

COMPETITION COMPLIANCE PROGRAM TOOLKIT



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Disclaimer:

This document is not a substitute for the Philippine Competition Act or its Implementing Rules and Regulations. In explaining the law, generalizations were made, and the examples given do not in any way restrict the enforcement or other powers of the Philippine Competition Commission. This document should not be taken as legal advice. If you have any doubt as to how you may be affected by the Philippine Competition Act, please consult a lawyer or contact the PCC through queries@phcc.gov.ph.



About this Toolkit

This Competition Compliance Program Toolkit (Toolkit) was created with the primary purpose of helping businesses comply with Republic Act No. 10667, or the Philippine Competition Act, which was enacted in 2015. This Toolkit endeavors to achieve said purpose by assisting businesses in the creation of their very own competition compliance program.

The publication of this Toolkit is the culmination of a five-year project, which involved gathering information on factors affecting compliance of businesses with competition laws. The project also included the conduct of key informant interviews and focus group discussions (FGD) with members of the business community based in different parts of the country and representing priority sectors identified by the Philippine Competition Commission (PCC). The interviews and the FGDs were organized by the PCC in partnership with the Philippine Chamber of Commerce and Industry (PCCI).

How to use this Toolkit

The Toolkit comprises three sections. The first section discusses the concept of market competition, its benefits, and the importance of compliance with the Philippine Competition Act and other competition laws. The second section provides a step-by-step guide in developing and implementing an effective competition compliance program (CCP). The last section features a sample CCP that businesses can use as template in creating their own CCP. The sample CCP incorporates all the concepts, elements, and steps discussed in the previous two sections.

Finally, the Toolkit has a “Competitionary” which is a glossary of competition terms cited in this entire material. Every new competition concept mentioned is italicized and printed in **bold** in order to prompt the reader to turn to the “Competitionary” for a better understanding of the term.

Market competition and its benefits

Market competition refers to the rivalry among businesses selling similar goods or services to customers.

A market is considered "competitive" when no buyer or seller controls the price of a good or service sold in the market. Since no single buyer or seller has the power to influence the market, the players compete by adapting according to the needs and demands of the customers and become driven to make their products better compared to that of their competitors.

Competition is beneficial for businesses for the following reasons:



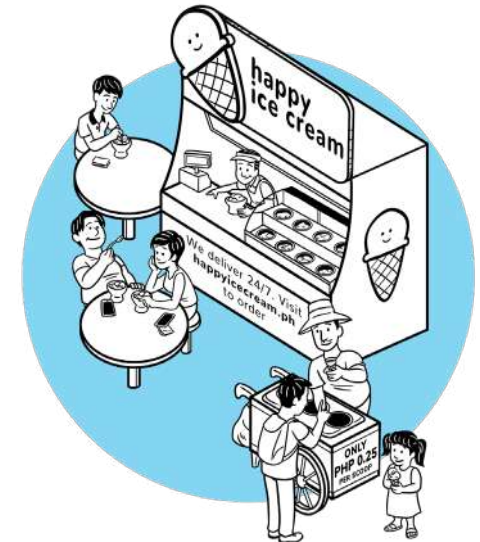
COMPETITION FOSTERS INNOVATION

To win more customers, businesses compete by improving their products or services thereby giving customers more value for their money.



COMPETITION ENCOURAGES BUSINESSES TO IMPROVE THEIR STRATEGIES

With the goal of differentiating themselves from their rivals and getting ahead of competition, businesses are motivated to come up with creative business strategies.



COMPETITION HELPS USHER IN A WIDER VARIETY OF PRODUCTS AT MORE AFFORDABLE PRICES

Competition among suppliers could provide businesses with a wide variety of options for inputs at affordable prices.

Recognizing the benefits of competition, Republic Act No. 10667, or the Philippine Competition Act (PCA) was enacted in 2015 as the country's primary law to promote and protect market competition. The law defines, prohibits, and penalizes anti-competitive practices, with the aim of enhancing economic efficiency and promoting free and fair competition in trade, industry, and all commercial activities.

The PCA prohibits the following acts:



ANTI-COMPETITIVE AGREEMENTS

Anti-competitive agreements are agreements between or among businesses that substantially prevent, restrict, or lessen competition.

The agreement may be any type or form of understanding between or among businesses to fix prices or manipulate bids. Examples include price fixing, output limitation, market sharing, and bid-rigging.



ABUSE OF DOMINANCE

Abuse of dominance pertains to the conduct of a dominant player in the market that substantially prevents, restricts, or lessens competition.

Some examples include predatory pricing, price discrimination, and other exploitative or exclusionary behavior or conduct toward consumers and competitors.



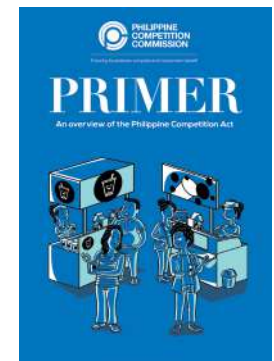
ANTI-COMPETITIVE MERGERS AND ACQUISITIONS

A merger refers to the joining of two or more businesses into an existing business or to form a new business, while acquisition refers to the purchase of securities or assets of another business to obtain control of that business.

While the Philippine Competition Act recognizes the importance of business combinations as a strategy for growth, the law forbids **anti-competitive mergers and acquisitions** (M&A), which happens when the transaction creates greater market concentration that could substantially lessen, restrict, or prevent competition.



Know more about the competition law and its key prohibitions in [PRIMER: An overview of the Philippine Competition Act](#).



The importance of compliance with competition law

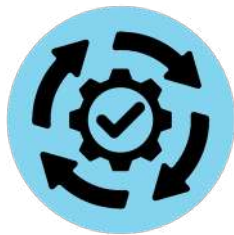


Compliance with competition law is necessary. Consciously refraining from engaging in any of the abovementioned anti-competitive practices saves businesses from exposure to the following risks:



FINES AND PENALTIES

Violation of the PCA is penalized with fines and, in some cases, imprisonment.



DISRUPTION IN OPERATION

Consciously refraining from engaging in any of the abovementioned anti-competitive practices keeps businesses from having to go through regulatory scrutiny, and in worst case scenarios, facing penalties.

To facilitate compliance with the Philippine Competition Act (PCA), the PCC encourages businesses to develop their own **competition compliance program (CCP)**.

The CCP is an internal system to identify and reduce the risk of breaching the PCA, remedy any breach that may occur, and create a culture of compliance within the organization.

While the PCA does not specifically require the creation of a CCP, having one is valuable to businesses due to the following reasons:



Businesses that exhibit commitment to compliance enhance their reputation in the market. This can increase trust among consumers and suppliers, thus, creating more opportunities.

