



Issue 18 | Special Edition

PHILIPPINE COMPETITION BULLETIN





EDITORS' NOTE

This special issue of the Philippine Competition Bulletin features key takeaways from the 2020 Manila Forum on Competition in Developing Countries held in January.

With the theme “Towards Dynamic Competition Policy, Regulation and Legislation in Rapidly Rising Asia,” the 2020 Manila Forum explored the complex interplay among regulation, legislation, and competition policy. It also featured insights by representatives of the Philippine legislature, the national government, international experts, and the academe.

The Philippine Competition Commission started the Manila Forum series in 2018. In 2019, it conducted a smaller forum to localize the previous year’s discussions to Philippine and regional contexts; the sessions focused on market competition issues and challenges arising from technological disruption.

The 2020 Manila Forum sessions are available for streaming at <https://www.themanilaforum.org/>. ■



COOPERATION WITH LEGISLATURE, SECTOR REGULATORS KEY TO EFFECTIVE COMPETITION POLICY

Mr. William Kovacic, Global Competition Professor of Law and Policy at the George Washington University, USA, in his keynote address, discussed the challenges of having a more effective competitive framework and offered some recommendations on how these can be addressed.

In laying out these challenges and solutions, Kovacic distinguished the difference between competition law and competition policy. The former refers to a set of restrictions that a nation establishes on certain types of business practices; the latter pertains to a set of strategies and tactics that makes competition an integral element of decision-making. Moreover, competition policy involves engaging the energies of the larger body of public administration in a nation. This means that building a more effective competitive framework cannot be attained by the competition authority alone. It will “require partnerships with other public institutions,” Kovacic added.

Engaging other public decision-makers in the process of promoting pro-competitive policies entails some challenges, however.

First, there is social ambivalence about competition. Consumers think competition is a good thing because it may lead to lower prices, better quality of products or services, and more choices. However, the same people may also be harmed by the disruption caused by competition. While competition may foster innovation in industries, this may also result in displacement of workers due to the introduction of new commodities and more advanced technology. Consequently, legislators’ stance on competition may be swayed by their constituents’ sentiments.

Second, competition agencies are up against the fast-changing and dynamic character of industries. Taking the smart phone as an example, Kovacic described how it transformed over time, including its functionality. This commercial dynamism and change is extremely disruptive, making it hard for a competition agency to anticipate how markets change. Therefore, competition agencies must build the basic knowledge to understand what needs to be done. Kovacic said competition agencies cannot do this on their own because it requires drawing upon the full resources of public agencies and partners, including academic institutions.

Third, the new economy and its large technology giants pose enormous challenges to competition agencies to be smart enough in coming up with effective interventions. Although there is no consensus on the steps to address this, Kovacic explained that public institutions need to understand modern developments amid extraordinary complexities, come up with accurate diagnosis, formulate appropriate interventions, and implement them effectively. More importantly, part of the task is applying



William Kovacic is the Global Competition Professor of Law and Policy at the George Washington University Law School and former Chair of the US Federal Trade Commission.

the right policy—that is, beyond measuring the agencies’ performance through cases filed and fines imposed, attention must be given to knowing if such interventions work effectively. At the center of these is the demand for broader collaboration among public institutions. Otherwise, “if the institutions were in isolation, they will not solve this problem. They will be habitually behind... never quite catching up,” Kovacic said.

Fourth, the public has a skeptical view of public administration, particularly about its capacity to work loyally, truthfully, and effectively on behalf of the citizens. The doubts associated with whether institutions are going to deliver results generate a challenge for competition agencies to deliver and cast these doubts away. For instance, Kovacic noted that although the PCC is off to a good start, it is swimming upstream against a current of suspicion and distrust about public administration. Hence, beyond delivering good cases, doing investigations, and writing good reports, he said the PCC needs to build a brand that dominantly commands respect and approval within the larger society.

