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# Manual for Competition Assessment of Regulations in the Philippines

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*Aiming to make regulations more competitive, this manual provides practical guidance on how government officials can assess the competitive effects of regulations and revise those that unduly restrict competition.*

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# The Checklist

Does the regulation:

- I. Create barriers to entry for new companies?**
  - a. Does the regulation create unique and exclusive rights for a company?
  - b. Does the regulation create license or permit systems for companies?
  - c. Does the regulation raise the cost for a company to enter or leave a business activity?
  - d. Does the regulation place geographical barriers on operation and trading?
  
- II. Restrict potentially competitive company actions?**
  - a. Does the regulation establish price rules?
  - b. Does the regulation restrict advertising?
  - c. Does the regulation set standards that would not be chosen by many informed consumers?
  - d. Does the regulation create differential costs of operation for businesses?
  
- III. Encourage potentially anti-competitive co-ordination by companies?**
  - a. Does the regulation create a regime of self-regulation?
  - b. Does the regulation generate sharing of sensitive information?
  - c. Does the regulation exempt a company or industry from competition law?
  
- IV. Limit consumer information and choice?**
  - a. Do consumers lack sufficient information and ability to choose well?

## 1. Executive summary

This manual is intended to help government officials to review regulations for their competitive impact on markets, identify those that potentially restrict competition and develop alternative regulations that have less or no harm to competition. The approach used in this manual is one that is currently applied in many regions, based on material initially developed after cross-economy consultations by the OECD. The core of this approach was endorsed by APEC's Economic Committee in 2017.

### 1.1 What regulations can be reviewed?

The generalised approach can be used to review existing regulations or proposed new regulations. It is not sector specific, instead it builds on the broad general principles of industrial economics. When the approach is applied to pre-existing regulations, a set of criteria is provided to suggest how to prioritise areas for review. When the approach is applied to new regulations, this can be done, via a general process of regulatory review.

### 1.2 Who should use the manual?

The manual is intended for government officials from central government ministries, government agencies, local government, regulators and the competition authority. It can be used for either self-review or outside review. No prior expertise on competition or economics is required to apply the manual. No prior professional training is required. While the manual can be applied by lawyers and economists, it is written for a wider audience and does not presume knowledge in these disciplines. The manual can also be used by local and regional government officials, not only member economy government officials.

### 1.3 How does the review work?

The review process is based around asking a set of questions about a regulation. These questions identify those regulations that have a potential to restrict competition. Regulations that are identified as potentially restrictive merit a further detailed competition assessment. Where the restrictions are confirmed as substantial, the manual presents a method for identifying possible alternative regulations. This is backed up by worksheets in the Annex that provide an illustrative technique for review. That technique can in turn be changed to accommodate regulator needs and information.

### 1.4 Why should a review be performed?

The reason to review regulations for their competitive impact is that competition-restricting regulations have a substantial impact on consumers and companies. While this review is particularly concerned with final impacts on end consumers or the purchasing public, it also considers intermediate buyers of products, which are often businesses, as "consumers". The relevant consumer, from the perspective of a government agency, may depend on the agency stakeholders. One of the best ways to protect real people and other spenders, like government, is to protect the process of market competition at all levels of supply chains, including at intermediate levels. Competition-restricting regulations can create government endorsed and enforced monopolies. While government may wish to create monopolies at times, there are substantial benefits that can be achieved from competition. As a result, government may wish to avoid anti-competitive outcomes. The intentional creation of monopolies should only occur after careful thought and due consideration of the costs and benefits of monopoly. Furthermore, at times, governments may unintentionally create monopolies. This manual will help to avoid such unintentional action.

## 2. Introduction

Establishing and enforcing regulations is an essential role of government. Regulations serve a variety of purposes, such as ensuring safety and security, making sure that people act in ways that take account of their impact on others, reducing the power of monopolies and reducing risks. Government is empowered to enact regulation in order to serve these public purposes. Many have found that at times, regulations overstep the necessary purpose and may have other impacts that are not desirable.

### 2.1 Regulation often has competitive impacts

Regulation often restricts competition. Typically regulations do not say explicitly that they are restricting competition. Often they do so in subtle unintended ways that require understanding what competition is, as a process, and not on whether the regulation literally says it will restrict “competition”. Competition, put simply, is the rivalry between companies to win business for a product and is enabled by a permissive environment towards the entry of new companies. It is competition that provides many of the incentives for companies to give us what we want. Competition often leads to one firm to charge a lower price than a rival firm to gain our custom or to offer a better quality product or service than the rival firm. Similarly, in sports, it is competition that yields the incentive for players and teams to excel. It is worth noting that, particularly in the context of liberalisation, the absence of regulation can sometimes create competition problems.

### 2.3 Competition yields substantial economic benefits

When regulations restrict competition, the incentives decline for companies to excel. Less competition can reduce the incentives for companies to keep their products affordable. A particular concern is when regulations create monopolies. When regulations create monopolies, there is no direct competitive force constraining the monopolist’s prices.

When regulations promote competition, they create a benefit for customers. There is also a substantial body of economic research that shows competition benefits the economy more broadly, by making companies more productive. Increasing productivity is ultimately one of the foundations of economic growth.

### 2.4 Ensuring regulations are not anti-competitive is therefore worthwhile

Due to the economic benefits that can arise from competition, officials may wish to adopt a general principle that competitive solutions should be favored. This is particularly the case because monopolies tend to benefit those who own them and hurt those who are forced to pay more for products, including the poor.

### 2.5 Competition assessment of new and existing regulations is the best way to achieve this goal

While governments may wish to promote competition, companies may seek to lobby for rules that restrict competition. Some theories suggest that companies may lobby for regulations in order to enhance their own market power. A maker of fire resistant pallets, for example, may lobby to make wooden pallets illegal due to their risk of burning.

To the extent that many economic forces may push regulations to restrict competition, a method is needed to ensure that government officials can identify and reduce restrictions on beneficial



competition. This manual presents a method for making competition assessments of regulations and for developing alternative regulations that still achieve the intended policy goal.

**Example 1: “Project Repeal”**

As a general matter, reviewing regulations from time to time is a valuable exercise. The National Competitiveness Council’s “Project Repeal” has been a large scale program designed to improve/remove regulation. By the end of November 2016, 30,125 regulations had been identified for review and 2,207 had been reviewed. Of those reviewed, 11 were repealed and 177 amended.

## 2.6 Appropriate weight should be given to the results of competition assessment

Once regulations have undergone competition assessment by officials, it is important that policymakers seriously consider the recommendations coming from these assessments. Substantial economic benefits can come from implementing those recommendations with large impacts. More generally, implementing many small changes can create large aggregate benefits.

## 2.7. How the process fits into the Philippines’ legal framework

The process described above can mesh well with the Philippines’ legal framework around competition policy.

### 2.7.1 The advisory role of the competition authority

The Philippine Competition Commission (PCC) is an independent quasi-judicial agency created under Republic Act No. 10667, or the Philippine Competition Act (PCA). PCC implements the National Competition Policy, and penalises all forms of anti-competitive agreements, abuse of dominant positions, and anti-competitive mergers and acquisitions, with the objective of protecting consumer welfare and advancing domestic and international trade and development.

Beyond monitoring, preventing and punishing anti-competitive actions or behaviour by private firms, it is also essential for the PCC to identify and review government restrictions and/or regulations that undermine competition. The PCC has the following specific powers in this regard:

- Advocate pro-competitive policies to the government by advising government agencies. Advice would relate to whether economic and administrative regulations, or government actions, policies, and programs adversely affect relevant market competition.<sup>1</sup>
  - Issue advisory opinions and guidelines on competition matters for the effective enforcement of the PCA. To this end, the PCC submits annual and special reports to Congress, including proposed legislation for the regulation of commerce, trade or industry.<sup>2</sup>
- Intervene or participate in administrative and regulatory proceedings, which require the consideration of the provisions of the PCA.<sup>3</sup>

Given the specific responsibilities of the PCC, agencies and government departments are welcome to approach the PCC for advice concerning the competition assessment of regulations. Using the powers outlined above, the PCC has provided opinions to government agencies.

