

LEVELING THE PLAYING FIELD

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 of competition policy and law in the Philippines

The inherent differences in scale, scope, and resources between small businesses and multinational companies means that direct competition in the same market could be one-sided. However, this does not mean that small businesses or new ventures cannot challenge larger incumbents, as has been clearly shown in the technology sector in the last 30 years. Small and Medium Enterprises (SMEs) are nimble and can create space in the market through lower cost structures, innovation in products and niche marketing, thus providing a different or better product or service that will appeal to customers.

The Philippine Competition Act (PCA) reinforces the efforts of the Government of the Philippines to sustain inclusive economic growth. In order to allow the SME sector to flourish and contribute to the promotion of economic growth, poverty reduction and increased employment, the government can help level the playing field by ensuring that artificial government or private barriers to market entry and unfair or anti-competitive commercial practices are effectively controlled.

The Philippine Development Plan (PDP) 2017-2022 provides

an overarching strategy for improving competition within the Philippines. It aims to “enhance market competition by fostering an environment that penalizes anti-competitive practices, facilitates entry of players, and supports regulatory reforms to stimulate investment and innovation.”¹ A core part of its objective is to “create a level playing field for SMEs by removing barriers to entry and reducing costs so that they can actively participate in the market.”²

Level the playing field – priorities for the Philippines

The Focused Group Discussions (FGDs) identified a number of priority areas for improving competition policy and law in the Philippines, and contributing to a leveling of the playing field. These are discussed briefly below, with further reference given to other Policy Notes, where they are outlined in more detail.

Government restrictions

Government restrictions were noted as disproportionately disadvantaging SMEs through the administrative burden related to running a business. As identified in the FGDs, SMEs cannot easily penetrate the market due to lack of government support in relation to infrastructure facilities, tax regulations and credit systems. The current systems for business

¹Government of Philippines, National Economic and Development Authority, (2017). Philippine Development Plan 2017-2022. p.245

²ibid, p.249

registration, licensing and taxation at national and local level were characterized as complex and slow. The overlapping mandates of different government organizations resulted in an overly bureaucratic system that provided disincentives for registering businesses as part of the 'formal' economy. For those that did register, issues with compliance emerge. This is discussed further in Policy Note 1: Government restrictions of competition for Small and Medium Enterprises.

Access to finance

Access to finance was identified as a limiting factor in establishing and growing business among SMEs. The Bangko Sentral ng Pilipinas (BSP) estimates that about 86 percent of Philippine households are 'unbanked' or do not have any bank accounts.³ While a number of banks have pro-SMEs policies, the uptake of these opportunities is limited by an emphasis placed on collateral by banks and the inability for SMEs to provide lands acquired under free patent or homestead as collateral. The result is that loan sharks or family are used as sources of credit and finance, rather than formal financial institutions. This is discussed further in Policy Note 4: Infrastructure, Competition and SMEs.

Anti-competitive practice from big business

At a broader scale, within developing countries, conglomerates can often be problematic by limiting SME access to markets. Conglomerates often have scale and scope, produce large revenues, which are often reinvested through subsidiary companies in other domestic sectors where, through cross-contracting between subsidiaries, external businesses are often 'crowded-out'. In the Philippines, certain conglomerates are now expanding outside their

core areas. While this might promote competition between conglomerates, for example, where previously a single firm had no effective competition, it may also intensify the risks of exclusionary effects with regards to SME entrants.

Within the FGDs, anti-competitive practices were not identified as a central issue for SMEs, who focused more on restrictions placed by government regulations and fees. However, it is likely that in the future, PCC may need to focus on conglomerate dominance and collective dominance issues. This issue is discussed further in Policy Note 3: Enforcement Priorities in Competition for SMEs.

Infrastructure

Infrastructure was noted as a significant issue in limiting SME access to markets. The lack of adequate infrastructure in the Philippines means that SMEs are competitively disadvantaged when it comes to facilities, technology and infrastructure. The key areas identified for lack of infrastructure related to roads, transport and shipping; telecommunications and connectivity; and costs related to utilities, particularly electricity. This is discussed further in Policy Note 4: Infrastructure, Competition and SMEs.

Enforcement

Enforcement was identified as an issue to be addressed. The PCA outlines three principal prohibitions related to anti-competitive agreements, abuse of dominance or misuse of market power, and anti-competitive mergers. While these prohibitions are important at a national level across businesses, the central threat to SMEs relates to anti-competitive agreements. FGDs identified that SMEs have a poor understanding of this prohibition, with the potential for them to engage in such activities as they

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³Chipongian, Lee, (2017). "86% of Filipino households do not have bank accounts –BSP survey," Manila Bulletin, January 14, 2017. Available at <http://business.mb.com.ph/2017/01/14/86-of-filipino-households-dont-have-bank-accounts-bsp-survey/>. Accessed July 13, 2017.

are deemed to be 'normalized' and without knowledge that they are committing any wrong doing.

Judicial process was also identified within FGDs as important. Problems to be addressed, specifically the cost of going through court proceedings and a desire for dispute resolution mechanisms that could resolve issues more quickly and with less expense. This issue is discussed further in Policy Note 3: Enforcement Priorities in Competition for SMEs.

Limited awareness of competition law

FGD participants identified that there is a low level of awareness related to either the PCA or the work of the PCC. This challenge is exacerbated by the PCC being a relatively new agency without significant public recognition. Given this, there is a strong requirement for advocacy in relation to raising the profile of competition-related issues across multiple scales, including focus on government agencies, businesses, SME associations, and SME owners themselves, given that the PCC has an important role to play in promoting market competition across different stakeholder groups in the Philippines. This is discussed further in Policy Note 2 – Advocating for SMEs and Competition Policy.

Conclusions and recommendations

There are multiple issues that are limiting the ability of SMEs to access and compete in markets within the Philippines. The majority of these are within the direct control of the Government of the Philippines, specifically in relation to addressing the current burdensome regulatory systems. The PCC has an important role in pursuing progress aligned with these issues, in so far as its mandate, resources and priorities allow. Each of the Policy

Notes outlines specific activities that could be pursued to remedy these issues. The following section provides some key actions that are recommended. At a whole-of-government level, there are key activities that could produce substantial benefits:

- Conducting a competition audit⁴ and making key policy decisions to eliminate government imposed barriers that prevent the formation and growth of SMEs;
- Addressing disproportionate compliance burden imposed on SMEs at the national and local government levels; and
- Energizing the SME sector through targeted policy measures to advantage SMEs by simplifying procedures for public procurement contracts and advantage SMEs through a targeted SME quota procurement policy.

The PCC should play a role in advocating with various government agencies to process these three activities.

More broadly, we recommend that the PCC should:

- devise and implement a targeted advocacy program aimed at politicians and government officials to draw their attention to the disproportionate administrative burdens placed on SMEs, and the negative impact these have on the growth of the SME sector, and consequently to economic growth and poverty reduction;
- devise and implement a targeted advocacy campaign aimed at the SME sector in collaboration with the Department of Trade and

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⁴A 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.

Industry (DTI) to inform associations and individuals of the nature and function of competition law, and the role of the PCC in assisting SMEs effectively deal with unfair and anti-competitive trade practices;

- suggest specific measures to national and local governments to reduce barriers to SME market participation; and
- target its enforcement of prohibitions contained in the PCA against anti-competitive upstream or downstream commercial practices to level the playing field in favor of SMEs.

For the PCC, it is important to emphasize that the best results are likely to be achieved through working with government, business and other representative associations and their networks.

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