Lastly, policy making is fragmented across different institutions, which may be due to different government agencies having overlapping mandates and jurisdictions. The main difficulty in this aspect lies in finding ways to overcome the tendency of agencies to create a policy archipelago, where the inhabitants of each island do not visit or welcome others. Kovacic highlighted that

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FRESH PERSPECTIVES ON THE ROLE OF COMPETITION POLICY



The opening session was moderated by Calla Wiemer (leftmost), editor in chief of the *Journal of Asian Economics*. In the panel were (from second left) Ng Ee Kia (Competition and Consumer Commission of Singapore), Sakon Varanyuwatana (Office of Trade Competition Commission of Thailand), Henry Schumacher (European Innovation, Technology, and Science Center Foundation), Tetsushi Sonobe (Japan's National Graduate Institute for Policy Studies), and Christine Qiang (World Bank), who served as the session's main speaker.

The first session of the 2020 Manila Forum on Competition in Developing Countries explored the complex interplay among competition policy, regulation, and industrial policy, particularly the role of antitrust enforcement in developing economies. The key challenge is how to ensure policy coherence in a situation where governments introduced industrial policies and public interest objectives to address market failures.

Drawing from the World Bank's (WB) experience in supporting developing countries, Christine Qiang, WB global manager for investment climate and main speaker for the session, talked about this intersection between competition policy and regulation.

Calla Wiemer, editor in chief of the *Journal of Asian Economics*, moderated the session, which had as panel members the following: Ng Ee Kia of the Competition and Consumer Commission of Singapore (CCCS), Sakon Varanyuwatana of the Office of Trade Competition Commission (OTCC) of Thailand, Henry Schumacher of the Philippine-based European Innovation, Technology, and Science Center Foundation, and Tetsushi Sonobe of Japan's National Graduate Institute for Policy Studies (GRIPS).

Competition policy, regulation in developing countries

Qiang said competition is perceived as very limited in least developed countries. Citing the prevalence of cartels in Latin America, especially in key input markets such

as transport and logistics and in essential goods such as food and healthcare, she said, "antitrust enforcement is clearly not enough to deter anti-competitive behavior."

Regulation is a critical tool for embedding competition in markets, Qiang noted. She said product market regulation (PMR) in developing countries is restrictive compared with OECD countries. PMR covers three elements: state control, barriers to entrepreneurship, and barriers to trade and investment. Of the three, state control – through public ownership and involvement of the state in business operations – contributes the most to the restrictiveness of the regulatory environment.

Competition policy interventions, such as opening markets and promoting market contestability and ensuring effective enforcement of competition law, in many developing countries supported by the WB have shown positive results. One example is the Philippine shipping industry, which used to be dominated by one or two firms several years ago. Incumbent shipping companies controlling routes had the power to delay and prevent entry of competitors, and to restrict the use of foreign vessels, resulting in very high shipping costs. Interisland shipping within the country was even more expensive than shipping from the Philippines to Hong Kong or Malaysia. The government took measures to mitigate the pressure exerted by incumbents on potential entrants. Presently, no incumbent can contest entry of new operators. Moreover, entry procedures were significantly reduced from 50 days to only four. This

regulatory reform is estimated to have generated at least US\$34 million in investments.

Another success story is the effective antitrust enforcement in Peru, which the WB helped by enhancing the competition agency's framework for conducting inspection, increasing awareness of the private sector to increase the potential for cartel detection, and developing a full-fledged leniency policy supplemented with a communication strategy. As a result, the number of sanctioned cartels increased substantially right after the reform. In just a span of only six months, four leniency applications from cartel members were received.

Competition policy amid rising digital economies

Qiang also discussed the distinct role that competition policy plays in the rising digital economy. She explained that specific features of digital markets raise the propensity for concentration of market power and that emerging business models may be prone to anti-competitive behavior. In Kenya's e-money sector, a new competitor complained that the incumbent, having a 70% share of the market, signed exclusivity contracts with stores that allowed customers to change cash for e-money and vice versa. The competition authority took steps to eliminate the anti-competitive behavior and to promote interoperability among different operators.