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<sup>1</sup> Philippine Competition Act, Section 12(r).

<sup>2</sup> Philippine Competition Act, Section 12(k).

<sup>3</sup> Philippine Competition Act, Section 12(n).

## 2.7.2 Regulatory improvement structure

In 2018, a whole-of-government approach to reviewing regulations was introduced by Republic Act No. 11032 (otherwise known as the Ease of Doing Business and Efficient Government Service Delivery Act of 2018) to expedite business-related transactions affected by government regulations. The law required all government agencies to conduct a Regulatory Impact Assessment (RIA) for all proposed regulations to ensure that the proposed regulations do not add undue regulatory burden and cost to government agencies, the applicants or requesting parties<sup>4</sup>. The Anti-Red Tape Authority (ARTA), which looks after the implementation of RA 11032, is required to review the quality of all RIAs. While the law does not expressly state that competition principles should be considered in the RIA, ARTA's RIA training materials mention competition as one of the impacts that should be considered in an RIA.

Specifically relating to competition, the PCA requires the PCC and sector regulators to work together, when appropriate, to issue rules and regulations to promote competition, protect consumers, and prevent the abuse of market power by dominant players within their respective sectors.<sup>5</sup>

This mandate is echoed by the Philippine Development Plan 2017-2022 (PDP 2017-2022),<sup>6</sup> which aims to steer regulations and the administrative procedures of government agencies towards promoting competition, to strengthen the enforcement of anti-trust laws, and to ensure competitive neutrality. To achieve these outcomes, the PDP employs the following strategies, among others:

- Reviewing, recalibrating, replacing or removing potentially anti-competitive legislation and policies that may substantially restrict, prevent or lessen competition.<sup>7</sup>
- Promoting competition-related policies and best practices through concerted efforts among relevant government agencies and other sector regulators, with support from the executive, legislative and judiciary branches.
- Conducting capacity building-activities for government agencies and other institutions. In this area, the government ensures that there is sustained support to improve the institutional and technical capacity of government agencies that are mandated to promote market competition.<sup>8</sup>
- Institutionalising a mechanism to monitor the impact, ensure cohesiveness, and improve the quality and flexibility of government regulatory frameworks. The mechanism follows a “whole-of-government approach” to regulatory reform, and aims to reduce the burdens imposed by regulations, to ensure that no new anticompetitive laws and regulations are passed, and to institutionalise transparency in the regulatory management process. An inter-agency body composed of, among others, the National Economic and Development Authority (NEDA), Department of Trade and Industry (DTI), PCC, Department of Justice, and the Governance Commission for Government-Owned and Controlled Corporations (GCG), looks after the implementation of the National Competition Policy through this mechanism.<sup>9</sup>
- Pushing for the passage of a law on a regulatory management system to establish a more competitive and coherent regulatory environment. The system will be governed by a central body which will ensure that there is an evidence-based approach to formulating laws, rules, and regulations.

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<sup>4</sup> Section 5, Republic Act No. 11032.

<sup>5</sup> Section 32, Philippine Competition Act.

<sup>6</sup> See Chapter 16, “Leveling the Playing Field through a National Competition Policy”, Philippine Development Plan (PDP).

<sup>7</sup> PDP, page 251.

<sup>8</sup> PDP, page 253.

<sup>9</sup> PDP, page 253.

In June 2017, President Rodrigo Duterte issued Executive Order No. 27 directing all departments, offices, and instrumentalities<sup>10</sup> of the member economy government to undertake efforts leading to the full implementation of the PDP 2017-2022.

The Philippine government has yet to institutionalise a regulatory management system. Currently, government agencies invite the PCC, on an *ad hoc* basis, to provide comments on proposed regulations. In some instances, representatives of the PCC participate as resource persons in meetings held by a Technical Working Group within these government agencies. The PCC may also submit written position papers or comments to a government agency after the latter publishes draft regulation to receive comments from the public.

The PCC has been advocating for the issuance of an Executive Order which would require all relevant laws, policies, rules and regulations to be reviewed to determine whether they restrict, prevent or lessen competition.

### 2.7.3 Consideration of competition in the legislative process

The Philippines has a bicameral legislative branch composed of the Senate (upper house, with 24 Senators) and the House of Representatives (lower house, composed of 250 representatives elected at the municipal or district level).

The procedures for introducing legislation are similar in both the House of Representatives and the Senate. This process involves seven steps. First, a draft bill is filed with the secretariat of the relevant house. Second, during the first reading, the bill is described and referred to a committee in the house. The committee where the bill was referred to determines the necessity of conducting public hearings. If no public hearing is needed, the bill is scheduled for committee discussions. The results of the committee discussions and public hearings are documented in a Committee Report. Third, during the second reading, the bill is considered by the plenary in full, and amendments are proposed and debated by the Senators (if in the upper house) or the Representatives (if in the lower house). Fourth, during the third reading, the bill is subjected to a final vote in the plenary, and once approved, transmitted to the other house for concurrence. Fifth, the bill undergoes the same legislative process in the other house. Sixth, a Conference Committee, composed of Senators and Representatives, is constituted to reconcile any disagreements in the bill. The reconciled bill is thereafter submitted to the Senate and House of Representatives for approval. Seventh, the bill approved by the Senate and the House of Representative is submitted to the President for his approval. The President may either sign the bill, after which it becomes a law, or veto it. The Congress may override the President's veto through a vote of two-thirds of the members of each house.

Because of the relative infancy of competition in the Philippines' policy discourse, there is, as of today, no official procedure for the consideration of competition principles in the foregoing legislative process. Usually, a Committee in the Senate or the House of Representatives invites the PCC to be a "resource person" in relation to a draft bill, when the sponsor of the bill, based on his or her own assessment, deems that competition issues are present in the proposed measure. The invitation is normally received after the first reading of the bill. The PCC would then submit its comments, in writing

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<sup>10</sup> A government "instrumentality" refers to any agency of the Member Economy Government, not integrated within the department framework, vested with special functions or jurisdiction by law; endowed with some, if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter.

and/or verbally during the public hearings. Representatives of the PCC likewise attend sessions for the second reading of bills, if requested by the bill sponsor.

The PCC has submitted position papers in relation to a range of legislative measures, Table 1 provides some examples of when this has occurred.

**Table 1 – Selected PCC position papers on legislative measures**

<b>House or Senate Bill</b>	<b>Subject Matter</b>	<b>Comments</b>
<p><i>House Bill No. 5664</i></p> <p>Requesting party: Senate Committee on Public Services</p> <p>PCC Position Paper dated 28 June 2018</p>	<p>Grant of a franchise to the Bicol Light and Power Corporation for the construction, installation and distribution of electric power.</p>	<p>PCC made observations on the competitive impact of granting the franchise.</p>
<p><i>House Bill Nos. 528, 877, 1324, 2917, and 5970</i></p> <p>Requesting party: House Committee on Trade and Industry</p> <p>PCC Position Paper dated 2 March 2018</p>	<p>Amendment of the Corporation Code of the Philippines</p>	<p>The amendments are meant to modernise the almost-40 year old law, to fit with contemporary developments. The PCC's involvement mainly concerned with ensuring that its mandate, especially in matters pertaining to mergers and acquisitions, was preserved.</p>
<p><i>Senate Resolution No. 73</i></p> <p>Requesting party: Senate Committee on Economic Affairs</p> <p>PCC Position Paper dated 14 August 2018</p>	<p>The review and updating of the Foreign Investments Act (R.A. No. 7042, as amended) to reflect global trends and to make the Philippines a competitive location for investment and multinational companies.</p>	<p>The PCC welcomes the review of the Foreign Investments Act, given that the nationality restrictions imposed on certain industries present potential barriers to entry.</p>
<p><i>House Resolution No. 898</i></p> <p>Requesting party: House Committee on Economic Affairs</p> <p>PCC Position Paper dated 11 September 2017</p>	<p>Inquiry on the desired economic policy direction of the Philippines with regard to foreign participation in the ownership and operation of corporations and firms engaged in construction</p>	<p>Current licensing rules contain a nationality distinction in the classification of licenses. The PCC views the nationality requirement as creating an uneven playing field and constituting a substantial barrier to entry to foreign contractors.</p>
<p><i>House Bills Nos. 5556, 5557 and 5559</i></p> <p>Requesting party: Senate Committee on Public Services</p> <p>PCC Position Paper dated 24 January 2018</p>	<p>Bills relating to the renewal of telecoms franchises</p>	<p>Congress has been actively seeking the inputs of the PCC. The PCC usually flags provisions that might impact competition, and recommends practices that will ensure a level playing field for all players.</p>
<p><i>House Resolution No. 1338</i></p>	<p>Inquiry in Aid of Legislation on the Administration and</p>	<p>While proposals for a comprehensive spectrum</p>

