Q&A

Frequently asked questions

Context

The Micro, Small and Medium Enterprise (MSME) sector is a vital engine of poverty reduction and economic growth in the Philippines. In 2015, the SME sector contributed 35%[1] of the gross domestic product and approximately 62% of all jobs in the Philippines.[2]

There has been an emphasis within government policy to support the sector. While enhancing competition policy and law with MSMEs in the Philippines has been identified as a means of increasing market performance, there exist low levels of awareness as to what competition policy and law is, and how it affects MSMEs.

The purpose of the document is to provide a clear outline of competition policy and law issues in the Philippines, and how it relates to MSMEs.

This Frequently Asked Questions brief builds on the previous outputs of the APEC-funded Capacity Building for Small and Medium Enterprises (SMEs) on Competition Policy and Law (CPL) project.

The purpose of this brief is to provide general guidance on competition policy and law issues for SMEs from Asia-Pacific Economic Cooperation member economies.

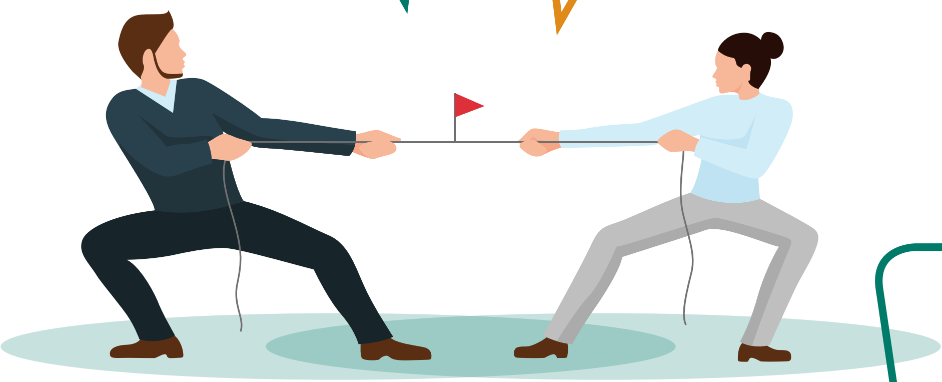
Section 1:

Competition policy and law in the Philippines

Q&A

What is competition?

Competition refers to a situation in which firms or sellers independently strive for buyers' patronage to achieve a business objective which includes, among others, increased profits, sales or market share.[3]



What is competition policy?

Competition policy promotes the level of competition in markets and creates opportunities for small enterprises and big firms alike. It benefits consumers by reducing prices, improving quality, and increasing the choice of goods and services.[4]

Competition policy generally consists of two elements. First, it includes policies that promote competition through market forces, such as trade and investment policies and reduction of government intervention in the market. Second, it includes competition law which dictates what business practices are prohibited and not.[5]

What does ‘competitiveness’ mean?

Competitiveness means the ability of firms to compete with other firms, while competition is the motivation for firms to compete in the first instance.[6]

Competitiveness generally refers to the ability of firms to produce goods and services that can compete in domestic and international markets.[7] A firm’s ability to compete is determined by a number of factors, including issues related to production (such as access to skilled workers), demand from consumers for the product, the existence of industries that support the business, and the strategies employed by the business itself.

Government also influences competitiveness. For example, governments can increase competitiveness through the provision of infrastructure (such as transport, telecommunications, and energy), reasonable and non-restrictive business regulations, and policies encouraging innovation and increased productivity.[8]

What prevents firms from entering and competing in the market?

Firms, especially prospective entrants, can be prevented from entering and competing in the market by a range of factors. This can include the existence of barriers to entry, which are restrictions on the movement of capital into and out of the market. These are either identified as structural or behavioral barriers.

Structural barriers are those that are usually outside the control of firms, such as the costs of producing goods, activities of governments and regulators, economies of scale, and large capital requirements or network industries – where many firms must use the same facility to do business (such as railway companies using the same rail infrastructure).

Behavioral barriers are those created by the conduct of existing firms to prevent the entry of new firms.[9] This includes anti-competitive agreements, abuse of dominant position, and anti-competitive mergers and acquisitions. Competition laws usually regulate these behavioral (also known as strategic) barriers to entry.

What is the Philippine Competition Act?