Ng Ee Kia, CCCS assistant chief executive, shared Singapore's experience in regulating digital markets. Like in many countries, digitalization introduced by companies such as Grab and Uber disrupted the taxi industry in Singapore. Since the traditional taxi industry was heavily regulated, incumbents protested, prodding the Singapore Land Transport Authority (LTA) to bear down on the disruptors as well. The collaboration between CCCS and LTA led to a holistic regulatory framework for ride-hailing services using digital platforms. This experience shows that it is possible to have a successful engagement between the competition authority and sector regulator.

Entry points to industrial policy

Thailand's OTCC Chairperson Sakon Varanyuwatana said competition policy is a combination of competition law and industrial policy (i.e., government interventions aimed at correcting market failures). As industrial policy alone may not be enough to maintain a competitive market environment, promotion of competition can be implemented through advocacy and enforcement, as in the case of Peru mentioned earlier, Varanyuwatana said.

Tetsushi Sonobe, NGIPS vice president, shared how competition law enforcement promoted appreciation of competition in Japan. He said the public appreciates the Japan FairTrade Commission as it enforces the law against collusive tendering. In infrastructure development, this enforcement translates to reduction in the cost of building transportation infrastructure, which is very easy for the public to understand.

Advocacy is equally important. Varanyuwatana noted the need to raise awareness of competition among

private businesses and the public sector. Otherwise, companies and enterprises would perceive competition policy as an additional burden. Moreover, advocacy promotes the harmonization of state policies and initiatives, making them more responsive to the needs of various stakeholders. Citing the Philippines, Calla Wiemer, noted that the first approach the Philippine Competition Commission (PCC) took was to reach out to the business community and to inform the public of the agency's mission and its importance. She said PCC's efforts to change the business culture not only through enforcement, but also through advocacy, may partly explain its early success.

Engaging the business sector

Henry Schumacher, former executive vice president of the European Chamber of Commerce of the Philippines and current head of the European Innovation, Technology, and Science Center Foundation, shared the perspective of the private sector in competition law and policy implementation in the Philippines. He said the competition challenges to the business environment in the country may be similar to those faced by other countries.

The concerns faced by international firms in doing business in the Philippines include import limitations, competition with government-owned firms, and limitations in shareholding, which do not promote a fair market environment.

Schumacher, who has been involved in various businesses in the Philippines in the past four decades, said they had always pushed for a competition law in the country, and that they are pleased to see how the PCC has started enforcing the competition law. He noted that the agency needs more tools for better implementation. For example, the need for stronger cooperation between PCC and relevant government agencies (e.g., on data privacy, intellectual property), as well as between the PCC and the private sector (e.g., on conducting deeper competition analysis in industry sectors). He underscored the need for a deeper interplay between the private sector and PCC so that the consumer will understand the work that the private sector is doing and the work PCC is doing to have fair competition. ■



BALANCING ACT: COMPETITION, REGULATION, AND LEGISLATION



The panel responds to questions from the audience. (From left) PCC Commissioner Johannes Bernabe, Jaeho Moon (Korea Fair Trade Commission), Representative Stella Luz Quimbo, Rizalina Mantaring (Management Association of the Philippines), Professor Gwen Grecia-De Vera (UP College of Law), and Professor Hassan Qaqaya (University of Melbourne).

While competition promotes dynamism, economic regulation is perceived to run counter to this. What happens if you throw legislation into the mix? Representative Stella Luz Quimbo of the Second District of Marikina City, who is formerly a commissioner of the Philippine Competition Commission (PCC), discussed this challenge of balancing competition, regulation, and legislation as main speaker for the second session of the 2020 Manila Forum on Competition in Developing Countries.

Moderated by PCC Commissioner Johannes Bernabe, the panel included Jaeho Moon of the Korea Fair Trade Commission (KFTC), Professor Hassan Qaqaya of the University of Melbourne, Rizalina Mantaring of the Management Association of the Philippines (MAP), and Professor Gwen Grecia-De Vera of the University of the Philippines (UP) College of Law.