<p>Requesting party: House Committee on Information and Communications Technology</p> <p>PCC Note on Spectrum Management dated 14 March 2018</p>	<p>Management of the Philippines' Radio Frequency Spectrum</p>	<p>management policy are still in exploratory stages at the House Committee level, bills which are nearing passage (e.g., Open Access, Amendments to the Public Telecommunications Act) have provisions mandating agencies, including the PCC, to formulate guidelines. The PCC's policy note to Congress stressed the need to initiate reforms in the assignment and allocation of finite radio frequency spectrum, best achieved through comprehensive framework for spectrum management.</p>
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### 3. Principles of competition assessment

In the past, the question of whether particular regulations restricted competition was difficult to assess and somewhat ad hoc. Since the introduction of the OECD's Competition Assessment Toolkit, in 2007, a methodical approach has become commonly used by governments for reviewing the competitive effects of regulations, identifying both those that merit change, and those that would not be expected to restrict competition. This framework is built, at its core, around a set of questions that are incorporated into the APEC-OECD Framework on Competition Assessment that was approved by the APEC Economics Committee in 2017.

A version of this framework, adapted to the Philippine context, is described below to help interpret the Checklist questions that are incorporated into the framework. Overall, the questions are designed to be understandable to non-experts. The OECD designed the framework as one that could be applied by governments to their own domestic circumstances, and this approach is continued in this manual. The focus is on four ways in which regulations can impact markets:

- Limiting the entry or expansion of companies;
- Limiting actions that companies can take to compete with each other;
- Raising incentives for competing companies to coordinate (e.g., on price); and
- Limiting information and options for consumers to make good choices.

The basic approach is to perform an initial assessment of whether there is potential competitive harm from a regulation. If a potential harm exists, a number of other points are worth exploring in a more in-depth review to determine whether the potential harm is substantial and what alternatives are feasible. One of the first steps is to understand the rationale underlying the regulation that is of concern. Often the element of concern is only one small part of a much more extensive regulation. The primary focus of the rationale is on the small part that raises the concern. The existence of a rationale is not alone sufficient to stop proceeding to further analysis. In fact, small parts of regulations can have large anti-competitive effects. If the potential harm from a regulation affects a substantial part of the commerce that is overseen by the regulation, it is worth performing a complete review. A substantial part of commerce is likely to be effected if new business startups and operation are substantially affected, if the regulations reduce consumer responsiveness to competition or if the regulations could enhance the likelihood that firms will cooperate on setting their prices, quantities of production or knowing the competitor's confidential information, like costs. These subsequent steps of a detailed review are explained in Section 4 and laid out for operational use in the worksheets of the Annex.

#### 3.1 Does the regulation create barriers to the entry of new companies?

Regulations that limit the number of suppliers may reduce competitive rivalry and create market power. How is market power created when there are fewer suppliers? As the number of suppliers falls, the possibility of reduced competition (or even collusion) among the remaining suppliers increases. Ultimately, suppliers may be able to raise prices. More generally, a decline in rivalry can reduce: (i) incentives to meet consumer demands, (ii) innovation, and (iii) long-term economic efficiency. While policy makers can have sound reasons to limit the number or range of suppliers, the default expectation should be that policies would not create such limits. When policies are proposed that create limits, the benefits from the policy need to be carefully balanced against the market power impacts that arise.

##### 3.1.2 Does the regulation create unique and exclusive rights?

An "exclusive right" to produce a good or operate a service means that only one company can provide a product/service and other companies are directly prevented from offering such products/services.

As a result, exclusive rights create a form of monopoly. At times, such rights may be justified. For example, an exclusive right to extract natural gas from a wide ranging deposit avoids contractual disputes about which company may own certain parts of the natural gas or whether one company is excessively depleting the pressure in the system that pushes out the gas. Another reason that governments might grant exclusive rights is to incentivise substantial investments in infrastructure that would not otherwise happen.

**Example 2: Liberalisation of the Philippines aviation industry**

Prior to 1995, Philippine Airlines (PAL), then fully owned and controlled by the Philippine government, had a monopoly in the air transport industry in the Philippines. Executive Order No. 219 led to the privatisation of PAL and the liberalisation of the Philippines' civil aviation sector. By allowing additional carriers (other than PAL) to use flight routes, EO 219 resulted in the entry of several competitor airlines, a huge increase in domestic passenger traffic in major markets, the opening of new markets for airline services, lower fares, and improved quality of service and overall efficiency in the industry.

**Example 3: Internet in public places**

In 2017 the Philippines Competition Commission (PCC) recommended prohibiting "exclusive arrangements" in the Free Internet in Public Places Act. This has already been adopted in the Implementing Rules and Regulations of Republic Act No. 10929. Section 16 states that the grant of exclusivity arrangements to a single Internet Service Provider (ISP) is prohibited. The Free Internet Access Program shall promote non-discriminatory, free, and unrestricted access to all ISPs for the purpose of installation and operation of broadband facilities.

3.1.3 Does the regulation create license or permit systems?

Many business activities require permits. Permits or licenses may show that a company meets minimum quality requirements. When licenses or permits are a pre-condition for selling a particular type of service, they reduce the number of suppliers. This can reduce competitive rivalry, but in principle would not eliminate such rivalry, unlike exclusive rights. The extent of competitive harm arising from license and permit systems varies based on the situation. For example, requiring that nurses have appropriate training is a common requirement to receive a nursing licence, and is important to protect patients. For some activities, governments apply a "public interest" test in which potential new suppliers must demonstrate the "need" for their service and, on occasion, even that their entry would not hurt existing businesses, which effectively prevents increased competition. In extreme cases, governments may restrict the number of permit holders. This effectively places a limit on the number of suppliers and, depending on the number selected (often a figure proposed by the providers), creates an artificial, government-endorsed scarcity that raises prices. While licensing schemes often have well-founded consumer protection objectives, such barriers can have the effect of protecting incumbent producers from competition by restricting entry.

**Example 4: Liberalisation of foreign direct investment**

Prior to 1991, all foreign investment in industries that were not subject to nationality restrictions (i.e., industries where foreign equity was not capped at 60%) had to be pre-approved by the Board of Investments (BOI). Republic Act No. 7042, otherwise known as the Foreign Investments Act (FIA), expressly allowed foreign equity participation of up to 100% in all industries that were not listed in the Foreign Investment Negative List. The FIA eliminated the need to get the BOI's prior approval and increased transparency regarding the industries that were allowed to have 100 % foreign equity.

