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EDITORS' NOTE

This special issue of the Philippine Competition Bulletin features key takeaways from the 2019 Forum on Competition in Developing Countries (FCDC) sessions.

In a follow-up to the inaugural 2018 Manila Forum, the Philippine Competition Commission (PCC) held the 2019 FCDC last February 1 in Quezon City. This effort, which coincided with PCC's third anniversary, is directed towards ensuring that Philippine competition policy is aligned with the government's strategy of making technology and innovation an effective vehicle for equitable and inclusive growth.

Designed as a more intimate platform to discuss emerging issues in market competition, the 2019 FCDC took off from last year's Manila Forum session on disruptive innovations and competition policy. The increased adoption of so-called disruptive technologies is one of the most significant challenges affecting economies, owing to their effects on the market and competition landscape. With the theme "Technological Disruption: Market Competition Issues and Challenges," this year's forum localized the discussion to Philippine and regional contexts, featuring renowned industry leaders, policymakers, and academics from Southeast Asia.

THE CHANGING CONTEXT OF COMPETITION – FROM GLOBAL TO DOMESTIC

Mr. Ndiame Diop, head of the World Bank Group's Macroeconomics, Trade and Investment Global Practice for South East Asia and the Pacific region, delivered the keynote address at the 2019 Manila Forum on Competition in Developing Countries (FCDC), with the theme, "Technological Disruption: Market Competition Issues and Challenges." His keynote covered three main ideas: benefits of market competition to the poor, global trends affecting market competition, and market competition amidst a slowing global trade.

Market competition benefits the poor

Recent studies analyzing the impact of market competition on poverty and the poor indicate that "the poor tend to benefit proportionally from greater market competition," according to Diop. Conversely, the poor are the most adversely affected by lack of competition, particularly in markets important to them such as the food market. He cited a 2016 World Bank study, which shows that the dismantling of cartels in wheat, maize, poultry, and pharmaceutical sectors in South Africa resulted in income gains for the bottom 40 percent of the population 3.4 times higher than those of the top 40 percent.

"Unfortunately, market competition does not always come naturally. The key issue is how to make market competition a reality on the ground," Diop said. On the policy front, government intervention may serve vested interests rather than level the playing field for all players.

When markets are not competitive, those with market power gain by charging exorbitant prices and collecting excessive profits, often to the detriment of the poor, especially if the market concerned, such as food, is of vital importance to them. It could be argued, therefore, that less competition in markets equals greater inequality and, by extension, worsening poverty.

Lending a new dimension to this perspective are global trends, particularly the rise of digital technology and slowing global trade, which are seen to significantly alter the competition landscape, namely: rise of digital technology and slowing global trade. How are these trends affecting market competition and, subsequently, the poor?

Rise of digital technology: stimulating competition or perpetuating dominance?

From a competition lens, the advent of advanced digital technologies may be seen from two conflicting schools of thought – digital technology as a catalyst for competition or as a perpetuator of dominance.

As a catalyst, digital technology could help stimulate competition as it provides opportunities for creating new markets. According to Diop, digital technology may benefit consumers "by allowing access to a larger pool of suppliers or service providers, enabling greater alignment of consumer preference and supply." Citing the transportation sector as an example, Diop said that the creation of third-party booking applications has enabled the entry of new players such as Grab and Uber, among others.

While it generally tends to improve market access within and across countries, technology may, in some instances, exacerbate inequality as smaller firms and workers lacking access and/or ability to use such technologies find themselves unable to keep pace with the technological wave. Having greater access to technologies – like artificial intelligence and sophisticated algorithms –enables dominant firms to create market advantages and distort market outcomes, to their favor.

Moreover, digital technology may also give rise to public interest concerns, such as undermining people's privacy and freedom. Diop said companies, like Apple, "are sitting on personal data of hundreds of millions of individuals." Competition authorities and regulators, therefore, need to strike a balance between promoting fair market competition and recognizing the interests of traditional players, as well as looking out for public interest considerations such as consumer safety.

Market competition amid slowing global trade

Generally, a liberalized trade policy between and among countries induces competition in their respective local markets as industries are integrated into global supply chains. Since the 2008 world economic crisis, however, a pattern of slowing global trade – paralleled by a slowdown in productivity – and subsequent rise in protectionism has emerged. Diop noted that a slowdown in global trade does not bode well for countries including the Philippines that have not fully completed their structural transformation.