The Philippine Competition Act (PCA) or Republic Act No. 10667 (R.A. No. 10667), was enacted in July 2015. It is the legal framework through which the government can develop policy and regulation to foster a level playing field for businesses of all sizes in any sector. This reform is a long overdue win for consumers and businesses, as the Philippines is among the last member states of the Association of Southeast Asian Nations (ASEAN) to have an antitrust law. The PCA marks the realization of a decades-long legislative struggle for comprehensive competition reform.

What government agency is mandated to implement the Philippine Competition Act?

The Philippine Competition Commission (PCC) is mandated to implement the Philippine Competition Act. The PCC aims to protect consumer welfare and advance both domestic and international trade. The PCC is an independent body with investigative and quasi-judicial,[10] regulatory;[11] and advocacy functions.[12] It has primary jurisdiction over issues relating to competition, including prohibiting exploitative business practices such as anti-competitive agreements, abuse of market dominance, and anti-competitive mergers and acquisitions.

What acts or conduct does the Philippine Competition Act prohibit?

The PCA prohibits the following acts or conduct:

A

Anti-competitive Agreements, substantially prevent, restrict, or lessen competition. It is illegal for business rivals to act together in ways that can limit competition, lead to higher prices, or hinder other businesses from entering the market. Price-fixing (e.g., when companies that sell the same goods or services agree on the price to charge consumers) and rigging the outcome of bidding processes (e.g., when bidders agree among themselves as to who will win the contract) are considered anti-competitive agreements.

For instance, Firms A, B, and C are competitors in the distribution of optical lenses. In order to gain higher profits, they agree to increase the prices of optical lenses by 10%. This agreement to raise prices by a fixed percentage is prohibited under the PCA.

B

Abuse of market dominance, exists when an entity with a significant degree of power in a market engages in conduct that restricts competition. Such conduct includes predatory pricing, imposing barriers to market entry, and the unfair exercise of monopsony power (where one business is the sole buyer for many sellers), among others.

For example, Firm A is the largest supermarket in Town A. It sources its fruits and vegetables from the farmers of Town A and is the sole buyer of all their farm produce. This gives Firm A the power to dictate the purchase price of the farm produce. Being the dominant supermarket in Town A, Firm A can refuse to buy bananas sold by farmers at PhP 100.00 unless the price is lowered to PhP 40.00.

C

Anti-competitive mergers and acquisitions refer to the merger or consolidation of companies that substantially lessen competition, or significantly impede effective competition in a relevant market. While mergers and acquisitions are not illegal per se, merged entities can coordinate their market behavior and exercise market power unilaterally.

For example, Firms A and B, which are competitors in the electricity distribution industry, agree to merge. Before such merger, Firm A has a market share of 60% of electricity distribution, while Firm B has 30%. Firm A also owns the distribution network, which it leases out to its other competitors. After such merger, the merged entity, Firm C will effectively corner 90% of the electricity distribution market. The remaining 10% consists of small electric distribution cooperatives. These cooperatives do not have the financial resources to invest in any expansion of their operations. Also, Firm C (through Firms A and B) has long-term contracts with all the electricity generation companies that supply most of their generated electricity to Firm C. Under these conditions, even if Firm C raises its electricity rates by 300% to gain profit at the expense of electricity consumers, no other firm can enter the market and compete with Firm C to force it to lower its electricity rates to competitive levels. This makes the merger anti-competitive.

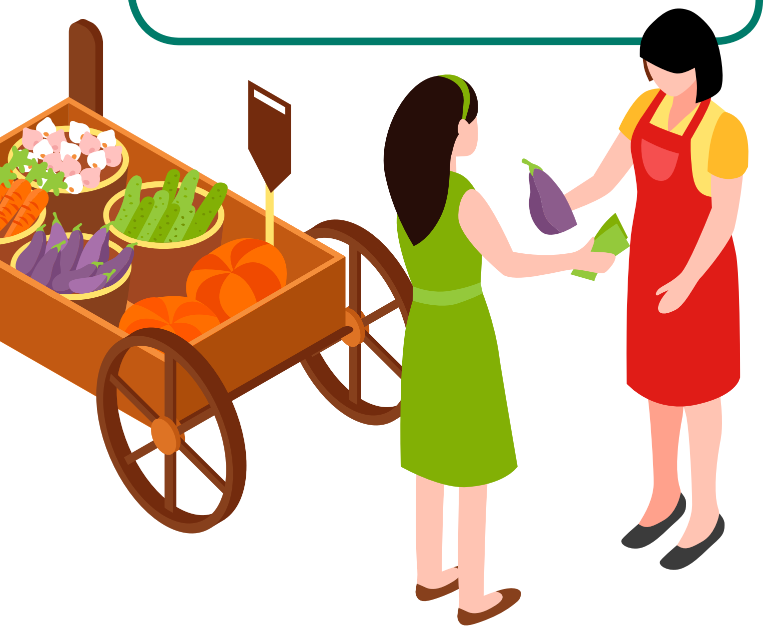
Section 2:

MSMEs and CPL in the Philippines

This section provides an outline of CPL and how it affects MSMEs in the Philippines.