### 3.1.4 Does the regulation raise the cost for a company to enter or leave a business activity?

Sometimes, regulations raise the cost for a company to enter or exit a business activity. When regulations do this, they tend to discourage new companies by creating a lower likelihood of success or by reducing the gains from achieving success. Cost increases can arise in many ways. For example, they may arise from excessively rigorous product testing requirements or requirements to meet unnecessarily high educational, technical or environmental standards. Exit costs arise whenever entry requires a firm to incur fixed costs, often of a contractual nature, which are not recoverable if the company subsequently decides to exit. Governments can reduce the competitive harms from cost-increasing rules with targeted exemptions. For example, a small and traditional boat manufacturer could be exempted from certain boat testing regulations.

### 3.1.5 Does the regulation place geographical barriers on operation and trading?

Regulations sometimes stop the movement of goods and services across geographical boundaries, such as going from one state to another. Such a restriction limits the physical origin of competitors and thus reduces the number of competitors, potentially allowing them to obtain market power and increase prices.

**Example 5: Improving customs and immigration services associated with aviation**

In the past, overtime charges for customs and immigration officers were implemented in a way that ultimately reduced cross-border trade. Following an Office for Competition (OFC) sector study Customs, Immigration and Quarantine officers' overtime charges in the Philippines were reformed enabling 24/7 operations and saving the aviation industry 400m PHP per annum.

## 3.2 Does the regulation restrict the actions companies can take to compete with each other?

Regulations often specifically constrain company actions. These can affect the ability of suppliers to compete in a variety of ways, including through advertising and marketing restrictions, the setting of standards for product or service quality, or by controlling prices for certain goods or services. These limits can reduce the intensity and breadth of rivalry between firms, resulting in higher prices for consumers and less product variety.

### 3.2.1 Does the regulation establish price rules?

Governments often set rates in traditional monopoly sectors, such as utilities. Such price controls can help consumers by countering the lack of alternatives for consumers. However, price controls may sometimes be applied when there are many potential suppliers for each consumer. As an alternative to setting all prices, governments may set minimum or maximum prices. Minimum price regulation



can sometimes be considered a way to protect small companies from “unfair” predatory competition. Nevertheless, the full impacts of minimum price regulations merit review because the result is likely to be higher prices for consumers. Maximum price regulations are sometimes introduced to protect consumers from abusive prices, but may lead suppliers to coordinate their prices around the maximum price.

**Example 6: Price liberalisation in shipping**

In order to encourage investment in the domestic shipping industry by existing domestic ship operators and to attract new investment from new operators and investors, Republic Act No. 9295 (Domestic Shipping Development Act of 2004) authorised domestic ship operators to establish their own domestic shipping rates, on the condition that effective competition is fostered and the public interest is served.

**Example 7 : Price liberalisation in telecommunications**

Prior to the enactment of Republic Act No. 7925 (the Public Telecommunications Policy Act of the Philippines) in 1995, the National Telecommunications Commission (NTC) regulated the service prices of telecoms companies using a maximum rate of return approach. RA 7925 changed the NTC’s power to set rates by authorising it to exempt specific telecommunications services from its rate regulations if the service has sufficient competition to ensure fair rates. This deregulation, along with the entry of additional players, was among the major factors that reduced prices for international calls, same-network calls, and sending SMS messages.

3.2.2 Does the regulation restrict advertising?

Sometimes regulations stop companies from advertising goods and services. Some advertising restrictions are intended to reduce advertising for products or services that are deemed to have a socially negative value, that are subject to excess consumption or that are aimed at “vulnerable” groups. Restrictions of this nature can generate social benefits. In contrast, other advertising restrictions can stop beneficial competition. The reason is that restrictions on advertising are likely to limit the success of new companies starting businesses by stopping them from informing potential customers of their presence in the market and the features of their products. An alternative is to focus on regulations that stop false and misleading advertising.

3.2.3 Does the regulation set standards that would not be chosen by many informed consumers?

Regulations sometimes set product standards or production input, process, or output standards. Such standards can benefit consumers and ensure that new products from different suppliers are compatible. But standard setting by government can at times provide undue advantages to some suppliers over others. One example occurs when minimum quality standards are set for a particular product. Such a standard might protect consumers from product dangers, but there may be alternatives, e.g. requiring the disclosure of certain product characteristics, which are not potentially anti-competitive.

3.2.4 Does the regulation create differential costs of operation for businesses?

Some regulations raise the costs of business operation unevenly across firms, not only in ways that prevent entry, but also in ways that affect competition between potentially alternative products. Sources of cost asymmetry in regulations include those that prefer one production technology over

another, those that create “grandfather clauses” to exempt current producers from new regulations and those that target subsidies to some enterprises and not others. Regulations that artificially create artificial cost differences can distort competitive behaviour.

**Example 8 : Limiting incumbent advantage in mobile telephony**

Historically, the Philippine government made spectrum allocations to telecommunications companies using an administrative method or the so-called « beauty contest » approach : the spectrum was awarded to the applicant which best demonstrated its capacity to provide the required capitalisation and infrastructure, without considering the existing spectrum already held by the applicants.

It was observed that this method of allocation spectrum led to the underutilisation of spectrum, which was held unused by the existing players. Moreover, by allowing the existing large players to accumulate more spectrum, it excluded smaller or new players from competing with them.

To address this issue, the National Telecommunications Commission issued Memorandum Circular No. 09-09-2018. This provided rules on the selection process for a new major player (“NMP”) in the Philippines telecommunications market. Entities that were related to any of the dominant telecommunications players were not allowed to participate in the selection process.

Following an opinion submitted by the Philippine Competition Commission, the NMP is required to return to the government any radio frequency spectrum below 3GHz which it fails to use within the timeframe stated in its roll-out plan.

### 3.3 Does the regulation encourage potentially anti-competitive co-ordination by companies?

Regulations affect company behaviour in many ways, not only by controlling the actions that companies can take to compete with each other, but also by reducing companies’ incentives to act as vigorous rivals. Two reasons that companies might compete less vigorously include regulations that: (a) facilitate co-ordination between companies and/or (b) reduce customer switching between suppliers. Self-regulatory regimes pose a particular risk of increasing behaviour resembling that of business cartels, by increasing the sharing of supplier output and price information or by excluding an industry or sector from the reach of competition law.

#### 3.3.1 Does the regulation create a self-regulatory regime?

Self-regulation occurs when a professional association regulates the conduct of its members by itself, sometimes with the legislative backing of government. Self-regulation can help to ensure standards are applied and enforced. However, at times, self-regulatory structures can create significant anti-competitive impacts. For example, some restrictions implemented by professional associations in the past have included advertising restrictions, rules that prevent discounts, common setting of prices, and unduly strict qualification requirements. Generally, industry or professional associations have an incentive to adopt rules that reduce incentives or opportunities for vigorous competition between suppliers of goods or services. A solution is to ensure that government retains powers to stop anti-competitive self-regulation and that governance of such associations includes a neutral voice external to the profession.

### 3.3.2 Does the regulation generate sharing of sensitive information?

Some regulations result in companies publicly revealing their prices or output levels. Explicitly discussing and setting prices is illegal but publication of such information can assist firms in coordinating on output levels or on price. A key condition for business cartels to survive is that they can effectively monitor their competitors' (or co-conspirators') market behaviour. Alternatives include only publishing average data, not all the data collected. If the information is collected mainly for government purposes, there may be no need to publish it at all.

### 3.3.3 Does the regulation exempt a company or industry from competition law?

Some legislation exempts a sector or company from the general competition law. In many of these cases, no rules exist to prevent anti-competitive conduct. Where a substantial exemption from the general application of competition law exists, there is a clear risk of business cartels, pricing abuses and anti-competitive mergers. When a clear reason to continue exemptions exists, careful analysis may be needed to find a way to keep the scope of the exemption at its minimum level.

## 3.4 Does the regulation limit the information and choices of consumers?

### 3.4.1 Do consumers lack sufficient information and ability to choose well?

Effective consumer choice is a key motivator of competition. If consumers do not choose well, due to ignorance, bias or manipulation, then competitive forces will be weakened or distorted. As a result, at times, consumers will need information to be provided and a clear ability to switch from one product to another. For example, when governments enable consumers to move mobile phone numbers from one operator to another, this creates a valuable increase in competition due to consumers' ability to threaten to switch supplier. When new product markets are created, as with the privatisation of retail electricity sales in some regions, consumers are at a particular risk of not knowing how to compare offers, so it is valuable to create an information format for offers that gives consumers a reasonable ability to make the comparisons required for them to make informed choices.