According to recent World Bank reports, "sustaining high economic growth requires maintaining high productivity growth which, in turn, requires promoting greater market competition." In this context, the Philippines needs to find a way to boost market competition to arrest the decline in productivity and economic growth brought about by slowing global trade. This will prove to be a challenge, however, given the highly concentrated nature of some markets in the country such as in the manufacturing sector.

Nonetheless, Diop cited PCC's approach of upstream advocacy as best practice, noting that PCC should continue prioritizing the review of laws and regulations to make them more pro-market competition. He concluded his keynote address with words of encouragement: "If governments want to effectively boost productivity and reduce poverty, they should focus on market competition. The rise in new technologies and the ongoing trade tensions are key contextual elements that make the work of this illustrious audience even more daunting. But the competition authorities have overcome many challenges in the past. I have no doubt that they have the expertise, knowledge, and energy to overcome this challenge as well."

TECHNOLOGICAL DISRUPTION: ISSUES AND CHALLENGES IN MARKET COMPETITION

Session one was moderated by Professor Emmanuel F. Esguerra (leftmost) of the University of the Philippines (UP). The panel was composed of (second from left) Director Tan Hi Lin of the Competition Commission of Singapore, Professor Raul Fabella of UP, Assistant Secretary Rafaelita Aldaba of the Department of Trade and Industry, Dr. Erika Fille Legara of the Asian Institute of Management, and Mr. Ramon R. del Rosario, Jr., President of PHINMA Corporation.

Technological disruption or disruptive innovation has no exact definition, but it has several key features, according to Dr. Emmanuel F. Esguerra, University of the Philippines (UP) economics professor and former socioeconomic planning secretary of the Philippines.

Citing the Organisation for Economic Co-operation and Development (OECD) Competition Committee, Esguerra said technological disruption has the "potential to drastically alter markets and their function." Such disruptions "not only involve a new product or process, but also the emergence of a new business model."

Generally, disruption occurs in large markets where dominant, inefficient firms are incumbents. Disruption also tends to spread quickly because the usual platform of the products and services is the Internet or mobile technologies. While technological disruption poses challenges against incumbent firms, it also affects sector regulators and competition authorities because it alters industry structures.

Impact on industry, competition regulation

Dr. Raul Fabella, UP economics professor, elaborated on the impact of technological disruption on industry structure and sector regulation. He explained disruption on cost structures of industries and cited examples of market structures thus: When there is only one player, that firm is a monopoly. When only two firms exist, there is a duopoly. Adding another player results in a trio-poly. A monopoly delivers less consumer welfare than a duopoly; a duopoly delivers less consumer welfare than a trio-poly. Such market structures depend on cost structures. Fabella said "a very high fixed cost normally suggests a monopoly." But when cost structures are disrupted (i.e., drastic reduction in the fixed cost of the delivery of a particular commodity or service), the natural monopoly no longer holds. The market structure becomes a duopoly or even an oligopoly (i.e., market with many players).

"Technological disruption tends to change the cost structure," said Fabella. He cited cases of disruption in the electric power and video rentals industry. For instance, the Solar Photovoltaic (PV) System drastically disrupted the power industry by enabling the delivery of wattage at a very low cost. In an auction in the Middle East, the winning bid was USD 0.03 per watt—a stark difference from the average delivery cost of USD 4 per watt. Another example is the story of Netflix and Blockbuster. Netflix invested in technology that provides video content through online streaming and requires very low cost. On the other hand, Blockbuster, the dominant player at that time, failed to catch up, resulting in its bankruptcy. These examples show that technology disrupts industries. Corollary to this, competition agencies' role must keep pace with industry developments.

"The competition agency's role changes with disruptive innovations," Fabella said, citing examples of how antitrust authorities may adopt various roles depending on industry developments. He cited a hypothetical example of a natural monopoly with a legal franchise or the right to operate granted by the government to an individual or corporation. Although technological innovation tends to dethrone a monopoly through cost disruptions, the legal franchise may provide a hedge for the said incumbent. Given the disruption, consumer welfare dictates that the franchise should be lifted. Fabella opined that competition authorities must exercise their role by advocating the lifting of such franchise.