Quimbo noted the increased appreciation for pro-competitive legislation in the Philippines. She said the legislature is taking more steps toward opening markets, tackling proposals such as opening up the practice of professions to foreign practitioners and liberalizing retail trade and public services. Citing studies, she said these three Philippine sectors will benefit from increased competition.

Despite these developments, however, there is still a lack of understanding of the benefits of competition. Hence, legislation may potentially distort competition in the process of achieving other objectives. "Many laws attain

many important social objectives but are unintentionally anti-competitive. As a result, competitive neutrality would continue to be a concern," she said. Such laws may grant undue competitive advantage to certain firms, change the market structure, or inadvertently facilitate unfair business behavior. Given this, there is a need to highlight competition concerns in policy deliberations.

Government as competition advocate

Jaeho Moon, director of KFTC's market structure division, shared the agency's success in influencing legislation in Korea, noting several "entry points" for the competition agency to check for potential anti-competitive provisions.

One entry point is by providing opinion on bills. "The KFTC can put forward its opinion for amendment or appeal where a bill contains new, stronger anti-competitive regulation," Moon said. A second entry point is through competition impact assessment (CIA). A regulatory reform committee review considers KFTC's opinion based on a CIA; consequently, the committee could request revisions on the proposed bill. A third entry point for putting forward KFTC's position is through the chairperson's participation in cabinet meetings. (In Korea, a cabinet meeting is the final route for producing a government bill for the national assembly.) "This authority is very important for the KFTC to successfully fulfill the role of a competition advocate," Moon said.

Quimbo noted the importance of political stability in the success of the competition agency efforts in Korea, where

bills are approved at the cabinet level first before heading to the legislature. "If you don't have that kind of a mature or stable party system, and you have politicians changing parties all the time, then this kind of system might actually not work for us," Quimbo said. The way forward is to find an alternative way to introduce CIA that is appropriate in the Philippine context. PCC Commissioner Johannes Bernabe shared that PCC is conducting CIA and drafting position papers for certain bills, but the agency is facing resource constraints.

Legislative initiative

Lending the perspective of the private sector, Rizalina Mantaring, former president of the Management Association of the Philippines, shared ideas on how legislators can identify and correct existing anti-competitive legislation. One is to apply an effectiveness test to assess existing anti-competitive legislation. Legislation must be realistic, since some laws are simply impossible to implement. Benchmarks must be established, allowing for the measurement of results.

Professor Gwen De Vera of the UP College of Law and head of the Competition Law and Policy Program of the UP Law Center echoed this need for legislative review. She suggested a legislative initiative that can be undertaken to avoid the passage of anti-competitive statutes. This initiative involves studying market trends under the period of pre-imposed competition regulation and comparing the findings with those under the period of post-establishment of the competition authority. The resulting data may serve as a baseline in policy considerations and identification of gaps in current legislation.

Mantaring saw the need to identify causes of public restraints. She cited legislative immunities, wherein the position of special interest groups and virtual monopolies are strengthened. She noted that some groups possess privileges not given to others belonging to the same sector, or are exempted from regulatory requirements, supposedly because they are serving the marginalized. However, these can create an environment for a monopoly. "A law can also take the guise of an antitrust measure such as when scale advantages of larger competitors are controlled, but in reality, are meant to protect competitors who may not be as efficient," she said. While countries may have valid reasons for crafting laws with such exclusion, Mantaring said the motivation has to be clear and well-documented.

De Vera suggested that Congress may exercise its oversight functions or authority, whether through its budget hearings or inquiries, to investigate policies that are potentially anti-competitive. It is also useful for Congress to seek comments and invite resource persons, including representatives from both public and private sectors, in its studies and inquiries, De Vera said.