#### **Example 9: Portability of mobile telephone numbers**

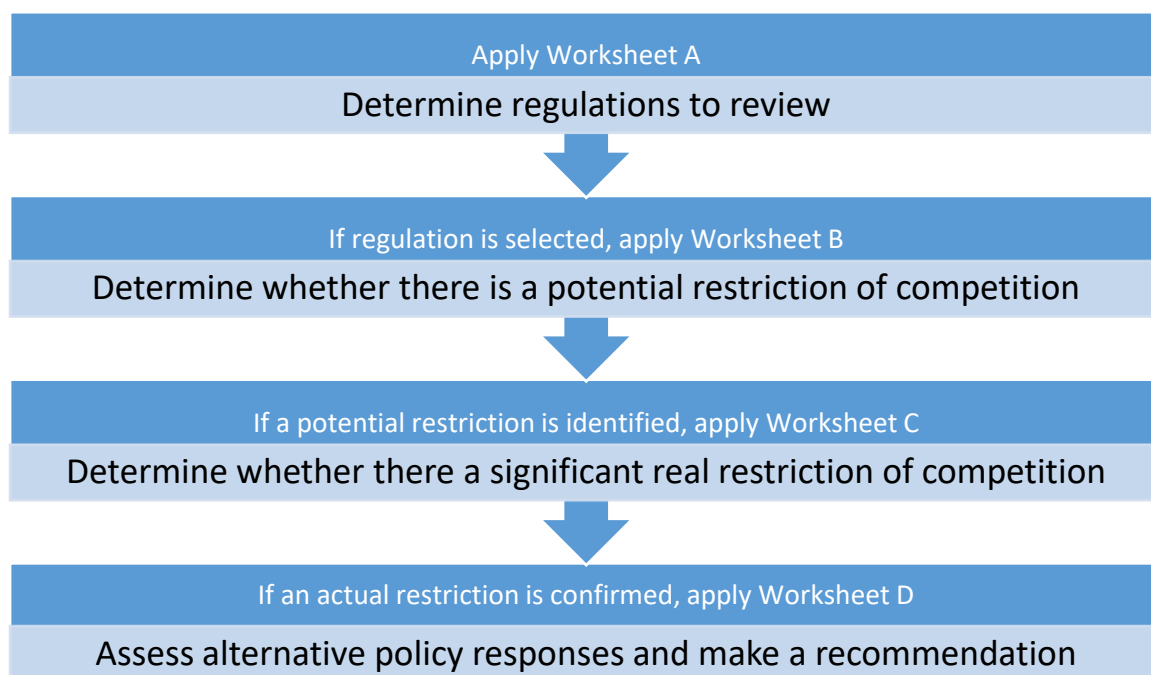
In 2019, the Mobile Number Portability Act was enacted. Under this measure, mobile subscribers do not need to pay a fee when they decide to keep their existing mobile number when moving from one mobile service provider to another, or when changing the type of subscription from postpaid to prepaid, or vice versa. This benefits consumers by reducing switching costs (the costs that consumers incur when changing service providers) among mobile subscribers thereby potentially encouraging subscribers to switch to a better service.

## 4. Procedure for making regulation more pro-competitive

The principles described in Section 3 are easily learned and can be quickly applied to regulations. A typical procedure for applying them is described below.

The overall process of review is shown in Figure 1:

**Figure 1 - Process of review**



### 4.1 Identify the regulations to review

Which regulations should be reviewed? Best practice suggests reviewing all substantial new regulations, since reviewing the flow of new regulations does not require a large amount of resources. In particular, applying the technical review of section 3 can occur very quickly. For reviewing the large number of existing regulations, more resources may be required and greater emphasis may be needed for the activity to succeed, so prioritisation can be valuable. Potential bases for prioritisation include:

- Size of economic activity affected (in terms of value of commerce or employment)
- High likelihood of finding substantial restrictions based on:
  - Complaints from firms wanting to enter a market
  - Complaints from incumbents
  - Reported high margins
- High price impacts on the poor and/or vulnerable (e.g., a higher percentage of income spent on a product by the poor than other income groups)
- Feasibility of resolving problems that are identified (e.g., due to willingness by the relevant government ministry to undertake reforms)

It may be useful to review existing studies or papers about the sector being reviewed to get preliminary insights on the existence of the foregoing factors.

## 4.2 Apply the principled technical review to identify potential restrictions to competition

The principled technical review of section 3 can be applied to regulations, or parts of regulations. The approach is based on asking the questions identified there, for example, whether the regulation creates exclusive rights to buy or sell, as basic indicators of whether a regulation has the potential to restrict competition. Not all potential restrictions are actual restrictions. So this preliminary assessment is a triage process: simply identifying those regulations that merit further review.

## 4.3 For those potential restrictions identified, complete a more thorough review, gathering information and consulting as needed

When a more thorough review of a regulation is pursued, the objective is to see whether a real and substantial restriction on competition would likely come about as a result of the regulation, taking account of other policy objectives that are recognised by informed analysts. Prerequisites for successfully completing this step are understanding the purpose of the regulation and the nature of the product affected by the regulation. The impacts of a regulation can be understood from industry experts, including relevant technical experts in government, companies currently operating and affected by the regulation, and companies that would potentially like to enter or expand in the area. When speaking to experts, it is important to recognise that they may sometimes have a conflict of interest, for example because their employer may have an interest in retaining unduly restrictive regulations.

Key steps in an assessment are to address the following questions:

- Is there a clear link between the restrictions and the policy goals?
- Are the restrictions the minimum necessary to achieve the goals?
- Would a reasoned analysis suggest the policy goal requires an anti-competitive restriction?

The knowledge drawn from this process of questioning should permit officials to evaluate the extent to which restrictions are necessary and substantial.

### 4.3.1 Collect relevant data when needed

At times, part of a thorough review includes analysis of data. Relevant data can sometimes be found at the Philippines Statistics Authority, in market studies produced for industry and in bespoke surveys that may be conducted specifically to assess the impact of a regulation. Most in-depth reviews are likely conducted without collection of data, largely due to the difficulty in many sectors of finding readily available information.

## 4.4 For substantial, actual restrictions, identify alternatives

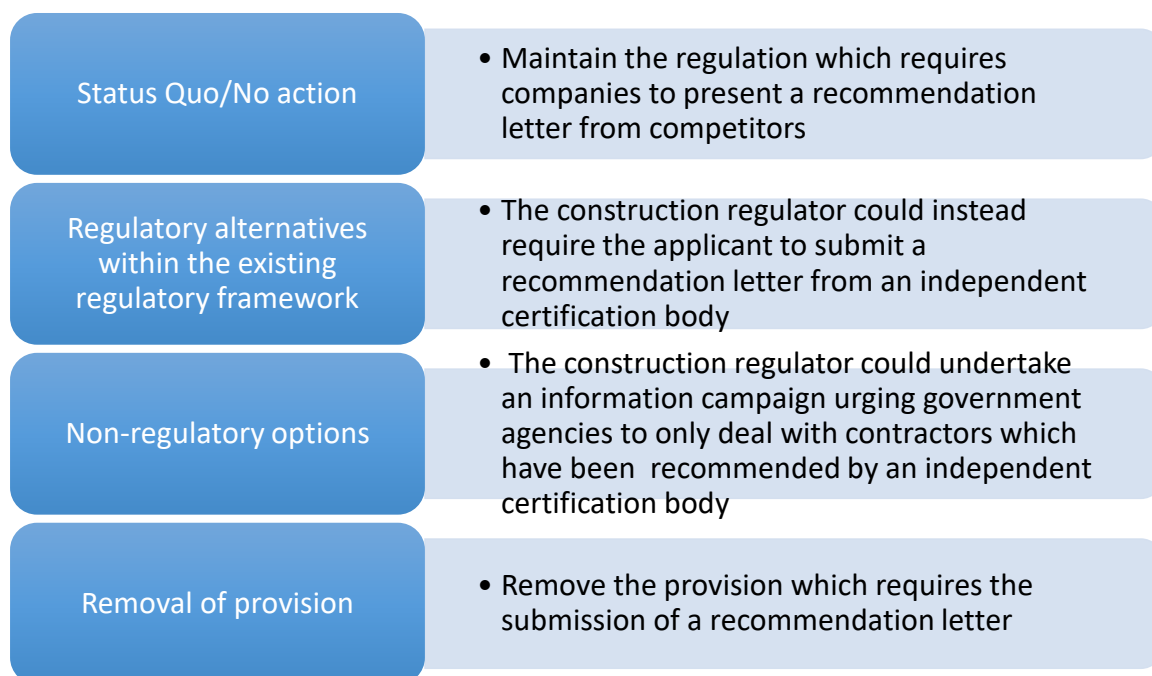
When regulations are found to restrict competition, a major challenge is to identify alternatives which would less likely distort competition. The development of alternatives is broader than looking at alternatives within the direct power of an agency, as sometimes the most appropriate solution may be to change a law or see an action undertaken by another agency.