In cases where technological disruption shows that the most efficient delivery of a service is through relatively larger fixed costs and consolidation becomes the appropriate track, the role of competition agencies can be to encourage mergers and acquisitions. In the banking sector, consolidating smaller banks can result in cheaper and more efficient service delivery, in view of the trend of globalizing banking service.

In sum, Fabella said that "what we need is the disruption of the regulatory mindset," noting that "regulation need not always be prescription."

Change of rules in the market, counter-attack by incumbents

Disruptive technology reshapes a market's competition landscape. Mr. Ramon R. del Rosario, Jr., PHINMA Corporation chief executive officer, agreed that "technology does disrupt competition very significantly." He cited as examples the case of Amazon and Apple. Amazon challenged the traditional ways of purchase, sale, and delivery by retailers. It started with online retail of books, resulting in bankruptcy of giant bookstores (e.g., Borders) because of the relative convenience of online transaction. Meanwhile, the entry of Apple in the music industry was instrumental in the phase out of compact discs. These drastic changes forced incumbents to afford protective legal remedies from regulators.

"Sometimes, when disruptive technology comes about, there is a temptation among the incumbents to see relief of some sort," del Rosario said. Existing market players may react by persuading regulators to protect them from being besieged by "unfair" competition. They may also raise concerns about employees losing their jobs, if not granted the needed protection. Del Rosario noted that when Amazon disrupted the market, regulators imposed a five-percent protective sales tax for online sales transactions.

Despite claims of "unfairness" by incumbents, technological disruption has the potential of becoming a platform for new players, even the smaller ones, to engage in the market.

Potential benefits, gaps in information

"Definitely, technology will impact all players," said Dr. Erika Fille Legara, associate professor at the Department of Analytics Information and Operations and academic program director of the Master of Science in Data Science, Asian Institute of Management (AIM).

Legara discussed instances wherein technology may help small- and medium-sized enterprises (SMEs), citing a technology developed by some AIM students that proved beneficial to the agricultural business sector. Using the "internet of things," the students developed automated health diagnostics and livestock management. They used cameras and sensors, as well as neural networks, to classify the health status of swine. The ones found unhealthy were quarantined or segregated from the healthy ones.

Del Rosario also shared how financial technology (fintech) enabled SMEs to access financial services. He noted that those who previously had no access to financial services gained access through such technology.

Despite the potential benefits, technology is misunderstood at times by regulators and the public. According to Legara, this is the era of the fourth industrial revolution, wherein technologies such as artificial intelligence, cloud computing, and cyber security can affect manufacturing and agriculture. While big businesses are already aware that technology may disrupt their operations, SMEs have little information on technology.

Del Rosario added that some regulators react to technological disruptions by subjecting them to regulation. For this reason, bank regulators may classify fintech as a bank because it is accepting deposits from or lending money to the public. He emphasized that the positive response of regulatory agencies "enables useful technology to flourish for the benefit of society at large." He commended the response of the Bangko Sentral ng Pilipinas, lauding its open-mindedness and being flexible with its regulations because it recognizes that fintech will improve financial services.

Regulatory framework, overlapping jurisdictions

Assistant Secretary Rafaelita Aldaba of the Department of Trade and Industry (DTI) acknowledged that disruptive innovation does not fit existing regulatory frameworks. Disruptive innovations, including the rise of platform businesses like Uber and Airbnb, pose a challenge for existing regulatory mechanisms. But amid all these, sector regulators always promote balance in fostering innovation, protecting consumers, and ensuring fair markets, while addressing potential unintended consequences of disruption.

Aldaba noted that currently the country's regulatory mechanisms are slow in adapting to societal and economic advances. "There is a gap between technological advancement and regulatory mechanisms, and this gap appears to be growing wider," she said. These issues are compounded by the complexity of national regulatory structure, existence of outdated policies, and overlapping authority of regulatory agencies.

In discussing various challenges that sector regulators encounter, Aldaba shared that it is difficult when disruptive business models cause industry breakthroughs, as products and services tend to shift from one regulatory jurisdiction to another. Moreover, the interconnected nature of disruptive business models makes it difficult for regulators to assign liability for consumer harm.

