27

Philippines*

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PROFILE	
Population:	81.5 million***
GDP (Current US$):	80.6 billion***
Per Capita Income: (Current US$)	1,080 (Atlas method)*** 4,170 (at PPP.)**
Surface Area:	300 thousand sq. km
Life Expectancy:	69.8 years**
Literacy (%):	92.6 (of ages 15 and above)**
HDI Rank:	83***

Sources:
- World Development Indicators Database, World Bank, 2004
- Human Development Report Statistics, UNDP, 2004

(**) For the year 2002
(***) For the year 2003

Situated in Southeast Asia, the Philippines[1] consists of more than 7000 islands, but the bulk of its population is confined to only 11 of these. The Philippines won its independence from the United States of America in 1946.

Having been hampered by political instability, involving rebellions and coups, the Philippines saw the return to greater stability and economic development with the election of Fidel Ramos in 1992. In the same year, the US also closed its military bases on the islands.

Joseph Estrada was elected president in 1998, but was succeeded by his Vice-president, Gloria Macapagal-Arroyo, in January 2001 after Estrada's stormy impeachment trial on corruption charges broke down and widespread demonstrations led to his ouster. Macapagal-Arroyo was elected to a six-year term in May 2004. The Philippine Government is still facing threats from armed communist insurgencies and from Muslim separatists in the South.

Economy

The Philippines was less severely affected by the Asian financial crisis of 1998 than its neighbours, aided in part by annual remittances of US$6-7bn from overseas workers. From a 0.6 percent decline in 1998, GDP grew by 2.4 in 1999, and 4.4 in 2000, but slowed to 3.2 percent in 2001 in the context of a global economic slowdown, an export slump, and political and security concerns. GDP growth accelerated to 4.4 percent in 2002 and 4.2 percent in 2003, reflecting the continued resilience of the service sector; gains in industrial output; and improved exports. Nonetheless, it will take a higher, sustained growth path to make appreciable progress in poverty alleviation, given the Philippines' high annual population growth rate and unequal distribution of income.

The Macapagal-Arroyo Administration has promised to continue economic reforms to help the Philippines match the pace of development in the newly industrialised countries of East Asia. The strategy includes improving the infrastructure, strengthening tax collection to bolster government revenues; furthering deregulation and privatisation of the economy; enhancing the viability of the financial system; and increasing trade integration with the region. Prospects for the future will depend on the economic performance of two major trading partners, the US and Japan, and on increased confidence on the part of the international investment community.

Competition Evolution and Environment

In the 1980's, the Government began to pursue major policy reforms towards trade liberalisation; the removal of quantitative restrictions; privatisation and deregulation; all in order to increase the efficiency of the country's domestic industries and to encourage competition. Efforts toward reforms were propelled by the need to make the domestic market more dynamic, as well as the need to prepare industries for the international forum.

The era of globalisation has introduced strong competitive pressures in many domestic markets. Whilst globalisation rewards most competitive economies, it also poses

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1 http://cia.gov/cia/publications/factbook/geos/rp.html

numerous challenges to most developing countries. As the Philippines faces the challenges of an increasingly complex global economy, it has adopted both economic and political reforms that are meant to help and ensure its viability and survival.

Whilst the growth and development process was hindered, for a time, by much political upheaval, the 1990s saw the Philippine Government adopt a more concerted policy approach, which was designed to promote liberalisation and achieve sustained economic growth. Whilst the previous administrations have succeeded in introducing structural reforms that were meant to open some sectors of the economy to competition; sustaining and deepening these reforms is the bigger challenge ahead. Much needs to be done to build the competition momentum, by extending the various pro-competitive reforms in a well-defined and transparent manner.

The year 1986 saw a change of Government in the Philippines. Under the new Aquino regime, a new Constitution was drafted in 1987. The new Constitution sought to abandon the heavy nationalisation that had characterised the Filipino economy; and recognised the 'indispensable role of the private sector' under Section 20. Thus, with the new Constitution, a fresh attempt was made to revive and promote competition in the markets. Even though this Constitution does not carry an explicit provision for a competition law, it has several provisions that directly or indirectly impact competition in the Philippines.