Jurisdictional issues

Jurisdictional issues often arise in highly regulated sectors. In the Philippines, competition law gives the

competition authority primary and original jurisdiction over competition matters. However, regulations, such as those on prices, quantities, and entry into the market, can cause difficulty in the implementation of remedies. In the case of the Grab-Uber transaction in March 2018, PCC raised a concern that such transaction, without any intervention by the PCC, effectively created a virtual monopoly for Grab in the market for transport network vehicle services (TNVS), resulting in higher fares.

Quimbo said legislation can solve an impasse such as this between competition authorities and regulators. Additionally, legislation can play a role in clarifying regulatory overlaps and balancing regulation with competition policy. "Given actual experience lent by the Grab acquisition of Uber, Congress should provide for guideposts on the sharing of jurisdiction over price regulation. While the sector price regulator has responsibility to ensure that prices are set reasonably on the basis of costs, PCC must be given enough elbow room to intervene in case a competition concern has been found in that regulated sector," she said.

De Vera noted the need to address this jurisdictional overlap, particularly in relation to fostering a culture of competition. "The importance of resolving jurisdictional conflict must be emphasized to ensure consistency in the exercise of quasi-legislative and quasi-judicial powers," she said. Apart from its implications for the development of standards in competition law and enhancement of the agency's expertise and effectiveness, managing the delicate relationship between the competition commission and the sector regulators is also important in ensuring that stakeholders do not resort to the most favorable forum, which De Vera noted could result in continuing anti-competitive conduct.

Professor Hassan Qaqaya of the University of Melbourne said it is more important to have an analysis at the level of competition regimes, rather than pit the competition agency and sector regulators against each other. "A competition regime combines the legislation, the organization that implements it, the policymakers, and the framework used to set expected conduct and outcomes. The approach encompasses the whole range of features and entities that contribute to a competition regime," he said.

Toward pro-competitive regulation

The panel discussion underscored the intricate relationship among competition policy, legislation, and regulation.

In Korea, the whole-of-government initiative for regulatory reform helped the competition authority in influencing the relevant agencies to push for the amendment of anti-competitive regulation. "As we established these formal procedures, the opinion of the competition authority in terms of setting up the competitive market environment has really been considered formally for policy making procedures," KFTC's Moon said.

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ADAPTING LEGISLATION FOR COMPETITION IN PUBLIC SERVICES: THE CASE OF THE PHILIPPINE ENERGY SECTOR



Senator Sherwin Gatchalian, chair of the Senate Committee on Energy, discusses key competition related issues in the power sector and provides insights on how to address these issues through a mix of legislative and policy reforms.

Senator Sherwin Gatchalian, chair of the Senate Committee on Energy, opened the second day's session of the 2020 Manila Forum on Competition in Developing Countries by sharing his experiences in advocating competition in the energy sector through legislation and policy.

Deregulated in 2001, the Philippine energy industry was broken up into four sectors—generation, transmission, distribution, and supply—to foster competition. However, despite this restructuring, the sector remains essentially controlled by only a handful of major business groups.

Deregulating public services such as power poses a challenge to the conventional sense of “the more, the merrier” competition, Gatchalian said. For one, the fixed costs of providing this service are extremely high. Two components, transmission and distribution, are natural monopolies. Such realities, Gatchalian said, calls for a nuanced regulatory approach to tackle anti-competitive behavior while ensuring beneficial outcomes for the both the industry and consumers.

Key competition-related issues

In the generation sector, more than 50 percent of the country's total installed generation capacity is under the control of a few major business groups. This dominance in the generation sector, Gatchalian noted, could trigger vulnerabilities in the wholesale electricity spot market (WESM), where distribution utilities (DU) buy power from plants when demand exceeds the contracted

supply. Colluding players in the generation sector could manipulate the WESM to drive prices up, undermining the bidding process meant to benefit both sellers and buyers.

