



**Asia-Pacific  
Economic Cooperation**

**Advancing** Free Trade  
for Asia-Pacific **Prosperity**

# **Comprehensive Review of Potentially Anti-Comprehensive Laws and Regulations**

**APEC Economic Committee**

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**Asia-Pacific  
Economic Cooperation**

**Project Summary Report  
EC 04 2018A**

**Comprehensive Review of  
Potentially Anti-Competitive Laws  
and Regulations**

**Economic Committee**

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APEC Project EC 04 2018 A

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# Executive Summary

## APEC Secretariat's RFP Project No. EC 04 2018A, "Comprehensive Review of Potentially Anti-Competitive Laws and Regulations."

### Preamble and Overview

#### 1. Purpose of the Project

The purpose of the project is to provide consulting services to develop and pilot a competition assessment manual in the Philippines, as outlined in the RFP.

The following services were specified: "creation of a Manual on the assessment of laws and regulations, pilot-testing of the manual, and the conduct of an international workshop to showcase the Project's outputs."

More specifically, the activities to be conducted would include:

- (i) The preparation of an inception report
- (ii) Drafting, revision and finalization of the Manual for government agencies to self-assess potentially anti-competitive laws and regulations,
- (iii) Planning and supervising the pilot-test of the Manual in three selected government agencies in the Philippines
- (iv) Assisting the government agencies in producing reports on the results of actual assessment and drafting detailed action plans to take corrective measures, and
- (v) Planning and conducting a two-day international workshop in Manila, the Philippines.

#### 2. Structure of this Project Report

This report includes the supporting documents for the manual. It describes how we have now successfully completed each of these activities. Chapter 1 serves as an introduction, explaining the benefits of Competition Impact Assessment. Chapter 2 is the draft manual which was to be pilot-tested. Chapter 3 then reports the details of how we conducted the pilot-testing. Chapters 4 and 5 respectively provide the agenda of the workshop and participants evaluations of the workshop and the draft manual. Appendix A1 presents the Inception Report and Appendix 3 provides our short background assessments of the sectors of the Philippines economy for which the Manual was piloted.

#### 3. Our Assessment

It is our judgement that this project has been highly successful.

The draft manual proved to be relatively easy to use. Feedback was generally very favourable and constructive. This feedback has led to relatively minor amendments which have now been included in the final version of the manual. We believe and hope that this manual will now be employed by other governments in the APEC zone.



The international workshop was also highly successful, with extremely favourable feedback on the quality of the speakers and the relevance of their presentations.

#### 4 The Future

A natural question is what follows the two-day international workshop and the initial pilot-testing of the Manual for the selected agencies? As highlighted in “Part B Empirical Evidence” section of this report, the total potential benefit of a Competition Impact Assessment (CIA) can be significant: for the case of CIA sector reviews in Greece, 2013, 2017, Romania 2016 and Mexico 2018, the total estimated benefit of implementing CIA recommendations can be as high as \$8,985 million. Similarly, the price reduction due to pro-competitive reforms can be of same magnitude as observed in typical cartel over-charge studies.

It was clear from the presentations at the workshop held in Manila that a wider dissemination and application of the Manual to other government agencies would be useful, in the first instance in terms of providing competition literacy to government employees and other policy makers, and in the second instance to generate an intrinsic debate about pros and cons of existing and new regulations under consideration. Thus, our recommendation is to roll out the Manual on both the extensive and intensive margins:

- (Extensive Margin) Wide dissemination of the Manual to other government departments, along with short training workshops on Competition Economics and the use of the Manual.
- (Intensive Margin) A deeper application of the Manual to a much richer set of existing regulations covering the sectors overseen by the three government agencies that participated in the pilot testing.

# **Chapter 1**

## **Merits of Competition Policy (and Competition Impact Assessment)**

## 1.1 Introduction

Competition Impact Assessment (CIA) recognises two propositions and, when the two propositions sometimes pull in opposite directions, provides a methodology for handling the potential trade offs raised.

### **Proposition 1**

In most, if not all, areas of government policy, some form of regulation is necessary if societal objectives are to be satisfied. In health and education regulations and standards are needed to ensure service quality; in civil policing and domestic defence, regulation is needed to ensure a balance between security and civil freedoms; in environmental policy we need to protect the welfare of future generations which will not necessarily be respected in current markets outcomes; etc. etc..

### **Proposition 2**

Competition is a good thing, and should be encouraged and protected by the law. The case in favour of competition was famously set out over 200 years ago by Adam Smith, and the overwhelming consensus amongst economists and policy makers ever since has been strongly in favour of competition. Virtually every economy in the world has explicit Competition Law, and this typically includes the prohibition of cartels, the prohibition of anticompetitive (abusive) behaviour designed to create or defend monopoly, and the power to control (prohibit or insist on remedy) to mergers likely to have anticompetitive effects.

### **Potential Trade off**

Sometimes, regulation designed to further governmental policy objectives in other areas (such as health, education, environment, development) may have the effect of dampening or removing competition. The primary objectives of the policy may well be desirable, and the anti-competitive consequences unintentional, but nevertheless this raises a potential trade-off. Should the regulation be introduced in spite of its anticompetitive consequences? Or should it be abandoned? Or should the government, or its agency consider alternative ways of achieving the objective which do not have anti-competitive consequences?

CIA is an approach designed to encourage government ministries and/or their agencies, when contemplating a new policy/regulation, to assess whether the regulation does raise competition concerns, and, if it does, to consider whether there may be alternative forms of regulation which would be equally effective but without dampening competition.

Furthermore, CIA need not be confined to reviewing potential new policies and regulations, it can be, and is, applied to reviewing existing established regulation, and in that case this might include reviewing whether the regulation might now be discarded altogether, or modified to be replaced by a more competition-friendly alternative.

The remainder of this paper/presentation is in two parts. In the first, we briefly survey existing literatures (theory and empirical) on the benefits of competition, and how to identify, for any market, whether or not it is likely to foster a healthy state of competition. This then leads quite naturally into an introduction of the CIA, and how it embodies an assessment of the competitive consequences of regulations. In the second part we consider some of the emerging evidence on the gains which can be derived from a CIA: we review not only previous economy cases of CIA themselves, but also the wider empirical literature on the beneficial effects of deregulated markets across the world and over the last few decades. We close the empirical survey with a short review of the adjacent literature of competition advocacy by competition authorities.

## Part A: background

### 1.2 Competition

In broad terms, competition can be defined as rivalry between competing firms (either actually or potential) to supply the market. The classic alternative to competition is monopoly, protected by high entry barriers, which leads to a price much higher and quantity much lower than the competitive level. The traditional depiction of competition is a market supplied by a large number of (small) competitors, none of which is large enough to control the price; moreover entry into such a market must be unimpeded by any barriers. More recently however, it has been recognised that the number of firms actually supplying a market is less important than whether there are potential suppliers that *could* enter the market, should incumbents raise price in order to achieve excessive profits. The other central issue is how fiercely do incumbents compete, especially if there is no real prospect of the discipline of new entrants? If incumbents are able to cartelise the market, or less extremely devise strategies to ensure they do not compete aggressively (tacit collusion), then this can take price up towards the monopoly price. It is traditionally argued that such collusion is more likely in concentrated markets (in which there are only a few large firms.)

Of course, competition, and consumers' utility usually derives from more than just the price. Productivity, product quality, consumer choice and innovation are also often the tools and/or outcomes of the competitive process. While there are considerable ongoing debates about whether competition will always generate optimal quality, choice and innovation, the consensus is that a market is best placed to supply socially desirable outcomes if there is healthy competition between suppliers – both within the market and for the market.

On productivity, the key theoretical insight is that competitive pressure on price drives productivity in 3 ways:

- (i) Within firms, competition is a disciplining force, applying pressure on managers to become efficient
- (ii) Within the market, under competition, the more efficient firms gain market share at the expense of the less efficient - who either have to improve efficiency or exit the industry. Notice that even exit of the inefficient increases average industry productivity.
- (iii) Competition drives firms to innovation, to gain a competitive edge on rivals – see next point

On innovation, the key theoretical insight derives from Arrow – competition brings greater incentive as there is business stealing in addition to market expansion. For monopoly, on the other hand, there are no rivals to steal from, and cannibalisation may be the only option. There are counteracting hypotheses however: As Schumpeter explained, firms often need to be large so as to afford R&D and to minimise uncertainty (given that technical uncertainty could be high). Nevertheless, the balance of the empirical evidence (e.g. Aghion et al), is that on balance is good for innovation.

On product quality, it is usually argued that competition drives technical quality upwards (vertical differentiation) and encourages a greater variety of choice (horizontal differentiation) which best serves the diversity of consumer tastes.

The policy implications are that we should aim for markets which are (i) freely open to prospective new entrants and (ii) offer both the incentive and discipline of incumbents to compete vigorously with each other.

### 1.3 Competition Impact Assessment

Although individual economies have conducted reviews of their regulatory regimes historically<sup>1</sup>, the type of assessment we advocate it was developed by OECD in its Competition Assessment Toolkit (2007, 2010, 2015). This method uses a set of threshold questions – a “Competition Checklist” that are applied to each regulation considered – to show whether they might have adverse implications for competition. For those that do, deeper further scrutiny is then conducted to assess whether there is indeed competitive harm, and if there is, can this be set aside because the regulation generates more than compensating benefits for the relevant area of government activity, and there are no other alternatives which could achieve those objectives without competitive harm.

The “Competition Checklist” includes 15 questions and these will be discussed later in this workshop. At this stage it is sufficient to note that these can be grouped under four broad headings: does the regulation

- A. Limit the number or range of suppliers
- B. Limit the ability of suppliers to compete
- C. Reduce the incentive for suppliers to compete
- D. Limit the choices and information available to consumers

The first three correspond exactly to the two desirable features referred to in the last sentence of the previous section (A, corresponding to the condition of entry, and B and C to the ability and incentives of incumbents to compete with each other.) D recognises that in addition, very often, a market works well only consumers have sufficient costless information on which to base their choices. If this information does not exist, the incentives for firms to compete aggressively, by introducing newer/better/cheaper products is reduced since that will not necessarily attract additional custom.

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<sup>1</sup> Perhaps most notably Australia (Hilmer, 1993) and the UK

## Part B Empirical Evidence

Against his backcloth, we now consider the empirical evidence on the magnitudes of gains that can follow from successful removal or modification to existing regulation.

### 1.4 Previous CIAs for other economies

Sector-wide reviews of existing regulation have been carried out by the OECD<sup>2</sup> since 2013, including Greece (OECD, 2013, 2016), Mexico (OECD, 2018), Portugal (OECD, forthcoming) and Romania (OECD, 2016), see Table 1.

**Table 1. Ex post regulatory reviews by OECD**

Economy	Sector	Legislation reviewed	Regulations with potential restrictions	Recommendations
Greece (2013)	Retail trade		210	129
	Building materials		46	32
	Tourism	153	132	76
	Food processing		100	54
Romania (2016)	Construction	162	95	72
	Freight transport	566	85	46
	Food processing	167	47	34
Greece (2016)	Construction	251	61	68
	Media	251	68	68
	Wholesale Trade	292	265	134
	Pharmaceuticals	155	88	54
	E-commerce	71	15	10
	Manufacturing	268	80	48
Mexico (2018)	Medicines	107	100	50
	Meat	121	76	57
Portugal (2018)	Professions	n.a.	n.a.	n.a.
	Transport	n.a.	n.a.	n.a.
Mexico (2019)	Gas and LPG	n.a.	n.a.	n.a.

As can be seen, these reviews were extensive in the numbers of legislations assessed, and the numbers of regulations considered to be potentially restrictive. Recommendations for change typically occurred in more than half of all these potentially restrictive cases.

<sup>2</sup> Competition assessment can be carried out by a government or its own agencies – indeed, the methodology was designed to be conducted by the economy itself – but there are advantages of having a third party review, ensuring independence and the ability of a third party (say OECD) to maintain pressure for implementation.

Estimates have been made of the economic benefits of implementing recommended pro-market reforms. While these are necessarily tentative, they have the potential to be substantial.

As an illustration consider the main identified restrictions in the medicines sector in Mexico, described in Box 1. Some of the recommendations have quantified potential benefits, with actual results ranging widely depending on assumptions over parameters used, yielding estimated benefits of implementing recommendations of between MXN 10,200 million and MXN 43,800 million annually, or £550 to USD 2,400 million.

**Table 2 Example: medicines in the competition assessment review, Mexico, 2018**

**A. In filling prescriptions, pharmacists must supply the branded drug, unless substitution is expressly allowed in the prescription.** When doctors prescribe the brand name, pharmacists must comply (at least by regulation) with that brand name and the generic medicine can only be substituted if the doctor has expressly authorised the replacement, even though the generic contains the same active ingredient. As a consequence, consumers are locked into buying branded medicines if their doctor prescribes them. The OECD recommended the following options to the Mexican government.

**Option 1) Change default option.** Amend the provision to oblige pharmacists to inform customers about the cheapest available generic and allow pharmacists to substitute prescribed medicines with this generic when the patient agrees, unless the doctor has specifically specified that substitution is not allowed. The substitution should be optional, not mandatory due to the fact that most purchases in Mexico are customer out-of-pocket spending and customers should be able to purchase the medicine they perceive to be best.

**Option 2) Require generic prescriptions.** Introduce a provision that requires doctors to prescribe only medicines with the International Non-proprietary Name (INN), which contains the active substance, but is not sold under a brand name.

If either of these OECD recommendations were fully implemented, the potential benefit to consumers was estimated to range between MXN 6,177 and 34,545 million a year.

**B. Control of conflicts of interest that incentivise doctors to prescribe in pharmaceutical company interest.** Mexico currently has no law regulating which benefits, such as conference participations or speaker engagements, pharmaceutical companies can provide to doctors. A lack of governmental regulation in this field may hinder competition among similar products and potentially give doctors an incentive to prescribe more expensive products that in turn provide them with more benefits. The OECD recommended issuing a binding regulation determining the exact conditions under which pecuniary advantages or benefits of significant value to doctors could be granted, to reduce conflicts of interest. Many economies have regulations in place to reduce conflicts of interest. The benefit to consumers from implementing the recommendation is estimated to be MXN 7,743 million a year.

**C. Adjacent Offices for pharmacies and doctors**

**(Consultorios Adyacentes a Farmacias, CAF).** In 2015 in Mexico, according to COFEPRIS, 53.5% of all pharmacies had adjacent doctors' offices or CAF (Consultorios Adyacentes a Farmacias, CAF). CAF provide patient consultations at extremely affordable prices, or even for free. While CAF business models may vary, most doctors working at CAF receive some form of compensation from the pharmacies, be it through a fixed salary, a bonus, or some other form of remuneration. As practically all CAF belong to pharmacies, doctors are not completely independent of the pharmacies in their prescription practice, and this could distort competition among medicines. The OECD recommended review of the practice and consideration of three options to the Mexican government, including potentially resting with the status quo.

**Option 1)** Issue a provision prohibiting CAF doctors from prescribing branded products and mandate them to only prescribe the INN or the generic name.

**Option 2)** Issue a code of conduct or regulation prohibiting pharmacies from exerting pressure on or incentivising doctors to prescribe certain products, especially by rewarding them according to volume or number of prescribed medicines.

**Option 3)** No action. The policymaker's objective of granting quick and easy medical access to the Mexican population, largely met through this system, could prevail over any possible concern with conflict of interest. This recommendation could leave the current CAF business model unchanged.

**Total potential benefits: \$550-\$2,400mn**



More generally Ennis (2018) applies a model for quantifying the total potential impacts from implementing the proposed recommendations (Table 3.)

**Table 3. Estimated impacts by set of recommendations, \$mn**

	Average
Greece, 2013	6,463
Greece, 2017	514
Mexico, 2018	1,469
Romania, 2016	539
<b>TOTAL</b>	<b>8,985</b>

### 1.5 The beneficial effects of deregulating markets: an ongoing meta-study

An alternative perspective on the magnitudes of gains that might be had as a result of CIAs is to turn to the vast existing literature on the effects of de-regulating markets. Ennis at OECD has been collecting estimates from a broad range of pre-existing studies examining the impact of pro-competitive or anti-competitive reforms. Here we shall concentrate on the effects on price, although future work will also examine output, quality and choice.

Table 4 provides a short summary of initial findings with the regulatory restrictions on competition categorised according to the Competition Assessment Toolkit’s checklist.

The studies identified were found through search for relevant keywords over Google. Two reviewers confirmed numbers for each study. Where there was disagreement, a third opinion was sought. This dataset is in the process of being extended and completed with more international studies.

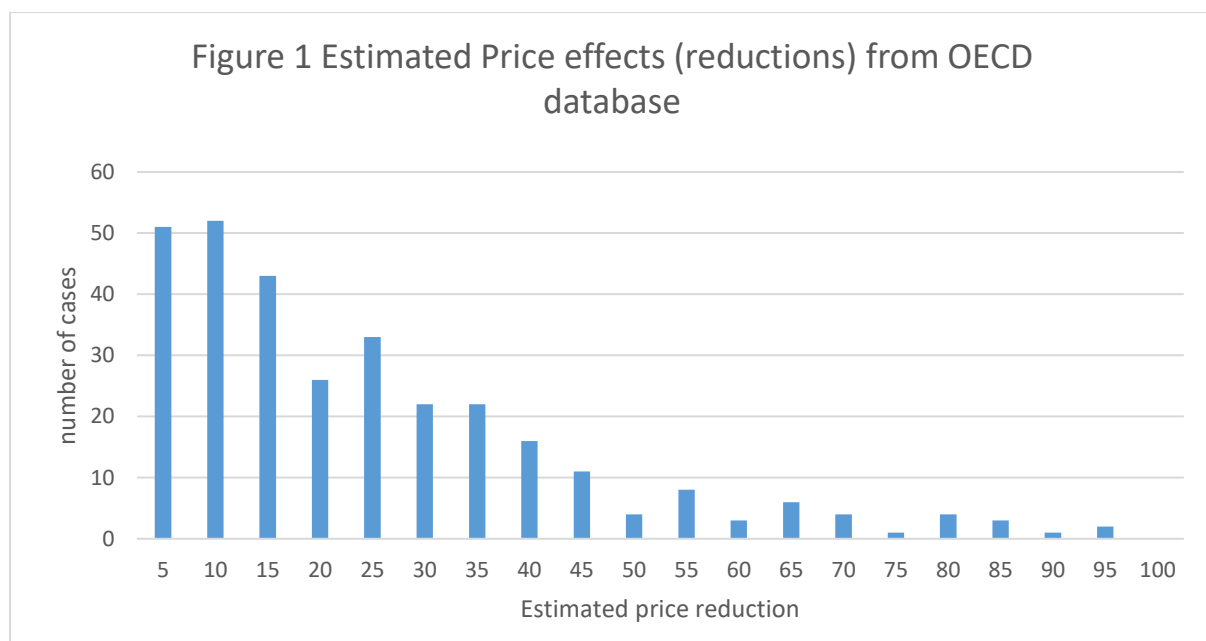
For each empirical estimate found in a reputable ex post study, we record the type of Checklist restriction involved and the empirical finding (typically a price or cost change). Studies that include multiple and distinct findings are listed multiple times, with a separate entry for each finding. A total of 312 findings have been identified, with most of these applying to a sub-category of the Checklist. A small percentage of findings are attributed only to one of the four broad categories, due to insufficient information for further classification into sub-categories.

**Table 4 Summary Statistics of Meta-analysis of Deregulation Studies, relative to cartels**

	Deregulation					Cartels		
	A	B	C	D	All	legal	illegal	All
	Entry	Ability to compete	Incentive to compete	Consumers				
	160	77	42	33	312	390	1107	1497
median	17	18	14.9	17.4	16.7	27	22	22.5
mean	21.2	23.2	20.8	22.9	21.9			
5%>	17%	17%	12%	18%	17%	22%	11%	14%
5-50%	73%	71%	83%	73%	74%	51%	74%	68%
>50%	9%	12%	5%	9%	9%	28%	15%	18%

The mean impact findings from the dataset are summarised in Table 4 which aggregates by Checklist category. In all cases reported, the more pro-competitive regulatory option had a lower price than the more restrictive option. This is true not only for the reported mean results but also for the entire range. The average reduction in price is 21.9%, across all studies, for the pro-competitive form of regulation. This mean is relatively stable across all the four categories, but with variability within the categories. For example, within category B, regulations that restrict price-setting appear to have a more substantial impact on price than advertising or marketing restrictions. Within category A, regulations that create exclusive rights appear to have a larger impact than license regulations.

The mean price impacts of pro-competitive regulation compared to restrictive regulations are overwhelmingly of the expected sign, with pro-competitive reforms having a price-lowering effect. The extreme values of price impact are 95% at the largest, and 0.1% at the smallest (see figure 1).

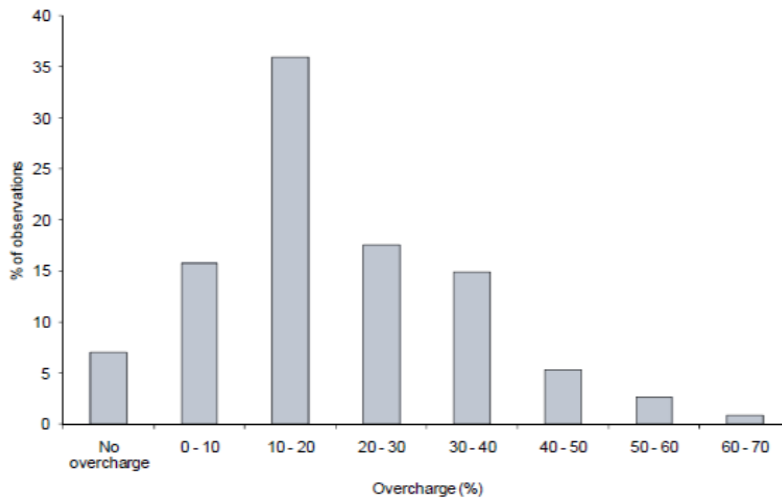


The average figure can potentially be used as a standard estimate of the price impact of a given type of restriction when the restriction has an anti-competitive impact.<sup>3</sup> Note that that applying standard estimates would be appropriate only when a restriction binds, in the sense that it changes behaviour or market structure.

Interestingly, these results suggest that anti-competitive regulations have an average impact that is in a similar range to cartel price impacts. John Connor’s review of more than 500 cartel-overcharge estimates suggests that the range of cartel overcharges follows a distribution as shown in Figure 2, with the main tendency lying between 10 and 20 percent, and the central deciles between 10 and 30%.

<sup>3</sup> Licenses and permits (category A2), for example, may be reasonably related to a policy objective and issued at will to any qualifying person or company; in such cases, a license or permit might have no competitive effect. On the other hand, in some situations licenses may require that excessive standards be met for delivering a service and that license requirements unduly restrict supply, thus having an anti-competitive impact.

**Figure 2. Distribution of cartel overcharges**



Connor and Lande (2008) as reported in Oxera and Komninos (2009)

The similarity between the size of price effects from anti-competitive regulations and of cartels can be explained as arising from a similar economic origin, the price impact of increasing scarcity. Governmental restrictions on firm entry or competitor actions and incentives can be similar in economic effects to private restrictions on quantities sold or competitive actions. Particularly in the case of regulatory capture, private interests may seek regulations that mimic the effects of cartels without the same legal consequences, which can include fines, damages and increasingly prison time for executives.

However, at this stage, we do not suggest any general conclusions are appropriate from a comparison of these two meta-studies. Each was conducted over different types of economic activity and with different methods. Nonetheless, based on the size of estimates, anti-competitive regulation deserves substantial policymaker attention, from a consumer harm perspective, much like cartels. Calls for review of anti-competitive regulation in both China and the United States<sup>4</sup> suggest that policymakers in the largest economies will increasingly focus on reforms to regulation as pro-productivity structural reforms that merit investment of both time and resources.

## 1.6 Advocacy

Finally, we suggest that there are similarities between Competition Impact Assessment and the Advocacy that Competition Authorities (CA) are required to undertake as part of their everyday activities. An International Competition Network (ICN) (2002) study reports that, amongst those economies that felt able to quantify, almost one third reported that they devoted 20-30% of their budget to advocacy.

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<sup>4</sup> China introduced a Fair Competition Review System in 2016, with an increasingly specific and developed structure released in 2017 under the aegis of one of the Chinese competition law authorities, the NDRC, while in a speech the head of the Antitrust Division of the United States Department of Justice, Assistant Attorney General Makan Delrahim seeks a “consensus” about whether to seek to identify and reform anti-competitive regulations (Delrahim, 2018).

To date however, there has been no rigorous attempt to quantify the impact of advocacy, in terms of estimated benefits to consumers. This will be the subject of our further research. There is no doubt that the task of quantitatively estimating the impact of advocacy is challenging – much of this activity is general and intangible in nature, with specific effects that are not amenable to measurement, or disentangling from other influences on policy decisions.

In the circumstances, most of the little evaluation work that has been done is predominantly qualitative. For example, the OFT (2010b) conducted a survey of officials across various government departments asking how far its competition related advice was taken into consideration and influenced policymakers. Judged on the replies from 43 respondents, it did indeed have a significant impact – leading to important changes in policy approach in half of cases, and changes in objectives in one quarter. However, this study did not attempt to quantify this impact.

The OFT also describes three case studies which illustrate quite well that, while advocacy can have important positive impacts, they are difficult to measure. The first was advice given to the Ministry of Justice, warning against licensing regulations that would have posed a serious barrier to entry into the market for will-writing; the second related to energy-efficiency in light bulbs, on which the OFT warned against voluntary arrangements which might facilitate collusion; the third was on how to improve procurement guidelines for competitive tendering in public procurement of waste management services. Impact in all three cases would be difficult to quantify. For example, in the light bulb case, speculation would be needed on the probability that collusion would have occurred, and the extent of that collusion.

## 1.7 Conclusions

While further research is clearly called for, some conclusions are clear cut. First, CIA is not simply a question of removing all government regulation. Many regulations make perfect sense in helping to achieve socially desirable outcomes beyond the province of competition. This is reflected in the large numbers of legislations which were not assessed as anti-competitive in previous OECD CIAs.

Second, and notwithstanding this, it is also clear from existing economic and policy literatures on the effects of competition in general that enhancing competition, where possible, can lower prices, improve choice and quality, and increase productivity and innovation.

Third, the emerging evidence on the likely impacts of previous deregulations in general, and, more specifically, actions following previous CIAs are very favourable – typically price reductions in the region of 15-20% are not uncommon. Intriguingly, this roughly parallels results from previous literatures on the impact of breaking cartels.

The case for CIA seems strong – both theoretically and empirically.

# Chapter Two

## Draft Manual

## 1 Executive summary

This manual is intended to help government officials to review regulations for their competitive impact, identifying those that potentially restrict competition and developing alternative regulations that have less or no harm to competition. The approach used in this manual is one that is currently applied in many economies, based on material initially developed after cross-economy consultation 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 generalized 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 regulation, a set of criteria is provided to suggest how to prioritize areas for review. When the approach is applied to new regulation, 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 operational ministries, government agencies, local government, regulators and the competition authority. No prior expertise on competition or economics is required to apply the manual. No particular 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 domestic 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 verified as substantial, the manual presents a method for identifying possible alternative regulations.

### 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. 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 prefer pro-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 economies 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 focusing on 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 our business. It is competition that provides many of the incentives to companies to give us what we want. Competition often lead 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.

### 2.2 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 on the monopolist to keep its prices at a level that makes its products affordable.

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.

### 2.3 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 favoured. 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.

### 2.4 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 would 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. “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.

## 2.5 [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 impact. More generally, implementing many small changes can create large aggregate benefits.



## 3 Principles of competition assessment

In the past, the question of whether regulation restricted competition was difficult to assess and somewhat ad hoc. Since the introduction of the OECD's Competition Assessment Toolkit, in 2007, the suggested 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 in order to interpret the Checklist questions that are incorporated into the framework. Overall, the questions are designed to be understandable to non-experts. The OECD initially designed the framework as one that could be applied by governments to their own domestic circumstances, and this is maintained in the approach of 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
- Ensuring consumers have appropriate information for making good choices.

### 3.1 Limit barriers to entry for 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 from the limits.

#### 3.1.1 Does the regulation create exclusive rights?

An exclusive right to produce a good or operate a service means that only one company can provide a product and other companies are directly prevented from offering such 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. Having said this, exclusive rights create monopolies. One reason that governments grant exclusive rights is to incentivize substantial investments in infrastructure that would not otherwise happen.

### **Example 2 Liberalization 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 privatization of PAL and the liberalization of the Philippines' civil aviation sector. By allowing additional carriers (other than official Philippine carriers) to use flight routes, EO 219 resulted in the entry of several competitor airlines, a huge increase in domestic passenger traffic in traditional major markets, the opening of new markets for airline services, lower airfares, 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 a non-discriminatory, free, and unrestricted access to all ISPs for the purpose of installation and operation of broadband facilities.

#### 3.1.2 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 for licensure, 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, which is often requested by the providers, create an artificial, government-endorsed scarcity to raise 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 Liberalization of foreign direct investments**

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 the transparency as to the industries that were allowed to have 100 % foreign equity.

### 3.1.3 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 reducing the gains from achieving success. Cost increases can arise in many ways. For example, they may arise from excessively rigorous product testing requirements as well as requirements to meet unnecessarily high educational, technical or environmental standards. Exit costs arise whenever entry incurs sunk 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.

### 3.1.4 Does the regulation place geographical barriers on trade?

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 OFC sector study Customs, Immigration and Quarantine officers' overtime charges were reformed enabling 24/7 operations and saving the aviation industry 400m PHP per annum.

## 3.2 Does the regulation restrict potentially competitive company actions?

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 controlling prices for selling certain goods or services. These limits can reduce the intensity and breadth of rivalry, 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 consumer alternatives. However, price controls may sometimes be applied when there are many potential suppliers to each consumer. In addition to fixing 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. Nonetheless, the full impacts 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 effectively coordinate their prices around the maximum price.

### **Example 6 Price liberalisation in shipping**

In order to encourage investments in the domestic shipping industry by existing domestic ship operators and attract new investment from new operators and investors, Republic Act No. 9295 (Domestic Shipping Development Act of 2004) authorized 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 regulated the service prices of telecoms companies using a maximum return on rate base. RA 7925 changed NTC's power to set rates by authorizing it to exempt a specific telecommunications service 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 the prices for international calls, same-network calls, and sending SMS.

#### 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 or 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 potential entrants 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 costs of business operation asymmetrically, not only in ways that prevent entry, but also in ways that affect competition between potential 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 a new regulation and those that target subsidies to some enterprises and not others. Regulations that create artificial cost asymmetry can distort competitive behaviour.

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

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

It was observed that this method of assigning spectrum led to the underutilization of spectrum bandwidths, which were merely warehoused by the existing players. Moreover, it allowed the existing large players to accumulate more spectrum, excluding 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 the rules on the selection process for a new major player (“NMP”) in the Philippines telecommunications market (“Selection Rules”). 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 Do not 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 could compete less vigorously would include regulations that: (a) facilitate co-ordination between companies and/or (b) they reduce customer switching between suppliers. Self-regulatory regimes pose a particular risk of increasing behaviour resembling that of business cartels, 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, 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 revealing publicly 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 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 derogation from the general application of competition law exists, there is a clear risk of 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 Ensure consumers receive sufficient information and choice

### 3.4.1 Does the consumer have 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 enabled consumers to move mobile phone numbers from one operator to another, this creates a valuable increase in competition from the consumer's ability to threaten to switch supplier. When new product markets are created, as with privatization of retail electricity sales in some economies, consumers are at the most 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 compare offers.

#### **Example 9 Portability of mobile telephone number**

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 retain their existing mobile number when moving from one mobile service provider to another, or changing the type of subscription from postpaid to prepaid, or vice versa. This benefits consumers by reducing switching costs (or costs that consumers incur as a result of changing service providers) among mobile subscribers and may create benefits for subscribers who 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.