The Philippine Constitution of 1987 prohibits anticompetitive practices. Monopolies are not prohibited *per se*, but only when public interest so requires. It also prohibits combinations, which may restrain trade or competition. However, the 1987 Constitution provides no imposable sanctions for the violations of these provisions. Instead, Article 186 of the Revised Penal Code R.A. 3815 (1930) provided for this, in a manner similar to Section 2 of the Sherman Act (1890), which was the major legislation that ushered competition law into the limelight in the US. Other articles, which describe the acts punishable, such as monopolies and combinations in restraints of trade, and the penalties imposable for such violations in the Philippines, include:

- Republic Act, 3247 (An Act to Prohibit Monopolies and Combinations in Restraint of Trade) (1961) provides for the recovery of treble damages for civil liability, arising from anti-competitive behaviour;
- Republic Act, 165 (1947) *(Patent Law)* and Republic Act, 166 (1971) *(Trademark Law)* describe the appropriate civil action, which can be resorted to, and the penalties imposable;
- Presidential Decree 49 (1972), *the Copyright Law,* penalises copyright infringements;
- Republic Act, 8293 (1997) (An Act prescribing the Intellectual Property Code, and establishing the *Intellectual Property Office Republic Act 386* (1949) (Civil Code of the Philippines)) stipulates the collection of damages arising from unfair competition;
- Republic Act, 7581 (1991) *(The Price Act)* protects the consumers by stipulating price manipulation (hoarding, profiteering and cartels) as illegal acts;
- Republic Act, 7394 (1932) *(The Consumer Act of the Philippines)* imposes penalties for such behaviour as deceptive, unfair and unconscionable sales practices in both goods and credit transactions;
- The *Philippine Corporation Code* Batas Pambansa Blg. 68 (1980) provides for rules and procedures to approve all combinations, mergers and consolidations; and
- *Revised Securities Act,* Batas Pambansa Blg. 178 (1982), Republic Act No. 337, regulates Banks and Banking Institutions and for other purposes (General Banking Act, 1948).

Competition Policy[2]

Under the Arroyo administration, the Philippines committed to renew advocacy for the immediate passage of an anti-trust law, and the establishment of a Fair Trade Commission (FTC) to enforce a national competition law.

The absence of a comprehensive and competition policy in the Philippines is a glaring omission. The Commission believes that if the Philippines is to enhance its position in the world economic scene, it must move decisively to establish a comprehensive and effective competition policy.

This paper discusses the current state of competition legislation in the Philippines and highlights some of the challenges/issues confronting competition policy (including formulation and administration), which may hinder effective implementation in the future. These include the following:

- need to create an institutional body to implement competition policy;
- a diffused legal system;
- need for training for better appreciation of a competition regime;
- lack of understanding as to the benefits of a competition law; and
- resistance from some members of the business community.

Institutional Framework

Given the formidable tasks implied by the comprehensive nature of an efficient competition policy, the present institutional arrangements to support competition policy are weak and ineffective. There is no central enforcement

2 r0.unctad.org/en/subsites/cpolicy/gvaJuly/docs/en9.doc

agency, but rather, enforcement is spread through four main agencies (Securities and Exchange Commission, Bureau of Import Services, Bureau of Trade Regulation and Consumer Protection, and the Tariff Commission); and some 12 sectoral agencies. These agencies rarely operate in a coordinated manner and sometimes produce conflicting situations. As such, the creation of a single authority, responsible for enforcement, will be the key initial step in the implementation of an effective competition policy.

The institutional framework is as important as the detail of the policy itself. Key tasks associated with implementation involve both policy analysis and advice, and administration. In studies initiated by the Tariff Commission in 1999, (First Phase) and 2001 (Second Phase), it was proposed that a new institution be set up under a specific act of Congress – the establishment of a Philippine Competition Commission (PCC) and that the Chairperson and Commissioners of the said proposed Commission be appointed under the mentioned act.

The PCC would have two main functions. First, it would coordinate reforms and act as an intermediary amongst the relevant agencies to ensure the formation and effective implementation of competition policy. The second task would be to advise and supervise a review of existing regulations that restrict competition.

The PCC would play a major role in enforcing competition policy through a process of surveillance (similar to the existing regime under the Price Act), by formally notifying violators of an impending investigation, and by undertaking formal inquiries into the pricing decisions of firms under investigation. Within the PCC, there would be two separate offices responsible for undertaking its major functions. These are the:

- Office for Policy Analysis and Advice (OPAA): The OPAA would be staffed by a group of highly trained economists and/or lawyers, who would undertake research and analysis on contemporary regulatory/ competitiveness issues and advise the PCC; and
- Competition and Consumers Welfare Administration (CCWA) which should be responsible for administration issues.

An economy-wide, single body is a desirable option compared to industry specific arrangements. Apart from administrative savings and the existence of adequate common features amongst industries, this approach ensures that there is objectivity in decisions and views on difficult issues.