In 2013, the Energy Regulatory Commission (ERC) and the Philippine Electricity Market Corporation (PEMC), which operates the WESM, found that collusion appears to have occurred when generation companies physically withheld available supply and drove prices up in the spot market. Even as the validity of the ERC decision to invalidate the exorbitant prices is still pending with the Supreme Court, Gatchalian noted the importance of coordinated government efforts in preventing anti-competitive behavior. “This event highlights the importance of vigilance against collusion, which can only be attained through combined and coordinated efforts of the ERC and the PCC working together,” he said.

Competition concerns in the distribution sector revolve around the lack of choice on the part of the consumers, who do not have a choice on which DU and generation company will provide their electricity. Previously, DUs chose which generator to negotiate with for their power supply agreements. Gatchalian explained that these bilateral negotiations are detrimental to consumers as these do not guarantee the lowest possible rate for end-users.

Now, under the Department of Energy's policy of competitive selection process, DUs should procure their power supply through public bidding, forcing generation companies to compete. This policy has already generated concrete savings, which could improve consumer welfare. To institutionalize this process, Gatchalian introduced Senate Bill No. 32 or the Competitive Selection Process for Power Supply Agreements Act, “to ensure that future generations of Filipinos will benefit from competitive bidding of power supply contracts.”

In the retail electricity sector, more than 90 percent of market demand is supplied by retail electricity suppliers owned by a few major groups. Gatchalian described the situation in the sector as ironic, noting that the retail competition and open access policy should be providing more choices for consumers. Legal suits pending before the courts are preventing the move toward full retail competition in the country. To address these gaps in existing policies and enable competition to reach the households, Gatchalian has introduced the Retail Competition and Open Access Act. With this legislation, consumers will be given the option to switch to lower-priced power generators.

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A BUSINESS-FRIENDLY REGULATORY FRAMEWORK — AN OXYMORON?

The fast-changing pace of innovation has regulators grappling with the risk of hampering market development as intricacies of new technologies challenge traditional regulatory approaches.

What kind of regulatory framework is then needed? How flexible should the framework be? How should they adapt to ever-changing circumstances? In the closing session of the 2020 Manila Forum on Competition in Developing Countries, Professor Ioannis Kokkoris, Chair of Competition Law and Economics at the Centre for Commercial Law Studies, Queen Mary University of London, led the panel in providing insights on these pressing matters.

The panel included Mochammad Hendry Setyawan of the Indonesian Competition Commission, Undersecretary Rafaelita Aldaba of the Department of Trade and Industry, Graciela Miralles Murciego of the World Bank Group, Lito Villanueva of Rizal Commercial Banking Corporation (RCBC) and FinTechAlliance.ph, and Professor Thomas Cheng of the University of Hong Kong. Philippine Competition Commission (PCC) Commissioner Amabelle Asuncion moderated.

Regulation can be an economic good; legislators offer regulation and interest groups seek regulation that favors them. “The problem for legislators and regulatory agencies is determining the efficient level of regulation, which must be an optimal balance between the various interest groups in society, while at the same time maximizing political support,” said Kokkoris. The key is designing better regulatory institutions and frameworks that not only discourage destructive behaviors but actually encourage markets and the economy to grow and advance.

According to the World Bank's Graciela Miralles Murciego, ideal regulation is almost impossible in practice, with market distortions arising from government interventions. For instance, state-owned enterprises can give rise to competition issues (e.g., advantage from the government). There is also the scenario of regulatory capture, wherein the regulator acts in favor of dominant commercial or special interests in the industry instead of upholding public interest.

Structuring a corporate-friendly regulatory framework

The government intervention approach, while the most popular type of regulatory framework, has a lot of weaknesses. “It has the force of law, and it's seen as highly protective of the public [but] it's inflexible in some circumstances, can be expensive to administer, and businesses do not have the incentive to go beyond the minimum standard set by the government,” Kokkoris explained.