### 4.1 Identify those regulations to review

Which regulations should be reviewed? Best practice would suggest reviewing all substantial new regulations, as reviewing the flow of new regulations does not require extensive resource commitments. In particular, applying the technical review of section 3 can occur very quickly. For reviewing existing regulations, more resources may be required and greater emphasis may be needed for the activity, so prioritization can be valuable. Potential bases for prioritization include:

- Size of economic activity (in terms of value of commerce or employment)
- High likelihood of finding substantial restrictions based on:
  - Complaints from new entrants
  - Complaints from incumbents
  - Reported high margins
- High price impact on the poor and/or vulnerable?
- Feasibility of resolving problems that are identified (e.g., due to willingness of ministry to undertake reforms)

### 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 regulation. 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 the 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. Prerequisites for success are understanding the purpose of the regulation and the nature of the product affected by the regulation. The impacts of the 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 recognize that they may sometimes have a conflict of interest, for example because their employer may have an interest to retain 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 necessitates a restriction?

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

#### 4.4 For substantial, actual restrictions, identify alternatives

When regulations are found to restrict competition, a major challenge is to identify alternatives. 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 policy objective for the regulation, alternatives may need to be found. One of the most common techniques for finding alternatives is to examine comparable regulations in other economies, for domestic regulations, or in other localities, for local government regulation. Other techniques include consulting sector experts and seeking their advice on potential regulatory alternatives.

#### 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 is known, it is worth estimating impacts in order to show the potential magnitude of the benefit of reforms to decision makers.

#### 4.6 Implement change

The implementation of reforms requires that decision makers choose to make the reform. When the regulation is purely ministerial, this reform may be primarily an internal ministry process. When the 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.



## 5 How this process fits into the Philippines legal framework

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

### 5.1 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 domestic competition policy, and penalizes all forms of anti-competitive agreements, abuse of dominant position, 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. PCC has the following specific powers in this regard:

- Advocate pro-competitive policies of 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>5</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>6</sup>
- Intervene or participate in administrative and regulatory proceedings, which require the consideration of the provisions of the PCA.<sup>7</sup>

Using the powers outlined above, the PCC has provided opinions to the following government agencies:

Recipient government agency	Title	Status
Department of Information and Communications Technology	Note on Spectrum Management	The selection process is now in the post-qualification phase. PCC issued a Commission Resolution exempting the NMP from PCC review, since competition inputs were already reflected in the terms of reference.
National Telecommunications Commission	Rules of procedure for the selection of new major players in telecommunications	The Anti-Red Tape Authority is still in the process of finalizing the draft IRR of the EODB Act.

<sup>5</sup> Philippine Competition Act, Section 12(r).

<sup>6</sup> Philippine Competition Act, Section 12(k).

<sup>7</sup> Philippine Competition Act, Section 12(n).

Department of Trade and Industry	Position Paper on the Draft Implementing Rules and Regulations of the Ease of Doing Business and Efficient Government Service Delivery Act (Republic Act No. 11032)	
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## 5.2 Regulatory improvement structure

The Philippines does not have a formal structure or institution which oversees the implementation and review of all regulations.

In 2018, a whole-of-government approach in reviewing regulations to expedite business-related transactions in government related to was introduced by Republic Act No. 11032 (otherwise known as the Ease of Doing Business and Efficient Government Service Delivery Act of 2018). The law required all government agencies to conduct a Regulatory Impact Assessment (RIA) for all proposed regulations to ensure that such proposed regulations do not add undue regulatory burden and cost to the government agencies and the applicants or requesting parties<sup>8</sup>. Republic Act No. 11032 does not expressly state the consideration of competition principles in the RIA, however, the draft rules implementing the law provide that the RIA should be applied to regulations and regulatory changes that have potential impact on business.

Specifically with respect 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>9</sup>

This mandate is echoed by the Philippine Development Plan 2017-2022 (PDP 2017-2022),<sup>10</sup> which aims to steer regulations and the administrative procedures of government agencies toward promoting competition, strengthen the enforcement of anti-trust laws, and ensure competitive neutrality. To achieve these outcomes, the PDP employs the following strategies, among others:

- Reviewing, recalibrating, replacing or removing potentially anti-competitive legislations and policies that may substantially restrict, prevent or lessen competition.<sup>11</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

<sup>8</sup> Section 5, Republic Act No. 11032.

<sup>9</sup> Section 32, Philippine Competition Act.

<sup>10</sup> Chapter 16, “Leveling the Playing Field through a National Competition Policy”, Philippine Development Plan (PDP).

<sup>11</sup> PDP, page 251.

technical capacity of government agencies that are mandated to promote market competition.<sup>12</sup>

- Institutionalizing 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, ensure that no new anticompetitive laws and regulations are passed, and institutionalize transparency in the regulatory management processes. 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 domestic competition policy through this mechanism.<sup>13</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 evidence-based approach to formulating laws, rules, and regulations.

In June 2017, President Rodrigo Duterte issued Executive Order No. 27 directing all departments, offices, and instrumentalities<sup>14</sup> of the domestic government to undertake efforts leading to the full implementation of the PDP 2017-2022.

The Philippine government has yet to institutionalize 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. PCC may also submit written position papers or comments to the government agency after a draft regulation is published by the latter for comments of the public.

### 5.3 Consideration of competition in the legislative process

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

The procedure 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 schedule 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 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

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<sup>12</sup> PDP, page 253.

<sup>13</sup> PDP, page 253.

<sup>14</sup> A government “instrumentality” refers to any agency of the domestic 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.

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 2/3 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 determination, 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 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 the following legislative measures:

House or Senate Bill	Subject Matter	Status
House Bill No. 5664	Grant of franchise for the construction, installation and distribution of electric power	The bill’s approval on third reading was reconsidered, and its transmittal to the Senate was withdrawn on 15 January 2019.
House Bill Nos. 528, 877, 1324, 2917, and 5970	Amendment of the Corporation Code of the Philippines	The Revised Corporation Code of the Philippines has already been enacted as Republic Act No. 11232. This already incorporates the relevant provisions of the Philippine Competition Act.
Senate Resolution No. 73	Updating of the Foreign Investments Act	Because of the favourable findings in the Senate Resolution, a separate Senate Bill was filed, seeking the amendment of the FIA.
House Resolution No. 898	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	The Resolution is still pending with House Committee on Economic Affairs

House Bill 5556	Sale, lease, transfer usufruct <sup>15</sup> or assignment of franchises	<p>Various franchise Bills – These are approved already</p> <p>H.B. No. 5556 - Innove Communications, Inc.</p> <p>H.B. No. 5557 - Ignite Telecommunications, Inc.</p> <p>H.B. No. 5559 - G Telecoms, Inc.</p>
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<sup>15</sup> Usufruct is defined in the Philippine Civil Code as the right to enjoy the property of another with the obligation of preserving its form and substance, unless the title constituting it or the law otherwise provides.

## 6 Conclusion

### 6.1 Competition assessment can be implemented with minimal resource investment

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.

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

Due to the benefits from making sure 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, economies 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 listed below, thereby showing the widespread nature of this activity.

#### **APEC**

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 economies have undertaken to carry out competition assessment with the OECD in the transport sector in a three-year project.

#### **Greece**

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

#### **Iceland**

Iceland started a competition assessment review of its tourism and construction processes 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**

Japan's competition authority issued guidance on competition assessment in 2017.

#### **Mexico**

Mexico's competition authority is called upon to review new regulations upon request of its central regulatory review authority or of its own volition. 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 Mexican 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**

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**

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 high regulated environment.

### **United Kingdom**

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

## **6.3 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 economies (to be updated when current numbers become available) could amount to more than USD 9 billion if the recommendations are fully implemented. This is a substantial benefit. These benefits can at times 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 introduced

## 7 Glossary

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.

Competitive neutrality = Ensuring state-owned and private businesses compete on a level playing field.

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 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 liberalization = The process by which price controls are removed.

Privatization = 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.

## 8 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>

## The Manual in brief: a checklist

### Limit barriers to entry for new companies

- Does the regulation create exclusive rights?
- Does the regulation create license or permit systems?
- Does the regulation raise the cost for a company to enter or leave a business activity?
- Does the regulation place geographical barriers on trade?

### Does the regulation restrict potentially competitive company actions?

- Does the regulation establish price rules?
- Does the regulation restrict advertising?
- Does the regulation set standards that would not be chosen by many informed consumers?
- Does the regulation create differential costs of operation for businesses?

### Do not encourage potentially anti-competitive co-ordination by companies

- Does the regulation create a self-regulatory regime?
- Does the regulation generate sharing of sensitive information?
- Does the regulation exempt a company or industry from competition law?

### Ensure consumers receive sufficient information and choice

- Does the consumer have sufficient information and ability to choose?

## Annex for manual

### **Philippines Manual for Competition Assessment Forms for Government Agencies**

This annex has three sheets to assist in applying the manual:

- A) Prioritising the sectors/products/services to review
- B) Initial evaluation of regulations selected for review
- C) Summarising the regulations identified as problematic

**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			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?	Yes	No	Uncertain	
5.	Forms a large proportion of consumer expenditure?	Yes	No	Uncertain	
6.	Disproportionate impact on the poor and vulnerable?	Yes	No	Uncertain	
7.	Priority in Philippine Development Plan?	Yes	No	Uncertain	
8.	Possibility of reform setting an example for other sectors?	Yes	No	Uncertain	
II.	<i>Indicators of harm</i>				
1.	Complaints from new/potential entrants?	Yes	No	Uncertain	
2.	Complaints from incumbent firms?	Yes	No	Uncertain	
3.	Complaints from suppliers?	Yes	No	Uncertain	
4.	Complaints from consumer groups?	Yes	No	Uncertain	
5.	Reported high margins?	Yes	No	Uncertain	
6.	Previous intervention(s) by competition authority?	Yes	No	Uncertain	
III.	<i>Feasibility of resolving problems (if found)</i>				
1.	Have potential remedies already been identified?	Yes	No	Uncertain	
2.	Has government expressed a willingness to reform the sector?	Yes	No	Uncertain	

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

**C Summarising the results of the initial evaluation**

1. Complete this table for those regulations identified as problematic in stage B)
2. A problematic regulation in stage B) is any for which on 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		Initial Assessment of Whether Restriction Justified		Explanation
							Large	Small	Justified	Not Justified	
1.							Large	Small	Justified	Not Justified	
2.							Large	Small	Justified	Not Justified	
3.							Large	Small	Justified	Not Justified	
4.							Large	Small	Justified	Not Justified	
5.							Large	Small	Justified	Not Justified	
6.							Large	Small	Justified	Not Justified	
7.							Large	Small	Justified	Not Justified	
8.							Large	Small	Justified	Not Justified	
9.							Large	Small	Justified	Not Justified	
10.							Large	Small	Justified	Not Justified	

# Chapter Three

## Conduct of Piloting



## Report on the Pilot Test results

### 1.1 Selection of agencies and participants

In October 2018, the Philippine Competition Commission (PCC) invited the following three domestic government agencies to participate in the pilot testing of the draft Philippines Manual for Competition Assessment of Regulations (“**Manual**”), in connection with the APEC Comprehensive Review of Potentially Anti-Competitive Laws and Regulations (hereinafter, “**Project**”):

- Maritime Industry Authority (MARINA) (through the Department of Transportation)
- Civil Aviation Authority of the Philippines (CAAP)
- Department of Health (DOH).

PCC selected the foregoing agencies on the basis of PCC’s past work involving industries that these agencies regulated. PCC requested the agencies to nominate their participants for the pilot testing of the Manual. Within the first two weeks of March 2019, DOH, MARINA, and CAAP confirmed the names of their participants. DOH nominated participants from its Pharmaceutical Division and the Food and Drug Administration, a domestic regulatory agency that is attached to the DOH.

### 1.2 Pilot Testing Process

#### 1.2.1 Orientation

The nominated participants were provided with PDF copies of the draft manual and were requested to bring their own laptops for the orientation held on 20 March 2019, in the PCC office in Quezon City, the Philippines. During the orientation, the UEA team:

- Briefed the participants about the background and objectives of the project
- Explained the structure and contents of the draft Manual
- Discussed the importance of competition assessment, principles of competition assessment, procedure for the competition assessment, and how competition assessment fits in the Philippine legal framework
- Explained how to use the annexed worksheets
- Presented the proposed schedule for the pilot testing (**Annex A, “Pilot Test Schedule”**)<sup>16</sup>

All nine (9) participants who attended the orientation confirmed that they did not have any prior training in competition law and economics.

After the orientation, CAAP’s participant, Ms. Angelica Rose Dimalanta, manifested that CAAP should be taken out of Project in favor of the Civil Aeronautics Board (CAB). With the approval of PCC, CAB replaced CAAP in the pilot testing. PCC likewise approved the treatment of FDA and DOH-Pharmaceutical Division as separate agencies for the purpose of the pilot test.

#### 1.2.2 Update and feedback mechanisms

The participants reported on the progress of their competition assessment of their selected regulations through (1) the regular update meetings arranged by UEA; (2) the submission of reports following the deadlines stated in the Pilot Test Schedule (**Annex A**);<sup>17</sup> and (3) informal communications with the UEA team via email, phone calls, and SMS.

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<sup>16</sup> The schedule was later on adjusted based on feedback received from PCC and the participants.

<sup>17</sup> The schedule was later on adjusted based on feedback received from PCC and the participants.

The regular update meetings were held every two weeks in Makati City, an area that the participants identified as the middle point of the offices of the agencies.<sup>18</sup> During the regular update meetings:

- The participants presented and explained their answers in the worksheets
- The UEA team and the co-participants shared their insights on the presentations and provided suggestions on the additional details that could be considered by the participants in their assessment.
- The participants reported the challenges that they encountered in using the worksheets and in participating in the pilot test.

The UEA team also organized special update meetings upon the request of agencies that could not participate in the regular update meetings. These special meetings also served as a venue for the UEA team to explain the objectives of the Project to the supervisors of the participants and other interested officers in the agency.

**Annex B** summarizes the participants' attendance in the regular and special update meetings.

### 1.3 Results of the Pilot Testing (as of 19 August 2019)

The participants were given until 19 August 2019 to submit the results of their competition assessment. All agencies requested for an extension of the deadline due to the numerous non-working public holidays in August 2019.<sup>19</sup> FDA, MARINA, and CAB's participants have submitted draft PowerPoint presentations which summarize their competition assessment results, but have notified the UEA team that such reports are not yet final and still subject to management approval. The competition assessment results that are summarized in **Annex C** are based on the written reports that were available to the UEA team as of 19 August 2019.

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<sup>18</sup> MARINA, DOH–Pharmaceutical Division, FDA, MARINA, and CAB's offices are located in the cities of Manila, Quezon City, Paranaque, and Pasay, respectively.

<sup>19</sup> 12 August – Eidul Adha, 19 August - Quezon City Day, 21 August – Ninoy Aquino Day, 26 August – National Heroes Day.

## Annex A – Pilot Test Schedule

Activity	Date
<b>Orientation</b>	20 March 2019
<b>STEPS 1 -2</b>	20 March to 10 April 2019
<ul style="list-style-type: none"> <li>• Identification of regulations for review</li> <li>• Principled Technical Review – Identification of potential restrictions</li> </ul>	
<b>Update Meeting 1</b>	1-3 April 2019
<b>Update Meeting 2</b>	10 April 2019 (Wednesday)
<b>Update Meeting 3</b>	16 April 2019 (Wednesday)
Participant Report for Steps 1 & 2	29 April 2019, COB - including other sectors
<b>STEP 3</b>	
<b>Thorough Review</b>	23 April to 16 May 2019
<b>Update Meeting 1</b>	8 May 2019 ( <b>Wednesday</b> )
<b>Update Meeting 2</b>	16 May 2019 (Thursday)
Participant Report for Step 3	22 May 2019
<b>STEPS 4-5</b>	
<ul style="list-style-type: none"> <li>• Identification of Alternatives</li> <li>• Comparing alternatives and selecting preferred options</li> </ul>	23 May to 27 June 2019
<b>Update Meeting 1</b>	29 May 2019 (Wednesday)
<b>Update Meeting 2</b>	10 June 2019 (Monday)
<b>Update Meeting 3</b>	26 June 2019 (Wednesday)
Participant Report for Steps 4 and 5	27 June 2019
<b>Step 6</b>	
<b>Preparation of Action Plans</b>	1 to 24 July 2019
<b>Update Meeting 1</b>	10 July 2019
<b>Update Meeting 2</b>	24 July 2019
Participant Report for Step 6	25 July 2019
<b>Preparation for the International Workshop</b>	August 2019
<b>Two-day International Workshop</b>	5-6 September 2019

## Annex B – Meeting Attendance

	CAB	DOH	FDA	MARINA
3-20	0	2	4	2
4-10	2	0	4	3
4-22	0	0	3	2
5-8	3	3	0	3
5-16 (DOH HQ)	0	9	0	0
5-22	2	6	0	4
6-3 (FDA HQ)	0	0	13	0
6-7	0	6	0	0
6-18	0	0	2	1
6-28 (CAB HQ)	5	0	0	0
7-4 (DOH Conference)	0	3	0	0
7-16 (MARINA Conference)	0	0	0	4
7-20 (FDA Conference)	0	0	2	0
7-30	1	2	1	2
8-9 (MARINA HQ)	0	0	0	6
8-19	3	0	2	0

## ANNEX C – Competition Assessment Results

### 1. CIVIL AERONAUTICS BOARD

SECTOR EVALUATED	CRITERIA USED FOR THE IDENTIFICATION OF REGULATIONS (SECTOR CHARACTERISTICS/INDICATOR OF HARM/FEASIBILITY OF RESOLVING PROBLEMS)  WORKSHEET A (ITEMS WHICH HAVE BEEN ANSWERED “YES”)	EXPLANATION BY THE AGENCY / OTHER COMMENTS
Commercial Air Transport Sector	<p><i>Sector Characteristics</i></p> <ul style="list-style-type: none"> <li>Sector characteristics: “Total revenue (in PHP or as a % of GDP)” (WS A.1.1)</li> </ul>	<ul style="list-style-type: none"> <li>CAB distinguished between two types of revenue: those came from transporting passengers and those that came from ancillary services.</li> <li>It was difficult for CAB to ascertain the percentage of the revenue of airlines which come purely from the transportation of passengers as their revenues are reported (in their Financial Statements) without a breakdown.</li> </ul>

REGULATIONS EVALUATED	RELEVANT SECTION/ PROVISION	CRITERIA USED FOR THE INITIAL EVALUATION OF REGULATIONS  WORKSHEET B (ITEMS WHICH HAVE BEEN ANSWERED “YES”)	EXPLANATION BY THE AGENCY / OTHER COMMENTS	POLICY OBJECTIVES	ALTERNATIVE MEASURES	RECOMMENDATIONS
<b>Commercial Air Transport Sector</b>						

<p><b>CAB Policy Resolution No. 32 S. 2018 As Amended By No. 72 S. 2018 “Guidelines on Capital and Operational Requirements for the Grant of Certificate of Public Convenience and Necessity”</b></p>	<p><b>II. Capitalization Requirement:</b>                      a. Scheduled Air Transportation Services                      1. domestic: 300M php                      2. international: 800M php                      b. Non-Scheduled:                      1. Domestic                      i. Air Taxi: 25M php                      ii. Agricultural Air-spraying: 10M php                      2. International Non-Scheduled 150M</p> <p><b>III. Operational Requirement:</b> An applicant-carrier, securing a Certificate of Public Convenience and Necessity (CPCN) to operate commercial air transport services, of whatever nature (i.e. scheduled or non-scheduled; and international or domestic), shall have, in its fleet, at least three (3) serviceable aircraft, one (1) of which must be owned by the applicant-carrier.</p>	<p><b>Limits barriers to entry for new companies</b></p> <p>Creates exclusive rights (WS B.1.1)</p> <p>Creates license or permit systems (WS B.1.2)</p>	<ul style="list-style-type: none"> <li>Regulations that prescribe license requirements create exclusive rights. It may seem to create exclusive right if there is only one capable operator to meet the financial requirements.</li> <li>The regulation provides for capital and operational requirements for the grant of a CPCN.</li> <li>This is deemed by CAB to have a <b>medium</b> initial assessment of harm and is <b>justified</b>.                             <ul style="list-style-type: none"> <li>This is to ensure that entities intending to operate air transport services have proven capacity and capability to operate the services applied for. By reason of public interest safety, and to prevent proliferation of "paper airlines" which puts the Philippine civil aviation industry in a bad light.</li> </ul> </li> </ul>	<p>The CAB sees the necessity to continuously review and revise existing policies to keep abreast with developments in civil aviation and to ensure that entities intending to operate air transport services, regardless of the nature of service provided, have proven capacity and capability to operate the services applied for; By reason of public interest safety, the CAB is mandated to regulate the growth of civil aviation and to prevent proliferation of "paper airlines" which puts the Philippine civil</p>	<p>Maintain the capitalization requirements and incorporate operational requirements as best determined by the CAAP under CAAP Memorandum Circular No. 26-18 (CAAP now requires at least three serviceable aircrafts one of which must be owned by the stakeholder, regardless of the nature of air services provided).</p>	<p>Full coordination with CAAP regarding operational requirements or any future amendments thereto; Review of impact assessment and case studies of other jurisdictions regarding air carriers permit capital requirements.</p>
		<p>The regulation raises the cost of a company to enter or leave a business activity (WS B.1.3)</p>	<ul style="list-style-type: none"> <li>Stakeholders would have to meet extensive capitalization requirements and possess a quoted number of aircrafts just to operate</li> </ul>			

		<p><b><i>The regulation restricts potentially competitive company actions</i></b></p> <p>The regulation establishes price rules (WS B.2.1)</p>	<ul style="list-style-type: none"> <li>Under RA 776, the CAB is mandated to adopt, review, and determine the charges which may be imposed by air carriers.</li> </ul>	<p>aviation industry in a bad light.</p>			
		<p><b><i>The regulation restricts potentially competitive company actions</i></b></p> <p>The regulation sets standards that would not be chosen by many informed customers (WS B.2.3) - <i>uncertain</i></p>	<ul style="list-style-type: none"> <li>The CAB is uncertain if this satisfies this requirement.</li> </ul>				
		<p>The regulation creates differential costs of operation for business (WS B.2.4)</p>	<ul style="list-style-type: none"> <li>There are carriers which have obtained legislative franchise (PAL, etc.) which grants them exemption from payment of filing fees and other tariffs. Thus, for other stakeholders which do not have legislative franchise, they have to pay filing and other ancillary fees to obtain permits and licenses.</li> </ul>				

		<p><b>Does not encourage potentially anti-competitive coordination</b></p> <p>The regulation generates the sharing of sensitive information (WS B.3.2)</p>	<ul style="list-style-type: none"> <li>Trade secrets are not shared by air carriers;</li> <li>Approved fares and other charges are published by air carriers, as required by the CAB.</li> </ul>			
		<p><b>Ensure consumers have sufficient information and ability to choose well</b></p> <p>The consumer has sufficient information and ability to choose well (WS B.4.1)</p>	<ul style="list-style-type: none"> <li>The regulation is discussed during air negotiations/consultations between states, the Philippines being led by the Philippine Air Panel.</li> </ul>			
<p><b>CAB Policy Resolution No. 40 S. 2017 “Guidelines Amending Cab Resolution No. 49 (Bm5-07-26-2013) and Setting the Period to File Petition for Renewal of Permits”</b></p>	<p><b>Par. 1:</b> That petition for renewal of any permit or authority issued by the Board, which permit is valid for five (5) years, shall be filed with the CAB, sixty (60) calendar days prior to the expiration of a given permit.</p>	<p><b>Limits barriers to entry for new companies</b></p> <p>Creates license or permit systems (WS B.1.2)</p>	<ul style="list-style-type: none"> <li>This regulation only prescribes the period for renewal of permits. Requirements for renewal are embodied in a different resolution.</li> <li>This is considered by CAB to have a <b>small</b> level of harm and is <b>justified</b>.                             <ul style="list-style-type: none"> <li>This is justified since to have a more orderly procedure and to ensure compliance with all documentary requirements for renewal, it is deemed necessary to prescribe a period to file petitions</li> </ul> </li> </ul>	<p>The CAB, in the interest of a more orderly procedure and to ensure compliance with all documentary requirements and renewal procedure and to ensure that sufficient time is given to ensure that the permits are renewed</p>	<p>Continuing review of stakeholder behavior through observation of historical data of filing of renewal of permits in order to make room for further amendments to the current amendment to the Guidelines in Setting the Period to File Petition for</p>	<p>Maintain the Resolution until amendments thereto are made.</p>



			for renewal.	prior to its expiration, deems it appropriate and necessary to amend the period prescribed within which to file for renewal of permits, as authorized by Section 10(B) of R.A. 776	Renewal of Permits, whenever necessary.	
		The regulation raises the cost of a company to enter or leave a business activity (WS B.1.3)	<ul style="list-style-type: none"> <li>Stakeholders would have to meet extensive capitalization requirements and possess a quoted number of aircrafts just to operate.</li> </ul>			
		<p><b>The regulation restricts potentially competitive company actions</b></p> <p>The regulation creates differential costs of operation for business (WS B.2.4)</p>	<ul style="list-style-type: none"> <li>As previously discussed, different treatment is given for air carriers with legislative franchise.</li> </ul>			
<b>E.O. 219 (S.1995) "Establishing the Domestic and International Civil Aviation</b>	<b>Art. 1.1</b> 1.1 Carrier Designation. At least two (2) international carriers shall be designated official carrier(s) for the Philippines. However, if the designated carrier(s) do not	<p><b>Limits barriers to entry for new companies</b></p> <p>Creates exclusive rights</p>	<ul style="list-style-type: none"> <li>The regulation prescribes license requirements and creates exclusive rights.</li> <li>Since international flights are governed by bilateral and multilateral agreements, there is a possibility that one state may only</li> </ul>	Constitutional mandate to regulate or prohibit monopolies when public interest so	No alternatives available.	Strict observance of the law until amendments are made.

<p><b>Liberalization Policy”</b></p> <p><u><b>This was withdrawn from the evaluation</b></u></p>	<p>service the total frequency entitlement of the Philippines under existing Air Services Agreements or other arrangements, then additional carrier(s) may be designated to operate such unused frequencies;</p> <p><b>Art. 2.1.</b> Entry Into and Exit from the Industry. To the extent allowed by law, transportation industry shall be liberalized. A minimum of two (2) operators in each route/link shall be encouraged. Routes/links presently serviced by only one (1) operator shall be open for entry to additional operator(s). The right of an existing operator to leave a particular route shall be recognized subject, however, to the statutory obligation that “no carrier shall abandon any route, or part thereof for which a permit has been issued, unless upon findings by the CAB that such abandonment is uneconomical and is in the public interest.” (Last par., Sec. 11, R.A. No. 776)</p>	<p>(WS B.1.1)</p> <p>Creates license or permit systems (WS B.1.2)</p>	<p>designate one carrier to operate in the Philippines, thus seemingly creating exclusive rights for such carrier.</p> <ul style="list-style-type: none"> <li>Stakeholders might be forced to take and/or maintain routes that may hamper competition In some agreements, agreed points in one state may limit air carriers where to operate. Further, limited frequencies are granted in major points.</li> <li>This is deemed by CAB to have a <b>small</b> initial assessment of harm and is <b>justified</b>.</li> </ul>	<p>requires and to make sure that no combination in restraint of trade or unfair competition be allowed;</p> <p>In line with the pursuit of the Philippines 2000 Strategy of Global Competitiveness, aviation regulators are mandated to encourage the entry of foreign market and competition to help improve air service availability, quality, and efficiency.</p>		
	<p><b>Art. 1.3</b> Frequency and Capacity. All grants of frequencies or capacity to, any increase of existing frequencies or</p>	<p><b>The regulation restricts potentially competitive</b></p>	<ul style="list-style-type: none"> <li>CAB claims that while this item does not apply to CAB as prices are deregulated, CAB can intervene when fares or prices are exorbitant.</li> </ul>	<p>The policy of liberalization is encouraged to facilitate the expansion of</p>		

	<p>capacities of and/or the grant of new routes or traffic points to any foreign carrier (even if on a provisional basis) shall be the sole prerogative of the CAB subject to the confirmation of the Office of the President. The following rules shall determine the frequency and capacity for the carriers concerned:</p> <p>a. Frequency and capacity of third and fourth freedom carriers will be determined based on reciprocity and value of the Philippines.</p> <p>b. Fifth freedom traffic shall be secondary and supplemental to third and fourth freedom traffic except that the CAB may grant fifth freedom rights in order to promote the development of routes and destinations.</p> <p>c. The CAB may authorize special flights when, for any reason whatsoever, the designated carrier(s) fail to accommodate a route/link traffic demand.</p>	<p><b>company actions</b></p> <p>The regulation establishes price rules (WS B.2.1)</p>	<ul style="list-style-type: none"> <li>This is deemed by CAB to have a <b>small</b> initial assessment of harm and is <b>justified</b>.</li> </ul>	<p>investment and trade and to increase access for Filipino as well as foreign passengers, improvement in the air service availability, quality, and efficiency through exposure to foreign markets and competition.</p>		
		<p><b>Ensure consumers have sufficient information and ability to choose well</b></p> <p>The consumer has sufficient information and ability to choose well (WS B.4.1)</p>	<ul style="list-style-type: none"> <li>The regulation is discussed during air negotiations/consultations between states, the Philippines being led by the Philippine Air Panel</li> </ul>			
<p><b>CAB Policy Resolution No. 41 Series Of 2017 “Guidelines Requiring Domestic Airlines to Apply Senior Citizens Discount And Persons with Disabilities</b></p>	<p><b>Chapter III. Applicability:</b> These Guidelines shall be applicable in all domestic flights booked via the airline’s website or mobile application, through the use of internet or by any other means of purchase, by Senior Citizens and Persons with Disability, or their authorized</p>	<p><b>The regulation restricts potentially competitive company actions</b></p> <p>The regulation establishes price rules (WS B.2.1)</p>	<ul style="list-style-type: none"> <li>Domestic scheduled air carriers are mandated by law to provide discount.</li> <li>This is deemed by CAB to have a <b>small</b> indicator of harm and is <b>justified</b>. Pursuant to RA 9257, RA 9994, RA 9442, RA 10754, senior citizens and PWDs are entitled to 20% discount and exemption from</li> </ul>	<p>The Resolution aims to comply with 4. Section 4 (a)(6) of R.A. 9994 “The Expanded Senior Citizen Act” as well as Section 32 (a)(6) of R.A. 10754 or “An Act</p>	<p>Monitoring fare monitoring and quality services (i.e. passenger handling during delays) as basis for future amendments or implementing policies of the APBR; No</p>	<p>Maintain the Resolution until amendments to the R.A. 9994 and R.A. 10754 have been made; revised APBR currently in progress.</p>

<p><b>Discount on Air Transportation Tickets Purchased Online”</b></p>	<p>representative, for the exclusive use of such Senior Citizen or Person with Disability. These Guidelines shall not be applicable to tickets claimed by virtue of sales promotions or techniques which contain promises of gain, such as prizes, as reward for the purchase of a product, or winning in a contest, game, and other similar competitions which involve determination of winner/s.</p>	<p><i>Ensure consumers have sufficient information and ability to choose well</i></p> <p>The consumer has sufficient information and ability to choose well (WS B.4.1)</p>	<p>VAT.</p>	<p>Providing for the Benefits and Privileges of Persons with Disability” require for at least 20% respective discounts and exemption from VAT for eligible persons; encourage competition, minimize price dispersion; encourage consumer purchasing power and behavior; regulate and stabilize supply of air services.</p>	<p>alternative available</p>	
<p><b>CAB Resolution No. 155 series of 2001 (on rules and procedures concerning CAB Resolution No. 155 series of 2001 (on rules and procedures concerning flight schedules of domestic air carriers) “Rules and Procedures</b></p>	<p><b>Sec. 6, Ch. 2:</b> Procedural Requirements:  a. Eligibility – only the following are eligible to apply for Commercial RPA operator certificate:  1. Citizens of the Republic of the Philippines;  2. Domestic partnership, entities or corporation sixty percent (60%) of the capital of which is owned by Filipino citizen. b. An application for Commercial RPA Operator Certificate is made on a form</p>	<p><b>Limits barriers to entry for new companies</b></p> <p>Creates license or permit systems (WS B.1.2)</p> <p>The regulation raises the cost of a company to enter or leave a business activity (WS B.1.3)</p>	<ul style="list-style-type: none"> <li>• Drones operated commercially shall secure permit from the CAB.</li> <li>• This is deemed by CAB to have a <b>large</b> initial assessment of harm and is <b>justified</b>. <ul style="list-style-type: none"> <li>○ Financial capacity is a continuing requirement for operators. Other permits and certifications are required for the grant of license. This is to ensure that the services offered to the public are performed in a safe and economical manner.</li> </ul> </li> </ul>			