The use of smartphones, connected devices, and sensors advances digital footprint. From a regulatory perspective, Aldaba cited the issue of regulating data circulation and ownership, especially addressing concerns regarding cybersecurity, as various malicious cyber activities have proliferated and have been made sophisticated by today's hackers. As regards the use of artificial intelligence in business dynamics, she cited as an example that algorithms create strategic decisions from approving loans to determining heart attack risks. These algorithms are closely held secrets by organizations who created them.

AIM's Dr. Legara talks about technological disruption and its potential benefits to small players.

Dr. Raul Fabella of UP elaborates on the impact of technological disruption on industry structure and sector regulation.

Companies like Uber and Airbnb are built on an algorithm or software that understands demand and supply, and matches people on both sides of the network. Aldaba underscored how crucial this issue is for competition and innovation. "It puts the platform owner in a position of unimaginable control," she said. She flagged some regulatory concerns such as, "how do we know that what we're paying for an Uber ride is the efficient price" or "what stops the algorithm from colluding with someone else's algorithm to fix prices?."

Given the aforementioned predicaments, Aldaba proposed that the government rethink its regulatory approach, especially as regards business models that are more agile, iterative, and collaborative, toward creating outcome-based regulation and testing models in sandboxes. She also recommended making data more accessible so that regulation become more data-driven. She also encouraged trust and collaboration among businesses and regulatory agencies in providing young innovators space to grow and flourish. Lastly, she emphasized that government must pursue legislative changes and remove outdated policies.

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Session 2 was moderated by PCC Commissioner Johannes Bernabe (leftmost). The panel was composed of (second from left) Undersecretary Rosemarie Edillion of the National Economic and Development Authority, Chairman Kurnia Toha of the Indonesian Commission for the Supervision of Business Competition (KPPU), Mr. Albert Tinio of G-Xchange Inc., and Dr. Nasarudin Bin Abdul Rahman of the Malaysia Competition Commission (MyCC).

STRIKING A BALANCE BETWEEN INNOVATION AND COMPETITION ENFORCEMENT

Electronic or online platforms have changed and continue to change the way businesses operate. As these new technologies may potentially facilitate anti-competitive conduct, competition authorities and sector regulators need to keep pace with the emergence of disruptive technologies. The challenge, however, is how to do so without reducing the incentive for firms to innovate.

This year's FCDC tackled this race between platform technologies and competition authorities. The panel discussants were Undersecretary Rosemarie Edillion of the National Economic and Development Authority (NEDA), Mr. Albert Tinio of G-Xchange Inc., Chairman Kurnia Toha of the Indonesian Commission for the Supervision of Business Competition (KPPU), and Dr. Nasarudin Bin Abdul Rahman of the Malaysia Competition Commission (MyCC). PCC Commissioner Johannes Bernabe moderated the session.

Promoting innovation

Commissioner Bernabe set the context of the discussion by raising the matter of implementing regulations to ensure consumer welfare vis-à-vis efforts to promote innovation. Undersecretary Edillion shared that one of the main reasons for having a dedicated chapter on promoting a level playing field in the Philippine Development Plan 2017-2022, a first in the country's history of socioeconomic planning, is to promote innovation. "The lack of competition or the lack of level playing field discourages innovators because they see that there's this really big barrier to entry, and that reduces the incentive for them to innovate," she said.

Edillion said that regulations remain critical to the pursuit of consumer welfare as well as producers. As such, the bottom line is to have regulations that would not stifle innovation. However, in today's fast-moving, constantly evolving environment, there is a need to fully understand when anti-competitive practices may arise, how to detect them, and how to address them.

Experience of digital companies

Tinio provided insight on this interplay of regulation and innovation by sharing the positive experience of GCash, a mobile money wallet.

GCash is an electronic money issuer under the supervision of the Bangko Sentral ng Pilipinas (BSP). In the context of financial inclusion, Tinio said that had BSP not changed some aspects of its regulations with respect to opening financial accounts, the government would not have achieved its target of doing transactions electronically.

BSP has since allowed the use of video collection as an alternative to face-to-face validation of identity, a basic requirement for opening an account. Because of this, GCash has been able to effectively service areas not reached by traditional financial institutions. Thus, a farmer or a tricycle driver can apply for and have a legitimate and secure account. "That's the kind of open mindset that needs to be inculcated in a lot of the regulators," Tinio said.