Hong Kong's Thomas Cheng noted two basic regulation considerations: identification of regulatory objectives and the regulatory capacity of the agency. One problem is that some policy objectives are vaguely defined. “Technology always evolves faster than regulation. We're always playing catch up, and there are even people who mention that ex post regulation of competition really doesn't work,” he said. He recommended adopting ex ante (i.e., before the fact) regulation, but emphasized that regulations should not stifle innovation.

At the other end of the spectrum is the self-regulation framework—where a group of firms or individuals exerts control over members and their behavior. Kokkoris warned that while businesses regulating their counterparts may be effective to a certain extent, there is always the danger that self-regulation will be self-serving and not representative of consumers' concerns.

“Regulations can strengthen consumer confidence and act as a catalyst for innovation. They can promote and reward business competitiveness,” he said. He shared the following values to be observed in creating a corporate-friendly regulatory framework:

- Agility - the structure and qualities of a regulatory system allow for rapid adjustments and continuous improvement.
- Responsiveness - the regulatory system responds in a timely way to changes in technology, industry business models and society, and incorporates feedback appropriately.
- Transparency - responsibilities of regulators and regulated parties are clear, and mechanisms are in place to evaluate and report on performance.
- Effectiveness - regulations are evidence-based and achieve the intended policy objective.
- Accountability - regulators engage regulated parties early and often, and clearly communicate how and why decisions are made.

Innovative regulation

Rapid technological advancements are challenging traditional regulatory frameworks. Trade Undersecretary Rafaelita Aldaba, who also serves in the Board of Investments, said that in the Philippines regulators are trying to balance innovation and consumer protection. She shared some modern regulatory approaches and several initiatives that the Philippines has undertaken.

Given the “disruptive” business models, there is a need to align regulations through an adaptive regulatory approach, which may involve removal of already irrelevant policies. “We need to carry out a thorough review of our existing regulations and repeal those that may be blocking innovation, are outdated, or duplicative,” she

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the power to form effective competition policy in the Philippines is not just a choice of the PCC. He stressed that “the PCC needs allies in the legislature, in the sector regulators, and in ministerial departments.” It also needs the assistance of non-agency institutions, such as the academe, to support the system. Moreover, all of these stakeholders need to be engaged since isolated efforts will not solve the big problems, especially those that involve key decisions that transcend the walls of the competition authority.

The big solution to overcome these challenges, Kovacic said, is to build a comprehensive competition policy. That is, make competition fuel the economy. Even as macroeconomic policy analysis is done across different agencies in the Philippine government, Kovacic recognized that the PCC is the platform that provides the best capability to do this work over time. However, accomplishing this requires alliances with various institutions. Given that the PCC has no ability to direct other sector regulators on what should be done, particularly in pursuing pro-competition policies, the competition agency must operate by persuasion. This

will involve establishing the goals that regulators want to pursue in the status quo, aligning the methods chosen with the said goals, evaluating their effectiveness, and finding alternatives to achieve the intended outcome.

Effective cooperation with other regulators takes time and requires trust, such that sector regulators see the competition agency not as a threat, but as a colleague. Using the United Kingdom Competition Network (UKCN) as an example to achieve this, Kovacic explained that the Competition and Markets Authority spearheaded the creation of the UKCN to serve as an alliance among regulators that have specific roles to support and enable competition within their sectors. Through UKCN, officials and staff of sector regulators have established mechanisms to know and interact with their counterparts in coming up with better and effective interventions. Although difficult to achieve, Kovacic said that cooperation, especially among public institutions, is worth pursuing because it is a source of better economic performance, greater satisfaction and well-being of the citizens, and the basis of the public to believe that their taxes are being spent well. ■

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For many countries, however, the difficulty of pushing for pro-competitive regulations remains. In addressing this difficulty, Qaqaya said governments must consider the capacity to implement regulations, which is often overlooked. Such countries should consider including in the legislation a government initiative to do a periodic review. “Sometimes you may not stop the legislation, [but] at least [you can] limit the damage in terms of scope by assistance of implementation,” he said. ■



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Shared responsibility

Despite the gaps in the power sector, Gatchalian commended PCC for its proactive participation in most Senate hearings, notwithstanding its limited resources. He noted that the agency’s vigilance is crucial in ensuring that laws are crafted in the principle of competition, given the entrenched presence of big businesses in many of the country’s political institutions. “The best way is to make sure that the spirit of competition is well embedded in the legislation, in the laws that we are tackling in the Senate,” he said.