Often, only a small part of a long regulation is found to be problematic. A common solution is simply to delete the problematic provision. Where deletion would not enable the ongoing delivery of the regulation's main policy objective, other alternatives may need to be found. One of the most common

techniques for finding alternatives is to examine comparable regulations in other regions, in the case of domestic regulations, or in other localities, for local government regulations. Another is to look at comparable problems in other domestic sectors. Other techniques include consulting sector experts or stakeholders and seeking their advice on potential regulatory alternatives. At times, even after considering alternatives, the status quo may be the preferred option. Overall, perhaps the two most common options are keeping the status quo and deleting the offending provision.

It would be ideal to identify and evaluate all possible alternatives in Annex 4 (Worksheet D). Alternatives that are not directly controlled by the agency or regulator (for example, alternatives which would require the amendment of a law) should still be included in the evaluation.

**Example:** As condition to the grant of a construction license, the construction regulatory agency required construction contractors submit a recommendation letter from other contractors as proof of its “good reputation” in the community and its ability to complete government construction projects on time. The possible alternatives are:



Detailed examples of alternatives may be found in Appendix B of the OECD Toolkit Volume 2.

#### 4.5 Compare alternatives and select preferred option(s)

Once the alternatives have been identified, they should be compared in a written argument that permits evaluation and discussion between government officials. Ultimately, a preferred option or set of options should be established. At times, the preferred option is to keep the regulatory restriction, even if it is found to be a significant restriction on competition, due to the lack of feasible alternatives. More commonly, though, alternatives can be identified. The choice between

alternatives is typically challenging, and criteria to use for identifying an alternative include whether it addresses the underlying policy need in a way that keeps the potential for new entry and allows companies to act in a competitive manner. At times, it is possible to estimate the potential impact of achieving the competitive outcome. For large changes, for which basic underlying economic information is available, such as the size of commerce, and the margins or price sensitivity of consumers, it is worth estimating impacts in order to show the potential magnitude of benefits from reforms to decision makers. It is worth recognising that the process outlined in this manual is primarily geared toward regulations that are restrictive. An alternative process is needed to consider where pro-competitive regulation might be needed, particularly after liberalisation. Market liberalisation (often following privatisation) can sometimes free monopolies from constraints, which is an anti-competitive outcome, and often a reason to create new regulators.

The challenge of deciding on a preferred alternative can be substantial. Such a decision is inherently based on a comparison between the alternatives. One way to compare alternatives is, for each alternative, to identify the likely strengths and weaknesses of each one. Then for each strength of a proposal, a positive number of points can be applied depending on the relative strength of the point. For each weakness, negative points can be applied, depending on the relative size of the weakness. The positive points can be added and the negative ones subtracted for each alternative. Each alternative then has a point score. The alternative with the highest number of points would be the preferred alternative. In the ideal approach, the criteria for evaluation of each proposal would be commonly assessed on each alternative.

An example of this weighting of alternatives is provided in table 2 and builds on the construction license example. The assignment of points can always be debated, but has the advantage of making implicit assumptions clear. Based on the scoring results, it suggests that the best option is the second one, that the construction regulator could instead require the applicant to submit a recommendation letter from an independent certification body. The point scoring system, while not a necessary part of evaluation, can provide transparency and allow for a clear discussion about the impacts of different alternatives.

**Table 2. Construction license example: weighing alternatives**

	Status quo	Alternatives in same framework	Non-regulatory option	Eliminate provisions
<b>Competition effect (scale of 3 to -3)</b>	-3	3	3	3
<b>Regulatory objective effect (proof of good character) (scale of 3 to -3)</b>	3	3	2	-3
<b>Cost of regulatory implementation (including private sector cost) (on scale of 1 to -1)</b>	0	-1	-1	0
<b>Total</b>	<b>0</b>	<b>5</b>	<b>4</b>	<b>0</b>