<p><b>Concerning Flight Schedules and Changes in Flight Schedules of Domestic Air Carriers”</b></p>	<p>and in a manner prescribed herein and shall be filed with Board and such other additional copies as the Board may require.</p>	<p>The regulation raises the cost of a company to enter or leave a business activity (WS B.1.3)</p>	<ul style="list-style-type: none"> <li>Stakeholders would have to meet extensive capitalization requirements and possess a quoted number of aircrafts just to operate.</li> </ul>			
	<p>The following documents duly authenticated shall be annexed to the application:</p> <ol style="list-style-type: none"> <li>1. Verified Application/Petition in CAB prescribed form;</li> <li>2. Certified true copy of partnership papers (if partnership), Article of Incorporation (if corporation) together with the by-laws duly filed and approved by the Securities and Exchange Commission or DTI Registration in case of Sole Proprietorship;</li> <li>3. Secretary’s Certificate regarding present stockholders, citizenship, number of shares held, amount of subscribed and paid up;</li> <li>4. Certificate of Insurance covering the aircraft to be used, RPA Controllers and third party liability;</li> <li>5. Audited Financial Statement;</li> <li>6. Copy of the current RPA Certificate of Registration issued by the Civil Aviation Authority of the Philippines (CAAP);</li> </ol>	<p><b>Does not encourage potentially anti-competitive coordination</b> The regulation generates the sharing of sensitive information (WS B.3.2)</p>	<ul style="list-style-type: none"> <li>Publication of approved flight schedules.</li> </ul>			

	<p>7. Copy of the current RPA Operators Certificate issued by the CAAP;              8. Copy of Special Certificate of Airworthiness (SCA) if applicable; and              9. Current RPA Controller Certificate issued by the CAAP.</p>					
<p><b>DOTC-DTI JAO No.1 (APBR) Series of 2012 In Relation to Cab Policy Resolution No. 74 Series Of 2009 (On Promotional Fares) “Providing For The Bill Of Rights For Air Passengers and Carrier Obligation”</b></p>	<p>Sec. 5.2: Every air carrier causing the publication of fare advertisements in a medium, shall likewise disclose the following:</p> <p>a. Conditions and restrictions attached to the fare type;              b. Refund and rebooking policies, if any;              c. Baggage allowance policies;              d. Government taxes and fuel surcharges;              e. Other mandatory fees and charges;              f. Contact details of carrier (i.e. phone number, website, e-mail, etc); and              g. Other information necessary to apprise the passenger of the conditions and the full/total price of the ticket purchased.</p> <p>Provided, that, in case of promotional fares, the</p>	<p><b>Limits barriers to entry for new companies</b></p> <p>The regulation raises the cost of a company to enter or leave a business activity (WS B.1.3)</p>	<ul style="list-style-type: none"> <li>CAB approval for promo fares is required.</li> </ul>	<p>Encourage competition, minimize price dispersion;</p>	<p>No recommendation or alternative.</p>	<p>Monitoring fare and monitoring and quality services (i.e. passenger handling during delays) as basis for future amendments or implementing policies of the APBR; <b>revision of the APBR is currently in progress.</b></p>
	<p><b>The regulation restricts potentially competitive company actions</b></p> <p>The regulation restricts advertising (WS B.2.2)</p>	<ul style="list-style-type: none"> <li>APBR is required to disclose conditions and restrictions of fares.</li> </ul>	<p>Encourage consumer purchasing power and behavior; regulate and stabilize supply of air services</p>			
	<p><b>The regulation restricts potentially competitive company</b></p>	<ul style="list-style-type: none"> <li>The APBR does not necessarily restrict but only regulate advertising. It requires air carriers to disclose conditions and restrictions of fares.</li> </ul>				

<p>additional information shall be included:                  h. Number of seats offered on a per sector basis;                  i. The duration of the promo; and                  j. The CAB Approval No. Of Fares.                  Provided, further, that where there are differing conditions, such as fuel surcharge in relation to the points of destinations or origin, the advertisements of these carriers may provide only the range thereof and not the actual surcharge of each route.</p>	<p><b>actions</b></p> <p>The regulation establishes price rules (WS B.2.1)</p>				
	<p><b>Does not encourage potentially anti-competitive coordination</b></p> <p>The regulation generates the sharing of sensitive information (WS B.3.2)</p>	<ul style="list-style-type: none"> <li>• Publication of approved fares and charges.</li> <li>• This regulation is deemed to have a <b>small</b> indicator of harm and is <b>justified</b>. It is the right of passenger to be apprised of the full breakdown of the ticket fees and charges, including its terms and conditions, thus, publication and advertisement of the same are required as approved by the CAB.</li> </ul>			
	<p><b>Ensure consumers have sufficient information and ability to choose well</b></p> <p>The consumer has sufficient information and ability to choose well (WS B.4.1)</p>	<ul style="list-style-type: none"> <li>• Since the APBR mandates an air carrier the full disclosure of the terms and conditions of carriage, the consumer can choose well.</li> </ul>			

## 2. DEPARTMENT OF HEALTH

SECTOR EVALUATED	CRITERIA USED FOR THE IDENTIFICATION OF REGULATIONS (SECTOR CHARACTERISTICS/INDICATOR OF HARM/FEASIBILITY OF RESOLVING PROBLEMS)  WORKSHEET A (ITEMS WHICH HAVE BEEN ANSWERED “YES”)	EXPLANATION BY THE AGENCY
Pharmaceutical Industry Sector	<p><b>Sector Characteristics</b></p> <ul style="list-style-type: none"> <li>• Forms a large proportion of consumer expenditure (WS A.1.5);</li> <li>• Has a disproportionate impact on the poor and vulnerable (WS A.1.6);</li> <li>• Is a priority in the Philippine Development Plan (WS A.1.7);</li> <li>• Reform in this sector has a possibility of setting an example for other sectors (WS A.1.8)</li> </ul>	<ul style="list-style-type: none"> <li>• Pharmaceutical products comprise 48.3% of medical care expenditure.</li> <li>• Pharmaceutical spending accounted for 41% of total health care spending in the Philippines and around half of total out-of-pocket spending by households (PHA, 2017) primarily paid through private pharmacies.<sup>10</sup> This contrasts with pharmaceutical spending as a share of total health expenditure in other economies which ranges from a mean of 19.7% in the high- income economies to a mean of 30.4% in the low-income economies (WHO 2011).</li> <li>• Essential medicines continue to be exorbitantly priced in the Philippines when compared internationally particularly for branded counterparts of already off-patent medicines.</li> <li>• Generic drug prices are still approximately up to 4 times higher than international reference prices (Batangan, 2017).<sup>1</sup> In addition, launch prices of specialized therapies, such as new cancer treatments, biologics and genetic therapies, which have emerged in recent years are beyond the capacity to pay of patients, private insurers, and the government. The poor and middle-income sectors remain to be exposed to the high prices of medicines making them at risk of impoverishment because of catastrophic spending.</li> <li>• Affordable access to medicines is an important component of the Universal Health Care Agenda of the domestic government.</li> </ul>
	<p><b>Indicators of Harm</b></p> <ul style="list-style-type: none"> <li>• Complaints from new/potential entrants (WS A.2.1)</li> <li>• Complaints from incumbent firms (WS A.2.2)</li> </ul>	<ul style="list-style-type: none"> <li>• The process for the registration, especially for generic drugs, is long and tedious.</li> <li>• It is burdensome for pharmaceutical companies to have to justify the cost-effectiveness of their new product.</li> </ul>



	<ul style="list-style-type: none"> <li>• Complaints from suppliers (WS A.2.3)</li> <li>• Complaints from consumer groups (WS A.2.4)</li> <li>• Reported high margins (WS A.2.5)</li> <li>• There have been previous interventions by a competition authority (WS. A.2.6)</li> </ul>	<ul style="list-style-type: none"> <li>• Incumbent companies have appealed for the raising of the maximum drug retail price.</li> <li>• Consumer groups, especially the poor, are still unable to afford the medicines.</li> <li>• A major drug chain which owns 70% of the pharmaceutical market sales report very high margins.</li> <li>• Competition authorities have previously enforced TRIPS flexibility upon this sector.</li> </ul>
	<p><b><i>Feasibility of Resolving Problems (if found)</i></b></p> <ul style="list-style-type: none"> <li>• Potential remedies have already been defined (WS A.3.1)</li> <li>• The government has expressed a willingness to reform the sector (WS A.3.2)</li> </ul>	<ul style="list-style-type: none"> <li>• Potential remedies include more public consultations and the revision of R.A. No. 9502 (Cheaper Medicines Act).</li> <li>• DPRI is envisioned to make access to medicines in the public sector easier and provides for fair pricing regulations for essential medicines.</li> <li>• In January 2019, the WHO published a comprehensive technical report on the high cost of cancer drugs with recommendations to governments and the international community on strengthening pricing policies for cancer medicines such as: (1) designing differential pricing sensitive to health system’s ability to pay; (2) enforcing price caps on cancer medicines; (3) creating competition on substitutable cancer medicines; (4) enhancing health system ability to review and adjust drug prices; and to (5) withdraw funding from superseded for less cost-effective medicines.</li> <li>• The Cheaper Medicines Act is intended to protect public health and to make quality medicines more affordable and accessible to all Filipinos. Chapter 3, section 17 of the said act gives authority to the President of the Philippines, upon the recommendation of the Secretary of Health, to impose the MRP over any or all drugs and medicines as enumerated and provided for within the law. The MRP shall be construed as the imposition of maximum prices at all levels of the supply chains including but not limited to manufacturer’s price, trader’s price, distributor’s price and wholesaler’s price, and retailer’s price.</li> <li>• The DOH recognizes the need for competition to ensure the lower prices of medicine. However, in the context of health care and, specifically, the pharmaceutical sector,</li> </ul>

		<p>it cannot be expected that market competition alone is sufficient to make medicines affordable given the condition that there is information asymmetry between and amongst patients and consumers as the buyers of goods, the physicians as the authority who makes the decisions for patients, and industry players which may hold monopoly power by virtue of trade, regulatory and intellectual property barriers which may limit competition in the market (Folland et al). Thus, the government retains the right to exercise its consumer protection mandate to intervene when there is no effective competition in the market.</p> <ul style="list-style-type: none"> <li>• Price regulation, whether direct or indirect, has a role to play on the overall strategy of improving access to medicines. Evidence from other economies, mostly OECD, shows that a comprehensive price regulation strategy, properly designed and executed, and where mark-up regulation at all levels of the supply chain is one component, can reduce prices and healthcare expenditures to consumers in the short term.</li> </ul>
<p><b>HEALTH FACILITIES AND SERVICES SECTOR</b></p> <p><u><b>This was withdrawn from the evaluation</b></u></p>	<p><b>Sector Characteristics:</b></p> <ul style="list-style-type: none"> <li>• Total revenue (in PHP or as a % of GDP); Forms a large proportion of consumer expenditure (WS A.1.5);</li> </ul>	<ul style="list-style-type: none"> <li>• Health Expenditures contributed to 4.5 % to the GDP <ul style="list-style-type: none"> <li>○ Household-out-of-pocket payment (OOP) posted Php 372.8 billion or 54.5 percent of CHE; <ul style="list-style-type: none"> <li>▪ Government schemes and compulsory contributory health care financing schemes at Php 225.9 billion;</li> <li>▪ More than half of OOP amounting to Php 186.6 or 50.1 percent went to pharmacies;</li> <li>▪ Private general hospitals came in second at Php 97.5 billion or 26.1 percent;</li> </ul> </li> </ul> </li> <li>• Providers of ambulatory health care at Php 50.3 billion or 13.5 percent. (Reference: PSA, 2017)</li> </ul>

	<ul style="list-style-type: none"> <li>• Has a disproportionate impact on the poor and vulnerable (WS A.1.6);</li> <li>• Is a priority in the Philippine Development Plan (WS A.1.7);</li> </ul> <p>Reform in this sector has a possibility of setting an example for other sectors (WS A.1.8)</p>	<ul style="list-style-type: none"> <li>• This sector is included in the expenses of health by consumers. However, not all sectors can avail of these services.</li> <li>• The PDP has provided for an increased budget for health.</li> <li>• Reform would provide a positive impact for future innovations.</li> </ul>
	<p><b>Indicators of Harm</b></p> <ul style="list-style-type: none"> <li>• Complaints from new/potential entrants (WS A.2.1)</li> <li>• Complaints from incumbent firms (WS A.2.2)</li> </ul>	<ul style="list-style-type: none"> <li>• The sector provides for appeals to the Secretary of Health with possible reversals of the decision.</li> <li>• There are complaints from incumbent firms about emerging competitors in business.</li> </ul>
	<p><b>Feasibility of Resolving Problems (if found)</b></p> <ul style="list-style-type: none"> <li>• Potential remedies have already been defined (WS A.3.1)</li> </ul> <p>The government has expressed a willingness to reform the sector (WS A.3.2)</p>	<ul style="list-style-type: none"> <li>• The DOH had explored alternative solution such as (a) revision of AOs; (b) transfer to other bureaus such as the HFDB; and (c) remove the CON requirement.</li> <li>• The government has expressed a willingness to reform the sector by giving consumers more access to health and the setting of new standards.</li> <li>• While the DOH is working on the future pricing regulation scheme, the DOH is also keen on advancing Universal Health Care and improving patient access to more cost-effective treatments through increased financing and other policy levers as may be allowed in the new UHC Act which include pooled procurement and framework contracting, multi-year obligation agreements (MYOA), direct price negotiation for innovative medicines and contracting private providers in the planned expansion of the Philhealth Outpatient Benefit Scheme, which shall include the financing of essential primary care medicines. The new UHC Act is expected to provide better access to treatments for patients as well as opportunities for the industry to participate in future DOH and Philhealth programs as the domestic government increases its investment on health care.</li> <li>• The DOH shall work with all stakeholders, both public and private, towards an access framework that will ensure improved patient access while keeping in mind that better access should happen in an affordable and sustainable way to the domestic health system in the face of competing health priorities, increasing public</li> </ul>

		<p>expectation, rising costs and a tough financial environment. Different tools, including drug price regulation, will have to be used by the DOH to enable the delivery of health goods and services at affordable prices and optimal access to as many patients as possible.</p>
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**NOTE:**

- DOH mentioned that private retailers do not carry generic medicine, only "branded generic medicine". This information could be included in the background description.
- DOH should explain: how they will or will not address the identified restriction/s, and why the other alternatives were not chosen / why DOH chose to select Status Quo. (ex. a. Pooled procurement - for government only, private sector is not included; Access to medicines - government will buy for free (Medicines Access Program), but this will only be accessible to government hospitals and not those who normally purchase from private drug stores. Also, the government has limited budget; customers do not normally buy from government drug stores, instead they go to private retailers which do not display non-branded generics; DOH also previously explored granting tax incentives to generics manufacturers, but this idea was initially rejected by the Department of Finance and the Bureau of Customs)
- DOH mentioned that drug prices in the PH are very different from other ASEAN economies (Example - Php 130k cost for cancer medicine in the PH vs. 10k in other ASEAN economies).

REGULATIONS EVALUATED	RELEVANT SECTION/ PROVISION	CRITERIA USED FOR THE INITIAL EVALUATION OF REGULATIONS  WORKSHEET B (ITEMS WHICH HAVE BEEN ANSWERED "YES")	EVALUATION BY THE AGENCY OR COMMENTS	POLICY OBJECTIVES	ALTERNATIVE MEASURES	RECOMMENDATIONS
<b>Pharmaceutical Industry Sector</b>						
<p><b>Cheaper Medicines Act (R.A. No. 9502)</b></p>	<p><b>Maximum retail price (S17, Ch. 3)</b></p> <p>“Section 17. Drugs and Medicine Price Regulation Authority of the President of the Philippines. The President of the Philippines, upon the recommendation of the Secretary of Health, shall have the power to impose maximum retail prices over any or all drugs and medicines enumerated in Section 23.</p> <p>The power to impose maximum retail prices over drugs and medicines shall be exercised within such period of time as the situation may warrant as determined by the President of the Philippines. No court, except the Supreme Court of the Philippines, shall issue any</p>	<p><i>The regulation restricts potentially competitive company actions</i></p> <p>The regulation establishes price rules (WS B.2.1)</p>	<ul style="list-style-type: none"> <li>The regulation regulates prices and mark-ups of pharmaceutical products</li> <li>Despite ongoing reforms of the DOH to ensure better affordability of medicines through the promotion of generic drugs and ensuring price transparency, medicine costs continue to escalate. Government investments on PhilHealth and medicine access to the poor remain inadequate to address this issue.</li> <li>The DOH evaluated the regulation as having a <b>medium</b> level initial assessment of harm with the restrictions being <b>justified</b>.</li> </ul> <p><i>Reasons for justification:</i></p> <ul style="list-style-type: none"> <li>Essential medicines continue to be disproportionately expensive in the Philippines when compared internationally, particularly for branded counterparts of already off-patent medicines. Generic drugs are still approximately up to 4 times higher than international reference</li> </ul>	<p>None provided.</p>	<ul style="list-style-type: none"> <li>Pooled Procurement - for government only (how about the private)</li> <li>Access (free meds) - government to buy meds (there is a limitation to the budget of the DOH)</li> <li>Generics Market: not being sold in the drugstore chains</li> <li>Tax exemption: DOF and BOC objected the tax exemption on medicines</li> <li>Status quo</li> </ul>	<p>Status quo is recommended.</p>

	temporary restraining order or preliminary injunction that will prevent the immediate execution of the exercise of this power of the President of the Philippines.”		prices (Batangan 2017). In addition, launch prices of specialized therapies such as new cancer treatments, biologics, and genetic therapies, which have emerged in recent years, are priced beyond what patients, private insurers, and the government can fairly afford. The excessively prices of medicines undermine the health of millions of Filipinos, with the poor and middle income sectors bearing the increased risk of being trapped in the vicious cycle of poverty, inequality and debt.			
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			<ul style="list-style-type: none"> <li>• In January 2019, the WHO published a comprehensive technical report on the high cost of cancer drugs with recommendations to governments and the international community on strengthening pricing policies for cancer medicines such as: (1) designing differential pricing sensitive to health system’s ability to pay; (2) enforcing price caps on cancer medicines; (3) creating competition on substitutable cancer medicines; (4) enhancing health system ability to review and adjust drug prices; and to (5) withdraw funding from superseded for less cost-effective medicines</li> <li>• The government recognizes effective competition in the pharmaceutical sector as a prerequisite to ensure lower prices of medicines. Effective competition is defined in RA 9502 as “a situation where there are a significant number of players in the pharmaceutical supply chain and exists in an <i>“environment where the consumers are well informed and are able to exercise their right to choose.</i></li> <li>• However, in the context of health care and, specifically, the pharmaceutical sector, it cannot be expected that market competition alone is sufficient to make medicines affordable given the condition that there is information asymmetry between and amongst <i>patients and consumers</i> as the buyers of goods, the <i>physicians</i> as the authority who makes the decisions for patients, and <i>industry players</i> which may hold monopoly power by virtue of trade, regulatory</li> </ul>			
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			<p>and intellectual property barriers which may limit competition in the market (Folland et al).<sup>5</sup> Thus, the government retains the right to exercise its consumer protection mandate to intervene when there is no effective competition in the market.</p> <p>Measures are needed including price regulation to promote affordable access to medicines under UHC both to patients and the government to ensure the long-term financial sustainability of the domestic health care system.</p> <ul style="list-style-type: none"> <li>• Price regulation, whether direct or indirect, has a role to play on the overall strategy of improving access to medicines. Evidence from other economies, mostly OECD, shows that a comprehensive price regulation strategy, properly designed and executed, and where mark-up regulation at all levels of the supply chain is one component, can reduce prices and healthcare expenditures to consumers in the short term</li> </ul> <p><i>What factors are considered by the DOH and the President to trigger the imposition of maximum retail prices?</i></p> <ol style="list-style-type: none"> <li>1. Burden of disease: Medicines addressing diseases with the highest burden in the economy in terms of both magnitude (i.e. the size of the population affected by the disease) and/or severity (i.e. the impact of the disease on a patient's quality of life and overall well-being including</li> </ol>			
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			<p>the ability to perform normal activities)</p> <ol style="list-style-type: none"> <li>2. Marginalized and Disadvantage Populations: Medicines which address diseases of low prevalence / frequency but which affect special and disadvantaged populations (e.g. orphan diseases, rare cancers, diseases of persons with disability) may be considered by the DPAC provided that the patients perceived that the cost of the medicines acts as a barrier to patient access;</li> <li>3. Limited Competition: Medicines with monopolistic (i.e. patented) and oligopolistic market due to certain barriers in the health care market which hinders effective competition such as intellectual property barriers, regulatory barriers, trade barriers, and information asymmetry.</li> </ol> <p><i>Whether or not the DOH had assessed the effects of these price caps on the prices of drugs in the market:</i></p> <ul style="list-style-type: none"> <li>• Yes, The drug price review shall be based on the best and most current available evidence of medicine prices to assess whether a medicine is priced excessively and should therefore be subjected under price regulation. The Council employs both internal and external reference pricing in carrying out the drug price review process.</li> <li>• Medicines screened based on burden diseases, patient / public demand and market concentration are further evaluated through price evaluation to determine if local prices are excessive</li> </ul>			
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			<p>and should therefore be subjected to regulation:</p> <ul style="list-style-type: none"> <li>○ High wholesale price differential against external reference price: medicines found to have grossly higher absolute price in the Philippine market relative to prices in the basket economies will be subject to price regulation.</li> <li>○ Excessive Mark-up by retail outlets: Mark-ups applied by hospitals and pharmacies after the wholesale prices given by manufacturers and distributors shall also be analyzed by the DPAC to determine if such mark-ups are excessive based on acceptable/prevaling market norms and could not be explained by the transaction cost of dispensing or administering a particular medicine</li> </ul> <ul style="list-style-type: none"> <li>● <b>Selection of Basket Economies for External Reference Pricing (ERP):</b> The criteria for selection of basket economies include the following: economies with publicly available price data; Asian economies that share geographical proximity, socioeconomic status, consumer protection mandates and other health system factors based on the WHO classification of member states by mortality data or World Bank classification on economic status; and developed economies which</li> </ul>			
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			<p>have establish Health Technology Assessment systems able to provide guidance on the clinical and economic value as well as cost-effective prices of innovative medicines in their own contexts.</p> <p>Despite ongoing reforms of the DOH to ensure better affordability of medicines through the promotion of generic drugs and ensuring price transparency, medicine costs continue to escalate. Government investments on PhilHealth and medicine access to the poor remain inadequate to address this issue. Thus this regulation is justified.</p>			
<p><b>Drug Price Reference Index (A.O. No. 2015 0051-A) (DPRI)</b></p> <p><b><u>This was withdrawn from the evaluation</u></b></p>	<p><b>Chapter V, Rule 21.</b> Implementation of Cost Containment Measures: The Secretary of Health shall any other measures that the government may avail of to effectively reduce the cost of drugs and medicines, such as, but not limited to, competitive bidding, price volume negotiations, and other appropriate mechanism that influence supply, demand and expenditures on drugs and medicines</p>	<p><b><i>The regulation restricts potentially competitive company actions</i></b></p> <p>The regulation establishes price rules (WS B.2.1)</p>	<ul style="list-style-type: none"> <li>• The objective of the regulation is to guide all public health facilities in the fair pricing of essential medicines and increase efficiency of the drug procurement process. It also provides for the expansion of the health care budget and has provisions to prevent corruption.</li> <li>• DPRI is envisioned to make access to medicines in the public sector easier and provides for fair pricing regulations for essential medicines.</li> <li>• The DOH evaluated the regulation as having a <b>medium</b> level initial assessment of harm with the restrictions being <b>justified</b>.</li> </ul>			
<b>Health Facilities And Services Sector</b>						
<p><b>Guidelines For The Issuance Of Certificate Of Need</b></p>		<p><b><i>Limits barriers to entry for new companies</i></b></p>	<ul style="list-style-type: none"> <li>• If the BPR is already satisfied in the area, other facilities with the same services cannot be established.</li> </ul>			



			<p>and MIMAROPA; while only 3 Regions have satisfied the BPR 1:1000 ratio, namely NCR, Regions 10 and CAR (Annex A). However, not all provinces/cities in those Regions with BPR &gt;1:1000 have achieved the desired BPR. Likewise, there are still regions without level 2 or 3 hospitals, and that most of the hospitals are privately owned. This is indicative of the maldistribution of health facilities, and its subsequent unavailability and inaccessibility of health services.</p> <ul style="list-style-type: none"> <li>• It is the role of the government through the DOH to ensure equitable distribution of health resources for easy accessibility of health facilities. To ensure access to quality and affordable basic and essential health care for all, Certificate of Need is one of the strategies done by the DOH.</li> </ul>			
		The regulation places geographical barriers on trade (WS B.1.4)	<ul style="list-style-type: none"> <li>• Regulation places a barrier, especially in urban areas.</li> </ul>			
		<p><b>The regulation restricts potentially competitive company actions</b></p> <p>The regulation sets standards that would not be chosen by many informed</p>	<ul style="list-style-type: none"> <li>• The regulation sets standards through the criteria set for CON issuance (See: Section V. B.):</li> <li>• The criteria set for the regulation of CON:                             <ol style="list-style-type: none"> <li>1. <i>Bed to population ratio</i> - ratio must not more than 1 bed per 1000 population (1:1000)</li> <li>2. <i>Travel time</i> - at least 1 hour away by the usual means of transportation</li> </ol> </li> </ul>			

		<p>customers (WS B.2.3)</p>	<p>during most part of the year from the nearest existing hospital. If, among criteria , only the Travel Time criterion is not met, the CON may be granted provided that: 1) The proposed hospital is of a higher level or service capability than existing hospitals located less than 1 hour of travel from the former, or, 2) If the proposed hospital is Level 3 hospital or a level 4 hospital, and there is an existing Level 3 hospital or level 4 hospital located less than 1 hour of travel from the proposed hospital but in a different province, the proposed hospital may be granted a CON</p> <p>3. <i>Accessibility</i> - accessible to patients and clients by the usual means of land and sea transportation during most part of the year</p> <p>4. <i>Integration with the local hospital development plan</i>- if the proposed hospital is to be located in an area where there is an existing local Strategic Plan for the Rationalization of the Health Care Delivery System Based on Health Needs, it must be integrated with this Strategic Plan.</p> <p>5. <i>Track record</i> - the hospital must have an acceptable track record in terms of good compliance with licensing requirements and a consistent history of few verified complaints</p>			
		<p><b><i>Does not encourage potentially anti-competitive</i></b></p>	<ul style="list-style-type: none"> <li>• There is a limited number of facilities providing the same services.</li> </ul>			

		<b>coordination</b>  The regulation exempts a company or industry from competition law (WS B.3.3)				
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### 3. FOOD AND DRUG ADMINISTRATION

SECTOR EVALUATED	CRITERIA USED FOR THE IDENTIFICATION OF REGULATIONS (SECTOR CHARACTERISTICS/INDICATOR OF HARM/FEASIBILITY OF RESOLVING PROBLEMS)  WORKSHEET A (ITEMS WHICH HAVE BEEN ANSWERED “YES”)	EVALUATION BY THE AGENCY OR COMMENTS
Micro-Small Enterprise Sector (Food Manufacturers)	<p><b>Sector Characteristics</b></p> <ul style="list-style-type: none"> <li>• Has a large impact on the costs of firms in other sectors (WS A.1.4)</li> <li>• Forms a large proportion of consumer expenditure (WS A.1.5) – <i>uncertain</i>;</li> <li>• Has a disproportionate impact on the poor and vulnerable (WS A.1.6);</li> <li>• Is a priority in the Philippine Development Plan (WS A.1.7);</li> <li>• Reform in this sector has a possibility of setting an example for other sectors (WS A.1.8)</li> </ul>	<ul style="list-style-type: none"> <li>• The FDA is uncertain whether or not this sector forms a large proportion of consumer expenditure and if reform in this sector can influence other sectors.</li> </ul>
	<p><b>Indicators of Harm</b></p> <ul style="list-style-type: none"> <li>• Complaints from new/potential entrants (WS A.2.1)</li> <li>• Complaints from incumbent firms (WS A.2.2)</li> <li>• Complaints from suppliers (WS A.2.3) - <i>uncertain</i></li> <li>• Complaints from consumer groups (WS A.2.4) - <i>uncertain</i></li> <li>• Has reported high margins (WS A.2.5) – <i>uncertain</i></li> </ul>	<ul style="list-style-type: none"> <li>• FDA is uncertain if there are complaints from suppliers, consumer groups or reported high margins.</li> <li>• There have been no previous interventions from competition authorities for the sector. (WS A.2.6)</li> </ul>
	<p><b>Feasibility of Resolving Problems (if found)</b></p> <ul style="list-style-type: none"> <li>• Potential remedies have already been defined (WS A.3.1)</li> <li>• The government has expressed a willingness to reform the sector (WS A.3.2)</li> </ul>	<ul style="list-style-type: none"> <li>• Potential remedies include more public consultations and the revision of R.A. No. 9502 (Cheaper Medicines Act).</li> <li>• DPRI is envisioned to make access to medicines in the public sector easier and provides for fair pricing regulations for essential medicines.</li> </ul>



<p><b>Medical Device Manufacturers, Traders, Distributors, Etc. Sector</b></p> <p><u><b>This was withdrawn from the evaluation</b></u></p>	<p><b>Sector Characteristics</b></p> <ul style="list-style-type: none"> <li>• Has a large impact on the costs of firms in other sectors (WS A.1.4)</li> <li>• Forms a large proportion of consumer expenditure (WS A.1.5);</li> <li>• Has a disproportionate impact on the poor and vulnerable (WS A.1.6);</li> <li>• Is a priority in the Philippine Development Plan (WS A.1.7);</li> <li>• Reform in this sector has a possibility of setting an example for other sectors (WS A.1.8)</li> </ul>	<ul style="list-style-type: none"> <li>• Medical devices are used by households and healthcare facilities, encompassing healthcare professionals and the general consuming public.</li> <li>• The change in regulation of medical devices will impact the general public, especially the poor and vulnerable.</li> <li>• It is uncertain if this is a priority in the Philippine Development Plan, however the Universal Healthcare Law was approved.</li> <li>• The regulation systems for other health products may be adapted or be references for this sector.</li> </ul>
	<p><b>Indicators of Harm</b></p> <ul style="list-style-type: none"> <li>• Complaints from new/potential entrants (WS A.2.1)</li> <li>• Complaints from incumbent firms (WS A.2.2)</li> <li>• Complaints from suppliers (WS A.2.3)</li> <li>• Complaints from consumer groups (WS A.2.4)</li> <li>• Has reported high margins (WS A.2.5) – <i>uncertain</i></li> </ul>	<ul style="list-style-type: none"> <li>• There are possibilities that new medical device establishments will complain about the current regulations.</li> <li>• The FDA is uncertain whether or not there are high margins since they have no information on this.</li> <li>• It should be noted that there have been no previous interventions from competition authorities.</li> </ul>
	<p><b>Feasibility of Resolving Problems (if found)</b></p> <ul style="list-style-type: none"> <li>• Potential remedies have already been defined (WS A.3.1)</li> <li>• The government has expressed a willingness to reform the sector (WS A.3.2)</li> </ul>	<ul style="list-style-type: none"> <li>• The FDA CDRRHR is working on the development of policies that will support the medical device industry regulation of the PH.</li> </ul>