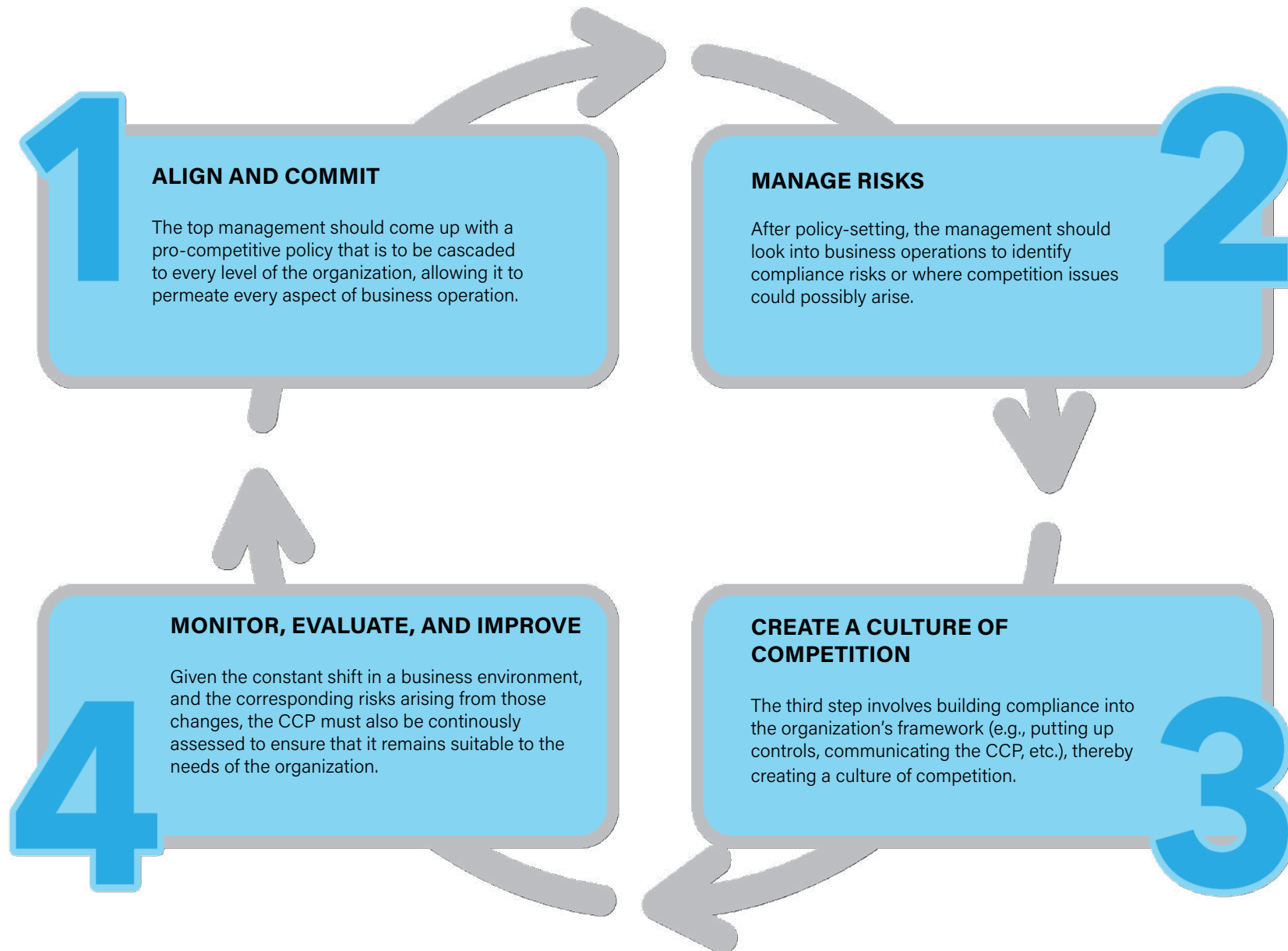


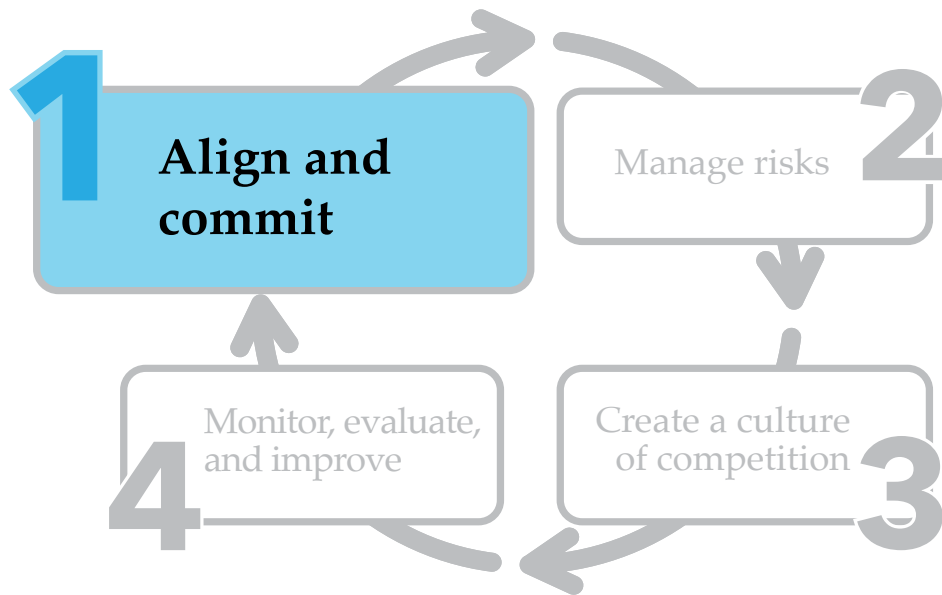
It helps businesses detect any possible violations of the PCA, thus, enabling them to take appropriate and timely corrective actions.



It helps businesses build compliance into their operations, which effectively fosters a culture of accountability among employees, leading to overall improved productivity.

Steps in developing and implementing an effective competition compliance program (CCP)





How do you make it happen?

Visible leadership

Top management should actively demonstrate commitment to competition law compliance.

This may be done through regular reminders on the importance of compliance, i.e., the business owner or the CEO may send either a personal message or an email blast to the employees reiterating the organization's commitment to compliance.

Competition law compliance starts from the top

Top management plays an important role as to how the business behaves in the marketplace. This is because the management shapes the organization's culture in many ways—from the messages that it communicates to the workforce, to the behavior it displays that employees emulate.



Why does it matter?

It is hard to get everyone on board if top management is not visibly invested in competition law compliance.



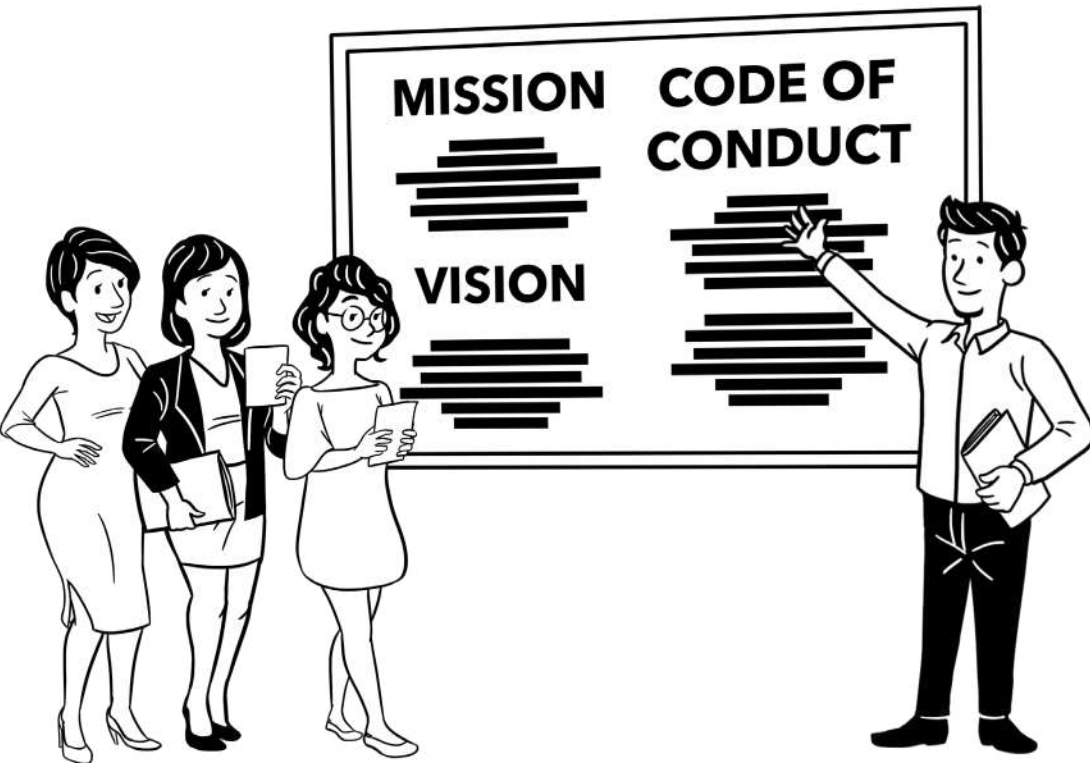
Align strategies with competition law

Competition law compliance is not a stand-alone activity. For it to be fully effective, it must be integrated into business systems and policies, which may include a company's code of conduct and other documents or manuals pertaining or relating to management or ethical standards.



Why does it matter?

Alignment means that competition law compliance is an integral part of business culture and policies. These policies set the direction of the organization and promote a lasting and continuous commitment to abide by it.



How do you make it happen?

Compliance policy

A key pillar to developing your compliance program is crafting a compliance policy, which provides guidance to prevent violations of the competition law and informs officials and employees what is expected of them, as well as the consequences of non-compliance.

The compliance policy should contain:

1. A statement of commitment to comply with the Philippine Competition Act;
2. A detailed plan outlining how competition law compliance will be operationalized within the business;
3. A requirement for all staff to report any compliance-related issues and concerns to the top management or its appointed focal person;
4. A guarantee that anyone who will report compliance-related concerns will not be prosecuted and that their reports will be kept confidential and secure; and
5. A clear statement that the business will act against any persons who knowingly or recklessly violate the Philippine Competition Act.

Vision and Mission

You may revise your vision and mission statements to incorporate competition compliance. This sets the tone for aligning all your strategies and policies with competition law principles.

Allocate resources for competition law compliance

An engine cannot run without fuel. Similarly, any serious effort to comply with competition law will need resources to move a business closer to the end-goal of full compliance. Since resource allocation is management's call, setting aside resources for a compliance program conveys to everyone in the organization that management is following through on its commitment.



Why does it matter?

Adequate resources, both personnel and material, allow for effective implementation of a competition compliance program (CCP).

For one, the conduct of activities or seminars that will educate stakeholders about the CCP and their respective roles in its implementation will require the involvement of knowledgeable personnel.



How do you make it happen?

Human resources

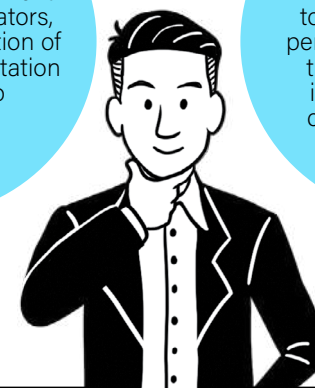
The right personnel to drive compliance program is the primary resource needed for its implementation. As discussed above, the initiative to have a CCP should come from top management. This includes the proper selection of personnel who is capable of handling the program. Depending on the size of the organization and the complexity of its operations, top management can designate a competition compliance officer or, if resources allow, an entire competition compliance team. If you already have a compliance officer or team to handle other regulatory requirements, then the following tasks can be included to their functions:

Regularly train
employees on competition
law compliance.