Competition authority perspective on digital economy

In Indonesia, growth in internet use is driving e-commerce. It is projected that by 2020 more than half of its population will be using e-commerce, making Indonesia the biggest e-commerce market in Southeast Asia. As such, Toha said KPPU has been studying digital economy, making it a priority this year. With its need to comprehensively understand the field of digital economy, KPPU has been sending its staff to various workshops and engaging experts in this area. He noted that the other branches of government and the Supreme Court also need to be equipped with a good understanding of the field.

Similarly, Malaysia has a prominent e-commerce industry, having popular online shopping platforms. Dr. Rahman of MyCC said that they have been receiving complaints from the public and traditional brick-and-mortar stores against online platforms. One of the challenges now facing MyCC is with regard to two-sided markets. "When we talk about one-sided platform, I think it is very easy for a competition authority to decide straightforward," he said. With MyCC now receiving complex complaints involving two-sided markets, Rahman foresees the agency adjusting the way it assesses competition law cases.

On big data

One of the more prominent issues in recent discussions on competition policy and digital economy is the use of big data. In particular, the concern has been on how big data can be used in an anti-competitive manner.

Toha laid out two possibilities. "Of course, the company who acquires big data has many advantages, but big data also can be an advantage for the people," he said. He noted that while big data can be used by companies to provide efficient services for the benefit of consumers, it can be abused and can be anti-competitive in that companies can use big data to discriminate other companies, as well as in possible predatory conduct or abuse of dominant position.

For Rahman, concern about the use of big data can be contextualized in the control of very critical input. "We can create entry barriers to other people to come to the market who depends on the data to succeed," he said. As such, it may be used to prevent new technology and products from reaching the market.

Strengthening institutional linkages

Innovations that drive the rapid integration of regional and global markets offer many unique opportunities to fast-track progress toward a technological frontier. On the other hand, these innovations also pose risks to market competition. Thus, the challenge for competition authorities, as well as sector regulators, is to keep pace with emerging technologies without stifling the incentive for firms to innovate.

In closing, PCC Commissioner Amabelle Asuncion underscored the need for flexible, adaptable, and transparent policies to manage the potential effects of disruptive technologies on competition. "We are all in agreement that innovation is good, both for business and consumers. We just have to make sure that we are also guarding against possible potential impact on both businesses and consumers," she said.

Amid the popularity of platform technologies, cross-border competition issues are also becoming a concern. In this regard, Commissioner Asuncion highlighted the need for cooperation among jurisdictions. "The insights that we learned today point to the need to strengthen the institutional linkages to effectively combat cross-border anti-competitive behavior and agreements," she said. She encouraged enhanced cooperation in the region through the Association of South East Asian Nations competition enforcement network. "I hope that after today, the efforts of this network and its strengthening this network will be even intensified. This will, and we can make ensure that we will have a collective but at the same time flexible response to the issues brought about by disruptive innovation."

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Best practices in Singapore

Director Tan Hi Lin of the Competition Commission of Singapore (CCS) shared best practices in Singapore to enable a cycle of innovation and healthier competition.

Regarding disruptive innovations, Tan said it is essential to understand which issues should be addressed by conducting market studies and research. In Singapore, the CCS takes a proactive stance to understand industries. It engages with various economic consultants, industry experts, and members of the academe to scope markets better.

Tan emphasized that CCS collaborates also with other government agencies, including sector regulators, since regulatory mechanisms must constantly adapt to a continuously changing business landscape. In advocating pro-competition policies, the CCS has been working closely with regulators such as the Monetary Authority of Singapore and the Land Transportation Authority. "We emphasize the need to have a level playing field, to keep the markets open, and also to guard against some certain efforts [or] attempts by the industry players to sort of self-regulate or maybe even try to collude on certain initiatives that might actually go against the promotion of these new innovations," he said.

He also recommended supporting advocacy efforts by conducting seminars and conferences with fellow regulators, from on-ground enforcers to top executives. He shared that CCS issues quarterly newsletters to document developments in various competition-related issues.

PHILIPPINE COMPETITION COMMISSION

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