REGULATIONS EVALUATED	RELEVANT SECTION/ PROVISION	CRITERIA USED FOR THE INITIAL EVALUATION OF REGULATIONS  WORKSHEET B (ITEMS WHICH HAVE BEEN ANSWERED "YES")	EVALUATION BY THE AGENCY OR COMMENTS	POLICY OBJECTIVES	ALTERNATIVE MEASURES	RECOMMENDATIONS
<b>Micro-Small Enterprises Sector</b>						
<p><b>Revised Guidelines On Current Good Manufacturing Practice In Manufacturing, Packing, Repacking Or Holding Food (A.O. 153 S. 2004)</b></p>	<p><b>Section V. Guidelines for Licensing of Food Establishment, A. General Principles of AO 2014-0029:</b> "8. Applicants must prove their capability and capacity to assure food safety and quality through compliance with Good Manufacturing Practice, Good Distribution Practice, Good Storage Practice, Hazard Analysis and Critical Control Points, and/or other best industry practices recognized by the Food and Agriculture Organization and the World Health Organization."</p>	<p><i>Limits barriers to entry for new companies</i></p> <p>Creates license or permit systems (WS B.1.2)</p>	<ul style="list-style-type: none"> <li>The regulation does not set exclusive rights because the standards within are mandatory for all.</li> <li>Compliance to standards indicated are a prerequisite for a License to Operate.</li> <li>The regulation has been evaluated to have a <b>MEDIUM</b> initial assessment of harm and is <b>JUSTIFIED</b>. It is justified because while there are compliance concerns, that have to be addressed, it cannot be compromised since the potential harm of non-compliance may possibly result to public health risk.</li> </ul>	<p>1. Assurance of public health;</p> <p>2. Compliance to health and safety standards</p>	<p>1. Publication of guidance document particular for MSE to accommodate certain limitations in terms of capability to comply certain standards without compromising quality and safety;</p> <p>2. Selective compliance of certain requirements (i.e., Specific types of materials stated in Sec IV.C.1, Enclosure of premises designed for fully automated processes stated in Section IV.B.2.3.2)</p>	<p>The FDA recommends the publication of a guidance document particular for MSE to accommodate certain limitations in terms of capability to comply with certain standards without compromising quality and safety.</p>
	<p><b>Section IV. General Guidelines of AO 153 s. 2004</b> provided specifications for the Organization (Item A), Premises (Item B), Equipment (Item C),</p>	<p>The regulation raises the cost of a company to enter or leave a business activity (WS B.1.3)</p>	<ul style="list-style-type: none"> <li>In certain cases, an upgrade of facilities or premises and manpower such as trainings would entail additional costs.</li> </ul>			

	Sanitation and Hygiene (Item D), Production and Process Controls (Item E), and Quality Control (Item F)	<p><b>The regulation restricts potentially competitive company actions</b></p> <p>The set standards that would not be chosen by many informed customers (WS B.2.3)</p>	<ul style="list-style-type: none"> <li>In certain cases, the cost of compliance is the reason for the choice.</li> </ul>			
		<p>The regulation creates differential costs of operation for business (WS B.2.4)</p>	<ul style="list-style-type: none"> <li>Necessary improvements create differential costs.</li> </ul>			
		<p><b>The regulation ensures consumers receive sufficient information and choice</b></p> <p>The consumers have sufficient information and ability to choose (WS B.4.1)</p>	<ul style="list-style-type: none"> <li>Industries and consumers have sufficient information.</li> </ul>			
<p><b>Rules And Regulation On The Licensing Of Food Establishments And Registration Of Processed Food, And Other Food Products, And For Other Purposes</b></p>	<p><b>Section V. Guidelines for Licensing of Food Establishment, A. General Principles of AO 2014-0029:</b> "2. All food establishment shall secure a License to Operate (LTO) before engaging in food manufacturing, importation, exportation, sale, offer for</p>	<p><b>Limits barriers to entry for new companies</b></p> <p>Creates license or permit systems (WS B.1.2)</p>	<ul style="list-style-type: none"> <li>The regulation does not set exclusive rights because the standards within are mandatory for all. (Please show the background of the MC that before RA 971, only food to be advertised are exempted.)</li> </ul>	<ol style="list-style-type: none"> <li>Assurance of public health;</li> <li>Compliance to health and safety standards</li> <li>To streamline the application and evaluation</li> </ol>	<ol style="list-style-type: none"> <li>Rationalizing the existing pre-market product registration procedure and strengthen post-market surveillance; or</li> <li>Selective</li> </ol>	<p>The FDA recommends the rationalizing of the existing pre-market product registration procedure and strengthening post-market</p>

<p><b>(AO 2014-0029)</b></p>	<p>sale, distribution, transfer, and where applicable the use, testing, promotion, advertisement, and/or sponsorship of food products."</p> <p><b>Section VI. Guidelines in the Registration of Processed Food Products, A. General Principles of AO 2015-0029:</b>                  "All processed food products including food additives, food supplements and bottled water, shall first be registered with the FDA before these are distributed, supplied, sold, or offered for sale or use and advertised, among other marketing or promotional activities."</p>	<p>The regulation raises the cost of a company to enter or leave a business activity (WS B.1.3)</p>	<p></p>	<p>process of processed food product registration</p>	<p>compliance of requirements based on product risk classification.</p>	<p>surveillance.</p>
	<p><b>Annex C Requirements for Application of License to Operate:</b>                  "2. Proof of payment of fees as prescribed by current FDA regulations" (AO 50 s. 2001 A. Fees for Licensing of Establishments Regulated by BFAD)</p> <p><b>Annex D. Requirements for Application of Certificate of Product Registration"</b>                  "2. Proof of payment of fees as prescribed by current FDA regulations" (AO 50 s. 2001 B. Fees for Registration of Products Regulated by BFAD)</p>	<p><i>The regulation restricts potentially competitive company actions</i></p> <p>The regulation creates differential costs of operation for business (WS B.2.4)</p>	<ul style="list-style-type: none"> <li>• Securing licenses to operate and certificates of product registration entail cost to the establishments.</li> </ul>	<p></p>	<p></p>	<p></p>

	<p>The issuance is accessible online</p>	<p><b>The regulation ensures consumers receive sufficient information and choice</b></p> <p>The consumers have sufficient information and ability to choose (WS B.4.1)</p>	<ul style="list-style-type: none"> <li>Industries and consumers have sufficient information.</li> <li>The regulation does not set exclusive rights because the standards within are mandatory for all.</li> </ul>			
<p><b>Procedure For The Use Of Electronic Registration (E-Registration) System For Prepackaged Processed Food Products (FDA Circular No. 2016-014)</b></p>	<p><b>Section II. Guidelines, A. General Guidelines:</b>          "1. The Electronic Registration (E-Registration) system shall cover the registration of raw materials or ingredients, low risk, medium risk, and high risk pre-packaged processed food products."</p>	<p><b>Limits barriers to entry for new companies</b></p> <p>Creates license or permit systems (WS B.1.2)</p>	<ul style="list-style-type: none"> <li>The regulation does not set exclusive rights because the standards within are mandatory for all.</li> </ul>	<p>1. Assurance of public health;</p> <p>2. Compliance to health and safety standards</p>	<p>1. Acceptance of manual applications for certificate of product registrations; and</p>	<p>Institutionalize digital assistance in the FDA Action Center and FDA Regional Offices for establishments with no access to computers and internet.</p>
<p>The regulation raises the cost of a company to enter or leave a business activity (WS B.1.3)</p>	<p><b>The regulation restricts potentially competitive company actions</b></p>	<p>3. To streamline the application and evaluation process of processed food product registration</p>	<p>2. Institutionalizing digital assistance in the FDA Action Center and FDA Regional Offices for establishments with no access to computers and internet.</p>			
<p>The regulation creates differential costs of operation for business (WS B.2.4)</p>	<ul style="list-style-type: none"> <li>Necessary improvements create differential costs (the use of the e-registration system requires access to computers, internet, and manpower with knowledge on the system)</li> </ul>					

		<p><b>The regulation ensures consumers receive sufficient information and choice</b></p> <p>The consumers have sufficient information and ability to choose (WS B.4.1)</p>	<ul style="list-style-type: none"> <li>Industries and consumers have sufficient information.</li> </ul>			
<b>Medical Devices Sector</b>						
<p><b>Updated List Of Medical Devices Required To Be Registered Prior To Sale, Distribution And Use (FDA Memorandum Circular No. 2014-005)</b></p> <p><b><u>This was withdrawn from the evaluation</u></b></p>	<p>The FDA did not identify which part of the regulation was evaluated.</p>	<p><b>Limits barriers to entry for new companies</b></p> <ul style="list-style-type: none"> <li>Creates license or permit systems (WS B.1.2)</li> </ul>	<ul style="list-style-type: none"> <li>The regulation does not set exclusive rights because the standards within are mandatory for all.</li> <li>It provides for the guidelines for the issuance of a Certificate of Product Registration.</li> </ul>			
		<p>The regulation raises the cost of a company to enter or leave a business activity (WS B.1.3)</p>	<ul style="list-style-type: none"> <li>Its provisions that all IVD medical devices must undergo performance testing adds to the additional costs.</li> </ul>			
		<p>The regulation places geographical barriers in trade (WS B.1.4) – <i>uncertain</i>.</p>	<ul style="list-style-type: none"> <li>The FDA is uncertain of this item because there is no data if HIV test kits (examples of IVD medical devices) is available in all healthcare facilities in the economy.</li> </ul>			

		<p><b>The regulation restricts potentially competitive company actions</b></p> <p>The regulation sets standards that would not be chosen by many informed customers (WS B.2.3)</p>	<ul style="list-style-type: none"> <li>The mandatory testing of identified IVD medical devices add to the costs which may not be chosen by many Filipinos.</li> </ul>			
		<p>The regulation creates differential costs of operation for business (WS B.2.4)</p>	<ul style="list-style-type: none"> <li>The mandatory testing of identified IVD medical devices add to the costs which may not be chosen by many Filipinos.</li> </ul>			
		<p><b>The regulation ensures consumers receive sufficient information and choice</b></p> <p>The consumers have sufficient information and ability to choose (WS B.4.1)</p>	<ul style="list-style-type: none"> <li>Some medical devices are used only by professionals, thus patients have no right to choose while others such as condoms afford the customers the right to choose.</li> </ul>			
<p><b>Designation Of NRL Laboratories And Transfer Of Corresponding Equipment, Instruments, Supplies, Specimens, Records From The Bureau Of Research And Laboratories To</b></p>	<p>The FDA did not identify which part of the regulation was evaluated.</p>	<p><b>Limits barriers to entry for new companies</b></p> <p>Creates exclusive rights (WS B.1.1)</p>	<ul style="list-style-type: none"> <li>There are only 6 identified National Laboratories which can conduct the performance testing of in-vitro medical devices.</li> </ul>			
		<p>Creates license or permit systems (WS B.1.2)</p>	<ul style="list-style-type: none"> <li>FDA CDRHHR approval is required for a CPR application.</li> </ul>			

<p><b>The Designated National Reference Laboratories (Do 393-E S. 2000)</b></p> <p><b><u>This was withdrawn from the evaluation</u></b></p>		<p><b><i>The regulation restricts potentially competitive company actions</i></b></p> <p>The regulation raises the cost of a company to enter or leave a business activity (WS B.1.3)</p>	<ul style="list-style-type: none"><li>• The testing in these laboratories add to additional costs.</li></ul>			
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#### 4. MARITIME INDUSTRY AUTHORITY

SECTOR EVALUATED	CRITERIA USED FOR THE IDENTIFICATION OF REGULATIONS (SECTOR CHARACTERISTICS/INDICATOR OF HARM/FEASIBILITY OF RESOLVING PROBLEMS)  WORKSHEET A (ITEMS WHICH HAVE BEEN ANSWERED “YES”)	EXPLANATION BY THE AGENCY / OTHER COMMENTS
Domestic Shipping Service – Franchising Sector	<p><b>Sector Characteristics</b></p> <ul style="list-style-type: none"> <li>• Forms a large proportion of consumer expenditure (WS A.1.5);</li> <li>• Has a large impact on the costs of firms in other sectors (WS A.1.4) - <i>uncertain</i></li> <li>• Forms a large proportion of consumer expenditure (WS A.1.5);</li> <li>• Has a disproportionate impact on the poor and vulnerable (WS A.1.6);</li> <li>• Is a priority in the Philippine Development Plan (WS A.1.7);</li> <li>• Reform in this sector has a possibility of setting an example for other sectors (WS A.1.8)</li> </ul>	<ul style="list-style-type: none"> <li>• MARINA is uncertain if this sector has a large impact on the costs of firms in other sectors as evaluated in MC 2016-02. <ul style="list-style-type: none"> <li>• Considering the nature of the service, which is the transportation of passengers, this is a basic necessity, but its usage may vary. For some, it may be a small part of their expenditure, as in the case of tourists, but for those who ride the motorbancas as a part of their daily commute, it may be a bigger expense.</li> </ul> </li> <li>• Government is undergoing a similar campaign to modernize jeepneys in land transport. The outcome of the phase-out of motorbancas in water transport may be instructive in that initiative, as well as in similar initiatives in the future.</li> </ul>
	<p><b>Indicators of Harm</b></p> <ul style="list-style-type: none"> <li>• Complaints from new/potential entrants (WS A.2.1)</li> <li>• Complaints from incumbent firms (WS A.2.2)</li> <li>• Complaints from suppliers (WS A.2.3)</li> <li>• Complaints from consumer groups (WS A.2.4)</li> <li>• Has reported high margins (WS A.2.5)</li> </ul>	<ul style="list-style-type: none"> <li>• <b>New/potential entrants:</b> Per Section VI (6), except for those in Section II of MC 2016-02, new/potential entrants are barred from applying for approval of ship’s plans and/or construction and registration of WHS. There shall also be no issuance/extension/renewal of the authority to operate;</li> <li>• <b>Incumbent firms:</b> Section VI (4) MC 2016-02 prevented those with existing authorities to operate</li> </ul>

		<p>from continuing their operation in routes where there are already sufficient ships with technologically-improved hull material. All authorities to operate shall be pre-terminated/cancelled six (6) months from notice.</p> <ul style="list-style-type: none"> <li>• <b>Suppliers:</b> The makers of WHS are affected by Section VI (6), which prevents the approval of ship’s plans and construction of WHS;</li> <li>• <b>Consumer groups:</b> Complaints were received due higher fare on ships with technologically improved hull material. Accessibility and efficiency of services offered by WHS is allegedly greater than that of ships with technologically improved hull material;</li> <li>• <b>Has reported high margins:</b> Based on annual reports submitted to the MARINA.</li> </ul>
	<p><b>Feasibility of Resolving Problems (if found)</b></p> <ul style="list-style-type: none"> <li>• Potential remedies have already been defined (WS A.3.1)</li> <li>• The government has expressed a willingness to reform the sector (WS A.3.2)</li> </ul>	<ul style="list-style-type: none"> <li>• It is recommended that MC 2015-04 to be amended to clarify certain provisions on entry of additional ships/ trips/ frequencies, and operation of existing ships, among others, and to delete certain provisions of EO 909 which are no longer applicable to MC 2015-004             <ul style="list-style-type: none"> <li>• The offices within the MARINA supports this recommendation, such as the Domestic Shipping Service, Franchising Service and others.</li> <li>• MARINA is currently reviewing MC 2015-04]</li> </ul> </li> <li>• It is recommended under MC 2009-023 to clarify certain provisions, specifically, on the categorization of "similar types of ships", scope of incentives to be granted to missionary route status and declaration of RORO missionary route             <ul style="list-style-type: none"> <li>• MARINA is currently reviewing MC 2009-023]</li> </ul> </li> <li>• It is recommended that the Institutional Support Mechanism in MC 2016-02 under Section VII shall be pursued by the MARINA in coordination with the relevant financial institutions such as the Development Bank of the Philippines (DBP), Land</li> </ul>

		<p>Bank of the Philippines (LBP), and other government agencies/instrumentalities such as the Municipality Development Fund Office (MDFO), Office of Transport Cooperatives (OTC) and Local Government Units (LGUs). Such Institutional Support Mechanisms shall include special loan facilities, schemes and incentives that can be availed of by <i>motorbanca</i> operators that will be affected by the modernization program in order for them to be able to replace their wooden-hulled ships (WHS) with ships of standard design and technologically-improved hull materials. The Franchising Service, Domestic Shipping Service, Shipyard Regulation Service, and Maritime Safety Service are primarily involved in the implementation of these provisions.</p>
<p style="text-align: center;"><b>MANPOWER SECTOR</b></p> <p style="text-align: center;"><u><b>This was withdrawn from the evaluation</b></u></p>	<p><b>Sector Characteristics</b></p> <ul style="list-style-type: none"> <li>• Number of employees</li> <li>• Has a large impact on the costs of firms in other sectors (WS A.1.4);</li> <li>• Has a disproportionate impact on the poor and vulnerable (WS A.1.6) - <i>uncertain</i>;</li> <li>• Is a priority in the Philippine Development Plan (WS A.1.7);</li> <li>• Reform in this sector has a possibility of setting an example for other sectors (WS A.1.8)</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Number of employees:</b> 60,000 domestic seafarers for below 500 ton vessels;</li> <li>• <b>Large impact on costs of firms in other sectors:</b> the sector is in charge of the safety and delivery of goods, services and people throughout the economy;</li> <li>• <b>PDP:</b> the sector should be competitive and produce quality service in the vessels and we should be able to produce competent seafarers</li> <li>• <b>Possibility of reform:</b> policies only consider the educated but should consider the traditional seafarers (uneducated) and small vessel owners, especially in tourist areas where only small boats are needed. The sector hopes to have more trainings on safety, marine pollution, etc. and allow licenses for the traditional <i>motorbanca</i> owners and even until above 500 ton vessels (Annex A).</li> </ul>
	<p><b>Indicators of Harm</b></p> <ul style="list-style-type: none"> <li>• Complaints from new/potential entrants (WS A.2.1)</li> <li>• Complaints from incumbent firms (WS A.2.2)</li> <li>• Has reported high margins (WS A.2.5)</li> </ul>	<ul style="list-style-type: none"> <li>• <b>New and potential entrants and incumbent firms:</b> from public consultations, it had been complained that MARINA should consider traditional seafarers (lacks formal education) who they do not understand that they need licenses, etc. For others, they hire the educated for the showing of their qualifications but in reality, it is the traditional seafarers who are the main owners and operators</li> </ul>

		<p>and have more experience. <u>Note</u>: <i>No complaints on the policy but during public consultations, these grievances are made known.</i></p> <ul style="list-style-type: none"> <li>• <b>High margins</b>: unknown margins but sector has around 100,000 personnel or more.</li> </ul>
	<p><b>Feasibility of Resolving Problems (if found)</b></p> <ul style="list-style-type: none"> <li>• Potential remedies have already been defined (WS A.3.1)</li> <li>• The government has expressed a willingness to reform the sector (WS A.3.2)</li> </ul>	<ul style="list-style-type: none"> <li>• There are attempts to amend or review the policy to include experience and long service as qualifiers which could match and complement educational standards or achievements. There are also discussions to put the responsibility of the safety of the <i>banca</i> on the shipowner who vouch for the competency of their seamen.</li> <li>• The government, through MARINA, had expressed willingness to reform the sector.</li> </ul>

REGULATIONS EVALUATED	RELEVANT SECTION/ PROVISION	CRITERIA USED FOR THE INITIAL EVALUATION OF REGULATIONS  WORKSHEET B (ITEMS WHICH HAVE BEEN ANSWERED "YES")	EVALUATION BY THE AGENCY OR COMMENTS	POLICY OBJECTIVES	ALTERNATIVE MEASURES	RECOMMENDATIONS
<b>DOMESTIC SHIPPING SERVICE - FRANCHISING SECTOR</b>						
<p><b>MARINA Circular No. 2016-02</b></p> <p><b>“Revised Rules On The Phase Out Of Wooden-Hulled Ships Carrying Passengers In Domestic Shipping”</b></p> <p><b>In Relation To: PD 474 (Section 2.A - Modernization Of Ships), RA 9295 (Chapter Iii Section 10)</b></p>	<p><b>Sec IV.1 and Sec VI.4:</b> The operation of existing wooden-hulled ships carrying passengers in domestic shipping shall be phased-out in accordance with the conditions specified in Sec. IV. Existing CPC/SP/PA or other temporary authority issued to wooden-hulled ships operating in routes that are fully served by steel-hulled ships or ships with aluminum, fiberglass or any other technologically-improved hull material shall be pre-terminated/ cancelled six</p>	<p><i>Limits barriers to entry for new companies</i></p> <p>The regulation raises the cost of a company to enter or leave a business activity (WS B.1.3)</p>	<ul style="list-style-type: none"> <li>• The objective is to adopt and promote standards for enhanced ship safety and for safer service in accordance with applicable Conventions and regulations. In addition, it aims to promote the use of modern ship design and technologically improved alternative hull materials that are safe, resilient and environmentally-friendly;</li> <li>• Existing and new operators of wooden-hulled ships are prevented from engaging in the business of transporting passengers in areas already served by operators with ships made of technologically advanced hull materials;</li> <li>• Both regulation sections are considered to have a <b>large</b></li> </ul>		<p>To remove the requirement of industry certification. The market study by MARINA on the need for more bottoms should be sufficient.</p>	<p>(1) MARINA would like to assist WHS with financial schemes that they could avail from to avail these wooden hulled ships.</p> <p>(2) Standardize designs so it will not be difficult for them to comply with. (3) Remove the certification requirement (the associations might be biased and refrain from issuing certifications to their competitors). [MARINA should check if there is a similar practice in other jurisdictions; Please explain how the recommendation addresses the harm to competition; Please explain why the other alternatives were not chosen]</p>

	<p>(6) months from notice. However, such ships may apply with MARINA free of charge for conversion to cargo operations.</p> <p><i>Relevant portions:</i> Phase-out and prohibition of entry of wooden-hulled ships carrying passengers</p>		<p>initial assessment of harm and is <b>justified</b>.</p> <ul style="list-style-type: none"> <li>○ There are currently around 1, 740 wooden hulled ships nationwide;</li> <li>○ The restrictions are necessary for safety reasons and necessary to implement the MC.</li> <li>○</li> </ul>			
		<p><b><i>The regulation restricts potentially competitive company actions</i></b></p> <p>The regulation creates differential costs of operation for business (WS B.2.4)</p>	<ul style="list-style-type: none"> <li>● The regulation creates a preference for ships made with technologically-advanced hull material. While ships with this material are made in shipyards regulated by the MARINA, many WHS are made in “backyard” shipyards.</li> </ul>			
		<p><b><i>The regulation restricts potentially competitive coordination by companies</i></b></p> <p>The regulation creates a self-regulatory regime (WS B.3.1)</p>	<ul style="list-style-type: none"> <li>● Motorbanca operators may engage in establishing a cooperative or association which may secure a loan from the relevant financial institutions to acquire a ship made with technologically-advanced hull material.</li> <li>● This regulation further encourages industry certification of the need for additional bottoms before WHS can continue operations in existing or new routes, per Section IV (7).</li> </ul>			

	<p><b>Sec. IV (4)</b></p>	<p><i>Limits barriers to entry for new companies</i></p> <p>Creates license or permit systems (WS B.1.2)</p>	<ul style="list-style-type: none"> <li>The section is deemed by MARINA to have a <b>large</b> initial assessment of harm and is <b>justified</b>. <ul style="list-style-type: none"> <li>The restrictions are necessary for safety reasons.</li> </ul> </li> </ul>			
	<p><b>Sec. IV (7)</b></p>	<p><i>Does not encourage potentially anti-competitive co-ordination by companies</i></p> <p>The regulation creates a self-regulatory regime (WS B.3.1)</p>	<ul style="list-style-type: none"> <li>The section is deemed by MARINA to have a <b>medium</b> initial assessment of harm and is <b>not justified</b>.</li> <li>The provision already provides for the results of a market study conducted by MARINA which should show the gap between the demand and supply of the service. Requiring an industry certification may lead to the incumbent players suppressing the entry of WHS in those areas which are not sufficiently served by ships with technologically-improved hull material. The market study alone can be sufficient basis.</li> </ul>			
	<p><b>Sec. VI (6)</b></p>	<p><i>Limits barriers to entry for new companies</i></p> <p>Creates license or permit systems (WS B.1.2)</p>	<ul style="list-style-type: none"> <li>The section is deemed by MARINA to have a <b>medium</b> initial assessment of harm and is <b>justified</b>. <ul style="list-style-type: none"> <li>The restrictions are necessary to prevent the unregulated entry of new WHS operators after the phase out.</li> </ul> </li> </ul>			

<p><b>MARINA Circular No. 2009-23</b></p> <p><b>“Rules In The Grant Of Missionary Route Operator Status For Roro And Similar Type Of Ships”</b></p> <p><b>In Relation To: PD 474 (Section 2.A - Modernization Of Ships), RA 9295 (Chapter Iii - Deregulation Of Domestic Shipping), EO 125/125-A And EO 170 And Its Subsequent Amendments</b></p> <p><b>Status: Ongoing Review For The Proposed Amendments To MC 2009-23*</b></p> <p><u><b>This was withdrawn from the evaluation</b></u></p>	<p><b>Sec. 6.1:</b> A domestic shipowner or operator providing water transport service in a RORO missionary route shall be given protection of investment until such time that the investment is recovered.</p> <p><i>Relevant portions:</i> Application for the grant of Missionary Route Operator Status.</p>	<p><b>Limits barriers to entry for new companies</b></p> <p>The regulation creates exclusive rights (WS B.1.1)</p>	<ul style="list-style-type: none"> <li>• Entry of new players/ additional ships in a RORO missionary route are given protection of investment until such time that the investment is recovered.</li> <li>• The objective of the regulation is to provide a scheme that will encourage the modernization/ improvement and upgrading of existing domestic merchant fleet.             <ul style="list-style-type: none"> <li>○ This objective has been met in some routes.</li> </ul> </li> <li>• Another objective is to encourage operators to provide shipping services on routes with no existing shipping services due to geographic limitation or absence of economic and market viability.</li> <li>• The grant of protection of investment may prevent entry of new players and/or additional ships</li> </ul> <p><i>How is the investment protected:</i> <u>By using the formula:</u></p> <p>Vessel Only: No. of Years = <math>\frac{(VAC + POC) \times 1.12\% ROI}{PR - PE}</math> Protection</p> <p>Vessel with RORO Ramp/ Facilities and Passenger Terminal:</p>	<p><b>OBJECTIVES:</b></p> <p>1. To provide rules in the grant of Missionary Route Operator Status for Roll-On Roll-Off (RORO) and similar type of ships; 2. To provide rules in the availment of corresponding incentives granted to Missionary Route Operator; and 3. To support the Road RORO Terminal System (RRTS) Project under the Strong Republic Nautical Highway (SRNH) of the President under EO 170 and its subsequent amendments.</p>		
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			<p>No. of Years = (VAC + POC + RFR + PT) X Protection</p> <p style="text-align: center;">1.12% ROI</p> <hr style="width: 20%; margin: auto;"/> <p style="text-align: center;">PR - PE</p> <p><u>Where:</u></p> <p><u>Vessel Acquisition Cost (VAC)</u> - refers to the cost of acquiring vessel such as importation, bareboat charter with option to purchase, lease purchase and local construction</p> <p><u>Pre-Operating Cost (POC)</u> - refers to expenditures/ expenses incurred on start-up activities or pre-opening costs to operate a vessel such as duties and taxes, permits, licenses, etc.</p> <p><u>Projected Revenue (PR)</u> - refers to the amount estimated or projected to be collected/ earned during the period of operation which includes freight revenue, passenger revenue and other income to be earned in operating the vessel</p> <p><u>Projected Expenses (PE)</u> - refers to the estimated vessel operating expenditures to be incurred during the period of operation which includes fuel, drydocking, repair &amp; maintenance, salaries &amp; wages, food &amp; subsistence, insurance, supplies, port</p>			
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			<p>charges, taxes, licenses &amp; fees, and other miscellaneous vessel operating expenses except vessel's depreciation expense</p> <p><u>Cost of RORO Facility/ Ramp (RFR)</u> - refers to the cost of constructing RORO facilities/ ramps</p> <p><u>Cost of Passenger Terminal (PT)</u> - refers to the cost of constructing a passenger terminal</p> <p><u>ROI</u> - refers to Return on Investment</p> <ul style="list-style-type: none"> <li>This regulation was connected to the Strong Republic Nautical Highway project of President Gloria Macapagal Arroyo and her policies n interconnectivity in Executive Order No. 170.</li> </ul>			
		Creates license or permit systems (WS B.1.2)	<ul style="list-style-type: none"> <li>There is a moratorium on entry of new players/additional ships for six years and grant of pioneer status restricted to brand new and IACs classed ships;</li> <li>The grant of protection of investment may prevent entry of new players and/or additional ships;</li> <li>This regulation provides for an incentive</li> </ul>			
		The regulation raises the cost of a company to enter or leave a business	<ul style="list-style-type: none"> <li>A domestic shipowner or operator who has been granted a Missionary Route Operator Status shall only be charged fifty percent (50%)</li> </ul>			

		activity (WS B.1.3)	of the regular fees in all renewal of ship documents, licenses, certificates and permits during the period of protection for the ship while operating in the missionary route.			
		The regulation places geographical barriers on trade (WS B.1.4)	<ul style="list-style-type: none"> <li>A domestic shipowner or operator granted missionary route is given protection from investment for a period using the formula and restricts the entry in the said route of other operators within the said period.</li> </ul>			
		<p><b>The regulation restricts potentially competitive company actions</b></p> <p>The regulation exempts a company or industry from competition (WS B.3.3)</p>	<ul style="list-style-type: none"> <li>The objective of the regulation is to encourage operators to provide shipping services on routes with no existing shipping services due to geographic limitation or absence of economic and market viability.</li> </ul>			
		<p><b>The regulation ensures consumers receive sufficient information and choice</b></p> <p>The consumers have sufficient information and ability to choose (WS B.4.1)</p>				