**Recommend
procedures**
to ensure compliance
obligations are integrated
in all company policies. This
includes factoring compliance
into employees' job
descriptions, as well as in
contracts with
external stakeholders.

Monitor compliance
through the measurement
of performance indicators,
as well as the generation of
reports and documentation
for submission to
management.

**Conduct regular
review**
to analyze compliance
performance and identify
the possible areas for
improvements in the
compliance program.



How do you make it happen? (continued)

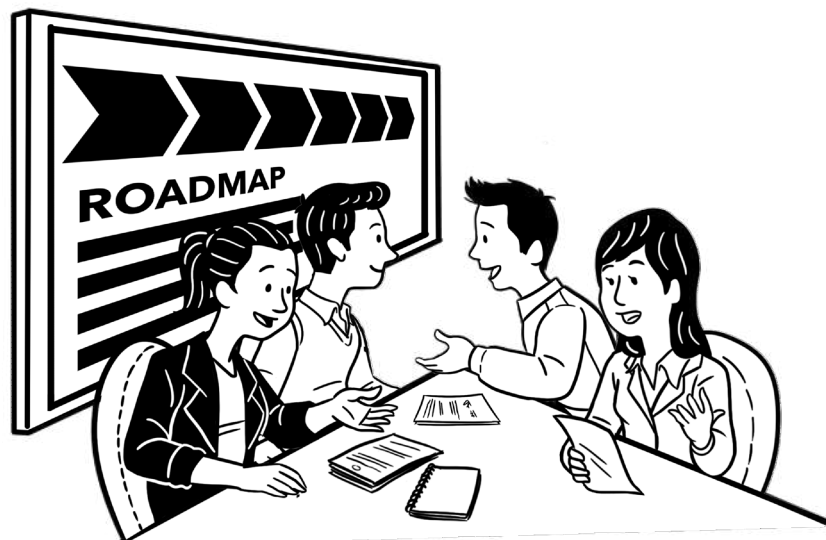
Training

As the country's primary competition authority, the Philippine Competition Commission (PCC) regularly conducts free seminars on the Philippine Competition Act, which the agency announces on its social media pages (CompetitionPH on both Facebook and LinkedIn). Alternatively, you may request the PCC to conduct an orientation-seminar tailored for your organization through the agency's Competition Orientation Outreach Program (<https://www.phcc.gov.ph/coop/>).

Material resources

Implementing a CCP entails the conduct of activities that would educate the entire workforce on competition law. This would require the use of material resources such as meeting rooms, references, workshop, training and other communication materials.

Reference materials about the competition law can be downloaded from the PCC website (<https://www.phcc.gov.ph>).



What gets measured, gets done

The CCP should have clear objectives to ensure that compliance commitments are implemented smoothly. The objectives should be SMART—specific, measurable, achievable, relevant, and time-bound.



Why does it matter?

Having targets or milestones ensures that progress in the implementation of the compliance program is properly tracked.

How do you make it happen?

An objective is SMART if it is:

- **Specific:** clearly and precisely addresses the “what,” “why,” and “how” of your goal.
- **Measurable:** with criteria to track progress and measure success.
- **Achievable:** realistic, considering your organization's resources and constraints.
- **Relevant:** aligned with business goals.
- **Time-bound:** with timeframe within which the objective needs to be achieved.

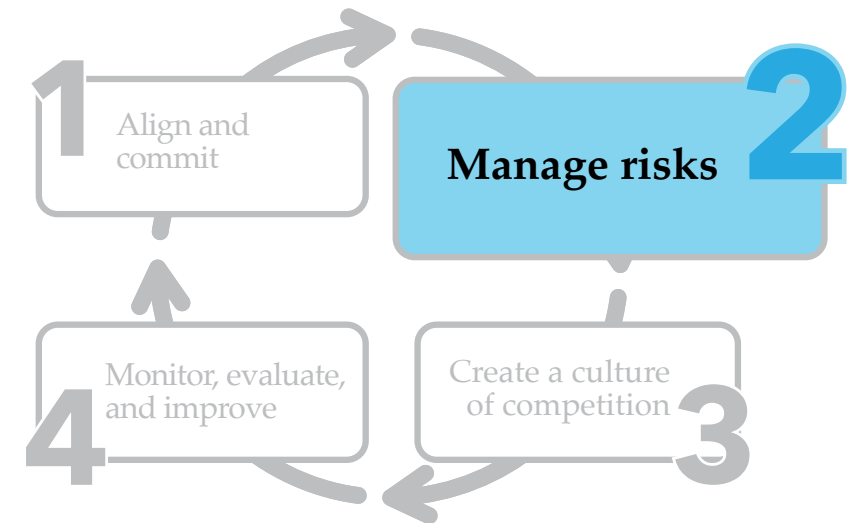
Plans and targets

Once the SMART objectives are formulated, the compliance officer or team should create an implementation plan to be approved by management. The implementation plan should at least include the following:

- Program of activities
- Roles and responsibilities of the compliance officer or team
- Resources required
- Priorities
- Key performance indicators
- Targets
- Reporting and monitoring procedures

Key Takeaways

- ✓ Top management commitment is the anchor to successful competition law compliance.
- ✓ Align business strategies with competition law compliance to ensure it fits with daily operations.
- ✓ Allocate the right resources for the program.
- ✓ Establish SMART objectives to effectively track the progress in the implementation of the compliance program.



Due to differences in their size and types of activities, businesses face different kinds of compliance risks. For instance, a large company operating in a market where most or all of its rivals are small may possibly abuse its dominance. Micro, small, and medium-sized enterprises (MSMEs) competing in the same market, on the other hand, may have an incentive to engage in anti-competitive agreements.

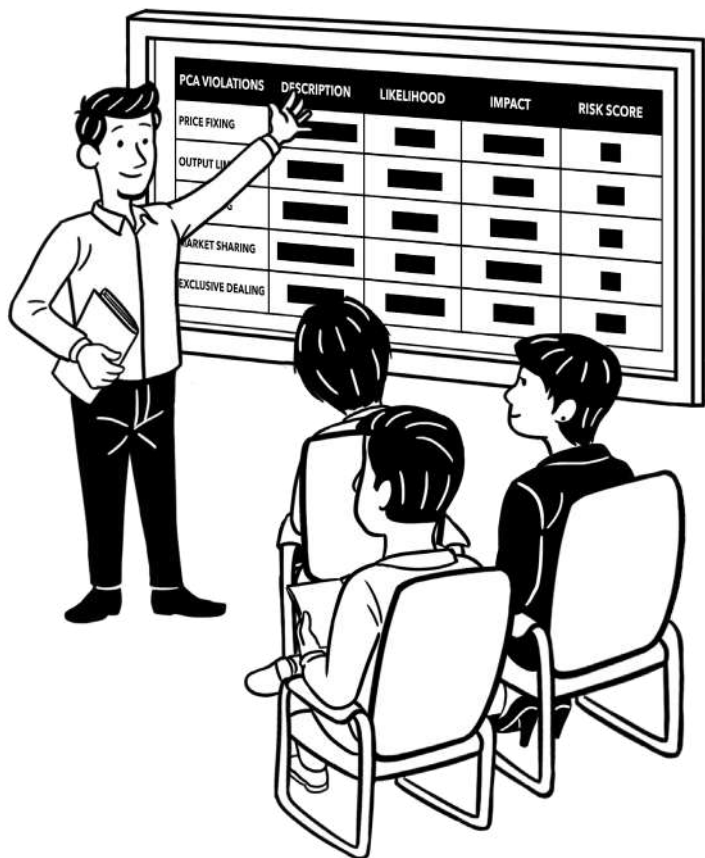
This is why the second step in developing a compliance program involves taking stock of your business risks. The succeeding pages explain how you may do this.

Identify and assess your compliance risks



Why does it matter?

This allows you to prioritize addressing the risks with higher likelihood of occurrence and bigger impact on your operations. Given scarce resources, you need to prioritize risks that are most likely to occur, especially since your business has to comply not only with competition law, but also with other applicable laws and regulations.



How do you make it happen?

Environmental scanning

During the company's annual planning, include competition law compliance risks when conducting environmental scanning to assess threats that are relevant to your business.

Knowing and closing the gaps

Understand the provisions of the Philippine Competition Act that apply to your business. A thorough assessment of policies and practices will reveal the possible gaps that are not compliant or which exposes the business to risk of non-compliance with the Philippine Competition Act.

Future-proofing

Knowing and filling the gaps will address your present-day concerns. However, you have to look ahead and future-proof your operations. It is important to think about the potential operational, reputational, and financial risks faced by your business. Rank the likelihood of these risk scenarios happening and consider the consequences of failing to prepare for or address them.

R

Recognize risks

The first step is to identify the competition law compliance risks faced by your business. These risks vary depending on the nature and size of your business.

You need to understand the key provisions of the Philippine Competition Act to determine whether your organization is conducting business within the bounds of the law or not. A *Checklist to recognize risks* can be found on pages 26-27.



I

Investigate and evaluate risks

After identifying the areas of risk, ask yourself these questions:

- What is the likelihood of this risk happening?
- How will it impact the company?
- What are the corresponding costs if the risks materialize?

Determine the gravity of the identified risks by rating or ranking them as low, medium, or high, then scan the activities of different departments or units in your organization to identify which employees work in high-risk areas. Examples include employees in sales and marketing who are likely to have dealings with competitors, or those who regularly transact with suppliers catering to multiple competitors.