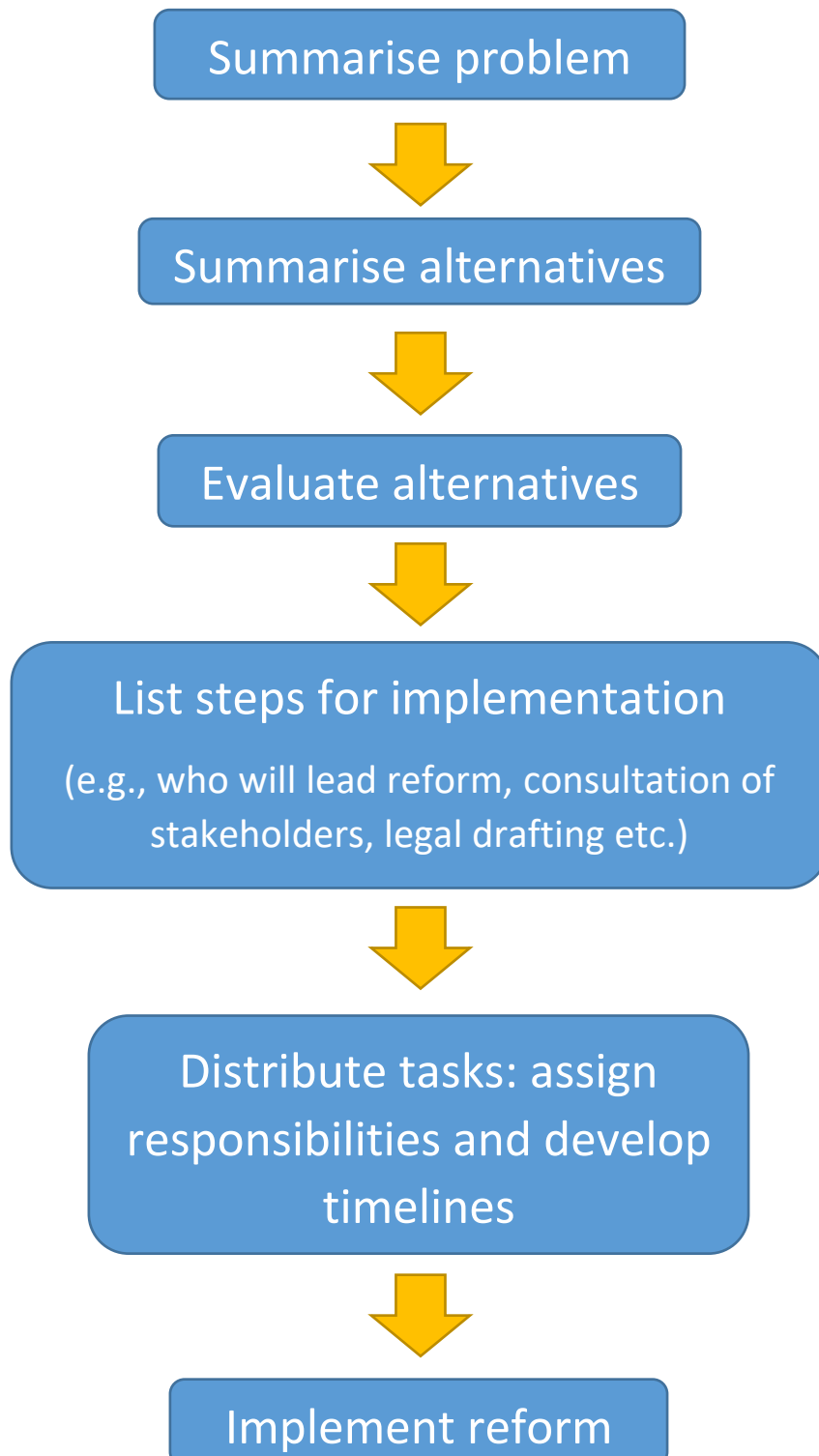
## 4.6 Implement change

The implementation of reforms requires that decision makers choose to make the reform. When a regulation is controlled entirely by a ministry, the reform may be primarily an internal ministry process. When changing a regulation requires congressional action, the path to implementation is

longer, but can sometimes be accomplished through normal incremental legislation. In either case, a key lesson is that change will not happen without advocates for change. Agents for change, both internal and external, can be identified and carry forward the task of converting desirable recommendations into action and beneficial reform. Often these agents can be convinced of the value of change if they help to initiate the competition assessment process and follow it over its progression, and thus understand the technical nature of the process prior to seeing the ultimate recommendations.

Figure 2 charts a possible process for implementing change.

**Figure 2 - Process for implementing change**





## 5. Conclusion

### 5.1 Competition assessment can be implemented with minimal resources

Competition assessment does not require a large human resource investment, especially compared to the size of potential impacts. For example, implementing a system that reviews new regulations in a ministry for their competitive effect can often be accomplished by identifying those who prepare legislation, training these officials in competition assessment and noting that the initial process of identifying potentially anti-competitive regulations can be quite fast.

### 5.2 Many economies have successfully carried out competition assessments

Due to the benefits of ensuring regulations protect and promote competitive processes, many governments have adopted competition assessment. In principle, these projects can be carried out by government officials without outside help. At times, others have chosen to seek outside support, particularly for the review of pre-existing legislation, for which external advice can help the process move faster and provide an outside perspective. Examples of economies implementing competition assessment are provided in the box below, thereby highlighting the widespread nature of this activity.

#### **Examples of economies implementing competition assessment of regulations**

**APEC** has adopted the APEC-OECD Competition Assessment Framework as a tool for its members to promote beneficial structural reforms and several APEC economies are completing trials of this approach.

**ASEAN** The 10 ASEAN members have undertaken to carry out competition assessment with the OECD in the transport sector in a three-year project.

**Greece** has undertaken review of regulations in 9 sectors, conducted by the OECD, and with a high implementation rate by the Greek parliament of recommendations for reform.

**Iceland** started a competition assessment review of its tourism and construction sectors in 2019 with an OECD project using its Competition Assessment Toolkit approach.

**Republic of Korea** The competition authority is led by a government minister who is at the table for regulatory reviews, and competition authority recommendations have been implemented in a number of cases when designing new regulations. The competition authority has issued guidance on competition assessment.

**Japan** The Japanese competition authority issued guidance on competition assessment in 2017.

**Mexico** The Mexican competition authority is called upon to review new regulations upon request by the central regulatory review authority or at its own initiative. The central regulatory authority has issued guidance to help ministries understand how to assess the competitive effects of regulations, developed with the help of the competition authority. The OECD has reviewed existing regulations in the pharmaceutical supply chain, the meat production supply chain and the gas and LPG sectors.

**Portugal** The OECD, in cooperation with the Portuguese competition authority and the Ministry for Administration, has reviewed existing regulations in two sectors, professional services and transport.

**Romania** has reviewed regulations in three sectors (food, freight transport and construction) in order to develop plans for regulatory revisions in these areas, in a project led by the OECD and with the support of the Prime Minister's Office and the competition authority. The competition authority has issued guidance on competition assessment.

**Tunisia** is carrying out a review of regulations in two sectors, including sea transport, with OECD support to identify regulations that may affect competition, due to a generally highly regulated business environment.

**United Kingdom** The UK competition authority has issued guidance on competition assessment that is made available to ministries and which can be applied by officials to new regulations or to existing regulations.

### 5.3 The benefits of competition assessment can be substantial

According to the OECD studies that had been completed as of 2018, the potential benefits from competition assessments in 18 sectors in 5 regions could amount to more than US\$9 billion if the recommendations are implemented in full. This is a substantial benefit which, at times, can be estimated in advance for particular reforms. Such estimates can give policymakers the necessary incentives to act, given that reducing monopoly power can mean taking on special interest lobbies who represent the small and concentrated beneficiaries of market power created by regulation. Special interests may not always be able to counter well-constructed economic estimates of the benefits from pro-competitive reform.

In short, competition assessment can be highly beneficial; it need not be costly; and there are many international examples where it has been fruitfully applied.

## 6. Glossary

Term	Meaning
Abuse of market power	Where a firm (or set of firms) with a large presence in a market, use their power to harm competition, often by imposing contractual terms which have a negative impact on competitors.
APEC	Asia-Pacific Economic Cooperation
Cartel	A group of suppliers acting together to raise their profits by, for example, fixing prices, restricting output or restricting the geographic areas where each firm operates.
Competition	The rivalry between companies to win business for a product. It is enabled by the absence of restrictions on the entry of new companies.
Competitive neutrality	Ensuring state-owned and private businesses compete on a level playing field.
Consumers	Buyers of products, both intermediate buyers (often companies) and end buyers (often real people, but also others such as government).
Cost asymmetries	When different suppliers of products or services have different costs of supply.
Economic efficiency	This is generally broken down into two elements: Allocative efficiency and Productive efficiency. Allocative efficiency refers to the allocation of scarce resources across different activities to maximise the total benefit achieved. Allocative efficiency is commonly associated with Pareto efficiency. An outcome is Pareto efficient, when it is not possible to make some one better off, without first making someone else worse off. Productive efficiency occurs when the total cost per unit of output is minimised.
Entrant	An entity (company, organisation or individual) that has recently entered, or is aiming to enter, a sector.
Exclusive right	When a single entity (company, organisation or individual) is granted the right to produce or trade a product or service. The exclusive right may be limited to a particular geographic area or period of time.
Grandfather clauses	When old rules apply to pre-existing situations, but new rules are applied to future situations. For example, an existing power plant may be required only to meet old and relatively lenient pollution controls, while new power plants have to meet higher standards.
Incumbent	An entity that has been operating in a sector for some time.
Monopoly	Where a single entity produces or trades a product or service.
OECD	Organisation for Economic Co-operation and Development
Permit or license system	When a permit or license is required before it is possible to produce or trade a product or service.
PCA	Philippine Competition Act (Republic Act No. 10667)
PCC	Philippine Competition Commission
Price controls	When laws or regulation restrict the prices that can be charged for a particular product or service. Most commonly these are either a maximum price (a price ceiling or price cap) or a minimum price (a price floor).
Price liberalisation	The process by which price controls are removed.
Privatisation	The process by which state-owned assets are sold to private entities.
Public interest test	When a broader set of “public interest” considerations are taken into account, beyond narrow economic/competition objectives, when deciding whether to enforce competition laws.

Self-regulation	When a group of entities are themselves responsible for determining the regulatory standards they must follow.
Switching costs	The costs a consumer incurs when changing brands, suppliers or products. Switching costs can include, for example, contractual 'exit fees', the time taken to identify and switch products, and/or the time and effort spent learning how to use a new product.