<p><b>Memorandum Circular No. 2015-04</b></p> <p><b>"Encouraging Investments In Newly Constructed Ships Or Brand New Vessels In The Domestic Shipping Industry By Providing Incentives"</b></p> <p><i>In Relation To:</i> PD 474 (Section 2.A - Modernization Of Ships), RA 9295 (Chapter Iii - Deregulation Of Domestic Shipping), EO 125/125-A (Section 14.9)</p> <p><b>Status:</b> On-Going Drafting Of The Proposed Amendments Of MC 2015-004</p> <p><b><u>This was withdrawn from the evaluation</u></b></p>	<p><b>Title VI.1:</b> For purposes of recovering its investment, the domestic shipowner or operator granted "Pioneer Status" shall be given protection of investment for a period of six (6) years by imposing a moratorium on the deployment of additional vessels or not allowing other vessels to ply in the applied link! route, subject to Sec. V.2 above.</p> <p><i>Relevant portions:</i> Application for the grant of Pioneer Status</p>	<p><b>Limits barriers to entry for new companies</b> The regulation creates exclusive rights (WS B.1.1)</p> <p>Creates license or permit systems (WS B.1.2)</p>	<ul style="list-style-type: none"> <li>The objective of the regulation is to encourage the introduction of internationally-classed brand new or newly constructed vessels in the domestic shipping industry that will bring about safer and more efficient sea transport and improved quality of services.</li> <li>There is a moratorium on entry of new players/additional ships for six years and grant of pioneer status restricted to brand new and IACS classed ships.             <ul style="list-style-type: none"> <li>The IACS requirement is mandatory under EO 909 and the MARINA is just implementing it. As far as MARINA is concerned, the IACS requirement attains the objective of bringing safer and more efficient sea transport and improved quality of services;</li> </ul> </li> <li>The grant of protection of investment may prevent entry of new players and/or additional ships.</li> <li>This regulation provides for an incentive.</li> </ul>	<p><b>OBJECTIVES</b></p> <p>1. To provide rules and regulations in the grant of "Pioneer Status" and the availment of corresponding incentives for domestic shipowners operators; 2. To provide scheme that will encourage the modernization! improvement and upgrading of existing domestic merchant fleet; and 3. To encourage the introduction of internationally-classed brand new or newly constructed vessels in the domestic shipping industry that will bring about safer and more efficient sea transport and improved quality of services.</p>	<p>1. Allow non-IACS classed vessels or Local Classed vessels to be given a Pioneering Status [What other alternatives were considered by MARINA</p>	<p>1. Amendment of EO 909</p>
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		<p><b><u>These incentives are:</u></b></p> <p>The following incentives under EO 909 are hereby given to domestic shipowners or operators operating as "Liner" or "Tramper", whichever is applicable, for a period of six (6) years; to wit:</p> <p><b>1. Protection of Investment <i>and/</i> or Route Protection (For "Liner" Only)</b></p> <p>For purposes of recovering its investment, the domestic shipowner or operator granted "Pioneer Status" shall be given protection of investment for a period of six (6) years by imposing a moratorium on the deployment of additional vessels or not allowing other vessels to ply in the applied link! route, subject to Sec. V.2 above.</p> <p><b>2. Priority in the Issuance of Certificate of Public Convenience (CPC)</b></p> <p>Domestic shipowners! operators granted "Pioneer Status" shall likewise be given priority in the issuance of CPC by MARINA in the route it proposes to operate whether said route has an existing ship operator or not. MARINA shall, promptly and without delay, issue all request for issuance of ship documents, certificates, and licenses within ten (10) working days provided the shipowner or operator has complied and submitted all the required documentary requirements.</p> <p><b>3. Fees and Charges</b></p> <p>Domestic shipowners or operators granted Pioneer Status shall only be charged fifty percent (50%) of the regular fees in all applications and</p>			
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		<p>renewals of ship documents, licenses, certificates and permits.</p> <p><b>4. Drydocking of Vessels</b> All provisions on drydocking of classed vessels shall comply with the drydocking schedule required by the Authority.</p> <p><b>5. Provision for Special Ramp} Berth Facility</b> Special ramp or berthing facility in any port shall be made available to IACS classed brand new or newly constructed ships under EO 909 subject to existing policies of the Port Authorities.</p> <p><b><u>The requirements for the grant of pioneer status are:</u></b></p> <p><b>QUALIFICATION REQUIREMENTS:</b> The vessel must be:</p> <ol style="list-style-type: none"> <li>1. Glassed by an IAGS member;</li> <li>2. Brand new or newly-constructed either abroad or built locally by a MARINA-licensed shipyard;</li> <li>3. Appropriate and suitable to the weather and sea conditions of the area where it will operate</li> <li>4. Covered by a Certificate of Philippine Registry (CPR) and Certificate of Ownership (CO) under MARINA Circular No. 2013-02</li> <li>5. Owned and operated by a domestic shipowner/operator and fully-manned by qualified Filipino officers and crew</li> <li>6. The domestic shipowner or operator must be a duly accredited maritime entity in accordance with MARINA Circular No. 2006-03 and its subsequent amendments.</li> </ol>			
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			<p><b>DOCUMENTARY REQUIREMENTS:</b>                  The following documentary requirements shall be submitted, as applicable:</p> <ol style="list-style-type: none"> <li>1. Letter of Application addressed to the MARINA Administrator</li> <li>2. Copy of valid MARINA Accreditation Certificate as a domestic shipowner or operator under MARINA Circular No. 2006-003 and its subsequent amendments</li> <li>3. IACS classed certificate and other applicable safety certificates</li> <li>4. Certificate of Ownership (CO) and Certificate of Philippine Registry (CPR)</li> <li>5. Proof of payment of processing fee of P20,000.00per ship</li> </ol>			
		The regulation raises the cost of a company to enter or leave a business activity (WS B.1.3)	<ul style="list-style-type: none"> <li>• Domestic shipowners or operators granted Pioneer Status shall only be charged fifty percent (50%) of the regular fees in all applications and renewals of ship documents, licenses, certificates and permits.</li> </ul>			
		The regulation places geographical barriers on trade (WS B.1.4)	<ul style="list-style-type: none"> <li>• For purposes of recovering its investment, the domestic shipowner or operator granted "Pioneer Status" shall be given protection of investment for a period of six (6) years by imposing a moratorium on the deployment of additional vessels or not allowing other vessels to ply in the applied link! route, subject to Sec. V.2 above.</li> </ul>			
		<b><i>The regulation restricts potentially</i></b>	<ul style="list-style-type: none"> <li>• Please see incentives above.</li> </ul>			

		<p><b>competitive company actions</b></p> <p>The regulation creates differential costs of operation for business (WS B.2.4)</p>				
		<p><b>The regulation does not encourage potentially anti-competitive coordination by companies</b></p> <p>The regulation exempts a company or industry from competition (WS B.3.3)</p>	<ul style="list-style-type: none"> <li>The domestic shipowner or operator granted "Pioneer Status" shall be given protection of investment for a period of six (6) years by imposing a moratorium on the deployment of additional vessels or not allowing other vessels to ply in the applied route.</li> </ul>			
		<p><b>The regulation ensures consumers receive sufficient information and choice</b></p> <p>The consumers have sufficient information and ability to choose (WS B.4.1)</p>				



Manpower Sector						
<p><b>MC 2012-03</b></p> <p><b>“Rules In The Conduct Of Examination And Issuance Of Certificate Of Marine Profession And Ids To Seafarers In The Domestic Trade, Boarding Vessels Below 500 Gt Or Engine Propulsion Power Below 750 Kw”</b></p> <p><u><b>This was withdrawn from the evaluation</b></u></p>	<p><i>Please See Website For The Full Circular.</i></p>	<p><b>Limits barriers to entry for new companies</b> Creates exclusive rights (WS B.1.1);</p>	<ul style="list-style-type: none"> <li>• Only MARINA provides the certificates and IDs and accreditation;</li> <li>• The regulation is deemed by MARINA to have a <b>large</b> initial assessment of harm and is <b>not justified</b>.</li> </ul> <p><i>Reason for it not being justified:</i></p> <ul style="list-style-type: none"> <li>• Based on the existing policy, there is a "Large" initial assessment of harm because from public consultations, the imposition of educational requirements restricts those who lack the academic achievement to be qualified for taking the examinations. This is despite their acquired skills and competencies from their long experience with these small vessels. I</li> <li>• t is "Not Justified" because even without these educational backgrounds, the seafarers are competent.</li> <li>• Seafarers complained about this educational requirement restriction during the stakeholders' consultations.</li> <li>• In addition, while the seafarers do not protest against the license or examination fees during a MARINA Board Meeting, there was a proposal</li> </ul>			

			<p>recommending the removal of examination fees despite it being only P300.00.</p> <ul style="list-style-type: none"> <li>○ Problems with the removal of the examination fees include the difficulty with explaining such removal to the DBM as it had already been implemented by MARINA.</li> <li>• The regulation is currently being reviewed and the Technical Working Group is taking into consideration the proposal removing the examination fees.</li> </ul>			
		Creates license or permit systems (WS B.1.2);	<ul style="list-style-type: none"> <li>• See: EO 125-A, Section 12(g) - (g) Undertake the issuance of licenses to qualified seamen and harbor, bay and river pilots;</li> <li>• See: PD 474 as well.</li> </ul>			
		The regulation raises the cost of a company to enter or leave a business activity (WS B.1.3).	<ul style="list-style-type: none"> <li>• License fees - P1,000 for lifetime license until the time they want to be promoted to another level (See: Rule 10).</li> </ul>			
		<b>The regulation restricts potentially competitive company actions</b>	<ul style="list-style-type: none"> <li>• The educational requirement of applicants for examination (now proposed to replace educational qualification with experience) are: graduates of BS MT (500</li> </ul>			

		<p>The regulation sets standards that would not be chosen by many informed customers (WS B.2.3)</p>	<p>tons) until 35 tonnage no educational requirement. (See: Annex 1 of MC 2012-03).</p> <ul style="list-style-type: none"> <li>The proposed amendments aim to balance education with the qualifications of experience and training.</li> </ul>			
		<p><b><i>The regulation ensures consumers receive sufficient information and choice</i></b></p> <p>The consumers have sufficient information and ability to choose (WS B.4.1)</p>	<ul style="list-style-type: none"> <li>The consumers can see who have the required permits and licenses in the MARINA website (See: Sec. 5, No. 2).</li> </ul>			

# Chapter Four

## Workshop

## WORKSHOP AGENDA

**Day 1**

08:30 – 09:00	<b>Welcome and registration process</b>
09:00 – 09:15	<b>Opening Remarks</b> <i>Arsenio Balisacan, PhD</i> <i>Chairman, Philippine Competition Commission</i>
09:15 – 10:15	<b>Merits of Competition Assessment</b>  Overview of competition impact assessment in a general scope, discussing examples of successful competition impact assessment initiatives in other jurisdictions, and the benefits of pro-competitive reform  <i>Farasat Bokhari, PhD</i> <i>Centre for Competition Policy, University of East Anglia</i>  <i>Benjamin Radoc, Jr., PhD</i> <i>Director, Economics Office, Philippine Competition Commission</i>
10:15 – 10:35	Coffee Break
10:35 – 11:35	<b>Interface between Competition Assessment and Regulatory Impact Analysis (RIA)</b>  Discussion on RIA and the Philippine requirement under the Ease of Doing Business Act of 2018 as well as the possibility of including a specific section in the RIA requirements to assess the effects on competition of new draft regulations  <i>Sean Ennis, PhD</i> <i>Centre for Competition Policy, University of East Anglia</i>  <i>Anti-Red Tape Authority Speaker TBC</i>
11:35 – 12:00	<b>Open forum on morning sessions</b>
12:00 – 13:30	Lunch
13:30 – 15:00	<b>The Competition Assessment Manual</b>  Presentation on the use of the Competition Assessment Manual: tips, good practices, do's and don'ts, report on the challenges encountered during the pilot-testing of the manual and proposed actions  <i>Sean Ennis, PhD</i> <i>Centre for Competition Policy, University of East Anglia</i>
15:00 – 15:30	Coffee Break
15:30 – 16:00	<b>Competition Assessment in Viet Nam</b>



	<p>Presentation on previously conducted competition assessment initiatives in Viet Nam including the approach and tools used</p> <p><i>Nguyen Anh Duong</i> <i>Director, Ministry of Planning and Investment, Viet Nam</i></p> <p><b>Open forum on afternoon sessions</b></p>
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**Day 2**

<p>09:00 – 09:30</p>	<p><b>Introduction to the Pilot-test Process and Results</b></p> <p><i>Farasat Bokhari, PhD</i> <i>Centre for Competition Policy, University of East Anglia</i></p> <p><i>Atty. Ma. Leonila Papa</i> <i>UEA Consulting Ltd.</i></p> <p><i>Paolo Lorenzo Tejano</i> <i>Economics Office, Philippine Competition Commission</i></p>
<p>09:30 – 10:45</p>	<p><b>Presentation of Pilot-test Results (with open forum)</b> <i>Department of Health – Pharmaceutical Division</i></p>
<p>10:45 – 11:15</p>	<p>Coffee Break</p>
<p>11:15 – 12:30</p>	<p><b>Presentation of Pilot-test Results (with open forum)</b> <i>Food and Drug Administration</i></p>
<p>12:30 – 13:45</p>	<p>Lunch</p>
<p>13:45 – 15:00</p>	<p><b>Presentation of Pilot-test Results (with open forum)</b> <i>Civil Aeronautics Board</i></p>
<p>15:00 – 15:30</p>	<p>Coffee Break</p>
<p>15:30 – 16:45</p>	<p><b>Presentation of Pilot-test Results (with open forum)</b> <i>Maritime Industry Authority</i></p>
<p>16:45 – 17:00</p>	<p><b>Closing Remarks</b></p> <p><i>Atty. Johannes Benjamin Bernabe</i> <i>Commissioner, Philippine Competition Commission</i></p>

Master of Ceremonies

*Atty. Christina Faye Condez-de Sagon*

*Philippine Competition Commission*

# Chapter Five

## Participant Evaluation

## 5.1 Participant Feedback on the Manual and Workshop

There were 41 respondents to the two evaluation questionnaires – one on the manual and the other on the workshop. They were asked to indicate their prior training (if any) in Economics and Competition Law, and their organisations/affiliation (Table 1). We have used these characteristics in the analysis of responses<sup>20</sup>.

**Table 1 Characteristics of respondents**

	yes	no	na
Prior training in Economics (ECON)*	20	17	4
Prior training in Competition Law (LAW)	11	25	5
Works in the Government broadly defined (GOVT)	34	2	5
Works in:			
One of the pilot agencies	9		
PCC	2		
Other Philippine government agencies	19		
Foreign	7		
n.a.	4		

They were asked to respond by ranking fifteen positive statements on a 1 to 5 scale, 5 being the most positive (strongly agree). Hereafter we refer to these as the quantitative questions. There were also 7 open-ended qualitative questions.

## 5.2 Quantitative questions

It is always difficult to know how much confidence we should have in answers to questions which ask respondents to rank statements on some arbitrary scale (here, 1 to 5). Standard significance tests are not really appropriate. Nevertheless, it is generally reasonable to interpret 'good' or 'very good' (here, 4 or 5) as positive results, while 1 or 2 are negative. On that basis, the results of both evaluation questionnaires are reassuringly positive.

Tables 2 and 3 tabulate the results in two different formats. Table 2 is derived by first aggregating each respondent's answers across all questions in each questionnaire. These are then summarised across all respondents in the distribution shown in the Table. For example, 6 respondents each had an average

<sup>20</sup> We had envisaged testing for differences between subcategories (e.g. nature of prior training), but this proved impracticable because most (17) of those with prior training in Economics had undergraduate qualifications whilst none of those with law training had law degrees. Also, as can be seen, nearly all respondents were employed in the government sector, so no private-public comparisons were possible.



of between 4.5 and 5 across the questions in the manual questionnaire; and the average score across all respondents was 3.80. The headline results are all very favourable (Table 2):

- The workshop was rated very highly: 28 of the 40 respondents (70%) reported an average of 4 or 5, and no respondent reported less than 3.
- The manual was rated slightly less favourably, but still very satisfactorily: 19 of the 36 respondents (just over 50%) reported an average of 4 or 5, and only 4 reported less than 3.

**Table 2 Summary of Responses: by Participants**

	<b>Average</b>	<b>Median</b>	<b>&lt;2.5</b>	<b>2.5-2.99</b>	<b>3 – 3.49</b>	<b>3.5-3.99</b>	<b>4-4.49</b>	<b>4 .5- 5</b>	<b>na</b>
<b>Manual</b>	<b>3.90</b>	<b>4</b>	<b>1</b>	<b>3</b>	<b>7</b>	<b>6</b>	<b>13</b>	<b>6</b>	<b>5</b>
<b>Workshop</b>	<b>4.25</b>	<b>4.25</b>			<b>5</b>	<b>7</b>	<b>10</b>	<b>18</b>	<b>1</b>

We tested whether participants' prior training and organisations had differential impacts on responses, but standard statistical tests revealed no significant differences. Thus respondents with prior economics training on average recorded both workshop and manual no differently from those without prior economics. Similarly, there was no significant differences between those with and without prior law training.

Table 3 presents the data in a more detailed way: in this case, each respondent's answer to each question constitutes an observation. So with each respondent answering 15 questions, we have approximately 600 observations. The results confirm the picture from Table 2, but now we can drill down into the cause of the few low marks for the manual.

- Combining workshop and manual, 29% of all statements were given the highest possible ranking (5) and a further 43% the next highest (4). None was given the lowest possible 1<sup>21</sup>, and only 3% of all statements were given 2
- The workshop was rated very highly: 80% of all statements were rated at 4 or 5, and less than 1% were rated at 2
- The manual questions were also rated generally very highly – nearly two thirds being ranked 4 or 5, and only 6% at 2.

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<sup>21</sup> More correctly, one respondent did score 1 for all questions about the workshop in spite of providing a positive qualitative response and scoring an average of 4 on the manual questions. We judge that this respondent really intended to score the workshop as 5, but erroneously interpreted 1 as the top score. We have omitted this respondent from the workshop summary statistics.

**Table 3 Summary of Responses by Question**

	Both Workshop & Manual	Workshop	Manual
# Participants	41	41	41
# Questions	15	8	7
Score 5	181 (29%)	123 (38%)	58(20%)
Score 4	265 (43%)	139(42%)	126(44%)
Score 3	89 (14%)	38(12%)	51(18%)
Score 2	18 (3%)	2(0%)	16(6%)
Score 1	0	0	0
n.a.	62 (11%)	26(8%)	36(13%)
Total	615	328	287
Average score	4.10	4.25	3.90
Median score	4	4	4

Because these overall responses are so overwhelmingly favourable, we have focused our scrutiny on the very small number of less favourable responses: the 3% of individual statements ranked as 2 out of 5. In fact, all but 2 of these 18 rankings refer to the manual and all but 4 are attributed to just 3 individuals. Interestingly these 3 participants are all from the pilot agencies themselves (two from Marina and one from FDA).

Arguably, the opinions of participants from the pilot agencies themselves are of particular interest because they will have had the most active experience of applying the manual. All three of these respondents opined that “non-economists might not know how to retrieve the data required by the worksheets” and two of the three recorded 2 rankings for the statements that: “it is easy to understand the manual”; that “the manual explains sufficiently how to answer the worksheets”; and that “the manual guides sufficiently towards which regulations to select for assessment”. These may offer some pointers to potential weak points in the manual. On the other hand, it is appropriate to remember the context: even these less satisfied respondents record 3 or more for the other 11 statements in the survey. Moreover, examining their responses to the qualitative questions, one person offered none, while the other two actually made remarks about the effectiveness of the manual. However, one wanted more guidance on terms such as “Exclusive rights and regulatory regimes” and another, rather cryptically, mentioned “consumer/client.”

## 5.3 Qualitative questions

The Appendix Tables A2 record all qualitative answers to the seven qualitative questions.

### The Manual

Comments are generally very encouraging: half of all participants added complimentary remarks (Table A2.1) to the high scoring already recoded on the quantitative side, and these covered all aspects of the manual. A few participants pointed to specific terms which they found difficult to understand (Table A2.2). Some relate simply to specific technical words or phrases, and a few to ambiguities of difficulties of interpretation. Inevitably in questionnaires such as this, some participants raised concerns on issues which others found especially clear. Nevertheless, we have considered all comments clearly in our subsequent revisions to the manual.

We also asked participants what other information should be included in the manual (Table A2.3): a few presentational suggestions were received (e.g. use of flow charts), and seven participants made requests for more guidance and/or examples. Again, we have considered all comments clearly in our subsequent revisions to the manual.

### The Workshop

The workshop attracted positive comments from 30 of the participants (Table A2.4). These covered, *inter alia*, the quality of speakers, engagement, structure, and organisation, structure. This confirmed our own conclusions on the days, which was that the workshop was thoroughly worthwhile and productive. Some useful suggestions for improvement were also received (Table A2.5). Mainly, these relate to practical suggestions like the start time and arrangements of chairs, but a handful of participants would have liked more explanation and discussion.

Finally, Tables A2.6 and Table A2.7 (asking for further comments respectively on the manual and workshop), only attracted a few additional observations, nearly all expressing further satisfaction.

## 5.4 Overall Conclusions

Overall, the feedback we have received to both manual and workshop are very gratifying. On the manual, they have provided some suggestions for improvement, all of which we have carefully considered in the revision made in the concluding stage to the project. On the workshop, we believe that the model we have developed should form the basis for any similar workshops in future projects of this kind.

Table A1 Response to Quantitative questions

<b>THE MANUAL</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>na</b>	<b>ave.</b>	<b>Med.</b>
Is easy to understand UNDERSTAND		2	4	21	9	5	4.03	4
Sufficiently explains how to answer the Worksheets EXPLAINS		2	3	20	10	6	4.09	4
Sufficiently guides the user on how to select regulations that will be subjected to competition assessment. WHICHREGS		3	8	15	10	5	3.89	4
Sufficiently guides the user in identifying the restrictions to competition RESTRICTCOMP		1	6	19	10	5	4.06	4
Sufficiently guides the user in identifying different alternatives to restrictive regulations. ALTREGS		2	10	16	8	5	3.83	4
Sufficiently guides user on creating action plans to address the identified restrictions. ADDRESS		1	10	17	8	5	3.89	4
A person who has no prior training in law or economics would know how to retrieve the data required by the Worksheets RETRIEVEDATA		5	10	18	3	5	3.53	4
<b>THE WORKSHOP</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>na</b>	<b>ave.</b>	<b>Med.</b>
Useful forum to progress discussion and action on competition impact assessment and the Manual developed WHELPFUL			1	11	21	8	4.60	5
Purpose & objectives clearly spelt out WOBJECT			2	21	17	1	4.38	4
Lived up to expectations WEXPECT			8	17	15	1	4.18	4
Content was relevant to me/my job WRELEVANT			3	16	21	1	4.45	5
Content and structure stimulated my learning on competition policy issues and competition impact assessment WSTIMULATE			6	20	14	1	4.2	4
Easy to follow and understand WEASY		1	6	20	13	1	4.13	4
I felt that I was able to contribute my opinion and perspective to the Workshop discussions WOPEM		1	7	14	7	12	3.83	4
Achieved the stated purpose and objectives			5	20	15	1	4.25	4
<b>TOTAL FOR ALL QUESTIONS</b>	<b>-</b>	<b>18</b>	<b>89</b>	<b>265</b>	<b>181</b>	<b>62</b>	<b>4.10</b>	<b>4</b>

**Table A2.1 What aspects of the Manual are especially effective in guiding the user in his/her competition assessment?**

1	Worksheet/checklists.
2	The explanation/discussion of anti-competitive principles and their corresponding examples are clear, simple and direct to the point.
3	Guide questions and explanations.
4	The tables provided are extremely helpful in guiding competition assessment. It is also helpful that the information provided in the body of the Manual sufficiently explains factors that need to be considered in the assessment.
5	The principles of Competition Assessment.
6	Preliminary survey
7	Concepts of competition and example of impacts of regulations on competition.
8	For technical people, they will find it hard to understand on how to assess the regulation. Examples given to further explain the different criteria are very useful.
9	The questions and the explanations are very clear and also presented examples.
10	The concepts are explained well prior to the Worksheets and are very helpful to users w/o an Econ background.
11	Key questions
12	Checklists
13	Guide questions
14	Gave sufficient explanation for the rationale of each question; provided enough examples and cases.
15	The Manual is clear and very practical.
16	The CIA checklist and the boxed samples.
17	The identified restrictions to competition is very useful for non-economists to understand basic knowledge about it.
18	The checklist used in evaluating competition policies in government agencies.

Table A2.2 What terms in the Manual are difficult to understand and should be further defined or illustrated?

**Specific terms**

- |   |   |
|---|---|
| 1 | Consumer/client.  |
| 2 | Exclusive rights, regulatory regime.  |
| 3 | Other terms are not easily understood ex. "entrants" better to put in layman's terms or define. |
| 4 | Weights   |
| 5 | Manual should be translated to Filipino language for a more easy understanding to others.       |
| 6 | Legal/technical economic/competition terms  |

**Meaning of "competition"**

- |   |   |
|---|---|
| 7 | Clarify competition "in market" in the Executive Summary so as not to confuse end-users or other stakeholders with other sorts/meanings of competition. |
| 8 | I think the definition of the word "competition" needs to be elaborated.  |
| 9 | Making regulations more pro-competitive.  |

**Ambiguities leaving too much discretion to the user**

- |    |   |
|----|---|
| 10 | Sufficient information that should be available to consumers.                           |
| 11 | How to establish/quantify the "disproportionate impact on the poor and the vulnerable." |

**More guidance required**

- |    |  |
|----|--|
| 12 | Guide questions and parameters on the initial assessment of harm. Basis/standards/measures on quantifying/measuring evidences to support assumptions/assessment of the agencies conducting the assessment. |
| 13 | I think it would be useful to strengthen the chapter of selecting alternatives in order to give more tools to the reader.  |

Table A2.3 What other information should be included in the Manual?

Additional examples & guidance
1. How liberalized/deregulated industries can still breed anti-competitive practices.
2. I think it would be more helpful if the Manual contained more examples.
3. More examples in the Philippine setting.
4. Assessing/accounting for "qualitative" impact, such as environmental "externalities" in order to come up with a more accurate "net benefit" value as compared to the "cost" of a regulation, in the process, for instance, of opening up the "market" or fostering "competition." Thank you.
5. Extent of competition/assistance that can be expected or sought from PCC; at least at the end portion of the Manual to motivate/invite more agencies to approach the Commission.
6. Guides on designing quantitative scales for specific industries of users.
7. Activities of companies regulated by FDA or other regulatory offices like for example promotion (tri-media) endorsements and advertisements be addressed because for small companies, they can't afford to pay endorsers/advertisers, may be anti-competitive. Like also for medicines, multinationals are favoured and the thinking of the people that generics are low quality.
Presentational
8. It would be good to include a guide to develop alternative solutions, a guide to interview stakeholders and a chapter to establish a public consultation mechanism.
9. Flow charts
10. Expand glossary. Add flowcharts/diagrams for the Competition Assessment process.
11. Some experiences in the market are analysed.
12. Sectoral presentation of information for easy reading and reference.
Others and/or meaning unclear
13. A methodology sample on how to measure the effects of "alternative regulation" to know if it is better than the status quo.
14. Include the aspect that competition assessment is part and can be anchored on the Ease of Doing Business initiatives of ARTA, such as the RIA Manual.
15. The Manual needs further refinement to consider the inputs/comments during the presentations.
16. 1) Use of PSA data for sector profiles; (2) segue into the applicability of official rationale of the regulation.



Table A2.4 What were the key strengths of the workshop?

1	The level of mastery of the speakers.
2	Presence of key resource persons, representatives from different regulations
3	Wide scope of regulators.
4	The reaction of reactors are enlightening and can help agencies improve on policy/regulations making.
5	The presentations made regarding the pilot testing of the Competition Impact Assessment. These presentations concretize the theories.
6	The structure of the program allows me to better understand the purpose of competition assessment and the report/presentation made by the other agencies gave the insights on application/implementation of the Manual.
7	Process flow and content (very relevant and substantial).
8	Presentations of the actual results of the pilot test; panel sessions.
9	Discussion of pilot-test results
10	Experts are available to give further knowledge on the subject matter
11	Participation of international experts
12	Input from other economies
13	Regulatory reform with respect to Competition Assessment, coordination among Ministry in the Philippines.
14	The background information was very intellectually stimulating.
15	It was an excellent review of the OECD toolkit.
16	Presentations on pilot-test competitive assessment
17	Most of the speakers were really knowledgeable of the topics they were discussing.
18	Participation of key technical resource persons from NGAs.
19	Good presentations (informative).
20	Good lineup of panelists, relevant sectors/government agencies
21	Panelists were able to directly advise agencies.
22	The experience of markets analysed
23	Presentations of participating agencies.
24	Speakers and presenters.
25	Shared experiences on the use of the Manual.
26	The speakers and their presentations are very relevant regarding CIA.
27	Engagement of officials from various authorities in the Philippines.
28	The Workshop was well structured and the presentations provided good insights.
29	Exchange of information and feedback on the Pilot Project.
30	Prompt time and well organized.

Table A2.5 Which aspects of the Workshop would you amend or improve?

1	More discussion on the application of the competition Assessment Manual rather than the substantive policies.
2	Perhaps an additional day to conduct an actual/hands-on training using the Manual. Case work,
3	Table arrangement should be in classroom style.
4	More audience engagement
5	The engagement with participants, reduce presentation time, documents should be distributed to participants prior to the Workshop.
6	It will be useful to explain the use of quantitative methods in order to improve the Workshop because it has a lot of qualitative methods.
7	Maybe a short activity where participants can apply the Manual using the understanding we have at the moment.
8	Clear use of the Manual in presentations; common format in presentations. Answer per question, remarks, judgment, etc.
9	Require the selected agencies to show how they used the worksheets.
10	Perhaps the presentations of the speakers can be printed in order to review them.
11	How to use the Manual/How the agency can improve more on the use of the Manual/critique the agency on how it used the Manual.
12	The presentations of each agencies should have included their step by step process of using the toolkit.
13	Just the timing. 9AM is a bit too late to start.
14	Feedback on the Manual by relevant agencies that had conducted the Pilot studies would be appreciated.
15	To allot time for the evaluation of the Manual because to read the draft Manual while there are presentations will not be well understood.

**Table A2.6 Do you have more comments on the Competition Assessment Manual and its contents?**

*(If yes, please state it briefly AND include a contact email so that we can discuss further with you.)*

1	We will email the organizers.
2	The action plan can be further developed into a work Program to accompany the results of Competition Assessment Review. The Work Program can be jointly implemented by the PCC and concerned agencies.
3	It will be useful for a chapter for interview stakeholders and a chapter of public consultation in order to have a more strong tool to be implemented.
4	No. However, since I am not the contact person from my agency that is in charge of CIA, I will forward the Manual to my colleague.
5	Evaluation on the Competition Assessment Manual will be emailed as some accomplished since we don't have enough time to read.

**Table A2.7 Do you have any further comments or suggestions?**

1	Thank you!
2	Pursue further pilot testing of the CIA involving more government agencies.
3	If possible may I have a copy of the softcopies of the presentations for reference?
4	Nil. Thank and big congratulations to PCC for the grand initiative.
5	Very well organized event, however, the review of the draft Manual to evaluate it was not given enough time.

# Appendices

# Appendix 1

## Inception Report

## Work Plan and Inception Report

This document is as anticipated in our Proposal, subject to one small change in the timetable,<sup>22</sup> and some early thoughts on the possible sectors to be chosen as case studies. It comprises the following work plan with two briefing papers as Appendices:

- A1 OECD's method for identifying and changing competition-restricting regulations
- A2 Background on the Philippines economy, its competition regime & issues

### Work Plan

This is self-explanatory, and is based on the milestones, which already provide a logical and linear structure to the project.

#### **Step 1 Preparation of Draft Manual: November 2018-February 2019**

The purpose is to create a manual which can be used by government agencies in the Philippines to identify and review potentially anti-competitive laws and regulations. This suggests, as an obvious natural starting point, the OECD manual and the Product Market Regulation indicators developed by the OECD and the World Bank group. We will first thoroughly familiarize ourselves with these - given Sean Ennis's leading role in helping to produce the manual whilst he worked at OECD - this will be largely an educational exercise for the rest of the team. The starting point for this is Appendix A1 to this document.

Against that backcloth, we will undertake a brief review of those other individual economies that have introduced CIA plans/manuals: assessing which have been successful, and which not, and drawing lessons from their experiences.

In order to assess how far existing manuals will need to be adapted, we will endeavor to further build our knowledge of the Philippine economy, using as a starting point Appendix A2 to this document. This will be done in consultation Dr Papa, the local contractor, and Dr Radoc, the contact officer.

The ultimate responsibility for this stage is Davies's and Bokhari's, joined by Ennis from January.

#### **Step 3 Pilot Testing of Manual: March 2019 – August 2019**

Planning and then supervising the pilot test of the Manual in the three government agencies is our responsibility, but close collaboration with the parties in the Philippines (PCA and the three agencies) is clearly crucial. At this stage the local consultant will play a pivotal role (see below). But all members of the team will be involved, variously, in data collection, analysis, and regular team discussions.

We envisage the following five steps in the pilot testing.

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<sup>22</sup> Due to delays in exchange of contracts, the project started on November 5<sup>th</sup> and the due date for this document was delayed until November 9<sup>th</sup> (revised respectively from start and end of October.)