Check out the guide *Evaluating risks by the numbers* on pages 28-29 and *Sample risk matrix* on page 30.

S

Strategize and plan on how to address risks

Once the risks have been recognized, investigated, and evaluated, the next step is to set up ways of addressing the risks. The exact actions you take will depend on the specific risks identified, their impact, and the likelihood of occurrence.

This can be in the form of a code of conduct or a checklist, which should be appropriate to address the risks you face. Examples of checklists are available on pages 31-33. Other strategies are also provided on pages 34-39.



K

Keep track of and review risks

A final step to managing risks is to never forget that they exist. Regularly review the preceding steps in order to ensure that the business has an effective compliance culture. The full review may be done annually.

During the company's annual planning, ask your compliance officer or team to present an accomplishment report, and provide updates on the competition landscape in the industry. More information on monitoring and evaluation will be provided starting on page 49.

Sample checklist to recognize risks

Is your business at risk of competing the wrong way? If you answer "yes" to any of the questions below, then the corresponding risk may apply to your business.



RISK	PEOPLE	PROCESSES	DOCUMENTS	INSTITUTION
General risks	<input type="checkbox"/> Is your business operating in a market where most, if not all, competitors know each other? <input type="checkbox"/> Are customers complaining about price, availability of supply, quality, or other terms of trade?	<input type="checkbox"/> Do you have any partnership with competitors? <input type="checkbox"/> Is there any cooperation planned with competitors?	<input type="checkbox"/> Does your business have joint selling or purchase agreements with any competitor?	<input type="checkbox"/> Has your business entered into an agreement with other companies or associations with regard to production, supply, or distribution of similar goods?
Horizontal agreements	<input type="checkbox"/> Are your customers also your competitors? <input type="checkbox"/> Is your sales staff in contact with competitors (for example, at trade events or association meetings)? <input type="checkbox"/> Do you discuss bidding documents with other bidders?	<input type="checkbox"/> Has there been any investigation or lawsuit involving cartels in the market where your business operates?	<input type="checkbox"/> Is there any agreement (verbal or in writing) with competitors about prices, quantities, or territories? <input type="checkbox"/> Is there any agreement regarding bid-rigging (for example, not to participate in bidding, withdraw a bid)?	<input type="checkbox"/> Is there any occasion where you could discuss market prices with other competitors? <input type="checkbox"/> Does your company consult competitors about specific territories, customers, or products?
Vertical agreements	<input type="checkbox"/> Are there customer and territorial restrictions (for example, an upstream manufacturer of a product prohibiting a distributor from selling outside an assigned territory or particular category of customers)?	<input type="checkbox"/> Are there restrictions in the delivery of goods (for example, an exclusive dealing agreement between a supplier and a retailer)?	<input type="checkbox"/> Are there agreements imposing resale restrictions (for example, on prices or territories) on retailers? <input type="checkbox"/> Are there exclusive distribution agreements? <input type="checkbox"/> Do you have distribution or franchising agreements with a manufacturer or distributor?	<input type="checkbox"/> Does your company discuss resale prices with your manufacturer or distributor?
Abuse of dominance	<input type="checkbox"/> Do you offer unequal terms to different customers without reasonable justification? <input type="checkbox"/> Do you refuse to sell or supply to certain customers (sale or purchase)? <input type="checkbox"/> Do you discriminate against customers who deal with any competitor?	<input type="checkbox"/> Do you have a persistently large market share in the relevant market ? <input type="checkbox"/> Are you expanding your market? <input type="checkbox"/> Are different prices or terms offered to similar customers?	<input type="checkbox"/> Are there existing strategies directed against competitors (for example, refusing to deal with similar customers or dealing with them using different prices)?	<input type="checkbox"/> Is your company charging customers a price which is below your production cost? <input type="checkbox"/> Is your company charging customers unfairly high prices? <input type="checkbox"/> Is your company paying suppliers at unfairly low prices?

Evaluating risk by the numbers

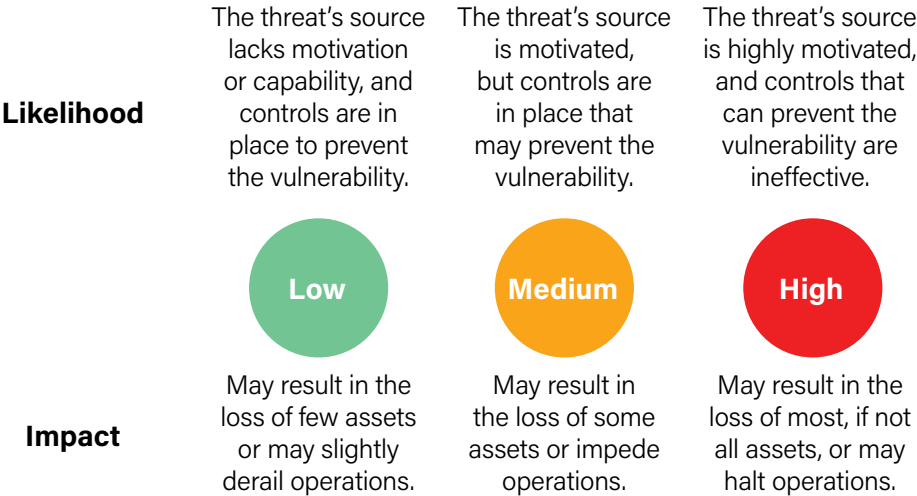
After recognizing the risks, you now need to evaluate the likelihood of such risks occurring and what their impact would be on your business. Evaluating your risks can help you create an effective risk management plan.

What are the chances?

The first part of evaluating risk is to find out the likelihood of such risks happening. Several factors need to be considered when determining this likelihood. Examples include the source of the threat and the motivation behind the threat. The chances that a potential vulnerability could be exploited may be rated from low to high.

How big is the impact?

The second part of evaluating risk is to find out its impact on the business. The magnitude of the impact can also be rated as low, medium or high.



Making risks quantifiable by assigning scores on their likelihood and impact simplifies the process of evaluation and planning. Here is how you could do the math:

First, assign scores on both the likelihood and impact of the risk. The scale below suggests assigning "1" if the likelihood or impact is low and a much higher "3" if high.

Second, multiply your ratings for the impact and likelihood. If you think that the likelihood of a risk materializing is medium (for example, a score of "2") and the impact is medium with a corresponding score of "2", then your overall risk exposure equals "4" (see table below).

		Impact		
		LOW (1)	MEDIUM (2)	HIGH (3)
Likelihood	HIGH (3)	Medium 3	High 6	High 9
	MEDIUM (2)	Low 2	Medium 4	High 6
	LOW (1)	Low 1	Low 2	Medium 3

The overall risk score is a concise indicator that signals to you to take appropriate actions. For example, if you arrived at a high overall risk exposure, then this score should prompt you to immediately investigate your process and implement strategies to address the risk.

A sample risk matrix is provided on page 30.

Sample risk matrix

BUSINESS PRACTICE	LIKELIHOOD*	IMPACT*	RISK SCORE**
<i>Price fixing</i>			
<i>Bid-rigging</i>			
<i>Output limitation</i>			
<i>Market sharing</i>			
<i>Exclusive dealing</i>			
<i>Predatory pricing</i>			
<i>Tying and bundling</i>			
<i>Unfair pricing against marginalized groups</i>			

* Low=1, Medium=2, High=3

** Likelihood x Impact



You get the overall risk by multiplying likelihood and impact. An overall risk score of "1" or "2" is considered low, while a score of "3" or "4" is rated medium. Scoring anywhere from "6" to "9" is considered high. Having derived your overall risk rating, you can then prioritize which risks to address.

Checklist on general compliance with the Philippine Competition Act

- ☐ Ensure policies and procedures are in place for complying with the Philippine Competition Act (PCA).
- ☐ Confirm that all employees acknowledge having read and understood the competition compliance program (CCP) and that they understood their respective obligations.
- ☐ Ensure that all employees know who your compliance officer is.
- ☐ Ensure that the compliance officer is accessible.
- ☐ Check that any violation is promptly reported to your compliance officer or the management.
- ☐ Verify that any potential compliance issue is considered when preparing documents, presentations, or training.
- ☐ Ensure that legal advice is sought, if a particular situation gives rise to competition concerns.
- ☐ Consider consulting with the Philippine Competition Commission (PCC) prior to engaging in business activities that may raise concerns under the Philippine Competition Act.
- ☐ Know that businesses may be held responsible for the actions of their employees and that management will be held accountable first and foremost.
- ☐ Contact the PCC if you suspect or have information on potential violations of the Philippine Competition Act by your company, competitors, or suppliers.
- ☐ Know that the PCC has a **Leniency Program** under which parties can self-report their involvement in anti-competitive activities in return for immunity or favorable treatment when an investigation starts (*Note: The Leniency Program covers only violations under PCA Section 14(a) and 14(b).*)

Checklist on agreements with competitors

- ☐ Contact the Philippine Competition Commission (PCC) when bid-rigging is suspected or observed.
- ☐ Avoid pre-announcing prices or price lists, or engaging in any behavior that could increase your ability to coordinate pricing, market allocation, production levels, or any other aspect of competition.
- ☐ Be aware that discussing pricing, market allocation, production levels or other aspects of competitive rivalry in "informal meetings," or "off-the-record" conversations at business functions, through social media, or as a component of any electronic information package, could violate the Philippine Competition Act.
- ☐ Do not make any comment that could be viewed as signaling to competitors any intention or expectation regarding price, trade terms, or other aspects of competition.
- ☐ Refrain from making any comment that can be perceived as threats or promises to competitors regarding pricing, market share, or any other aspect of competition.
- ☐ Be on the lookout for any agreement with competitors about pricing, market or customer allocation, production levels, bid-rigging, or other agreements which can lessen competition.