As more work is needed to foster competition in the power sector, there is need for strengthened collaboration between concerned government agencies and policymakers. “If competition is the shield against corporate greed and enslavement, then government officials and policy experts are the bearers of that shield. We must do all we can to double down on our efforts and work even harder to champion open competition, market efficiency, and consumer welfare, not only in the energy sector but also in other industries imbued with public interest,” he said. ■

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said. One initiative being undertaken is Project Repeal, which is aimed at removing outdated and duplicative regulations, especially those blocking innovations. This initiative could benefit the e-commerce sector, wherein removing restrictions is crucial for attracting more investors.

A results-based regulation could be another approach, shifting the focus of regulation from traditional inputs to outputs. For instance, in regulating drones, traditional approaches rely on inputs such as licensing (e.g., securing a license prior to flying drones). Aldaba said one hypothetical approach could be prohibiting the flying of drones higher than 400 feet or anywhere in a controlled airspace.

Collaboration is another approach to regulation. In a collaborative framework, regulators work directly with businesses, innovators, and other players to define rules for emerging technologies. Sector regulators must also address overlapping jurisdictions among different government agencies and must implement a coordinative mechanism designed for various agencies to work together effectively and to align their programs.

From the perspective of a competition authority, Mochammad Hendry Setyawan, who heads one of the regional offices of the Indonesian Competition Commission (ICC), noted the importance of advocacy as an approach to incorporating the competition lens in regulation. ICC intensified and advocated its enforcement initiatives to instill in the government the importance of a competition perspective in terms of economic development. He said it took three years, three enforcement cases, and orders of penalizing erring firms with administrative fines to persuade one district that competition regulation is important. Key success factors include the incremental filing of cases each year and collaboration with local journalists for media coverage. As a result, the competition authority and regional government have better collaboration in regulation.

Ensuring responsive regulation

Disruptive innovation due to technological advancements is inevitable. Executive Vice President Lito Villanueva of Rizal Commercial Banking Corporation noted that the tendency of markets is to shift to digitization as consumers look for convenience. “You’re no longer talking of just customer-centric propositions, but human-centric initiatives, because products nowadays are personalized. Products should evoke emotions. It has to have empathy for you to be able to get the attention of your target market,” he explained. As such, regulation must be dynamic and responsive.

Villanueva shared that in the case of the financial technology market in the Philippines, regulators have been open-minded and dynamic. For instance, the Bangko Sentral ng Pilipinas (Central Bank) has been proactive in creating a “regulatory sandbox.” This test-and-learn approach creates an open environment for the private sector to test their ideas and platforms to the public, lessening the difficulty of engagement with regulators.

Toward business-friendly policy space

While regulatory mechanisms are imperfect and may not be appropriate for all sectors, Kokkoris emphasized that regulation must always go with competition, as the latter is not enough on its own. “Competition is not there to cure everything,” he said. Murciego highlighted the need to enhance synergies between competition and regulation. Cheng said that while regulation is difficult to undertake, the government should step up to do so if the need arises. The panel agreed that the key to creating business friendly policy spaces is continuous collaboration among all stakeholders. ■



(From left) PCC Commissioner Amabelle Asuncion, Lito Villanueva (Rizal Commercial Banking Corporation), Graciela Miralles Murciego (World Bank), Professor Ioannis Kokkoris (Queen Mary University of London), Mochammad Hendry Setyawan (Indonesian Competition Commission), Professor Thomas Cheng (University of Hong Kong), and Undersecretary Rafaelita Aldaba (Department of Trade and Industry).



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