**(i) Selection of Agencies**

We fully understand that the selection of these agencies will not be our decision. Above all, the three agencies themselves must be willing and “want-in” to the venture. We presume also that the PCA will have a strong voice in this. At the proposal stage, we discussed some possible candidates amongst ourselves; we anticipated that these might include the agencies responsible for Telecomm, Energy, Health, Education, Agriculture etc. In some or all of these sectors, we anticipated potential conflicts between competition and other societal objectives which create the potential for laws and regulations designed to achieve other objectives but with possible competition concerns.

In the initial tele meeting we have had with Dr Radoc, he mentioned that there are three

- Construction: the PCAB is the relevant agency, and this is under the DTI
- Pharmaceuticals: the FDA is the relevant agency, and this is under the DOH
- Air transport: the CAAP is the relevant agency, and this is under the DTr<sup>23</sup>

On each of these Dr Radoc has provided us with invaluable background documents: (i) an Amicus brief on construction, (ii) a PCC issues paper on the pharma industry and (iii) a PCC issues paper on air transport.

Our preliminary reading of these documents suggests that these cases could be excellent examples, involving important issues that we had anticipated (e.g. restrictions on foreign entry) and/or mirror familiar issues in UK/EU/US anti-trust (e.g. slotting allowances).

**(ii) Identifying the main economic features in the Philippines of each sector**

In order to assess the likelihood of potential competition concerns in a given sector, we must first construct an informed picture of the nature of demand and cost conditions, and the structure of the industries and firms. This will require collecting information on price and demand trends; the identity of key players and their market shares; import trends; barriers to entry, etc. This information will be relevant already publicly available data.

**(iii) Identifying the key regulations, laws, decrees, etc. for each pilot review**

The pilot studies may be based on a number of different regulations or pieces of legislation, or they may be built around just one key piece of legislation. This will depend on the sectors and the wishes of the agencies, but at this stage we suspect that it might be most fruitful, for gaining a detailed understanding, to focus on just one piece of legislation. At this stage, we

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<sup>23</sup> Key to Acronyms:

- FDA - Food and Drug Administration
- DOH - Department of Health
- PCAB - Philippine Contractors Accreditation Board
- DTI - Department of Trade and Industry
- CAAP - Civil Aviation Authority of the Philippines
- DTr - Department of Transportation

need to identify the correct legal name(s) of that legislation, its status (under consideration for passage of law, actual applied law), its duration etc.

***(iv) Identifying the potential benefits to removing competition***

We will identify a list of ways in which the legislation might potentially restrict competition, and this will lead to an analytical note, for each sector, containing a Philippines focused literature review of the benefits of removing obstacles to competition. This will include qualitative explanations and data (and where feasible quantitative) estimates of the potential benefits to consumers or business in the Philippines – for example, in terms of higher productivity and faster economic growth, or lower prices - arising from removing the restrictions.

***(v) Suggestions for revision of the manual***

Based on our experience with the pilot implementers, we may decide that some features of our draft manual require revision, extending or even perhaps downplaying

***The role of the local consultant***

As mentioned above she plays a key role at this stage. Here, we are fortunate in having secured a trained lawyer who is of course fluent in Filipino as well as English.

She will review and contribute to the work of the three pilots in the elaboration of recommendations to increase competition and improve economic performance; provide regular feedback and advice to the ministries or government bodies on the screening work carried out by them, as frequently at least every two weeks. She will also consult at least every two weeks with the Philippines Competition Commission about the analysis in the pilot reviews. She will also participate in meetings with stakeholders and the pilot ministries or government bodies to better understand the sectors of focus and potential competitive restrictions within the pilot areas of economic activity.

***Step 4 Preparation of workshop materials and delivery of workshop in Manila August-September 2019***

The planning of structure and detailed content for the workshop will be a team effort, but led by the senior consultants who have considerable experience in teaching and training. In the Philippines, the local contractor will accompany, assist and serve as local planner for the two-day workshop.

***Step 5 Documentation of pilot test results and plans for corrective action, October 2019***

The RFP section 3.1 specifies that our role is to assist the government agencies in producing the reports on the results of the actual assessment and drafting detailed action plans to take corrective measures. It remains to be seen precisely how this will be operationalized, but we understand that this will require clarity and support from us. The local consultant will be important here, but so too will be the senior consultants.

***Step 6 Finalisation on Manual, October - November 2019***



The senior consultants will have the ultimate responsibility for substantive content, but the copy editing, proof reading and final presentational formatting will be undertaken by Deller in conjunction with CCP's specialized administrators.

## Appendix A1 OECD's method for identifying and changing competition-restricting regulations

The OECD has developed a method for finding regulations that restrict competition and then developing alternative more pro-competitive regulations. The approach established in the Competition Assessment Toolkit<sup>24</sup> is derived from experiences and practices reported by delegations from around the world and intended for adaptation in any economy that is interested in the approach. The OECD's method of competition assessment uses a set of threshold questions (a "Competition Checklist") that show when proposed regulations may have significant potential to harm competition. This Checklist can help policymakers focus on competition issues at an early stage in the policy development process; the Checklist is not intended for application as a tick-the-box exercise but rather provides a set of substantive cues for identifying potential restrictions on competition. Based on extensive experience, the majority of regulatory requirements reviewed would not create a significant potential harm to competition. In those situations where harm to competition is most likely, an in-depth competition assessment is warranted, likely involving consultation with government technical experts on the regulation and government agencies with expertise in competition.

To help regulators address potential competition problems, the OECD's approach also identifies alternatives that may mitigate potential harm to competition while continuing to achieve the desired policy objectives. These options may range from a simple suggestion to delete a particular part of a regulation to the proposal of alternative regulatory approaches, such as those that may have worked successfully in other economies.

The Checklist approach is designed for use by officials with any specialisation and in the presence of minimal initial information. Minimal information is typically available at the beginning of a regulatory process, and certainly not enough for a competition agency style market definition. Furthermore, the approach is drafted for use by officials from many educational backgrounds, without any presumption of experience with competition policy, in order to ensure broadest possible access to it.

Since the introduction of the competition assessment methodology, it has been adopted in a number of economies both for *ex ante* review of regulations and *ex post* review. Both types of review are important to increase the beneficial operation of markets in economies.

Jurisdictions that have applied the competition assessment method to new regulations include, among others, China, the European Commission, Japan, Republic of Korea, Mexico, Russia, Spain and the UK. In most of these jurisdictions, the approach closely reflected that of the OECD Competition Assessment Toolkit.

In addition, major sectoral reviews of existing regulation have occurred in Greece, Mexico, Portugal and Romania.

According to the OECD Checklist, and based on industrial organization theory, there are four main themes under which potential restrictions to competition are categorised: (i) barriers to entry or exit, (ii) limits on the activities in which companies can engage, (iii)

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<sup>24</sup> <http://www.oecd.org/competition/assessment-toolkit.htm>

limits on the incentives to compete and (iv) limits on the choices and information available to consumers. Below, the elements of these themes are described in turn as they can be generally useful in the design of domestic systems for competition review of regulation.

Potential restrictions should be assessed based on whether there is a clear link between the restrictions and the achievement of specific policy goals, whether the restrictions are the minimum necessary for achievement of the goal, whether a reasoned analysis suggests the policy goal will be achieved by means of the restriction and whether the restrictions are limited to a finite time span via explicit regulatory provisions.

#### **A. Are there limits on the number or range of suppliers?**

Limiting the number of suppliers leads to the risk that competitive rivalry will be reduced. When the number of suppliers is constrained, the possibility of diminished competition (or collusion) among the remaining suppliers increases; consequently the ability of individual suppliers to raise prices can increase. A decline in rivalry can reduce suppliers' incentives to meet consumer demands effectively and can reduce innovation and long-term economic efficiency. While there are sound policy reasons why policy makers may sometimes limit the number or range of suppliers, the policy benefits of entry limits need to be carefully balanced against the fact that ease of entry by new suppliers can help prevent existing suppliers from exercising market power.

##### ***Grants of exclusive rights***

When the government grants an exclusive right to produce a certain good or provide a certain service, this action establishes a private monopoly. Often, the grant of an exclusive right frequently occurred in the context of a "natural monopoly": suppliers needed control over a long duration to encourage substantial investments in infrastructure that would be unlikely absent the incentives provided by exclusive rights. But exclusive rights are sometimes used in situations where the natural monopoly justification for them does not apply.

##### ***License or permit requirements***

When governments require a license or permits for a supplier to operate they are necessarily restricting entry. These restrictions may ultimately be well justified in many circumstances. For example, qualifications requirements can take the form of minimum standards for formal education and/or experience and may include good character requirements, as in medical and financial services. License or permit requirements are sometimes stricter than is necessary for consumer protection; they may unnecessarily reduce consumer choice and raise prices. Self-regulating professions will generally have a financial incentive to limit entry. So governments can usefully ensure that license and permit requirements are not, and do not become, broader than is necessary to achieve the desired regulatory objectives.

##### ***Limits the ability of some types of suppliers to provide a good or service***

At times, governments limit the ability of other types of suppliers to participate in a business activity. For example, some governments require that all real estate brokers provide a government-mandated set of services, and thus limit or prohibit provision of services by low-cost minimum-service brokers. Such restrictions are often excessive

because they unduly restrict the number of suppliers, reduce competition between suppliers and result in higher prices or less desirable contract terms for customers.

***Significantly raises the costs of entry or exit***

Regulations that raise the costs for suppliers to enter or exit a market will tend to reduce the number of participants in the market over time. Examples of this kind of regulation include rigorous product testing requirements and requirements to meet unnecessarily high educational or technical qualifications.

***Restricts the geographic flow of goods, services, capital and labour***

Regulations sometimes limit the flow of goods, services, and capital across jurisdictional boundaries. Such limitations, however, can artificially reduce the geographic area of competition for provision of a good or service. This may reduce the number of suppliers and potentially allow suppliers to exercise market power and increase prices.

**B. Are there limits on the ability of suppliers to compete?**

Regulation can affect the ability of suppliers to compete in a variety of ways, including through advertising and marketing restrictions, setting of standards for product or service quality, and controls over prices at which goods or services are sold. These limits can reduce the intensity and dimensions of rivalry, yielding higher prices for consumers and less product variety.

***Controls the prices at which goods or services are sold***

Governments often regulate prices in traditional monopoly sectors, such as utilities. In natural monopolies, price controls are probably helpful to consumers and serve as a counterweight to lack of consumer alternatives. But price controls can also sometimes be applied in situations where there are many potential suppliers to the same consumer. Minimum prices may prevent the operation of low-price suppliers who would provide best value for some consumers, while maximum prices may reduce supplier incentives to innovate and may, in the end, result in price coordination around the maximum price.

***Restricts advertising and marketing***

Governments and professional associations may be tempted to restrict suppliers' ability to advertise or market goods and services, for example to limit misleading advertising, maintain a quality image or avoid encouragement of inappropriate, socially undesirable or dangerous activities. Restrictions of this nature, when circumscribed to ensure they are not overly broad, can have significant social benefits, but advertising restrictions may be excessive on certain occasions and can, in particular, make competition from new entrants less likely.

***Sets standards for product quality that are above the level that some well-informed customers would choose (Checklist B3)***

Standard setting often delivers substantial benefits to consumers; its benefits vary by product. Standards can ensure that products are of the desired consumer quality and that new products from different suppliers are compatible. But standard setting can also provide undue advantages to some suppliers over others. Standards can be designed in ways that unfairly advantage a small number of suppliers, for instance by requiring a particular technology or by setting unduly strict standards. Alternatives are often

available to standards regulations. For example, when minimum standards are pursued for consumer protection reasons, it may instead be possible to require disclosure of certain product characteristics or provide a labelling/certification process that only some products would need to meet.

***Raises the costs of some suppliers relative to others***

At times, regulations raise costs for some suppliers more than others. Cost asymmetry can come from technology requirements, “grandfather clauses” that exempt current suppliers from a regulation but apply the regulation to new entrants and targeted subsidies available only to specific enterprises. Such arrangements can distort competitive relations within the industry by disproportionately influencing the costs to some suppliers.

**C. Are there reductions in the incentives for suppliers to compete?**

Regulations can affect suppliers incentive to act as vigorous rivals. Some regulations may have the effect of facilitating co-ordination between suppliers or may reduce the willingness, ability or incentive of customers to switch between suppliers. Profit or market share limits can restrict the potential reward from competing. Cartel-like behaviour may be more readily generated under self-regulatory or co-regulatory regimes, by increasing the sharing of supplier output and price information or by excluding an industry or sector from the reach of competition law.

***Self-regulation and Co-regulation***

When an association takes full responsibility for regulating the conduct of its members, the term “self-regulation” can be used. However, when government provides legislative backing to rules that are developed at least in part by the association, the term “co-regulation” can be used. Self-regulatory and co-regulatory structures can yield substantial benefits by ensuring that technical standards are appropriate and that standards advance with technology. However, these structures can have significant anti-competitive impacts. In particular, industry/professional associations often adopt rules that reduce incentives or opportunities for vigorous competition between suppliers of goods or services, such as rules that prevent discounting. Opportunities for government oversight of such activities is valuable.

***Requirements to publish information on supplier prices, outputs or sales***

Regulations that require market participants to publish information on their prices or output levels can significantly assist in the formation of cartels, since a key requirement for cartels to operate successfully is that participants in the cartel can effectively monitor their co-conspirators’ market behaviour. Such outcomes are dangerous because cartels raise prices. Alternatives exist to publishing all collected data. When information is gathered mainly for government purposes, there may be no need to publish it at all. When the purpose is to aid consumers or provide general statistics, aggregate statistics would support cartels less than supplier-specific statistics.

***Exemptions from general competition laws***

In many economies, particular suppliers or economic sectors benefit from exemptions from the general competition law. Where a substantial derogation from the general application of competition law exists there is a clear risk of cartels, pricing abuses and anti-competitive

mergers. When a compelling rationale exists for an exemption, governments might consider how to reduce the scope.

**D. Are there limits on the choices or information available to customers?**

The prior items focus on the supplier side of markets. But a key part of ensuring competitive markets work is making sure that the demand side works well. This happens when consumers are enabled to choose and have useful information for their choices.

***Limits on ability of consumers to decide from whom they purchase goods or services***

Regulations sometimes limit the choices to consumers about how they purchase. For example, a regulation may restrict customers to purchasing medical services locally. Limits on consumer choice can be harmful, because the suppliers who remain can have less incentive to satisfy consumers by delivering products of desired quality and price.

***Reduces the mobility of customers by increasing the costs of changing suppliers***

Regulations can at times affect “switching costs” – the costs borne by a consumer in changing from one supplier to another. These costs may be real monetary costs or implicit costs, such as inconvenience. Switching costs have a variety of possible sources. One is long contracts that tie assets to suppliers and make switching inconvenient, as with tying a phone number to a given service provider. The pro-competitive impact of reducing switching costs can be large; policymakers can reasonably seek to encourage policies that reduce switching costs for consumers.

***Fundamentally changes information required by buyers to shop effectively***

When governments deregulate, and introduce markets that have not previously existed, consumers make choices between products for which they might never have shopped in the past. One example when this occurs is with consumer purchases of electricity. When consumers obtain the choice over their supplier in new markets, they may find it difficult to evaluate offers and distinguish better offers from worse ones. In such circumstances, it may be better to accompany the creation of a new market with the creation of an information requirement that helps provide consumers with a reference point for comparing offers, considering their own circumstances.

## A2 Background on the Philippines economy, its competition regime & issues

### 1. The Philippine Economy

General Background<sup>25</sup>: The Philippines is an archipelago of at least 7,107 islands (formed into three main groups: Luzon, Visayas and Mindanao) with a population of 104.2m. Population density is high as despite being the 12<sup>th</sup> most populous economy with the 20<sup>th</sup> largest maritime area, its land mass is mid-ranking. The economy was a Spanish colony from the 16<sup>th</sup> century and was ceded to the US in 1898. The Republic of the Philippines was founded in 1946. The economy is at risk from volcanic activity and is the most exposed in the world to tropical storms.

Politics<sup>26</sup>: The Philippines is a democratic constitutional republic with a presidential system. The president is head of state, head of government and commander-in-chief. The president is elected for a single six-year term. The Congress comprises of: (i) the Senate where elected members have six-year terms, and (ii) the House of Representatives where elected members serve three-year terms. The economy is divided into 17 regions, 81 provinces, 145 cities, 1,489 municipalities and 42,036 'barangays' (wards).

There is a Supreme Court involving a Chief Justice and 14 associate justices, all of whom are presidential appointees. Overall the legal system is 'mixed' containing elements of both common and civil law.

President Rodrigo Duterte was elected in 2016 with 'inclusive growth' and poverty reduction as top priorities. Duterte has a reputation for taking a tough line on drugs, crime and corruption. The government also intends to spend \$165bn on infrastructure by 2022.<sup>27</sup>

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**Observation:** Maximising the value for money from this \$165bn will be key. Not only will general competition in the construction sector support this, there needs to be awareness about the potential for particular interests to siphon this money off via bid rigging and corruption etc. This concern is real given previous evidence of cartelisation in the cement sector.

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An article in The Economist<sup>28</sup> highlights that political parties are weak in the Philippines with parties often associated with a particular president and politicians frequently changing party to that of the newly elected president. President Duterte is part of the PDP-Laban party. The article quotes a study noting that 70% of representatives have other politicians in the family and another 2016 study as finding a correlation between areas with political dynasties and those with higher poverty.

Among ASEAN member states (excluding Myanmar), the Philippines ranks second to last in the quality of its institutions ahead of Cambodia but a long way behind Viet Nam. Also, in the 2016 Corruption Perceptions Index, the Philippines was ranked 101<sup>st</sup> out of 176 economies, although, this was an improvement on the position of 134<sup>th</sup> in 2010.<sup>29</sup>

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<sup>25</sup> CIA World Factbook, East and Southeast Asia: Philippines, available at: <https://www.cia.gov/library/publications/the-world-factbook/geos/rp.html>

<sup>26</sup> Wikipedia unless stated otherwise, available at: <https://en.wikipedia.org/wiki/Philippines>

<sup>27</sup> CIA World Factbook

<sup>28</sup> 'Post-partisan', The Economist, 6 October 2018.

<sup>29</sup> Philippine Competition Bulletin, Issue 5, October-November 2017, Philippine Competition Commission, available at: <https://phcc.gov.ph/pcc-official-newsletter-issue-2017-05-october-november-2017/>

The economy has experienced decades of armed insurgencies in the southern Philippines from the Moro ethnic group. In 2017 President Duterte declared martial law in the region around Marawi City where there was an ISIS-Philippines siege.<sup>30</sup>

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**Observation:** Issues around the integrity of the Filipino state are perhaps unsurprising given the economy's dispersed geographic nature. It also suggests there may be geographic as well as institutional barriers to establishing effective competition, with individual islands' markets being at risk of monopolisation by local firms.

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Statistical Overview of the Economy's Structure (2017 estimates)<sup>31</sup>:

GDP: \$313.4bn, 30<sup>th</sup> in world

GDP per capita (PPP): \$8,300, 151 in world

GDP composition by sector: agriculture 9.6%, industry 30.6%, services 59.8%

Labour force by occupation: agriculture 25.4%, industry 18.3%, services 56.3%

Government revenue is 15.7% of GDP, there is a budget deficit of 2.2% of GDP and public debt is 37.8% of GDP

Largest markets for exports: Japan 16.4%, US 14.6%, Hong Kong, China 13.7%, China 11%, Singapore, Thailand, Germany, Republic of Korea

Largest sources of imports: China 18.1%, Japan 11.4%, Republic of Korea 8.8%, US 7.4%, Thailand, Indonesia, Singapore

Economic Performance: The World Bank<sup>32</sup> notes the Philippines is a dynamic economy with an average annual growth of 6.3% between 2010-2016, following on from an average of 4.5% over 2000-2009. This growth has led to increasing urbanisation and a growing middle class. It is supported by a strong services sector focused on Business Process Outsourcing (for the US<sup>33</sup>), real estate, finance and insurance.

However, it is widely accepted that there are issues behind this high rate of GDP growth. The World Bank notes that investment in human and physical capital is required to maintain high growth and that despite declining poverty rates inequality is still a significant issue. A particular issue is that many Filipinos who leave agriculture end up in low-end service jobs, with under-employment near its long-run average of 18-20%. Also, while employment increased between 2006 and 2015, mean wages increased by only 4% over the same period. Unlike many South East Asian economies, manufacturing did not really take off in the Philippines.

The World Bank Country Partnership Strategy from 2014<sup>34</sup> views policy distortions, including competition, as limiting job creation, productivity and the translation of growth into poverty reduction.

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<sup>30</sup> CIA World Factbook

<sup>31</sup> CIA World Factbook

<sup>32</sup> <http://www.worldbank.org/en/country/philippines/overview>

<sup>33</sup> The IMF indicates anecdotal evidence suggests 80% of this business is with the US.

<sup>34</sup> <http://documents.worldbank.org/curated/en/328351468332470964/pdf/782860CPS0P132060Box385222B000UO090.pdf>



The extreme poor (those below \$1.25 per day) still formed 19.2% of the population in 2012, the reduction in this figure since 1991 is lower than in China, Indonesia and Viet Nam.

The lack of good job opportunities means there has been significant emigration of high-skilled individuals. 40% of each year's college graduates leave the economy and remittances form a notable element of household income.

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**Observation:** It is these pressures that lead to the policy emphasis on reducing inequality. This potentially suggests a focus for competition policy on those sectors which form a large element of the expenditures of the poor.

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The Philippines has free trade agreements with China, Republic of Korea, Australia, India and the European Free Trade Association, and is negotiating agreements with the US and EU.<sup>35</sup>

## 2. The Competition Regime<sup>36</sup>

A New Competition Law: The Philippine Competition Act (PCA) came into effect on 8 August 2015 and is the Philippines first comprehensive competition law. It replaces/supplements<sup>37</sup> a disparate range of laws with components that related to competition. The PCA has the objective of protecting consumer welfare and elements covering: (i) anti-competitive agreements, (ii) abuse of dominance, and (iii) anti-competitive mergers and acquisitions. Following the enactment of the law there was a two-year grace period for businesses to restructure operations, renegotiate agreements and amend practices.

No sectors are excluded from the PCA nor are state controlled firms when conducting commercial activities in competition with private firms.

The PCA gives the Philippine Competition Commission (PCC) the power to impose: structural remedies, behavioural remedies, injunctions, disgorgement and divestiture to address anti-competitive agreements/conduct, other competition concerns or to promote public welfare.

For an entity found to be part of an anti-competitive agreement or to have abused their dominance the fine for the first offence can be up to 100m Philippines Peso (PHP) (\$1.9m) and for the third or subsequent offences between 150-250m PHP (\$2.85-4.75m). Fines are tripled if the violation involves trade or the movement of basic necessities/primary commodities as defined by the Price Act. The PCA allows fine amounts to be increased every 5 years to reflect inflation. The fine amounts are far larger than the maximum 1m PHP fine under the Price Act. Follow-on private damages actions are allowed.

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**Observation:** While these fine amounts may be large relative to Filipinos' average earnings, one wonders whether they have much deterrence value for large firms, especially multinationals.

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<sup>35</sup> See Chapter 4 'Competition policy in the Philippines' in OECD (2016), 'OECD Investment Policy Reviews: Philippines 2016', available at: [https://read.oecd-ilibrary.org/finance-and-investment/oecd-investment-policy-reviews-philippines-2016\\_9789264254510-en#page3](https://read.oecd-ilibrary.org/finance-and-investment/oecd-investment-policy-reviews-philippines-2016_9789264254510-en#page3)

<sup>36</sup> Largely taken from 'Competition Law in Asia-Pacific: A Guide to Selected Jurisdictions, 2018', OECD/KOREA Policy Centre, available at: <http://www.oecd.org/daf/competition/Competition-Law-in-Asia-Pacific-Guide-2018.pdf>

<sup>37</sup> It is not entirely clear whether the PCA removes the previous laws' powers or is simply laid over them.

Criminal violations allow for imprisonment of 2-5 years and fines of 50-250m PHP. If a company is judged criminally liable, the prison terms go to the managers and directors, if they were knowingly and wilfully responsible for the violation. Interestingly these sentences represent a reduction compared to the Price Act where sentences could be 5-15 years.<sup>38</sup>

The OECD notes that the PCA allows for wide-ranging non-adjudicatory administrative remedies that are unusual compared to international practice. Also, requests are allowed for binding rulings to assess concerns over the legality of proposed business conduct, similar to US business reviews.

Anti-competitive Agreements: Criminal sanctions can only be applied to certain types of anti-competitive agreements.

Section 14 of the PCA distinguishes between 3 types of anti-competitive agreements:

(a) Per se prohibited agreements are those restricting price or other terms of trade or efforts to rig bids in auctions

(b) Those agreements with the object or effect to substantially prevent/restrict/lessen competition by limiting/controlling production, markets, technical development or investment, or those agreements that divide the market

(c) Those agreements with the object or effect to substantially prevent/restrict/lessen competition not covered by (a) or (b)

Agreements not falling into (a) or (b) that improve production/distribution or promote technical/economic progress may not be a violation of the PCA if consumers receive a fair share of the resulting benefits.

Section 35 of the PCA requires the PCC to develop a leniency programme for those involved in agreements of types (a) or (b) who volunteer information either prior, or during, a case's Preliminary Inquiry. The leniency programme that has been developed does not grant leniency to cartel ringleaders and an entity applying for leniency must have taken prompt action once it identified illegal activity. The PCC can also decide that granting leniency would be 'unfair to others'.<sup>39</sup>

Abuse of Dominance: In broad terms this follows EU practice by listing potentially unlawful behaviours. Section 15 of the PCA prohibits one or more entities from abusing their dominant position through conduct to substantially prevent/restrict/lessen competition. Such conduct includes: (i) selling below cost to remove competition, (ii) barriers to entry/growth, (iii) making a transaction subject to obligations that have no connection to the transaction, (iv) setting prices or other terms or conditions that "unreasonably discriminate between customers or sellers of the same products...where the effect may be to lessen competition substantially"<sup>40</sup>, (v) restrictions on leases or sales for products concerning where, to whom or in what forms products can be sold/traded or restrictions on dealing with competing entities, (vi) making the supply of one product dependent on purchasing other products with no direct connection to the main products, (vii) imposing unfair purchase prices on "marginalised service providers and producers", (viii) imposing an "unfair" purchase or selling price on competitors, customers, suppliers or consumers, and (ix) limiting production, markets or technical development to the prejudice of consumers.

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<sup>38</sup> OECD (2016)

<sup>39</sup> OECD (2016).

<sup>40</sup> OECD (2016).

Section 4 of the PCA defines a dominant position as “a position of economic strength that an entity or entities hold, which makes it capable of controlling the relevant market independently from any or a combination or the following: competitors, customers, suppliers or consumers.”

Section 27 of the PCA gives a rebuttable presumption of dominance if an entity’s market share in the relevant market exceeds 50%

Mergers: The approach follows that of the EU: control appears based on the concept of ‘decisive influence’ and market definition together with the substantial lessening of competition concept also follows the EU. Mergers or acquisitions may be exempt from prohibition if: (i) efficiency gains exceed any likely anti-competitive effects, or (ii) the acquired/merging entity faces actual or imminent financial failure so that the merger is the least anti-competitive arrangement for the failing firm’s assets. For these exemptions the burden of proof is on the merging parties

“acquisitions of shares solely for investment and not used to vote/exercise control or to lessen competition” are not prohibited.

A merger/acquisition requires notification when the aggregate annual gross revenues in, into or from the Philippines, or the value of the assets in the Philippines of the ultimate parent entity of the acquiring/acquired entities exceeds 1bn PHP (\$19m); and the value of the transaction (gross revenue/value of the assets) exceeds 1bn PHP. If the acquisition involves a partial shareholding a notification is required if the purchaser(s) end up with 35% of voting shares, or if they already own more than 35% the additional shares purchased take the shareholding above 50%.

In making assessments the PCC may consider things including: (i) the structure of relevant markets, (ii) entities’ market positions, (iii) actual or potential competition from other entities, (iv) the alternatives available to suppliers and users, and (v) any legal or other barriers to entry.

If agreements are in violation of the notification requirement, they are considered void and an administrative fine of 1-5% of the transactions value is applied. As of November 2017, there had been 125 merger notifications of which 103 had been approved and 11 were pending, suggesting 11 had been turned down.

Earlier Competition Law<sup>41</sup>: The PCA was enacted after 20 years of discussions around establishing a unified competition policy. A likely reason for the PCA being passed when it was, was that ASEAN had a target that all members would have a domestic competition policy by the end of 2015.

The OECD lists 30 laws prior to the PCA that contained competition law elements.<sup>42</sup> In particular, the 1992 Price Act prohibited cartels, but the cartel offence was never enforced. The Price Act includes extensive price monitoring/setting powers with the main enforcer being the Department for Trade and Industry (DTI). The Price Act includes prison sentences and fines.

While earlier laws did not include a merger regime based on competitive effects, banks, insurance companies and utility firms had to gain permission from the relevant sector regulator to merge. The requirement for a sector regulator to approve these mergers continues after the passing of the PCA.

A New Competition Commission: The PCC was established on 1 February 2016. It is a quasi-judicial body attached to the Office of the President for budget and policy co-ordination purposes. The PCC supersedes the Office for Competition (OFC) created in 2011 which sits under the Department of Justice (DoJ). The OFC retains the power to conduct preliminary investigations and to prosecute

<sup>41</sup> This information is from OECD (2016) unless otherwise stated.

<sup>42</sup> See Box 4.2, pg 2013, OECD (2016).

criminal offenses related to the PCA. However, the OFC can only file a criminal case after approval from the PCC. The DoJ has co-operation agreements with Japan and Australia.

The PCC has primary jurisdiction in the enforcement and regulation of all competition-related issues. If an issue involves both competition and non-competition issues the PCC retains jurisdiction, but the relevant sector regulators must be consulted. The PCC has the power to investigate, hear and decide cases relating to the PCA and other competition laws. It can file criminal complaints with the DoJ. The PCC can subpoena documents and witness and the PCC can fine anyone who obstructs investigations up to 2m PHP (\$38,000). Decisions by the PCC are appealable to the Court of Appeals for review on the merits.

The PCC consists of a Chairperson and 4 Commissioners who are all appointed by the President. They have security of tenure for a single 7-year term and can only be suspended or removed with 'just cause'. The PCC must include one economist and one lawyer. The Executive Director of the PCC is appointed by the Commissioners and the PCC reports to the Congressional Oversight Committee on Competition. In 2017 the PCC staff was 159. The PCC structure follows the US model. Fines do not form part of the PCC's budget with them instead going to the Treasury.

After the PCC initiates a preliminary investigation it has 90 days to determine whether there is no infringement or a full investigation is required. There is no time limit for full investigations.

The PCC has an explicit advocacy function within government to: (a) review economic and administrative regulations for whether they negatively affect market competition, and (b) advise on the competitive implications of government actions, policies and programmes. The PCC can issue advisory opinions and guidelines and submit special reports to Congress.

Prior to the PCC, the OFC established the Sector Regulators Council to share information, experience and to enable competition advocacy. This body managed to organise joint investigations.

Regarding international co-operation, in 2013 a 4-year World Bank project began to identify and address competition barriers in domestic trade and logistics. Apparently this included a study on product market regulation using the OECD's indicators. The OFC signed a memoranda of understanding with Japan's FTC in 2013 and Australia in 2014, with an expectation that 3 more would be signed in 2015. As of 2016, the Australian Competition and Consumer Commission was providing assistance to prepare an investigation manual.

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**Observation:** We should try to find out where things have reached re: applying the OECD's product market regulation indicators to the logistics sector and the investigation manual supported by the Australians.

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Consumer Protection: The Consumer Act 1992 is the key legislation, with the DTI having rule making and adjudicatory powers. The Department of Health deals with food, drugs, cosmetics, devices and substances; the Department of Agriculture deals with agricultural products; and the National Consumer Affairs Council provides co-ordination across these bodies. The National Telecommunications Commission also has consumer protection powers.

The OFC issued guidance on unfair business practices including: (i) gift certificates equivalent to cash; (ii) airline adverts missing relevant information; (iii) poor services from Internet Service Providers (ISPs); and (iv) ISPs imposing 'fair usage' requirements on 'unlimited' internet deals.