- ☐ Be on the lookout for any attempts to discuss trade information such as prices, changes in industry production, capacity or inventories, as these may be considered a possible Philippine Competition Act violation.
- ☐ Consult the compliance officer in advance if there are questions about the topics to be discussed and to be avoided during trade conferences and meetings with competitors.
- ☐ Be aware of the compliance risks that could arise when a competitor is also a customer, a supplier, or a joint venture partner.
- ☐ Exercise caution when entering into information-sharing agreements, research and development agreements, or joint production agreements, especially with competitors.
- ☐ When in doubt, consult the PCC before entering into any agreement with competitors, or whenever there are concerns about discussions that have taken place at a meeting, a function, or elsewhere, with competitors.

Checklist on abuse of dominance

Exercise caution in the following situations, especially when your business is considered as the market leader or has some degree of **market power**.

- ☐ Before implementing a loyalty program or an exclusive dealing agreement with your customers.
- ☐ When using one of your products as leverage to force or induce a customer to purchase any of your other products.
- ☐ Before selling articles at a price lower than your cost.
- ☐ Before penalizing a customer that supplies a product outside a defined market.
- ☐ Before charging different prices for goods or services sold to the same types or kinds of customers.
- ☐ When refusing to supply a product to a potential customer who may be substantially affected or precluded from operating its business because of your refusal.
- ☐ Refusing to supply a product to, or discriminating against, another business because of its low pricing policy.

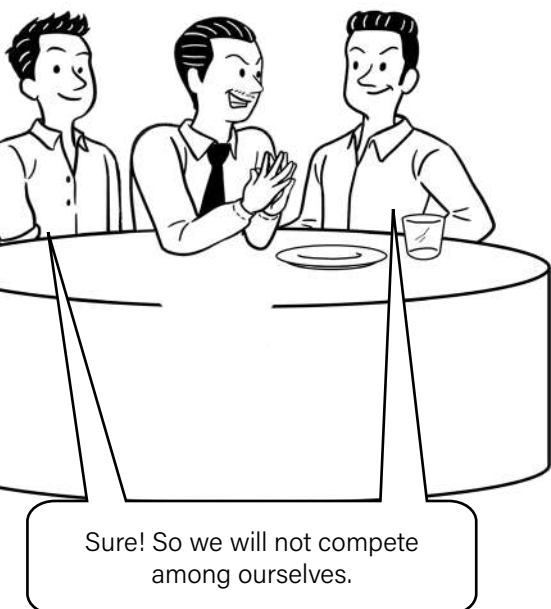
Checklist on mergers and acquisition

- ☐ Check the applicable notification thresholds to determine whether or not the PCC must be notified of a proposed transaction. In case of doubt on whether or not the PCC must be notified of a proposed transaction, consult the PCC Mergers and Acquisitions Office through email at mergers@phcc.gov.ph.
- ☐ Before completing a transaction, consult the Philippine Competition Commission (PCC) when in doubt regarding the requirement to notify the PCC of a merger.
- ☐ Ensure that all appropriate documents are produced as part of any required notification to the PCC.
- ☐ Before completing a transaction, beware of taking steps to coordinate with an acquisition target before the PCC has provided its advice regarding the potential impact of the merger.
- ☐ Consider undertaking due diligence before any merger to determine if there are likely to be competition law compliance concerns that may arise as a result of the proposed transaction.
- ☐ Consider the deadline for filing notification and the periods for the PCC to conduct merger review in planning transactions that fall within the notification thresholds.
- ☐ Do not consummate a notifiable transaction until clearance has been given by the PCC.
- ☐ Update your company's compliance program and compliance training after a merger or acquisition is consummated.

How to avoid price fixing

Let's set a uniform price.

That is called price fixing, which is prohibited under the Philippine Competition Act. Having a competition compliance program (CCP) will help your business steer clear of this unfair practice.



The Philippine Competition Act prohibits agreements between and among competitors that restrict competition as to price or other terms of trade.

DO'S AND DON'TS WHEN MEETING WITH COMPETITORS

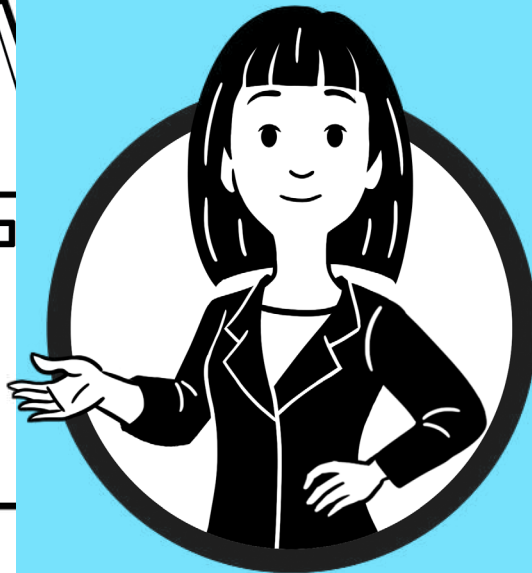
- ✓ Consult your legal or compliance officer or PCC before contacting and/or meeting with competitors.
- ✓ Before attending meetings (for example, association meetings or conferences), check the agenda and make sure that they do not touch upon matters that could give rise to competition concerns.
- ✓ Ask your legal or compliance officer if you have concerns about the topics to be discussed.
- ✓ Ensure that all discussions during meetings with your competitors are confined to the agenda items that will not pose competition concerns.
- ✓ Consult with and report to your legal or compliance officer the discussions that have taken place during the meeting with competitors.
- ✗ Do not discuss and agree with competitors about pricing, market or customer allocation, production levels, bid-rigging or other agreements that lessen competition.
- ✓ Report any antitrust violations promptly to your legal or compliance officer.

How to avoid output limitation

By reducing supply, we can create a fake shortage and charge higher prices.



That is called output limitation, which is prohibited under the Philippine Competition Act. Having a competition compliance program (CCP) will help your business steer clear of this unfair practice.



You may include in your company's code of conduct some or all of the following simple guidelines for compliance with competition law:

CODE OF CONDUCT

The PCA ensures that business practices are fair, and the marketplace is free and open.
In line with this, I will:

Not discuss prices with competitors;

Not agree with competitors to restrict levels of output;

Not agree with competitors to divide customers, markets, or territories;

Not require customers to buy products only from my company;

Not agree with competitors to boycott suppliers, or customers;

Not use one product as leverage to force a customer to purchase another product;

Report any antitrust violations promptly to your legal or compliance officer;

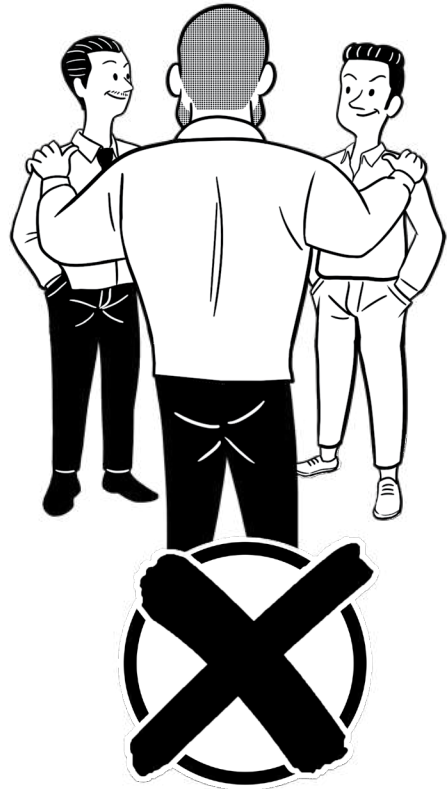
Consult with PCC if I have questions on specific situations concerning competition.



How to avoid bid-rigging

We can take turns at winning the bid.

BIDDING IN PROGRESS



That is called bid-rigging, which is prohibited under the Philippine Competition Act. Having a competition compliance program (CCP) will help your business steer clear of this unfair practice.



COMPREHENSIVE GUIDE FOR BIDDERS

Before bidding

- Understand what bid-rigging is by reading this recommended resource: <https://www.phcc.gov.ph/enforcement/bid-rigging-what-it-is-and-how-to-detect>
- Review internal documents, policies, and procedures to ensure that they comply with the Philippine Competition Act.

When preparing a bid

- Make independent pricing decisions by not exchanging pricing or other sensitive information with competitors.
- Consult with PCC before entering a joint bid with a competitor.