## 7. Further Reading

- OECD (2017), 'Competition Assessment Toolkit: Volume 1 – Principles', available at: <http://www.oecd.org/daf/competition/46193173.pdf>
- OECD (2017), 'Competition Assessment Toolkit: Volume 2 – Guidance', available at: <http://www.oecd.org/daf/competition/45544507.pdf>
- OECD (2017), 'Competition Assessment Toolkit: Volume 3 – Operational Manual', available at: [http://www.oecd.org/daf/competition/COMP\\_Toolkit\\_Vol.3\\_ENG\\_2015.pdf](http://www.oecd.org/daf/competition/COMP_Toolkit_Vol.3_ENG_2015.pdf)
- OECD (2018), 'OECD Competition Assessment Reviews: Mexico', OECD Publishing, Paris, available at: <http://www.oecd.org/daf/oecd-competition-assessment-reviews-mexico-9789264288218-en.htm>
- OECD (2017), 'OECD Competition Assessment Reviews: Greece 2017', OECD Publishing, Paris, available at: [https://read.oecd-ilibrary.org/finance-and-investment/oecd-competition-assessment-reviews-greece-2017\\_9789264088276-en#page1](https://read.oecd-ilibrary.org/finance-and-investment/oecd-competition-assessment-reviews-greece-2017_9789264088276-en#page1)
- OECD (2016), 'OECD Competition Assessment Reviews: Romania', OECD Publishing, Paris, available at: <http://www.oecd.org/daf/competition/oecd-competition-assessment-reviews-romania-9789264257450-en.htm>
- OECD (2018), 'OECD Competition Assessment Review: Portugal: Volume I – Inland and Maritime Transports and Ports', OECD Publishing, Paris, available at: <http://www.oecd.org/daf/competition/Portugal-OECD-Competition-Assessment-Review-Vol1-Transports-preliminary-version.pdf>
- OECD (2018), 'OECD Competition Assessment Review: Portugal: Volume II – Self-Regulated Professions', OECD Publishing, Paris, available at: <http://www.oecd.org/daf/competition/Portugal-OECD-Competition-Assessment-Review-Vol2-Professions-preliminary-version.pdf>
- APEC-OECD (undated), 'Integrated Checklist on Regulatory Reform', available at: <http://www.oecd.org/regreform/34989455.pdf>

## Annex 1: Worksheet A - Identifying regulations to review

### A) Identifying regulations to review

1. Complete a copy of the table below for each sector/product/service regulated
2. Wherever possible, try to make a definitive judgement Yes or No to each of the criteria listed
3. When choosing the sectors/products/services to review in stage B) look at the evidence in the round rather than simply ranking by the number of 'Yes' responses
4. Expand the table as required to provide a full explanation of the issues

	Criteria	Evidence (Yes, No, Uncertain)	Explanation
I.	<i>Sector characteristics</i>		
	1. Total revenue (in PHP or as a % of GDP)		
	2. Number of employees		
	3. Export revenue (in PHP or as a % of all Philippine exports)		
	4. Large impact on the costs of firms in other sectors?		
	5. Forms a large proportion of consumer expenditure?		
	6. Disproportionate impact on the poor and vulnerable?		
	7. Priority in Philippine Development Plan?		
	8. Possibility of reform setting an example for other sectors?		
II.	<i>Indicators of harm</i>		
	1. Complaints from new/potential entrants?		
	2. Complaints from incumbent firms?		
	3. Complaints from suppliers?		
	4. Complaints from consumer groups?		
	5. Reported high margins?		
	6. Previous intervention(s) by competition authority?		
III.	<i>Feasibility of resolving problems (if found)</i>		
	1. Have potential remedies already been identified?		
	2. Has government expressed a willingness to reform the sector?		

## Annex 2: Worksheet B - Initial evaluation of regulations selected for review

### B) Initial evaluation of regulations selected for review

1. Complete a copy of the table below for each regulation affecting the areas/sectors selected for review.
2. Wherever possible, try to make a definitive judgement Yes or No to each of the criteria listed
3. Expand the table as required to provide a full explanation of the issues

		Criteria	Issue Identified (Yes, No, Uncertain)	Explanation
I.	<i>Limit barriers to entry for new companies</i>			
	1	Does the regulation create exclusive rights?		
	2	Does the regulation create license or permit systems?		
	3	Does the regulation raise the cost of a company to enter or leave a business activity?		
	4	Does the regulation place geographical barriers on trade?		
II.	<i>Restrict company actions to compete with each other</i>			
	1	Does the regulation establish price rules?		
	2	Does the regulation restrict advertising?		
	3	Does the regulation set standards that would not be chosen by many informed consumers?		
	4	Does the regulation create differential costs of operation for businesses?		
III.	<i>Do not encourage potentially anti-competitive co-ordination by companies</i>			
	1	Does the regulation create a self-regulatory regime?		
	2	Does the regulation generate sharing of sensitive information?		
	3	Does the regulation exempt a company or industry from competition law?		
IV.	<i>Prevent consumers receiving sufficient information and choice</i>			
	1	Do consumers lack sufficient information and ability to choose well?		

## Annex 3: Worksheet C - Summarising the results of the in-depth evaluation

### C) Summarising the results of the in-depth evaluation

1. Complete this table for those regulations identified as problematic in stage B)
2. A problematic regulation in stage B) is any where for at least one criteria there is an answer of 'YES'
3. Add as many lines to the table as there are problematic regulations
4. Expand the table as required to provide a full explanation of the issues

	Regulation Name	Regulation/Article /Act No.	Sector/Product/ Service	Revenue of Sector/Product/ Service	Issues identified in part B) (e.g. II.3)	Body in charge of regulation	Initial Assessment of Harm (Large, Medium, Small)	Explanation
1.								
2.								
3.								
4.								
5.								
6.								
7.								
8.								
9.								
10.								

<b>Example</b>	Road construction bill of 1974	Article 9(b)(ii)	Asphalt production	130m currency units	I.3 (raise cost of starting a business activity)	Road Transport Authority	Medium	The minimum size of an asphalt production plant is set at 2000 m <sup>3</sup> . The impact of a minimum size requirement is to limit the number of competitors who can operate in the market, because the market only uses 2.5 times the minimum size level.
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## Annex 4: Worksheet D - Alternatives and recommendation

### D) Alternatives and recommendation

1. Complete this table for those regulations identified as problematic in stage C)
2. A problematic regulation in stage C) is any where for at least one criteria there is an answer of 'Not Justified' and an assessment of harm that is at a level you consider worth addressing
3. Add as many lines to the table as there are unjustified regulations worth addressing
4. Expand the table as required to provide a full explanation of the issues

	Regulation Name	Regulation /Article/ Act No.	Sector/ Product/ Service	Revenue of Sector/Product /Service	Issues identified in part C) (e.g. II.3)	Alternatives	Evaluation of <b>each</b> alternative	Recommendation
1.								
2.								
3.								
4.								
5.								
6.								
7.								
8.								
9.								
10.								

<b>Example</b>	Road construction bill of 1974	Article 9(b)(ii)	Asphalt production	130m currency units	I.3	Alternatives include the status quo, eliminating any minimum size on asphalt plants or reducing the minimum size level	Option 1 - Status quo: There is no compelling reason to establish a minimum size of asphalt plants. Commercial processes can determine appropriate operating sizes based on local market conditions and no government oversight of the size level is necessary. Option 2 - Elimination of the minimum size: the elimination of the minimum size option will allow copmanies to enter with different sizes of plants, particularly smaller size plants that can help to discipline any market power of larger plant operators; Option 3 - Reduction of minimum size: The reduction of the minimum size might allow for the creation of more plants, but will not address the fundamental point that the government role may not be to determine the appropriate size of a plant, which is more of a commercial operating decision.	Eliminate minimum size requirement.
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