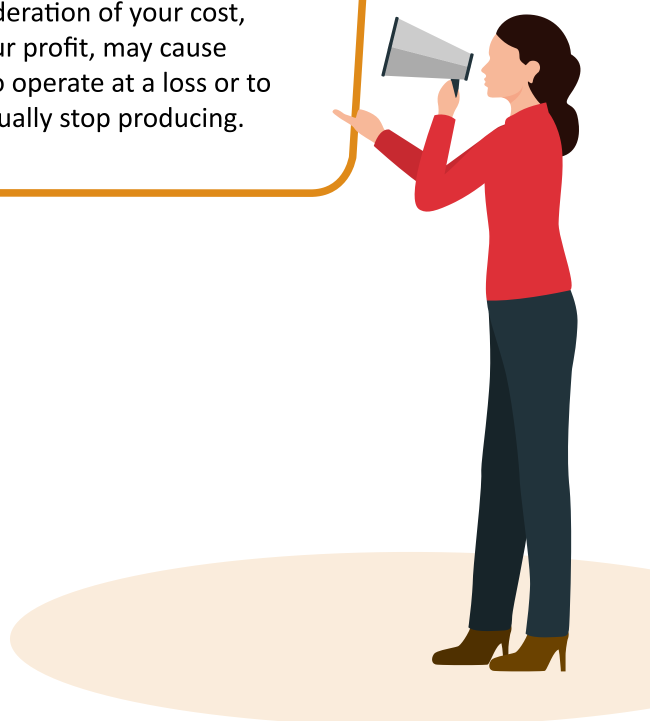
As an MSME, what are the acts or conduct that are not allowed under the PCA?

Micro small and medium enterprises (MSMEs) are prohibited under the PCA from entering into anti-competitive agreements. For example, MSMEs cannot agree with each other to take turns at bidding for projects (such as construction projects); or to fix the price of goods they sell, which is different from the prevailing market price, with the intent of getting customers from other competitors.



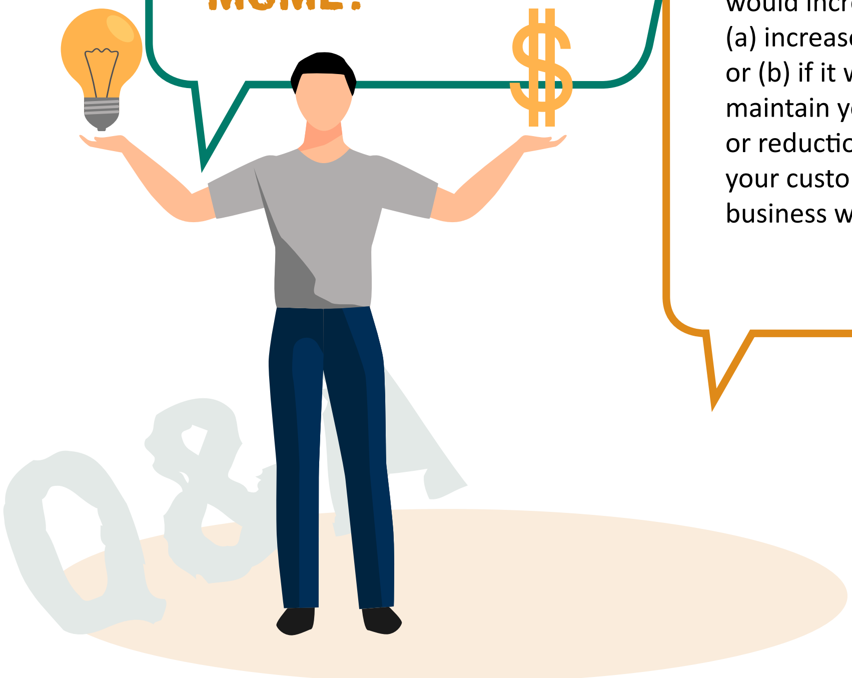
Why would it matter to me, as an MSME and farmer in Town A, that Firm A in Town A (See Question 7, item B above) dictates the price of the farm produce it purchases from Town A farmers?