When approached by another bidder

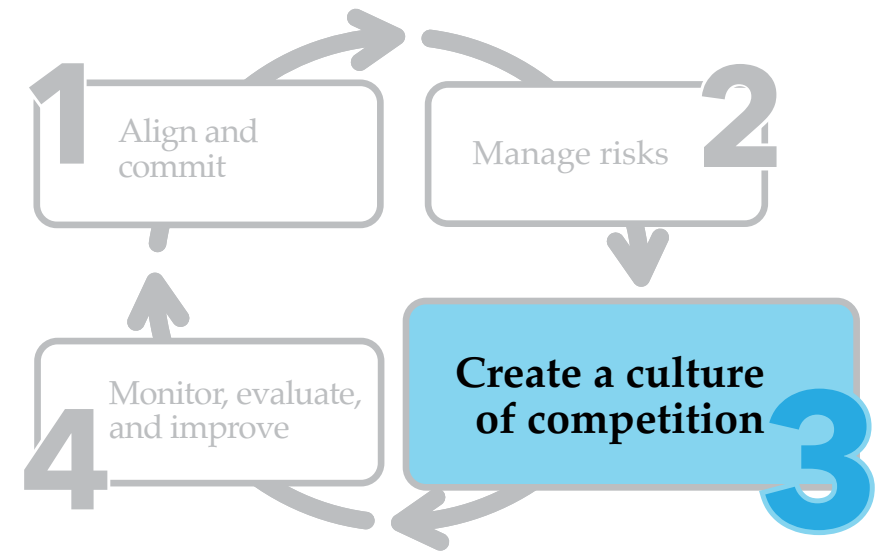
Object, leave the discussion, and report the incident to your legal or compliance officer, if asked to discuss any of the following:

- pricing;
- allocating customers or markets;
- limiting production or supply; and
- not submitting a bid, withdrawing a bid, or submitting a bid arrived at by agreement.



Key Takeaways

- ✓ **Recognize your risks.** The first step in managing risks is to know the vulnerabilities of your business under the Philippine Competition Act so you can prepare measures to address them.
- ✓ **Investigate and evaluate your risks.** Know the likelihood of the risks occurring, their possible impacts and the corresponding cost to your business if the risks materialize—all of which will contribute into crafting your strategies to address those risks.
- ✓ **Strategize and prepare measures to address risks.** Since risk exposure is specific to your business, strategies to address risks will have to take into account your actual circumstances.
- ✓ **Keep track of and review your risks regularly.** Doing this ensures you respond to them in a timely manner.



To best equip your business for competing fairly, your compliance program should integrate awareness and knowledge about competition law concerns into the organization's culture. Employees should also be fully aware of the risks inherent in their roles, and the impact that their behavior and decisions may have on the business. Innovations in operations, industry movements, and updates to the competition law should be regularly cascaded across the organization.

Put in place controls to ensure compliance and achieve desired behavior



Why does it matter?

Controls help the company avoid potential risks of violating the Philippine Competition Act. There are different types of controls designed for the operating environments of different types of businesses. Such controls, where possible, should be embedded into normal business processes.



How do you make it happen?

Integrate compliance procedures

The compliance officer or team has to establish, document, implement, and maintain the procedures to support the compliance policy and translate these into practice. At the same time, these compliance features can also be integrated into the operational and administrative procedures or manuals, such as the computer systems, forms, reporting systems, and contracts.

Issue identification and escalation

The compliance officer or team may implement procedures for seeking and receiving feedback and report on competition law concerns from employees.

This reporting and monitoring mechanism should establish the steps needed to identify, report, and escalate instances of non-compliance. This mechanism should identify the instances when compliance officer/s and employees need to reach out to PCC to report non-compliance and/or seek advice.

Reference documents

The compliance officer or team may put together a CCP folder containing the following documents:

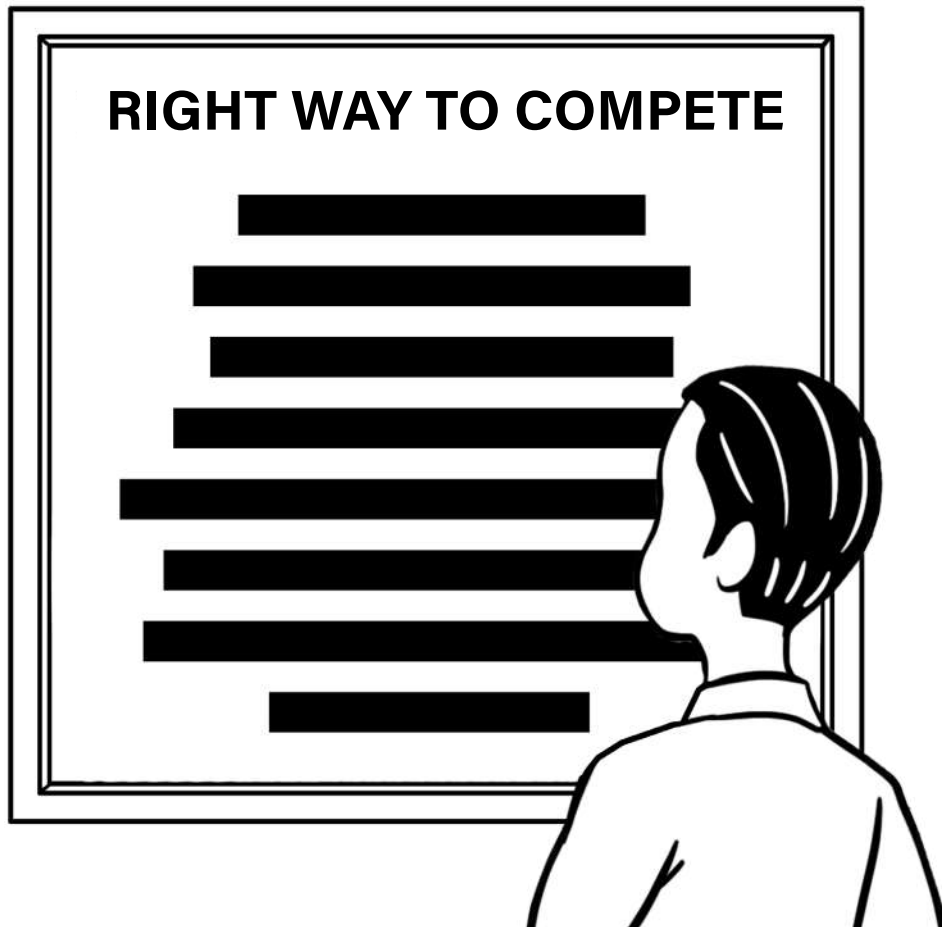
- Compliance policy;
- CCP objectives, targets, structure, and content;
- A record of the roles and responsibilities assigned to the compliance officer or team;
- Training records; and
- A register of relevant compliance requirements.

Communicate the compliance program



Why does it matter?

Effective communication of compliance commitment is necessary to enlist active engagement of all stakeholders.



How do you make it happen?

Internal communication

The CCP should be well-communicated to all internal stakeholders of the business as some of its elements may require a shift from usual business operations, especially for some frontline employees.

This can be done by using different communication platforms and channels to ensure that the compliance message has reached the employees and that it is understood by them.

Among the methods of communication suitable for internal audiences are new employee orientation seminars, informal discussions, team meetings, townhall meetings, focus group discussions, dialogues, e-newsletters, as well as more traditional memos, and posters on bulletin boards.

External communication

A practical approach to external communication, targeting all interested stakeholders, should be adopted. These interested parties may include, at the very least, customers, contractors, suppliers, business associates, advocacy partners, investors, and nongovernmental organizations.

This could be done by publishing press releases, advertorials, newsletters, annual (or other periodic) reports, as well as conducting community events, and setting up telephone hotline for the purpose of answering queries relating to compliance.

Constant communication

Providing regular and constant communication about your compliance efforts helps make those initiatives a part of the organization's culture.

Create a suitable environment that supports compliance

If the CCP is accepted and practiced, compliance will surely follow. The organization should put in place the workplace conditions that make it easier for everyone to comply.



Why does it matter?

Two of the biggest hurdles in implementing a CCP are getting stakeholders to adopt the behavioral changes required by the policy and ensuring they consistently adhere to said best practices. These challenges require designing the organization's policies and procedures in a way that promotes and encourages compliance.



How do you make it happen?

Making values loud and clear

Every stakeholder should be made aware of the values of your organization. Leaders should help raise awareness by actively discussing these values and visibly setting an example for everyone to follow.

Create a rewards system

With the human resource (HR) officer or department as lead, you can establish a procedure whereby compliant behavior is rewarded and non-compliant behavior is penalized across all levels of the organization.

Safe space

Create a safe space where managers and employees can raise concerns and even ask for help about ethics, company policies, and compliance matters.

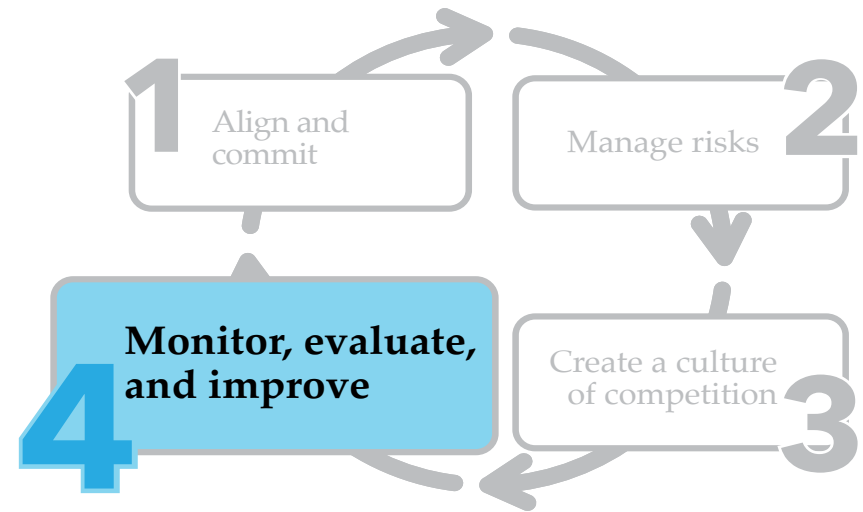
You can do this by implementing an "open door" policy, where questions on compliance can be directly raised at any time with the compliance officer or team.