### 3. Reforms and Competition Issues<sup>43</sup>

Deregulation and Reform Overview: Large efforts around trade liberalisation, deregulation and privatisation occurred in the late 1980s and 1990s including the breaking up of monopolists in key sectors. The OECD judges restrictions on Foreign Direct Investment (FDI) to be high by regional and global standards. As of 2016 foreign equity restrictions existed in many non-manufacturing sectors and land ownership was prohibited for foreigners. Some of these foreign ownership restrictions are difficult to address as they are contained within the Constitution. These issues result from the ‘nationalist’ policies pursued by the government/ regime led by Ferdinand Marcos.

The obstacles to foreign entrants are particularly important given the business structures within the Philippines where there is a lack of medium-sized domestic firms to provide competitive threats to incumbents. For utilities, foreign equity stakes are limited to 40%. The PCC has sought amendments to the Public Services Act to define ‘public utilities’ subject to foreign ownership restrictions more narrowly.

The reform efforts in the 1980s/90s focussed on: financial services, telecoms, power, water, air transport and shipping. Continuing import restrictions reinforce the high concentrations in cement, iron, steel, glass and plastics industries.

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**Observation:** The OECD document summarised in this section is specifically focused on investment policies/opportunities; this document might over-emphasise the importance of barriers to foreign entry/foreign investors relative to other competition/regulatory issues?

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Using World Bank Product Market Regulation indicators the economy’s product markets appear less restrictive than large Asian peers such as China, Indonesia and India, but are more restrictive than similar economies in other parts of the world such as Chile, Poland and Romania.<sup>44</sup>

The OECD suggests a key reason for earlier reform efforts having limited impact is that there was a lack of supporting policies, in particular, the lack of an effective competition policy.

Greater detail on the issues in specific sectors and sector-specific reforms is provided in Section 4.

Challenges to Competition Policy – The OECD’s Assessment<sup>45</sup>: The OECD suggests that the political economy of the Philippines may hinder the effective operation of the PCA and PCC. The OECD argues the length time it took for the PCA to be enacted from initial discussions (c.20 years) reflects a small political elite fighting to protect their vested interests.

The OECD also expresses concern regarding particular elements of the PCA. First, it is concerned by an exemption for predatory pricing where the prices have been established “in good faith”.

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<sup>43</sup> Unless stated otherwise the material in this section is from OECD (2016).

<sup>44</sup> Philippine Competition Bulletin, Issue 5, October-November 2017, Philippine Competition Commission, available at: <https://phcc.gov.ph/pcc-official-newsletter-issue-2017-05-october-november-2017/>

<sup>45</sup> Based on the views expressed in OECD (2016).

Second, the OECD is concerned by the broad and vague nature of the PCC's powers to exempt entities from coverage by the PCA. Significantly, the exemption concerns the entity, not particular conduct. Also, an exemption can be granted if the PCC finds competition is not necessary to meet the objective behind the PCA. Furthermore, the PCC has discretion both to initiate the exemption and to end it. A potential constraint on the use of these exemptions is that they have to be made public. Nevertheless, the OECD's concerns are heightened by the exemption being included in the PCA following business lobbying and thus it being left to the PCC to resist corporate pressure for exemptions to be granted.

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**Observation:** While not stated explicitly by the OECD, it seems clear they are implying this would be an ideal legal tool to exempt particular politically favoured companies from the power of competition law. Being pessimistic the exemption mechanism's design appears open to explicit corruption if dishonest individuals were involved.

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Third, the OECD expresses concern about how the competition policy fits alongside the existing price control system.

Fourth, the OECD notes that the PCA has a broad public interest exemption, something which has fallen out of favour in many OECD economies, although, is more common in developing/transition economies. The PCA states the PCC's enforcement decisions must not be overzealous re: undermining productivity, innovation or the development of priority areas/industries. Even where intervention is favoured the intervention must take these factors into account. The PCA also makes reference to wider public policy objectives such as infrastructure investment and international competition.

Fifth, it is seen as a weakness that the PCA includes market share thresholds for defining dominance and that it is possible to vary these thresholds between sectors. Also, the PCA makes specific reference to not prohibiting dominant positions achieved before the passage of the law. Apparently the PCC also needs to consider whether the alleged anti-competitive conduct had a "reasonable commercial purpose" or was "a reasonable commercial response to the market entry or conduct of a competitor".

Sixth, the OECD found that the OFC investigation timelines were longer than envisaged suggesting a need for adequate staffing, as well as a prioritisation process to direct scarce resources.

The OECD indicates the Philippines had the worst ranking among ASEAN economies for the extent of market dominance and the effectiveness of anti-monopoly policy as of 2016. It suggests this is due to a lack of appropriate regulatory frameworks, inefficient regulators and infrastructure constraints.

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**Observation:** The overall message from the OECD is that while the PCA on paper is reasonable, the OECD has fundamental concerns about whether the PCC has sufficient political backing and other institutions are sufficiently strong to take on significant vested interests.

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Key concluding quotes from the OECD are:

Regarding the PCA: "Certain provisions of the Competition Act are likely to impede effective enforcement of the underlying objectives of the Act"

"Raising awareness of the Act and changing attitudes to established business practices in the Philippines will be a considerable challenge."

“The Commission should also adopt a competition assessment methodology, such as the OECD’s Competition Assessment Toolkit, to identify anti-competitive policies and regulations and propose less restrictive alternatives.”

A ‘National Competition Policy’ and Setting Priorities: The Philippine Development Plan (PDP) appears to be a significant domestic document. The 2011-16 Development Plan saw competition law as a tool to aid economic justice and something to support trade and economic development. More significantly, in the 2017-2022 plan<sup>46</sup> there is a whole chapter on competition policy. It highlights the need to ‘level the playing field’ for smaller firms relative to larger players. The plan also explicitly seeks to increase market competition and directly mentions that there a number of government agencies with dual regulatory and operational roles with resulting conflicts of interest, citing the Philippines Port Authority as a prime example.

The PDP appears to be frank in its assessment that the competition environment remains weak. It also notes that fragmented government regulatory functions pose threats to competition with agencies performing similar functions for different commodities operating in silos and many regulatory units decentralised to local government units.

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**Observation:** It is unclear whether this segmentation of regulation is purely seen as administratively inefficient or is seen as increasing the likelihood of regulatory capture/corruption.

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The PDP highlights that product market regulations are particularly restrictive, with the Philippines being ranked in a worse position than Colombia or South Africa. The PDP notes a challenge to competition is to ensure that State Owned/Controlled Enterprises (SOEs) compete on an equal footing with private firms. Apparently SOEs currently enjoy tax exemptions and other advantages.

The PDP mentions that there are limits on foreign equity ownership, e.g. in the mass media, and the ability of foreigners to practice in professions that potentially limit the benefits of belonging to ASEAN. Efforts to improve/remove regulation appear to fall under the heading ‘Project Repeal’. Regarding Project Repeal the PDP states restrictions on competition will be kept only if they are consistent with the public interest. The DTI’s 2016 Annual Report<sup>47</sup> notes that as of 28 November 2016, 30,125 regulations had been identified for review and 2,207 had been reviewed. Of those reviewed, 11 were repealed, 177 amended, 18 consolidated, 896 delisted and 1,105 retained.

Regarding prioritisation, the PDP suggests selection should take into account: (i) spillovers in other markets, (ii) creating a regulatory environment supportive of competition, and (iii) the feasibility of reform. Furthermore, priority sectors should be identified where the impact on consumer welfare and market efficiency is expected to be largest. The selection of priority sectors will consider the potential for improvements in the variety and quality of products essential for poverty reduction and sectors that can generate new employment opportunities. Following this, in agriculture, competition in markets involving key production inputs (e.g. fertiliser and seeds) will be analysed.

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<sup>46</sup> See Chapter 16 ‘Leveling the Playing Field through a National Competition Policy’, Philippine Development Plan 2017-2022, National Economic and Development Authority, available at: <http://pdp.neda.gov.ph/wp-content/uploads/2017/01/PDP-2017-2022-07-20-2017.pdf>

<sup>47</sup> Department of Trade and Industry Philippines, ‘2016 Annual Report’, available at: <https://drive.google.com/drive/folders/OByoFpFM9THk1NmhxR1JlazZ3aIE>

As the competitiveness of the tradable goods sector depends on competition in supporting service/goods markets, enhancing competition in services, especially telecoms and power, will be prioritised.

The PDP chapter on competition also proposes two new acts: (i) the Amended Public Service Act to ease/lift restrictions on foreign ownership, and (ii) the Regulatory Management System Act to make the regulatory environment more coherent and to provide a central body to ensure an evidence-based approach is used to formulate laws, rules and regulations.

The PCC's 2017 Annual Report<sup>48</sup> sees "mainstreaming competition policy in government" as a key objective and building partnerships as important. For example, an agreement has been made with the Commission on Audit to ensure effective investigations where there is bid-rigging in government procurement.

Looking forward the PCC intends to issue guidelines regarding joint ventures, public-private partnerships and the use of remedies under the PCA. The 2017 Annual Report lists the following as priority sectors for attention by the PCC: rice, meat and poultry, pharmaceuticals, land transportation, air transportation, rural finance, digital commerce, retail and telecoms.

The OECD<sup>49</sup> noted specific issues to focus on should include: (i) interconnection between the incumbent and entrants in telecoms, (ii) the focused implementation of competition in the retail power market, (iii) the price control system should eventually be repealed except to solve restricted market failures, and (iv) the Philippines Port Authority should be reformed to remove its conflicts of interest.

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**Observation:** It would be good to find out the extent of progress re: resolving competition issues highlighted by the OECD and Filipino organisations. Where have there been successes and where have things proved too difficult?

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Price Control Regime: In June 2015 the OFC published a review arguing that the control of retail prices should be restricted to the narrow justification for the existing price control mechanism: to control prices when natural disasters/domestic emergencies occur.

The Price Act is designed to cover necessities and commodities but additional items can be added to the list. As of 2016 the list included items like bottled water, liquefied petroleum gas and noodles. Prices are co-ordinated by the National Price Co-Ordination Council which includes manufacturing/retail representatives as well as government departments. The Council publishes suggested retail prices for commodities every 3 months as well as suggested retail prices for seasonal items. The DTI monitors prices and if they are found to be outside an acceptable range businesses must justify their costs. The DTI and politicians regularly issue warnings for products to remain within price caps.

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<sup>48</sup> See <https://phcc.gov.ph/pcc-annual-reports/>

<sup>49</sup> OECD (2016).



In December 2014 the DTI said retail prices for basic commodities should fall by at least 3% as petrol prices had fallen 30%. The OECD has significant concerns about this price control regime. In a 2015 report the OFC noted that the retail price control mechanism had failed to detect/stop price hikes for rice, garlic or onions, all of which were being investigated by the DoJ for possible collusion.

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**Observation:** The OECD's description of the price control regime makes it appear highly suspect. While hopefully unintentional, the regime sounds like an ideal mechanism for cartelists to detect cheating. One imagines the problem for the PCC is that taking on such an establish regime requires significant political capital. As a new competition authority the PCC's 'prioritisation' process may initially be to focus on 'low hanging fruit'. The OECD itself suggests the OFC generally skirted around tackling the strongest regulatory barriers head-on.

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More recently, when the President declared a state of domestic emergency in Mindanao due to violence, the DTI enforced the Price Act by ordering a price freeze on basic necessities in areas under 'automatic price control'.

Looking at the DTI's Prosperity Plan 2022<sup>50</sup> it appears that it is policy to keep the price control regime in place until 2022. The document seems to imply that the target for this price control regime is to keep increases the prices of non-agricultural basic and primary commodities below the general inflation rate.

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**Observation:** This target re: the general inflation rate contains the perverse incentive that it could be met by ensuring a particularly high rate of inflation for those products not covered by the price control regime.

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The PCC/DTI are considering an alternative to formal price regulation that could involve encouraging the use of the DTI's ePresyo or Online Price Monitoring System platform by consumers. This is an online listing of prevailing prices of basic necessities/commodities allowing comparisons of prices across brands/retailers.

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**Observation:** It is interesting that the government seems to be running/setting up a price comparison website for basic necessities. If the pricing data could be accessed for research, it would seem a very interesting dataset to see the potential impact of policy changes. It could also be interesting just to see the extent of 'bunching' by firms around the suggested retail prices.

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State Owned Enterprises<sup>51</sup>: There are 104 SOEs across eight sectors: (i) government financial institutions, (ii) trade, regional development and tourism, (iii) education and culture, (iv) gaming, (v) energy and materials, (vi) agriculture, fisheries and food, (vii) utilities and communications, and (viii)

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<sup>50</sup> Department of Trade and Industry Philippines, 'Prosperity Plan 2022: Trabaho, Negosyo, Kabuhayan at Konsyumer', available at: <https://drive.google.com/file/d/1WmKLLnMXcfPKj6yhdesVf3eE5WxEoR02/view>

<sup>51</sup> See OECD (2017), 'Disclosure and Transparency in the State-Owned Enterprise Sector in Asia: Stocktaking of National Practices', available at: <http://www.oecd.org/countries/philippines/Disclosure-and-Transparency-in-SOE-Sector-in-Asia.pdf>

healthcare. These SOEs sit under a co-ordinating agency called the Governance Commission for Government Owned/Controlled Corporations.

#### 4. Sector Specific Details<sup>52</sup>

Sugar: Controlled by the government's Sugar Regulatory Administration that has a production sharing arrangement between planters and millers. Tariffs protect the market resulting in control by integrated domestic firms. The OECD notes high domestic sugar prices despite a worldwide glut and that this knocks onto the competitiveness of food processing industries.

Garlic and Onions: In September 2014 the President instructed the OFC to investigate after a 75% increase in the garlic price over a single year. The investigation found the majority of import permits went to a group of 4 individuals who then ran a cartel. The OFC's report called for a government instituted 'action team' to be disbanded as it was contributing to the problem. The National Bureau of Investigation filed criminal charges against 119 individuals under the Anti-Graft and Corrupt Practices Act. In January 2015, a report found the same practices by the same group were being used to cartelise the onion industry and recommended the same policy responses.

The OFC proposed the commodity sector be prioritised for competition-related studies and a draft Administrative Order for the President was prepared directing the heads of all government agencies with some sector regulation remit to conduct sector studies to determine potential competition reforms.

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**Observation:** The garlic and onion cases suggest trade protection, cartel behaviour, poor regulation and potential corruption may well overlap rather than being distinct issues. It also shows the benefits of investigating related industries when a cartel is found. It would be interesting to know the outcome of the OFC's call for a focus on competition in commodity sectors.

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Glass: 3 firms control 84% of the industry's value added. The flat glass subsector involve only one domestic producer.

Cement: Historically cartelised via production quotas and the allocation of geographic markets, this collusion is aided by the high transport costs between islands. The sector gained protection from imports between 2000 and 2004.

Electricity: 2001 Electric Power Industry Reform Act allowed competition in generation while retaining regulation of transmission and distribution. The act made the Energy Regulatory Commission the principal regulator. No firm may operate more than 30% of installed generation capacity, although, cross ownership between generation and distribution firms is allowed.

However, the electricity sector in 2016 was still dominated by the old monopolists: National Power Corporation in generation, Transco in transmission and Meralco in distribution. The press contains lots of headlines re: power shortages and affordability. A 2006 investigation into wholesale electricity market price manipulation found insufficient evidence and an investigation into price fixing by generation companies beginning in December 2013 had yet to conclude in 2016.

The PDP notes that the regulation of retail prices affects incentives for electricity firms and that the Philippines has some of the highest electricity prices in Asia. An issue may be that the power grids of

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<sup>52</sup> Based on OECD (2016) unless stated otherwise.

Luzon, Visayas and Mindanao are not integrated. However, government officials suggest that the high cost of electricity in the Philippines (relative to other ASEAN economies) is because only the Philippines and Singapore do not subsidise energy prices.

Water: Privatised in 1990.

Telecoms: Prior to liberalisation in the 1980s the Philippine Long Distance Company was a private monopolist. Mobile services were liberalised in 1992 and regulation was separated from operations in 1995. Establishing a new fixed network is challenging as a franchise (usually 25 years) requires approval by both houses of Congress. By 2001 there were 7 players, however, competition is seen as lacking due to high concentration. Interconnection between the incumbent and entrants remains a regulatory challenge.

In mobile the former monopolist has a 65% market share and another firm, Globe Telecom, has a market share of 30%. The old monopolist controls 60% of broadband and 80% of the fixed line sector after being allowed to buy Digitel in 2011.

In 2017 the PCC made a number of policy recommendations to Congress regarding telecoms legislation. In particular it recommended prohibiting 'exclusive arrangements' in the 'Free Internet in Public Places Act'. There is also legislation before Congress for mobile number portability, spectrum management reform and to require firms with substantial market power to ensure fair, reasonable and non-discriminatory access to their services. This last piece of legislation also aims to allow the PCC to investigate cases of anti-competitive cross-subsidisation.

Air Transport: Domestic air travel largely involves duopolists on major routes and monopolies on minor routes. International air travel is heavily regulated, lacking a full open skies policy.

The OFC conducted a sector study into reforming Customs, Immigration and Quarantine officers' overtime charges. The OFC investigated following complaints from business and supported reforms leading to 24/7 operations and supposedly saving the aviation industry 400m PHP annually.

Sea Transport: The Philippines Ports Authority is seen as having significant conflicts of interest being a regulator, operator and developer of ports. The July 2015 Cabotage law lifted restrictions on foreign shipping operators.

The OECD highlights the importance and inefficiency of the domestic logistics industry by noting that logistics account for 24-53% of wholesale prices in the Philippines compared to 20% in other economies. It also highlights a World Bank study showing it is cheaper to send a shipping container via a third international port than directly between two major Filipino ports using domestic shipping lines. The OECD notes that dealing with transport costs could lower consumer prices while increasing the incomes of farmers.

Existing laws limit entry to the sector. For example, ship repair must be done in the Philippines. In 2014 the Maritime Industry Authority made applying for licences easier and eliminated a requirement that

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**Observation:** It would be interesting to know the extent to which issues in the ports, shipping and logistics sectors are explicitly used as a facilitating practice for cartels and/or local monopolies. Concern might be heightened if large conglomerates routinely contain transport operators.

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incumbents should be notified of market entry. The Foreign Ships Co-Loading Act now allows foreign ships to serve local routes for import and export cargo.

The Philippines Port Authority is an SOE attached to the Department of Transportation and Communications. It supervises 119 self-owned ports and regulates 500. It approves increases cargo handling rates and receives 10% of domestic and 20% of foreign handling rates. The Port Authority has previously restricted cargo handlers to use specific piers and work for specific shipping lines. OECD suggests that the Port Authority's regulatory and operational roles should be separated since it claims the authority has used its regulatory powers to delay/refuse permits for the construction and operation of private ports.

The OFC conducted two sector studies in the maritime sector regarding harbour pilots and tug boats. Regarding harbour pilots, in 2014 it was found that there was monopolisation, conflicts of interests re: the appointment of pilots and there was a lack of transparency regarding pilot's financial transactions. The OFC recommended a Presidential Executive Order so that: (i) pilots no longer need to belong to the pilots' association, (ii) pilots could set competitive rates, (iii) limits on the number of pilots per area are removed and (iv) all pilots must submit financial records to the Ports Authority. As of 2016 the

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**Observation:** That the Port Authority receives a percentage of handling rates seems to create a massive incentive problem: it would benefit from increased revenues if cargo handling involved monopolies/cartels.

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proposals were still under consultation.

The 2015 investigation into tug boats found exclusive contracts between tug providers and ports, potential cartel behaviour and opaqueness regarding pricing. The OFC recommended to remove entry barriers and exclusive contracts, develop regulations around unfair business practices and increase the transparency of prices.

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**Observation:** It is interesting that three of the OFC's completed sector studies were into customs/immigration, harbour pilots and tug boats. Naively, all three appear to involve relatively small sectors, but sectors which might be a nuisance to larger business interests. The selection of these sectors could be consistent with trying to show to business that competition enforcement can be beneficial to them.

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Downstream Oil: The Downstream Oil Industry Deregulation Act 1998 was passed in response to 1992 power supply crisis and ended the government's ability to set/regulate oil prices. It also prohibited cartels in the sector. In November 2011 a cartel case against liquefied petroleum gas dealers was filed but as of 2014 the outcome was unclear.

Banking: In October 2013 the OFC cautioned banks about making industry-wide adjustments to ATM fees and charges. Increased transparency was sought to ensure co-ordination was not occurring.

Agriculture: Historically agricultural policy has been steered to self-sufficiency in rice rather than towards farm productivity/profitability. An OECD report notes that price support for rice increases the

consumer price of rice, possibly increasing the number of undernourished people by 3.2m.<sup>53</sup> The OECD recommends diversification towards higher value crops. Farm productivity and investment are seen as being held back by insecure property rights and restrictions on land transactions.

The OECD reports that policy transfers from consumers and taxpayers averaged 25% of gross farm revenues in 2012-14 compared to an OECD average of 18%, the Philippines is the highest amongst all emerging economies covered by the OECD. Similarly, this support was equivalent to 3.3% of GDP compared to an OECD average of 0.7%.<sup>54</sup>

Healthcare: In 2017 the PCC's Competition Enforcement Office closed an administrative investigation in the ophthalmological services sector after the parties agreed to terminate the alleged anticompetitive practice. The OECD noted that there had been suggestions of cartel behaviour in the pharmaceutical drugs sector.

Construction: The DTI's 2016 Annual Report notes that, "we saw an equally compelling need to strengthen our construction industry to ensure that it can support the Administration's Build. Build. Build program, which is the crux of Duterteonomics." It is expected that Public-Private Partnerships will be central to the delivery of the government's ambitious infrastructure goals.

The Construction Industry Authority of the Philippines has a mandate to promote, accelerate, and regulate the development of the construction industry to meet domestic goals.

Foreign involvement in the sector is currently restricted by a number of factors. First, in public procurement there is a 15% margin of preference for local suppliers, which the PCC hopes will be reviewed under the Government Procurement Reform Act. Second, there is a need to fully implement a 2017 regulation which eases/lifts the restrictions on foreign participation for the construction and repair of locally funded public works.<sup>55</sup>

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<sup>53</sup> See 'Further agricultural reforms in the Philippines would help reduce poverty and improve food security', OECD, 7/4/17, available at: <http://www.oecd.org/countries/philippines/further-agricultural-reforms-in-the-philippines-would-help-reduce-poverty-and-improve-food-security.htm>

<sup>54</sup> See OECD (2017), 'Agricultural Policies in the Philippines', OECD Food and Agricultural Reviews, available at: [https://read.oecd-ilibrary.org/agriculture-and-food/title-agricultural-policies-in-the-philippines\\_9789264269088-en#page3](https://read.oecd-ilibrary.org/agriculture-and-food/title-agricultural-policies-in-the-philippines_9789264269088-en#page3)

<sup>55</sup> National Economic and Development Authority, 'Socioeconomic Report 2017', available at: [http://www.neda.gov.ph/wp-content/uploads/2018/03/SER-2017\\_as-of-June-2018.pdf](http://www.neda.gov.ph/wp-content/uploads/2018/03/SER-2017_as-of-June-2018.pdf)

# Appendix 2

## The Pilot Sectors

### 3.1 Competition in the Philippine Food Manufacturing Sector

#### Introduction and Background

The food (and beverage) manufacturing sector is a particularly broad and diverse one. The sector is important in three key ways: (i) directly as a substantial element of manufacturing in the Philippines, (ii) as a provider of incomes to farmers by purchasing their output, and (iii) as a key stage in determining the cost of food to end consumers.

Manalili et al (2017) quotes the industry as having a value added of US\$27bn in 2013 and accounting for almost half of all the manufacturing sector's gross value added in 2014 (manufacturing in general is recognised as a weak spot in the Philippine economy). Manalili et al also quote processed foods as accounting for 57% of the Philippines' US\$3.55bn of food exports in 2012.

The sector's importance explains the historically high level of state intervention, in particular, reflecting the political salience of food products and an attempt to use the sector as a springboard to 'move up the value chain' in the development of industries beyond simply the production of agricultural commodities. Clarete and Villamil (2015) explain that a central challenge in achieving development objectives is overcoming co-ordination failures where investments at different stages of the supply chain are reliant on each other occurring simultaneously.

In certain 'strategic' sectors (most notably sugar and rice) significant tariff barriers and state intervention remains, while more generally the food manufacturing sector has had to adjust to steady reductions in the tariff protections afforded to domestic agricultural and food products in relation to ASEAN membership as Clarete and Villamil (2015) note. Regardless of development objectives, there is clear need for regulation in the food sector to ensure safety and the accuracy of product information given to consumers.

For statistical purposes the Filipino food manufacturing industry is split into the following categories: (i) processed and preserved meat, (ii) processed and preserved fish, crustaceans and molluscs, (iii) processed and preserved fruits and vegetables, (iv) manufacture of vegetable and animal oils, (v) manufacture of dairy products; (vi) manufacture of grain mill products, starches and starch products, (vii) manufacture of other food products, and (viii) manufacture of beverages.

#### Structure of the Industry and Competition

Regarding the food processing sector Manalili et al (2017) report that 90% of local food manufacturing is for the domestic market and that around 80% of total output is accounted for by large firms. As of 2013, Manalili et al (2017) state that food manufacturing involved 1,537 registered establishments employing almost 206,000 people. In terms of employment, 'other food products' is the most significant subsector with 86,000 employees in 2013. In terms of productivity, the dairy subsector appears notable with 9,300 employees resulting in revenue of Php 182bn (in comparison 'other food products' had revenue of Php 233bn).

Regulatory Authorities: The Food and Drug Administration (FDA) is the overall Food Safety Regulatory Agency in the Philippines, in particular for processed and prepackaged foods, but the situation is complicated by a number of industry specific regulators. The FDA's main regulatory function is to licence food establishments and register the products produced by these establishments as meeting safety standards. As one would expect imports are also required to meet local standards.

Manalili et al (2017) state that beyond the FDA there is the Bureau of Animal Industry (for food derived from animals e.g. eggs), the National Dairy Authority, the National Meat Inspection Service, the Bureau of Fisheries and Aquatic Resources, the Bureau of Plant Industry (for plant based products), the Philippine Coconut Authority, the Sugar Regulatory Administration (SRA) and the National Food Authority (NFA) (for rice and other grains). Many of these bodies have the dual role of performing consumer protection duties while also promoting the development of the relevant industry. The Food Safety Act 2013 (RA 10611) is significant in specifically defining a 'Food Regulatory Safety System' combining standards with inspection, monitoring and data collection efforts.

Beyond the complexity of having multiple regulators, Manalili et al (2017) note the challenge of complying with regulations is heightened by the limited regulatory resources to issue and monitor licences and the fact that the office locations of the main regulatory agencies do not match the distribution of food producers across the economy. Llanto et al (2017) note this limited geographic coverage could be significant given the need for new food plants to be inspected, and these challenges representative a potential obstacle to entry by legitimate businesses. A similar problem is identified with the capacity and location of food testing laboratories.

#### Potential Competition Issues in Specific Subsectors

*Rice* Before sale to end consumers rice has to be milled. Briones (2018) questions the continued role of the NFA as an import monopoly controlling the quantity of rice imported and, hence, the extent of foreign competition for domestic producers. Briones notes that domestic rice prices have not followed a global downward trend and in January 2018 the domestic wholesale price was 66% higher than the world price. The Philippines' quantity restrictions required specially negotiated exceptions to WTO rules and since the expiry of the final possible exception in 2017 the Philippines has technically been breaching its WTO obligations. Aside from quantity restrictions, Clarete and Villamil (2015) also note that in 2015, even for rice from ASEAN economies, a tariff of 35% was applied.

Regarding the functioning of domestic competition, Briones and Pena (2015) cite a range of studies suggesting a competitive market between farmers and local millers with farmers having a range of selling options and prices appearing integrated across geographic locations and responding quickly to cost fluctuations. Highlighting the limited buying power of mills, Briones and Pena note 8,288 were operating in 2013. Although, Briones (2019) indicates 80% of mills are small 'village mills', while a smaller number of much larger commercial mills account for 69% of output.

Briones (2019), writing for the PCC, takes a slightly more nuanced approach view regarding competition noting that departures from competitive conditions cannot be ruled out when rice stocks are low. Briones (2019) also flags that there have been frequent allegations of a rice cartel operating even if little evidence has been found. However, he cites evidence that the margin between farm rice and wholesale milled rice is noticeable higher in the Philippines than in Thailand (\$67 vs \$16 per ton) and that up to 45% of this difference in margin could be attributable to market power. As a possible entry barrier, Briones (2019) explains that at all stages of the rice value chain foreign investors can own no more than 40% of any operating entity.

*Sugar* Aldaba (2008) explains that the SRA operates a production sharing system between planters and millers which potentially removes the incentive for millers to invest in higher productivity plants. Also, Aldaba cites a 1998 study describing an oligopoly structure in a vertically integrated industry where 7 firms account for 38% of raw sugar production, 40% of milled sugar production and 70% refined sugar production.



*Coconuts* Manalili et al (2017) highlight that Coconut derived products are a significant Filipino export, with the economy being a leader in virgin coconut oil, coco sugar and coco water production. Clarete and Villamil (2015) state that the Philippines accounted for 45% of world crude coconut oil supply in 2012. PD 1468 grants the Philippine Coconut Authority significant powers to 'rationalise' the coconut milling industry using mechanisms including imposing price floors and/or ceilings for exports and determining maximum quantities for particular periods and markets. Domestically palm oil provides an alternative to coconut oil, albeit one involving significant imports from Malaysia.

*Processed Fruit and Vegetables* There are multinationals in this subsector led by Del Monte Philippines and Dole. In particular, Manalili et al (2017) cite Euromonitor figures indicating that Del Monte Philippines has a strong, possibly dominant position, accounting for 44% of the value share in this sub-sector in 2014, of which 75% was attributable to shelf-stable fruit in 2015.

*Other Food Products* While hard to define, Manalili et al (2017) suggest it is dominated by a small number of companies mentioning Unilever and Nestle in particular.

*Beverages* Manalili et al (2017) indicate the sector is dominated by multinationals like Coco-Cola and Pepsi, although, transport costs imply local production by multinationals. The sector is a particularly large industrial user of sugar with industrial use accounting for 70% of sugar consumption in the Philippines in 2015 and the beverage sub-sector accounting for 57% of industrial sugar consumption. As such, the industry is heavily affected by the regime of import allocations imposed by the Sugar Regulatory Authority and a future tax on sweetened drinks.

### **Food Retailing**

USDA (2019) puts the value of the food retail industry at \$47.4bn and explains that in the Philippines food retailing remains unconsolidated with traditional small independent stores still accounting for the majority of the market. Given the size of the Philippines, the number of outlets owned by the largest supermarket chain appears relatively low, especially as they include convenience stores: Supervalve Inc. (645), Puregold (289) and Robinsons/Rustans (575+). USDA (2019) reports that supermarkets account for around 20% of the market and that a key growth area is in smaller convenience stores, for example, there are 2,753 7-Eleven branded stores in the economy. The modern grocery stores are located primarily in Manila and the main regional cities.

Digal (2001) describes how in the 1990s the Philippines' food retailing sector evolved in way linked to the economy's overall development with the shift from 'wet' markets to supermarkets being linked an increasing emphasis on convenience and increasing car ownership among consumers. Digal also suggests that as supermarket chains grow they alter the nature of the interaction between the retail and manufacturing sectors as automated ordering systems develop that favour strategic partnerships with large manufacturers. Significantly, the retail sector was only fully liberalised and opened to foreign investors in 2000.

### **General Issues with Food Supply Chains**

OECD (2014) makes clear that once one considers competition in the food supply chain as a whole rather than at an individual stage in the supply chain it is difficult to draw generalizable conclusions. This difficulty results from the inter-play of horizontal and vertical effects that often lead to forces operating in different directions. For example, mergers between retailers on the one hand may raise prices to end consumers as competition between retailers is reduced, but this effect may be offset by consolidated retailers having increased bargaining power relative to food manufacturers which could reduce retailers' input costs.