The abuse of dominance exercised by Firm A in dictating the purchase price for your farm produce without consideration of your cost, or your profit, may cause you to operate at a loss or to eventually stop producing.



How would anti-competitive mergers affect me as an MSME?

Going back to the example in Question 7, item C above, if Firm C increases electricity rates to earn a 300% profit, the substantial increase in electricity prices may increase your cost of doing business. If your cost of doing business would increase, your options may be to either: (a) increase the selling price of your product; or (b) if it will make you lose customers, maintain your selling price and suffer losses or reduction of your profits. In option (a), your customers will suffer. In option (b) your business will suffer.



As an MSME, what should I do if I am a victim of anti-competitive behavior?

If you are a victim of anti-competitive behavior, you can inform the PCC through the filing of a verified complaint. The PCC, through its Enforcement Office, may then conduct a preliminary inquiry to determine if there are reasonable grounds to conduct a full administrative investigation. A full administrative investigation will determine if there is basis to charge the entity you are complaining against with a violation of the PCA. If the PCC finds sufficient basis, it will file a statement of objections against the entity charged (respondent) and the PCC shall conduct adjudication proceedings. If the PCC finds a violation, it may fine or penalize the respondent in accordance with the provisions of the law. (See PCC Rules of Procedure.) After such finding, you may also file a civil suit against the respondent. In addition, the PCC may also initiate criminal proceedings with the Department of Justice - Office for Competition.

Are there parts of the PCA that protect me, as an MSME, against anti-competitive behavior?

If the PCC, after full administrative investigation, finds that an entity or entities have engaged in anti-competitive conduct, the PCC may impose structural or behavioral remedies to cure such anti-competitive behavior, thereby protecting consumers and other businesses.

If I want to know more about competition policy and law and how it affects my business, what resources are available to me?

For more information about the PCA and the PCC and the work of APEC on SMEs, you may check out the following links:

- Philippine Competition Commission website: http://phcc.gov.ph/
- The Philippine Competition Act and its Implementing Rules and Regulations: http://phcc.gov.ph/implementing-rules-regulations-philippine-competition-act/
- PCC Rules of Procedure: http://phcc.gov.ph/2017-rules-procedure-philippine-competition-commission-pcc/
- Frequently Asked Questions: http://phcc.gov.ph/pcc-faqs-smes/
- APEC SMEWG website: www.apec.org/Groups/SOM-Steering-Committee-on-Economic-and-Technical-Cooperation/Working-Groups/Small-and-Medium-Enterprises

Endnotes

1 Mercurio, R, (2015). SMEs eyed to hike GDP contribution, The Philippine Star. Available at: www.philstar.com/business/2015/11/24/1525141/smes-eyed-hike-gdp-contribution
2 Government of Philippines, The Department of Trade and Industry, 2015 MSME Statistics. Available at: www.dti.gov.ph/dti/index.php/2014-04-02-03-40-26/news-room/179-workshop-on-market-access-for-smes-set
3 A Framework for the Design and Implementation of Competition Law and Policy, OECD-World Bank, 1998.
4 Competition Policy. World Bank. Available at: www.worldbank.org/en/topic/competition-policy
5 See Erlinda M. Medalla, ed., Towards A National Competition Policy for the Philippines, (Philippines: PASCN and PIDS, 2002), 1-21.
6 See The relationship between competition, competitiveness and development, Regional Seminar on Trade and Competition: Prospects and Future Challenges for Latin America and the Caribbean, UNCTAD, 2009.
7 See The relationship between competition, competitiveness and development, Regional Seminar on Trade and Competition: Prospects and Future Challenges for Latin America and the Caribbean, UNCTAD, 2009.
8 See Michael E. Porter, The Competitive Advantage of Nations, Harvard Business Review, March – April 1990.
9 See Competition and Barriers to Entry, Policy Brief, January 2007, OECD; A Framework for the Design and Implementation of Competition Law and Policy, World Bank-OECD, 1998.
10 Rep. Act 10667, Section 12.
11 Rep. Act 10667, Sections 50.
12 Rep. Act 10667, Section 12.