Whistleblowing

A more formal approach would include setting up a whistleblowing procedure (whether web-based, telephone line, etc.).

Key Takeaways

- ✓ Put in place controls to ensure employees, and even external stakeholders, do not commit any acts prohibited under the Philippine Competition Act. These controls should be integrated into normal business activities to avoid adding another layer of complexity to the operations.
- ✓ Ensure that awareness and knowledge about competition law concerns become an integral part of organizational culture.
- ✓ Establish a mechanism whereby compliant behavior is rewarded and non-compliant behavior is penalized.



You have to continually adjust your compliance program to cope with the constant shifts in the business environment, and the accompanying risks that arise from those changes.

In this fourth and final step, you can:

- ⚙️ Avoid potential risks of violating the Philippine Competition Act;
- ⚙️ Learn from your experience in implementing a compliance program; and
- ⚙️ Prevent new risks from emerging.

Regularly reviewing the steps discussed in the earlier sections will ensure that the risks you identified and the measures for managing them remain current and relevant.

How often you conduct a review will depend on the nature of the business. Some businesses conduct an annual review of their compliance efforts while others do so less frequently.

Monitor, measure, assess, and report

Doing these allow you to identify and remedy challenges in the implementation of your CCP, check if compliance obligations are being met, and review the effectiveness of the compliance program.



Why does it matter?

It provides you a snapshot of your organization's state of compliance at any given time. It is also important to track progress in meeting compliance policy commitments, objectives, and targets. This is also crucial for evaluating the effectiveness of operational controls.



How do you make it happen?

Feedback

The compliance officer or team may develop and maintain procedures for seeking and receiving feedback on the organization's compliance performance. Among the various communication channels and platforms that may be used are the following:

- Hotlines and suggestion boxes for employees;
- Complaints handling procedure for customers;
- Performance rating system for suppliers; and
- Regular meetings with regulators.

The feedback monitoring can be documented in a password-protected digital document or spreadsheet that the compliance officer needs to maintain regularly.

Audit and monitoring records

Over the course of a year, the compliance officer or team should maintain the following records:

- Risk assessment and responses; and
- Results of reviews and audits of the compliance program and actions taken.

The compliance officer or team needs to log or document the feedback and concerns received in order to properly monitor them and the actions taken to address them. It can either be computer- or paper-based, as long as the personnel providing feedback and concerns are protected. Privacy is a critical requirement for ensuring the integrity and continuity of the compliance program.

Introduce improvements based on the lessons learned from your experience



Why does it matter?

Regular reviews of the company's compliance program allow the compliance officer or team to propose adjustments in policies and practices when needed to reflect changing conditions in the business environment.



How do you make it happen?

Reviews can be done during your annual planning. You can also have informal discussions with your employees and brainstorm how procedures and other controls can be adjusted to prevent new risks from arising, and old ones from recurring.

As part of the review process, the compliance officer or team will go over the following aspects of the CCP:

Core requirements

This covers the adequacy of the compliance policy, its associated objectives and targets, systems, structure, as well as personnel, and the resources allocated for its implementation.

Operational effectiveness

Examine the extent to which objectives and targets have been met.

Environmental scan

Check for changes in the external and internal environments and review the results of monitoring activities.

Compliance issues

Look back to previous compliance reviews and recommendations and the status of corrective and preventive actions, as well as timeliness of resolution.

Correspondence

Document communications received from interested parties, including complaints, as these form part of the means to verify the business' compliance to its commitments.

Key Takeaways

- ✓ Regular monitoring of key targets provides a snapshot of the state of compliance of your business at any given time.
- ✓ Another way to understand the extent by which your organization is complying with the law is to document key activities to see how aligned actual practices are with the objectives.
- ✓ The CCP should not be static. Regular reviews and continual improvements will keep it updated and relevant to the times.

Finally, it is not a toolkit without a...

CCP template

You do not have to reinvent the wheel when it comes to setting up your own compliance program.

This template incorporates the elements and activities discussed in the previous sections.



Sample Competition Compliance Program

[COMPANY NAME] establishes this competition compliance program (CCP) to embody and uphold the principles of the Philippine Competition Act.

Through the implementation of this CCP, [COMPANY NAME] shall:

Compliance policy

1. Adhere to business practices that are consistent with the competition law, thereby offering fairly-priced, innovative, and quality choices of products, and/or services to the public.
2. Commit its compliance to the Philippine Competition Act through mechanisms and activities outlined in this CCP and/or other supplemental documents (e.g., risk assessment report, compliance review).
3. Designate a compliance officer or form a compliance team,¹ who will be responsible for ensuring that the CCP is effectively designed, implemented, reviewed, maintained, and improved.
4. Require all staff to report any competition law concerns to the compliance officer or team.
5. Guarantee that anyone who files competition law compliance concerns will not be prosecuted or disadvantaged in any way and that their reports will be kept confidential and secure.
6. Institute own measures against any persons who knowingly or recklessly violate the Philippine Competition Act.

Training

7. Ensure that the CCP provides regular training for all directors, officers, employees, representatives, and agents of [COMPANY NAME], whose duties could result in them being involved in conduct that may violate the Philippine Competition Act.
8. Take advantage of and endeavor to participate in the free seminars provided by the Philippine Competition Commission (PCC), such as the Competition Orientation Outreach Program.
9. Ensure that any training is conducted by a suitably qualified compliance professional or legal practitioner with expertise in competition law.

¹ Instead of hiring additional personnel to serve as the compliance officer, the responsibilities of a compliance officer may be assigned or designated to the company's legal counsel or any personnel who is involved in complying with various government regulations such as permitting, licensing, etc.

10. Require that all new directors, officers, employees, representatives, and agents are aware of competition law compliance concerns prior to their induction to their respective posts as their duties expose them to possible violations of the Philippine Competition Act.

Risk assessment

11. Regularly conduct competition law risk assessment/s, through its compliance officer or team.
12. Identify the following as its compliance risk/s:

[Retain all applicable items]

- ☐ Price fixing
- ☐ Bid-rigging
- ☐ Output limitation
- ☐ Market sharing
- ☐ Exclusive dealing
- ☐ Predatory pricing
- ☐ Tying and bundling
- ☐ Unfair pricing against marginalized groups
- ☐ Anti-competitive mergers and acquisitions

[You may add other compliance risks that you have identified during the risk assessment.]

13. Assess the likelihood of these risks occurring.
14. Identify where there may be gaps in [COMPANY NAME]'s existing procedures for managing these risks. In doing so, [COMPANY NAME] will take note of the following:

[Refer to the checklists on pages 31-35]

15. Provide other recommendations for any action to be taken by [COMPANY NAME] regarding the above assessment.

Controls

16. Reflect its compliance commitments in all applicable operational and administrative procedures or manual.

Complaints Handling System

- 17. Ensure that its compliance program includes a competition law complaints handling system.
- 18. Ensure that staff and customers are aware of the complaints handling system.



Whistleblower protection

- 19. Ensure that its compliance program includes whistleblower protection mechanisms to protect those coming forward with competition law complaints.



Communication

- 20. Communicate its compliance commitments to its officials, employees, suppliers, customers, and other relevant stakeholders.



Compliance review

- 21. Through its compliance officer or an external reviewer, conduct an annual review of the compliance program to be carried out in accordance with each of the following requirements:



21.1. Scope of Review - The review should be broad and rigorous enough to provide [COMPANY NAME] and/or the PCC with:

21.1.1. A verification that [COMPANY NAME] has a compliance program that satisfies each of the requirements detailed above; and

21.1.2. The compliance reports detailed in items 22-23 below.



21.2. Evidence - [COMPANY NAME] will do its best to ensure that each review is conducted on the basis that the reviewer has access to all relevant sources of information in [COMPANY NAME]'s possession or control, including without limitation:



21.2.1. The ability to make inquiries of any officers, employees, representatives, and agents of [COMPANY NAME];

21.2.2. Documents relating to the risk assessment, including the risk assessment report;



21.2.3. Documents relating to [COMPANY NAME]'s compliance program, including documents relevant to [COMPANY NAME]'s compliance policy, complaints handling system, staff training, induction program, and compliance reports; and

21.2.4. [COMPANY NAME] will ensure that a review is completed within one year of this undertaking coming into effect, and that a subsequent review is completed within each year for [x] years.

