues as a result of the large number of government agencies, at different levels, with overlapping mandates and to propose consolidation, and abolition or reform of structure and processes as appropriate.

multiple government agencies in the process could provide other benefits. Through engaging closely with other government stakeholders, the audit could raise awareness of competition within government, as well as how different policies affect competition within the Philippines.

Given the limited scope and resources of the PCC, we recommend the PCC to pursue an advocacy strategy for SMEs that draws on networks of SME associations and relevant government agencies. For example, continuing to build a close working relationship with DTI centrally as well as with regional offices would assist in building credibility and access to SMEs as the assistance of DTI is well acknowledged by SME owners and SME associations. Similarly, SME associations have strong networks to their members and are able to provide more targeted messaging through their pre-existing systems. These may be the best channels for PCC to advocate to SMEs nationwide both to inform SMEs about competition law but also as a method of gathering market intelligence and generating competition complaints.

We recommend that the PCC continue to build their profile with the general public through a multi-faceted approach. This will include taking advantage of low-cost profile building, such as public commentary and engagement in the media. Targeted awareness raising campaigns could be considered, but these should be based on consideration of priority areas as they can be costly exercises. Continuing to build the use of modern social media channels as well as cooperating with civil society groups to assist with advocacy efforts are essential in the continuation of the PCC profile building. The PCC could also look at other innovative strategies for raising long-term awareness of competition related issues. For example, targeted campaigns focused on schools and possible shaping of case studies in the school and university curricula

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