Not only do vertical and horizontal factors combine, the real world of food retailing contains a combination of complexities which are difficult for theoretical models to consider in combination. In particular, supermarkets stock a myriad of different differentiated products where increasingly retailers will offer an 'own brand' version of popular products and may require payment from suppliers for prominent shelf space. However, a relatively settled issue is that shoppers' access to competing retailers is a question to be assessed at the local rather than domestic level.

OECD (2014) notes that the stylised fact driving concern about possible competition problems in food supply chains is that the spread between farm prices and final retail food prices has been increasing over time in developed economies. This has coincided with a period of increasing consolidation both in food manufacturing and retailing. However, it is not clear that this reflects anti-competitive behaviour or merely increased value added at intermediate stages of production, which could relate to changing marketing and consumer behaviour. Equally, it may be politically difficult to ignore this increasing spread when food purchases form a significant element of household expenditure and on average across the OECD food price inflation was almost double that of non-food inflation between 2005 and 2011 (21.7% vs 11.4%) according to OECD (2014). In less developed economies, the key differences to the above story are that food will form a higher percentage of households' budgets while supermarket chains are likely to be less influential.

In response to these issues OECD (2014) notes that, if policy interventions have been pursued, they generally fall into two categories: (i) increased price transparency, and (ii) codes of conduct (potentially with monitoring) around the treatment of suppliers, especially farmers and small producers who tend to lack bargaining power.

## References

- Aldaba, R.M. (2008), 'Assessing Competition in Philippine Markets', Discussion Paper No. 2008-23, Philippine Institute for Development Studies
- Briones (2018), 'Options for reform of the National Food Authority', Policy Note No. 2018-09 (October 2018), Philippine Institute for Development Studies
- Briones, R.M. (2019), 'Competition in the Rice Industry: An Issues Paper', Philippines Competition Commission Issues Paper No. 1, Series of 2019
- Briones, R.M. and B. Pena (2015), 'Competition Reform in the Philippine Rice Sector', Discussion Paper No. 2015-04, Philippine Institute for Development Studies
- Clarete, R.L. and I.R.G. Villamil (2015), 'Readiness of the Philippine Agriculture and Fisheries Sectors for the 2015 ASEAN Economic Community: A Rapid Appraisal', Discussion Paper No. 2015-43, Philippine Institute for Development Studies
- Digal, L.N. (2001), 'An Analysis of the Structure of the Philippine Food Industry', Philippine Journal of Development, Number 51, Volume XXVIII, No. 1
- Llanto, G.M., K.P. Ortiz and C.A.D. Madriaga (2017), 'Reducing Unnecessary Regulatory Burden: The Philippine Tuna Industry', Discussion Paper No. 2017-13, Philippine Institute for Development Studies
- Manalili, N.M., S. Simondac, I.V. Valenton and M.M.Q. Pangilinan (2017), 'Scoping Study on Reducing Unnecessary Regulatory Burdens in the Philippine Food Manufacturing Industry', PIDS Discussion Paper No. 2017-23, Philippine Institute for Development Studies

Organisation for Economic Co-operation and Development (OECD) (2014), 'Policy Roundtables - Competition Issues in the Food Chain Industry 2013', DAF/COMP(2014)16, OECD: Paris, 15 May 2014

US Department of Agriculture (USDA) (2019), 'Philippines – Retail Foods – 2019 Food Retail Sectoral Report', GAIN Report No. 1913, 7 August 2019

## 3.2 The Pharmaceuticals Sector in the Philippines: Structure and Competition Issues<sup>56</sup>

### Introduction

Given that medicines save lives, the importance of the pharmaceuticals sector is clear. In 2018 the pharmaceuticals market was valued at PhP 176bn and was growing at 8.3% per year. In the Philippines pharmaceuticals sector key issues relate to the medicine choices of gatekeepers and consumers. These issues arise because the private provision of healthcare is more significant in the Philippines than in many developed nations other than the US. Private citizens pay directly for a high proportion of healthcare costs: in 2014 56% of health expenses were 'out-of-pocket', a level similar to Singapore and higher than Viet Nam and Indonesia. Also, between 1994 and 2014 the proportion of health spending accounted for by the government fell from 37% to 17%. This means that, firstly, the price of medicines are particularly important to individuals and their health, and, secondly, 'consumer choice' over medicines has more importance than in systems with greater government funding/purchasing

More generally, the key stages in pharmaceuticals supply are: (i) R&D, (ii) manufacturing, (iii) distribution of finished medicines, (iv) the choices of gatekeepers i.e. doctors, and (v) the choices of patients (end consumers). Little or no R&D occurs in the Philippines and manufacturing appears less than in other economies. As in all economies all stages of the supply chain are subject to heavy regulation. There are also potential competition issues in the Philippines relating to the distribution of finished medicines, beyond the issues at stages (iv) and (v).

In evaluating the pharmaceuticals sector the end policy objective is increasing access to effective medicines as this should save/improve lives. The challenge is doing so when medicines are expensive and consumers pay for them directly.

Competition from generics should reduce drug costs and so improve access to medicines. However, there are two qualifications to this point: (a) generics need to be available through distribution channels that reach end consumers, and (b) consumers (or their representatives) must choose the cheaper generics. It appears that in the Philippines many consumers do not purchase the cheapest version of a bioequivalent drug, hence, price competition is weaker than the number of generic competitors might suggest. Also, for those on low incomes even the cheapest version of a drug may be unaffordable, in other words, improving competition in the pharmaceuticals market is likely to be insufficient in resolving the full issue of access to medicines.

### Structure of the Pharmaceuticals Sector

In 2016, 87.2% of the market was supplied through retail outlets and 12.8% through hospitals. In the same year, 24% of sales were originator drugs, 71% were branded generics and 5% were unbranded generics. Clarete and Llanto (2017) report that the market share of originator drugs fell rapidly after 2006 when it stood at 62%.

In terms of the supply of pharmaceuticals in the Philippines, in 2016 multinationals accounted for 56.5% of sales, while the largest domestic firm United Laboratories (Unilab) took 25.1% and other local firms took 18.4%. The market share of local firms other than Unilab rose by 7.3 percentage points between 2007 and 2016. Of the generics market in 2016 domestic producers accounted for 57% of the market (86% of unbranded generics sales). Between 2007 and 2016 the number of firms manufacturing or importing branded generics increased significantly (460 to 654), while the number of unbranded

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<sup>56</sup> Unless otherwise stated the data is from Reyes and Tabuga (2018)

generic firms fell (113 to 78). This indicates that for both types of generics there is a long-tail of small firms. The vast majority of these firms are involved in importation rather than manufacturing. This long tail of firms may be supported by local 'manufacturers' being needed for imported drugs to perform repackaging/labelling as the FDA requires each tablet/capsule to have an expiry date printed on it

In terms of true manufacturing, domestic production struggles to compete with foreign imports. In 2018 62% of all registered drugs were imported (up from 53.4% in 2011) and all active pharmaceutical ingredients that go into domestic production are imported. In 2016 imports reached US\$2.8bn and, as of 2018, 28.4% of finished drugs were imported from India.

Despite the large number of firms, there are concerns about the high prices consumers are paying for medicines. Reyes and Tabuga (2018) suggest that prices are high compared to comparator economies; for example, the price of Ponstan is 14 times that in India and 4 times that in Indonesia. Also, the prices of branded generics show considerable dispersion: some brands are approaching (or even above) the originator's price, while others are noticeably below the price of unbranded generics. The price of originator drugs is generally many multiples of the cheapest generic. As a result, the key competition issue appears to be increasing consumption of the cheapest generic, not just a generic instead of an originator drug.

### **Key Regulations and Government Policies**

There are four key laws affecting pharmaceuticals competition in the Philippines. The Philippine Medical Act (RA 2382) states only doctors can prescribe medicines, while the Pharmacy Law (RA 5921) states only registered pharmacists can dispense and sell medicines. Then the Generic Act 1998 (RA 6675) required the government to promote generic medicines and public sector programs to purchase them. Lastly, the Cheaper Medicines Act 2009 sets a maximum drug retail price and a government mediated access price for originator drugs that treat the leading causes of death.

Regarding the effectiveness of the Cheaper Medicines Act, Sarol (2014) found that between 2009 and 2010 the price of originator drugs fell by an average of 42%, while the price of the cheapest and most expensive generics fell on average by 27%. Nevertheless, Clarete and Llanto (2018) cite a survey of households where 50% felt they seldom had access to unbranded generics, and 13.5% seldom had access to branded generics.

In terms of the supply side of the industry, the time required to meet licensing requirements potentially constrains entry. The primary regulatory authority is the Food and Drug Administration (FDA) which sits under the Department of Health (DoH). The FDA issues licenses to operate to firms in the pharmaceuticals supply chain and registers drugs. As one would expect, the primary objective is ensuring the quality and safety of pharmaceuticals. However, Reyes and Tabuga (2018) report claims that the length of time to receive regulatory approval considerably exceeds official times. They suggest obtaining licences to operate might take 4-6 months, new drug registration might take 2 years and bioequivalence tests for generics could take 6 months to 1 year. Also, the regulatory standards are potentially higher than in other economies: since 2013 the Philippines has required bioequivalence tests for all oral generics, whereas Indonesia and Viet Nam only require it for a subset of molecules.

### **Distribution Channels**

There are two main distribution channels: pharmacies and hospitals. In 2012 there were around 6,000 retailers of pharmaceuticals and around 1,000 wholesalers. Despite this fragmented structure, there are four main distribution networks centred around four firms: Unilab, Zeullig, Ambica and Cathay Drug. Also, historically retailing was dominated by Mercury Drug with 1,100 branches, but The Generic

Pharmacy has grown rapidly since its entry in 2001 to have 2,000 branches. There are four other recognised pharmacy chains. At a global level, OECD (2001) notes that increasing vertical integration along the supply chain may limit the ability of cheaper generics to reach final consumers.

Turning to hospitals, they may act as gatekeepers and it may be that private hospitals may choose more expensive drugs. Picazo et al. (2015) report that there were 1,810 hospitals in the Philippines in 2012 of which 60% were privately owned. Reyes and Tabuga suggest a rule of thumb is for hospitals to stock an originator drug alongside 2-3 generics.

Private hospitals select the drugs to stock based on doctors' preferences. However, Doctors' views may well reflect the marketing efforts of drug firms, hence, if the cheapest generics have limited marketing, they are unlikely to be stocked. Also, hospitals may seek quantity discounts for the drugs they stock. Nevertheless, some hospitals charge the same price for the originator drug and its generic equivalents.

In an attempt to steer the stocking and prescribing decisions of hospitals, since 2018 the domestic health insurance scheme PhilHealth only reimburses drugs listed in the Philippines National Drug Formulary (PNDF). However, Picazo et al. (2015) question whether PhilHealth has the ability to change hospital behaviour as it accounts for only 11% of all health expenditures.

In contrast, government hospitals only stock medicines listed in the PNDP and mostly use branded generics. Furthermore, Picazo et al. (2015) describe how since 2012 a 'Drug Price Reference Index' places a ceiling on the price government hospitals and health offices pay for 660 drugs. However, public hospitals have suffered from issues of poor stocking thereby limiting practical access to drugs. Batangan and Juban (2009) found only 53% of surveyed public health facilities had 15 key essential medicines, while a European Commission study in 2010 identified a similar medicine stocking issue.

### **Doctor and patient choice**

Wong et al (2016) note that despite the Generics Act there are still barriers to consumers purchasing generics. They cite survey evidence that while 84% of consumers knew that they had the right to choose generic drugs, they had limited understanding of the 'generic' term and its implications. Additionally, 16% of respondents' prescriptions did not state generic names for drugs despite this being a requirement of the Generics Act and, while pharmacists are required to offer generic alternatives, only 41% of respondents said this occurred and only 25% of those not offered a generic actively asked for one. Furthermore, in focus groups Wong et al found that doctors still questioned the effectiveness and quality of generic medicines.

Social status also appears as a factor in drug purchasing behaviour. Based on focus groups in Manila Guzman and Fausto (2014) finds that the poorest are most likely to use generics due to their contact with government health facilities. Higher income groups are more likely to purchase branded drugs as these are more often prescribed by private doctors (something corroborated by Wong et al). However, perhaps more significantly, Guzman and Fausto found that all social groups thought lower generic prices correlated with low quality and respondents believed their own experiences showed generics involved longer recovery times.

### **Global issues relevant to the Philippines**

When considering competition issues in the pharmaceuticals sector at a global level it is important to split economies by their income levels. Competition issues in middle income economies differ to those in high income economies as limited local R&D means incentives for innovation are a less important policy consideration and there is less state funding and involvement in the purchasing of drugs. The core issue is making drug access affordable leading to two main regulatory interventions: (i) price (and

mark up) regulation, and (ii) regulations shaping doctor's prescribing and pharmacists' dispensing behaviour towards favouring generics. The first of these measures potentially helps deal with a lack of buyer power, while the second is thought necessary as health professionals' drug choices are price insensitive or manipulable by drugs firms.

Compared to many other markets it appears the debate concerns the nature of price regulation rather than whether it should exist. In part this likely because the political pressures for price regulation appear strong. The WHO (2015) notes that medicines take 20-60% of health spending in low and middle incomes economies compared to 18% in the OECD and in developing economies out-of-pocket medicine payments may be the largest family expenditure item after food.

The WHO (2015) suggests economies consider using 'external reference pricing' based on drug prices in other comparable economies to regulate drug prices. However, the OECD (2001) notes that at the global level if multiple economies use reference pricing, distortions can be created as economies without price controls then become particularly influential in setting global prices. The impact of price regulation along the whole of the supply chain also needs to be recognised. OECD (2001) highlights that differences in the regulation of wholesale drug prices can influence the trading flows in medicines between economies.

Turning to the retail end of the supply chain, WHO (2015) suggests economies consider the regulation of pharmacists' mark-ups. In particular, 'regressive mark-ups', i.e. lower mark-ups for higher priced products, are suggested to avoid the incentives being placed on pharmacists that favour more expensive originator drugs over cheaper generics. However, WHO (2015) also notes the evidence base concerning the outcomes relating to pharmaceutical pricing regulations in less developed economies is poor.

Additional regulations to steer behaviour towards cheaper drugs are also common. Policies to steer the decisions of purchasers to choosing cheaper drugs can include: co-payments and reimbursement rules to make end consumers price sensitive; formularies (drug lists) restricting what can be prescribed; allowing/requiring doctors to use the international non-proprietary name in prescriptions; allowing/requiring generic substitution by pharmacists; and information campaigns on the quality of generics. Where these regulations exist, as in the Philippines, the question turns to whether they are effectively enforced.

Looking more broadly, the global pharmaceuticals industry has two tiers. The OECD (2001) outlines how the top tier involves large multinationals with heavy R&D investments and big patent portfolios, while a large number of smaller firms manufacture off-patent generics. The top tier firms are mainly located in the US, Japan, Switzerland and UK. These firms' R&D has a very low success rate, hence, top tier firms rely on a small number of patented 'blockbuster' products for profits. In turn, this means they have very strong incentives to defend blockbuster drugs from generic entry leading to various anti-competitive behaviours. The OECD (2015) explains that potentially anti-competitive strategies include: pay-for-delay deals, 'ever-greening' patented products, patent thickets, refusal to licence essential patents and brand proliferation with doctors encouraged to 'product hop' to new brands.

## References

Batangan, D. and N. Juban (2009), 'Philippines Pharmaceutical Situation: 2009 WHO Health Facility Survey on Medicines', World Health Organization, Department for International Development, and Medicines Transparency Alliance-Philippines

- Clarete, R.L. and G.M. Llanto (2017), 'Access to medicines in the Philippines: Overcoming the barriers', Policy Note No. 2017-23 (November 2017), Philippine Institute for Development Studies
- Guzman, E. and M.A. Fausto (2014), 'The Impact of Cheaper Medicines Act on Households in Metro Manila: A Qualitative Study', Discussion Paper Series No. 2014-20, Philippine Institute for Development Studies
- Organisation for Economic Co-operation and Development (OECD) (2001), 'Competition and Regulation Issues in the Pharmaceutical Industry – 2000', DAF/CLP(2000)29, 6 February 2001
- Organisation for Economic Co-operation and Development (OECD) (2015), 'Executive Summary of the Discussion on Competition and Generic Pharmaceuticals', DAF/COMP/M(2014)2/ANN6/FINAL, 10 February 2015
- Picazo, O.F., V.G.T. Ulep, I.M. Pantag and B.L. Ho (2015), 'A Critical Analysis of Purchasing of Health Services in the Philippines: A Case Study of PhilHealth', Discussion Paper Series No. 2015-54, Philippine Institute for Development Studies
- Reyes, C.M. and A.D. Tabuga (2018), 'Profiling the Philippine Pharmaceutical Industry', Report for the Philippine Competition Commission
- Sarol, J. (2014), 'Effect of government mediated access pricing on prices of targeted drugs in the Philippines', Journal of Asian Scientific Research, 4(9), pp. 473-489
- World Health Organisation (WHO) (2015), 'WHO Guideline on Country Pharmaceutical Pricing Policies', Geneva
- Wong, J.Q., J.R.M. Baclay, R.G. Duque, P.M.S. Roque, G.K.T. Serrano, J.O.A. Tumlos, A.A. Ronsing and K. Cochon (2016), 'How effective has the Generics Act been?', Policy Note No. 2016-06 (February 2016), Philippine Institute for Development Studies



## 3.1 Competition in the Philippine Air Transport Industry

### Introduction and Background

As in many nations aviation in the Philippines has experienced significant deregulation which has coincided with a large increase in air travel and apparent competition. Despite this success competition between airlines nevertheless faces two structural limitations: (a) international routes are controlled by bilateral Air Service Agreements (ASAs) routinely limiting the number of carriers flying on international routes (and imposing other restrictions), and (b) capacity constraints at the main hub airport in Manila, Ninoy Aquino International (NAIA). Both of these issues represent clear barriers to entry which are difficult to address in the short-term.

Regulation of the aviation sector is split between two main bodies: the Civil Aeronautics Board (CAB)<sup>57</sup> and the Civil Aviation Authority of the Philippines (CAAP)<sup>58</sup>. Both are agencies attached to the Department of Transportation and Communications (DOTC). The CAB is mandated with the economic regulation of air transport, in particular, issuing permits to both domestic and international carriers<sup>59</sup>, as well as to sales agents and airfreight forwarders. The CAAP was formed in 2008 when the Air Transportation Office was abolished. The CAAP's primary responsibilities concern the safety regulations surrounding air travel and the regulation of airports and ground activities; significantly the CAAP not only regulates, but also operates most government owned airports.

In terms of the importance of aviation to the Philippines economy, Llanto and Rodolfo (2018) highlight that the air transport industry directly generated Php 32.7bn of gross value added or 0.21% of GDP. However, the real value of the aviation sector is as enabler of other economic activity. Llanto and Rodolfo note that air transport moved 99% of the 6.6m international tourists visiting the Philippines who in total spent Php 448.6bn in the economy. These authors also note that while air transport moved only 0.5% of trade by volume in 2017, it moved 52.5% of the dollar value of merchandise trade shipments; and helped the mobility of Filipino workers employed abroad who contributed US\$28bn to the Philippines economy in 2017.

### Structure of the Airline Industry and Competition

The most significant regulatory development in the past thirty years was the passing of Executive Order 219<sup>60</sup> in 1995 which significantly liberalised the airline industry and firmly encouraged competition in the sector. While airlines are still subject to a licencing regime, article 1.1 requires at least two airlines to be designated official international carriers for the Philippines and article 2.1 encourages at least two operators on domestic routes. Prior to E.O.219, the sector was largely monopolised by the flag carrier, Philippines Airlines (PAL)<sup>61</sup>. Indeed, between 1973 and 1988 there was an explicit one airline policy.<sup>62</sup> Llanto and Rodolfo (2018) explain that while fare setting is deregulated, the CAB still approves fares with hearings being held where airlines must explain fare increases. They also report that there is a move in Congress to re-regulate airfares with price ceilings being set.

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<sup>57</sup> See [www.cab.gov.ph/](http://www.cab.gov.ph/)

<sup>58</sup> See <https://www.caap.gov.ph/>

<sup>59</sup> Domestic carriers receive Certificates of Public Convenience and Necessity, while foreign carriers receive a Foreign Air Carrier's Permit.

<sup>60</sup> E.O.219 (S.1995) "Establishing the Domestic and International Civil Aviation Liberalization Policy"

<sup>61</sup> From 1977 to 1992 PAL was government controlled, with privatisation occurring in the latter year.

<sup>62</sup> Austria (2000) notes this policy began with Letters of Instruction No.151 and 151A in December 1973 and was ended by Executive Order 333 in August 1988.

Domestic Air Travel: Austria (2000) provides detail on the immediate increase in competition in the five years following liberalisation. In terms of domestic passenger volumes, PAL's market share fell from 100% in 1994 to 49.0% in 1999, while by 1999 Cebu Pacific Air and Air Philippines had market shares of 24.3% and 21.5% respectively. At the same time, domestic passenger volumes increased considerably from 4.5m in 1994 to 6.1m in 1999.<sup>63</sup> OFC (2015) reports that the total number of domestic passengers rose from 7.2m in 2005 to 20.3m in 2013.<sup>64</sup>

Manuela Jr (2007) provides econometric evidence of the price reductions for Philippines air travel following the introduction of competition. Using data from ten routes and market characteristics for the period 1981–2003, Manuela Jr (2007) finds that airfares per kilometre were 10% lower, on average, on routes with at least two airlines after liberalisation. Twenty-three routes, representing more than 90% of domestic airline passengers, were served by at least two airlines by 2003, indicating the scale of the benefits from competition.

There is also evidence of substantial price drops over a longer period with OFC (2015) citing a World Bank report that found on some domestic routes ticket prices fell by 50% in real terms between 1997 and 2014. Austria (2000) also notes that in more remote parts of the Philippines, such as in Mindanao, air travel competes with road and sea travel due to their much lower costs. As in many economies, the falling cost of air travel and increasing passenger volumes have been associated with low cost airlines who have also attracted public and press attention for various consumer protection issues, such as drip pricing. Responding to these pressures, in 2012 the Air Passenger Bill of Rights was passed which provides consumers with greater information on tickets and refunds.

The current three main airlines operating in the Philippines are: PAL, Cebu Air and Philippines Air Asia. Llanto and Rodolfo (2018) note that Cebu Air was the market leader with a market share of 55.3% followed by PAL with 29.0% and Philippines AirAsia with 13.9%. As of 2017, just under 50% of domestic routes were subject to competition (albeit often a duopoly with a dominant firm). The greatest proportion of competitive routes was in 2012 when it was around 75%, that this percentage has fallen in recent years is linked to a large number of new routes being established which normally begin as monopolies.<sup>65</sup>

International Air Travel: In terms of international traffic, Llanto and Rodolfo (2018) report that PAL remained the clear market leader in 2017 with a 27.9% market share followed by Cebu Pacific with a 19.2% share. The rest of the market was split between a large number of foreign airlines with relatively small market shares; the one other Filipino carrier with a notable market share was Philippines AirAsia at 5.5%.

As with domestic travel, there has been a significant increase in passenger traffic with OFC (2015) reporting an increase from 9.7m international passengers in 2005 to 17.3m passengers by 2013. This increase in traffic is associated with a greater number of international routes: the number of routes increased from 53 to 83 between 1992 and 2017 according to Llanto and Rodolfo (2018). Between 2005 and 2017 Llanto and Rodolfo report that the percentage of international routes that were monopolised fell from 75.9% to 42.2% implying an increase in competition. However, PAL remains the only carrier with non-stop flights to the US.

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<sup>63</sup> See Table 2, pg18, Austria (2001).

<sup>64</sup> See Figure 2, pg4, OFC (2015).

<sup>65</sup> See Figure 5.4, pg46, Llanto and Rodolfo (2018).

One interesting feature of PAL is that it does not belong to one of the three big airline alliances (Oneworld, Star Alliance or Sky Team), although, it does have links with Etihad and All Nippon Airways.

### **International Considerations**

As noted above, competition both domestically and internationally is constrained by ASAs between economies. These ASAs may limit the number of carriers, the number of flights and/or the size of aircraft. Being bilateral agreements there is the knock-on impact that the 'national citizenship' of airlines becomes important. While the Philippines has signed agreements concerning the ASEAN 'Single Aviation Market', this is not as expansive as the true 'open skies' policy operating in the EU. In other words, foreign airlines are not able to operate domestic flights within the Philippines. Since 2016, the Philippines has ratified ASEAN agreements such that foreign ASEAN airlines have the right to fly routes to and from airports in the Philippines, including NAIA. However, the capacity constraints at NAIA imply these rights are more relevant for routes to secondary airports in the Philippines.

For an airline to be classified as Filipino, and thus entitled to fly domestic flights, it must satisfy the domestic ownership criteria of public utilities requiring at least 60% of voting equity to be held by Filipino citizens. The need to be identified as a domestic carrier explains the ownership structure of Philippines AirAsia. AirAsia runs domestic services in a number of Asian economies via a number of subsidiaries that each meet domestic ownership requirements and are therefore counted as domestic airlines. According to Barenca et al. (2017), in addition to the ownership requirements the directing head of an airline and two-thirds of its board of directors and managing officers must be Filipino citizens to be counted as a Filipino airline.

### **Airport Capacity**

Llanto and Rodolfo (2018) report that, as of August 2016, there were 215 airports in the Philippines of which 85 were government owned and controlled. With the exception of the largest government owned airports, government airports are run by the CAAP. In 2017 NAIA handled 42m passenger movements and in 2015 it handled 67% of the international air cargo entering the Philippines.

As is often the case with airport hubs, congestion is a significant issue at NAIA, with the knock-on effect of limiting entry and competition between airlines at NAIA. The government currently limits the number of aircraft movements at NAIA to 40 per hour, but IATA believes that through a variety of measures the number of movements could be increased to 51-56 per hour. Construction of a new terminal began at Clark International Airport in 2018 which, in time, may allow it to become a more effective competitor to NAIA.

### **General Competition Issues relating to Air Travel**

As noted above, the issues of airport congestion and restrictive international air agreements are common across the world. OECD (2014) suggests that to address a lack of landing slots being a barrier to entry, it is sensible to allow a secondary market for slots. However, the OECD recognises that these secondary markets may not solve all competition issues as, for example, incumbent airlines could still refuse to sell their slots or impose harmful restrictions on those purchasing the slots.

These issues around limited airport capacity and potential network effects raise the question of whether hub airports themselves have market power which requires regulation. In turn, this depends on the extent to which there is competition between airports. IATA (2017), representing airlines' interests and arguing for the regulation of fees at large airports, presents evidence that competition between airports is limited as travellers are heavily influenced by the distance to airports. IATA cites evidence from Frontier Economics that in the UK a 1% increase in distance to an airport was associated

with the probability of a passenger using the airport falling by 4%; similarly, a 1% increase in distance would need to be offset by a 1% reduction in the relative price of the more distant airport. In contrast, Starkie (2002) argues that the pricing power of hubs is limited because hub-large airline combinations are in competition.

However, the extent of competition between large airlines can be questioned with the full-service airline industry dominated by three big alliances and examples of collusion being found. As OECD (2014) notes, alliances, rather than mergers, have been the mechanism for international airline consolidation due to the need for airlines to retain their home nationality. The OECD explains that where routes overlap alliances led to price rises, but where there is interlining (combining journeys on different airlines) the price effects are less clear. Switching between airlines and/or alliances is generally reduced by frequent flyer programmes that act as a barrier to entry and price discrimination via corporate discount schemes. There is an ongoing debate about the extent to which merger rules should apply to airline alliances.

The OECD (2014) highlights that 20 airlines were caught in a cartel where airlines were found guilty of colluding on fuel surcharges in the airfreight and, to a lesser extent, passenger markets. The EU fined airlines €799m for an air cargo cartel running between 1999 and 2006, while the US imposed a fine of \$1.6bn. There are a number of factors that might be thought to aid collusion between airlines: (i) multi-market contact, (ii) IATA has historically facilitated price co-ordination via ‘tariff conferences’, and (iii) sophisticated IT platforms for ticket selling and making reservations.

## References

- Austria, M.S. (2000), ‘The State of Competition and Market Structure of the Philippine Air Transport Industry’, PASCN Discussion Paper No.2000-12, Philippine Institute for Development Studies, available at: <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.578.9114&rep=rep1&type=pdf>
- Barcenas L.L.A.B., G.T. Reyes, J.T. Tongzon and R.B. Serafica (2017), ‘Regulatory Measures Affecting Services Trade and Investment: Distribution, Multimodal Transport, and Logistics Services’, Discussion Paper Series No.2017-40, Philippine Institute for Development Studies, available at: <https://pidswebs.pids.gov.ph/CDN/PUBLICATIONS/pidsdps1740.pdf>
- International Air Transport Association (IATA) (2017), ‘Airport Competition: Myth or Reality?’, IATA Economics Briefing, November 2017, available at: [https://www.iata.org/publications/economic-briefings/airport\\_competition.pdf](https://www.iata.org/publications/economic-briefings/airport_competition.pdf)
- Llanto, G.M. and M.C.L. Rodolfo (2018), ‘The State of Competition in the Air Transport Industry: A Scoping Exercise’, Philippine Competition Commission
- Manuela Jr, W.S. (2007), ‘Airline liberalization effects on fares: The case of the Philippines’, *Journal of Business Research*, 60(2), pp. 161-167
- Organisation for Economic Co-operation and Development (OECD) (2014), ‘Airline Competition – Background Paper by the Secretariat’, DAF/COMP(2014)14, 12 June 2014, available at: [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP\(2014\)14&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP(2014)14&docLanguage=En)
- Office for Competition (2015), ‘Report on Airlines’ Cancellation and Refund Policy’, 23 September 2015, available at:

<https://www.doj.gov.ph/files/ofc/Report%20on%20Airlines%20Cancellation%20and%20Refund%20Policy.pdf>

Starkie, D. (2002), 'Airport regulation and competition', *Journal of Air Transport Management*, 8, pp. 63-72

# **Appendix 3**

## **Primary Impact Indicators**

#### 4.1 Number of Laws and Regulations Reviewed

**Summary Table indicating the number of laws and regulations reviewed by the government agencies selected for the pilot activities**

<b>Agency</b>	<b>Number of Regulations Reviewed</b>	<b>Name or Title of Regulation</b>
Civil Aeronautics Board	2	a. Capital and Operational Requirements b. Period to file for Renewal of Permit
Department of Health Pharmaceutical Division	1	a. Maximum Drug Retail Price Policy
Food and Drug Administration	2	a. Revised Guidelines on Current Good Manufacturing Practice in Manufacturing, Packing, Repacking or Holding Food b. Rules and Regulation on the Licensing of Food Establishments and Registration of Processed Food, and Other Food Products, and for other purposes
Maritime Industry Authority	1	a. Revised Rules on the Phase-out of Wooden-hulled Ships Carrying Passengers in Domestic Shipping
<i>Total</i>	<i>6</i>	

#### 4.2 Number of Staff and Officials Trained

**Summary Table indicating the number of staff and officials in the government agencies trained in the actual evaluation of potentially anti-competitive laws and regulations**

<b>Agency</b>	<b>Number of Staff Trained</b>
Civil Aeronautics Board	3
Department of Health Pharmaceutical Division	6
Food and Drug Administration	4
Maritime Industry Authority	4
<i>Total</i>	<i>17</i>

#### 4.3 Proportion of Anti-Competitive Laws and Regulations Identified with Concrete Plans for Corrective Action

**Summary Table indicating the proportion of anti-competitive laws and regulations identified with concrete plans for correction action**

<b>Agency</b>	<b>Proportion of Regulations</b>	<b>Percentage of Regulations</b>
Civil Aeronautics Board	2 / 2	100%
Department of Health Pharmaceutical Division	1 / 1	100%
Food and Drug Administration	2 / 2	100%
Maritime Industry Authority	1 / 1	100%