Compliance reports

- 22. Ensure that the compliance officer reports to management every [x] months on the continuing effectiveness of the compliance program.
- 23. Include the following findings of the review in a compliance report provided to the management:

- 23.1. Whether the compliance program of [COMPANY NAME] includes all the elements detailed in items 1-22 above, and if not, what elements need to be included or developed;
- 23.2. Whether the compliance program adequately covers the parties and areas identified in the risk assessment, and if not, what needs to be addressed;
- 23.3. Whether the staff training and induction is effective and if not, what aspects need to be improved;
- 23.4. Whether [COMPANY NAME]'s complaints handling system is effective and if not, what aspects need to be developed;
- 23.5. Whether [COMPANY NAME] is able to provide confidentiality and security to competition law whistleblowers, and whether staff are aware of the whistleblower protection mechanisms;
- 23.6. Whether there are any material deficiencies in [COMPANY NAME]'s compliance program; and
- 23.7. Whether there are or have been any instances of material noncompliance with the compliance program and, if so, recommendations for rectifying the material failure/s.²

² Material failure means a failure that is non-trivial and which is ongoing or continued for a significant period to: (a) incorporate a requirement of the undertaking in the design of the compliance program (for example if the complaints handling system did not provide any mechanism for responding to complaints); or (b) comply with a fundamental obligation in the implementation of the compliance program (for example, if no staff training has been conducted within the annual review period).

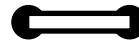
Response to compliance reports

- 24. Ensure that the compliance officer, within [x] days of receiving the compliance report, shall:
 - 24.1. Provide the compliance report to management or relevant governing body;
 - 24.2. Provide a report to management or relevant governing body identifying how [COMPANY NAME] can implement any recommendations made by the reviewer to rectify the material failure identified in the compliance report.
- 25. Implement promptly and with due diligence any recommendations made by the reviewer in the compliance report to address a material failure.



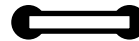
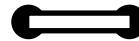
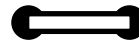
Reporting material failures to the PCC

- 26. Ensure that legal advice is sought, if a particular situation gives rise to competition law concerns.
- 27. Consider requesting a written opinion from the PCC prior to engaging in business activities that may raise concerns under the Philippine Competition Act.
- 28. Contact the PCC if [COMPANY NAME] suspects or has information on potential violations of the Philippine Competition Act by the officers and/or employees of [COMPANY NAME], competitors, or suppliers.
- 29. Consider the PCC's Leniency Program, under which parties can self-report their involvement in anti-competitive activities in return for immunity or favorable treatment when an investigation starts.



Provision of compliance program documents to the PCC

- 30. Maintain a record of, and store all documents relating to and constituting the compliance program for a period not less than [x] years (being the number of years compliance training is required) and an additional two years following that period.
- 31. Provide the PCC, if requested, copies of all documents constituting the compliance program, including:
 - 31.1. Compliance policy;
 - 31.2. Risk assessment report;
 - 31.3. An outline of the complaints handling system;



- 31.4. Staff training materials and induction materials;
- 31.5. All compliance reports that have been completed at the time of the request;
- 31.6. Copies of the reports to management and/or senior management referred to in 24.2 above.

PCC recommendations

- 32. Implement promptly and with due diligence any recommendations that the PCC may make and that the PCC deems reasonably necessary to ensure that [COMPANY NAME] maintains and continues to implement the compliance program in accordance with the requirements of this undertaking.

Competitionary

Abuse of dominance: An illegal practice wherein a dominant market player uses its market power to exclude competitors from the relevant market, and discriminate against and/or exploit customers.

Agreement: Refers to any type or form of contract, arrangement, understanding, collective recommendation, or concerted action, whether formal or informal, explicit or tacit, written or oral.

Bid-rigging: An illegal practice wherein businesses agree to manipulate bids by colluding and agreeing in advance which company will win the bid. In effect, procuring organizations are left with higher-priced bids and subsequently pass on the additional cost to consumers.

Bid rotation: A form of bid-rigging where competitors take turns in winning the bid.

Bid suppression: A form of bid-rigging wherein competitors agree that one or more of them will not submit a bid or withdraw a previously submitted bid.

Binding ruling: A non-adversarial administrative remedy where an entity can request in writing from the PCC when it is "in doubt" about whether an act or conduct is in compliance with, exempt from,

or in violation of the Philippine Competition Act, or other competition laws. This applies only to contemplated, non-existing acts and to situations wherein no prior complaint or investigation has begun.

Cartel: A group of competitors who agree to fix prices, rig bids, control production, divide the market, or such other forms of agreements that substantially lessen competition.

Competition compliance program (CCP): A program specifically aimed at encouraging and assuring compliance by a business with the country's competition laws.

Dominance or dominant position: Refers to a position of economic strength that an entity holds, which makes it capable of controlling the relevant market independently from any or a combination of the following: competitors, customers, suppliers, or consumers.

Exclusive dealing: When a manufacturer prevents a distributor from selling the products of a competing manufacturer, or when a company is prevented from buying inputs from a competing supplier.

Horizontal agreements: Agreements among competitors. For example, two competing manufacturers collude to fix the price of their product.

Leniency program: A program that allows any entity that violates or violated certain provisions of the competition law to avail of either total or partial reduction of fines and other penalties in exchange for voluntary disclosure of information regarding such violation, subject to certain requirements.

Market power: The ability of an entity (or group of entities) to raise prices above those that would be charged in a competitive market.

Market sharing: An illegal business practice wherein competitors agree to divide the market or allocate customers by not competing in certain geographic areas. This harms consumers because it limits their choices and may result in higher prices in the absence of competition.

Monopoly: A market situation wherein a business faces no competition. It is characterized by a single seller, selling a unique product in the market.

Monopsony: A situation wherein a large portion of the market is controlled by a single large buyer (monopsonist) of the goods or services offered by many sellers.

Output limitation: An illegal business practice wherein rival companies agree to limit production or set quotas. This creates an

artificial shortage in the market that drives up prices. While businesses earn larger profits, consumers suffer by having to pay more.

Predatory pricing: When a company sells at a price lower than its cost, to undercut competitors, and drive them out of the market.

Price fixing: Refers to restricting competition as to price, or components thereof, or other terms of trade. This usually happens when competitors collude with one another, rather than allow demand and supply conditions to determine price.

Relevant geographic market: The area where a business trades its goods and/or services to consumers, and where businesses experience a similar competition environment. It is distinct from the conditions of competition in neighboring areas.

Relevant market: Refers to the market in which a particular good or service is sold. This is a combination of the relevant product market and the relevant geographic market.

Relevant product market:

Comprises all those goods and/or services which are regarded as interchangeable or substitutable by the consumer or the customer, by reason of the goods' and/or services' characteristics, their prices, and their intended use.

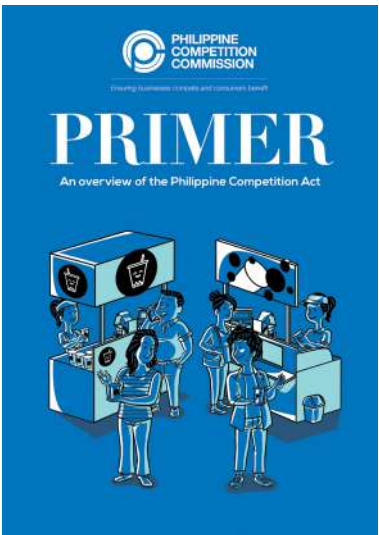
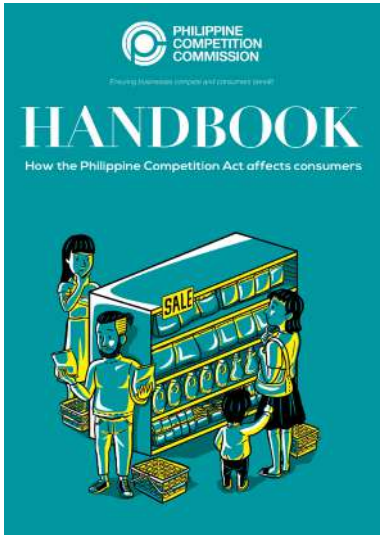
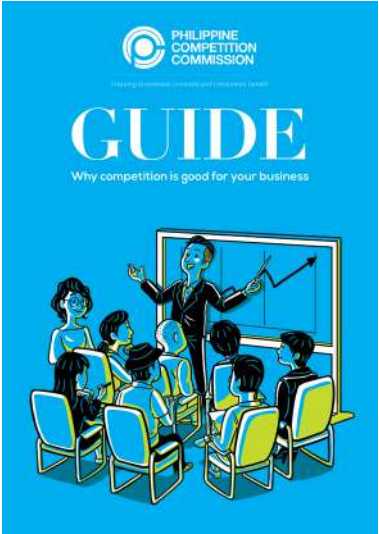
Unfair pricing against

marginalized groups: Imposing unfairly low purchase prices for the products of marginalized agricultural producers, small to medium scale enterprises, and the like.

Trade association: An organization whose members are engaged in a similar or related line of commerce, organized to promote and improve business conditions in that line of commerce.

Tying and bundling: When a seller who has market power over one product will only sell that product to buyers who agree to also buy a different product, which is referred to as the “tied” or “bundled” product.

Vertical agreements: Denote agreements between firms at different levels of the supply chain. For example, an agreement between a manufacturer and its distributor.

[illegible]

How do you stay ahead of the competition?

This Toolkit will help your business build a game plan for competing in the market, the right way!

Contact Us

The Philippine Competition Commission (PCC) is open Mondays through Fridays, from 8:00 a.m. to 5:00 p.m.

Submissions of notifications and complaints are accepted during these hours.



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