More importantly, such a body would build up a fund of economic and social policy expertise, which, over time, would prove to be an effective knowledge base for policy advice and administration, in order to ensure the development of the Philippine economy as a dynamic and internationally competitive market. It is essential that the PCC be adequately staffed and resourced, to discharge its duties, to implement and oversee national competition policy.

Some of the provisions under the new Constitution are:

- Monopolies are not prohibited *per se* but action can be taken against them if their presence is considered detrimental to public interest;
- The Price Act (Republic Act No. 7581 of 1992) was implemented to:
  1. ensure the availability of basic necessities and prime commodities at reasonable prices, at all times, without denying legitimate business a fair return on investment; and
  2. provide effective and sufficient protection to consumers against hoarding, profiteering and cartels, with respect to supply, distribution, marketing and pricing of said goods – especially *inter alia* during periods of calamity, emergency, and/or widespread illegal price manipulation.

Regulatory Framework

Though the Philippines do not have a dedicated competition law, as aforementioned, it has various provisions and Acts that deal with competition.

Inter alia the Philippines has:

- The *Retail Trade Liberalisation Act* that cites qualifying instructions for a foreign retailer, before (s)he can set up business in the country;
- The *Foreign Investment Act* recognises the importance of foreign investment in the country and, accordingly, sets up a framework. Under the Act, foreign ownership in export and domestic market enterprises in those areas of economic activity, in which foreign presence is limited, is specified in a negative list;
- The *Consumer Act* mandates the development of safety and quality standards for consumers, and protects them from trade malpractices, and from substandard and hazardous goods.

Other Acts include *Export Development Act, Tobacco Regulation Act and Transactions Value Act.*

Philippines also have an online consumer assistance portal called '*i-reklamo*' Consumers can file their complaints online and check the status of their application.

Telecommunications Sector

The Philippines has made great progress in breaking up monopolies and cartels in the telecom sector. The Republic Act No.7925 entitled *An Act to Promote and Govern the Development of Philippine Telecommunications and the Delivery of Public Telecommunications Services,* was enacted in 1995 to provide a comprehensive framework in the regulation of the telecom sector, so that consumers derive maximum benefits alongside the freedom of undertakings to pursue their interests.

The reforms, initiated in the 1990s, transformed the telecommunication industry from a single-firm dominated industry to a competitive, dynamic, multi-product, multi-operator industry. Competition was engendered through the grant of franchises to new players, allowing foreign equity partnership; mandating compulsory interconnection of authorised public telecommunication carriers; and encouraging private enterprises to take a lead in providing telecommunication services and facilities, amongst others.

The adoption of these reforms substantially developed the telecommunications industry, helping it become one of the leading sources of growth for the economy. The communications sector grew from 8.2 percent in 1990 to 13.4 percent in 2003. Competition also markedly improved service provision as the total number of telephone lines increased ten-fold, from less than half a million in 1990 to 6.8 million in 1999, which lead to an improvement in telephone density from 2.0 percent in 1990 to 9.12 in 1999.

Subsequent to the reforms, local exchange telephone carriers doubled to 76, gateway operators tripled to 11 and cellular mobile telephone systems more than doubled from two to five. As an added benefit of competition, the price of telephone services has decreased, particularly for cellular mobile phones.

Box 27.1: The State of Competition in the Air Transport Industry

Liberalisation and deregulation have brought genuine competition to the domestic air transport industry, resulting in lower airfare; improvements in the quality of service; and efficiency in the industry, in general.

For twenty-two long years, Philippines Airlines (PAL) was flying solo on the country's domestic airways. The monopoly created so much inefficiency that the quality of service was not tailored to the demand. The airline did not endeavour to maintain certain service standards to keep its customers (and attract even more), since it knew that the latter had no alternative. The supremacy of PAL was finally challenged with the passing of Executive Order (EO) 219 in 1995. The EO established the domestic and international civil aviation liberalisation policy of the country.

The EO 219 made the domestic air industry a market-driven industry, with customer demand determining the levels of service and price. It made the entry of five new players into the industry possible. Each company adopted specific marketing strategies that were geared toward making a difference in the market.

Source: Towards a National Competition Policy for the Philippines

Air Transport

Economic regulation for the country's air transport industry is the responsibility of the Civil Aeronautics Board (CAB). Under a deregulated environment, however, the role of CAB has greatly diminished. With diminished functions, its continued existence would depend on the regulations that would remain under the new environment.

Anticompetitive Business Practices

The 1987 Constitution provides the Philippine Government with the authority to regulate or prohibit monopolies, and it also bans combinations in restraint of trade and unfair competition. However, there is no comprehensive competition law to implement this constitutional provision. Instead, there are a number of laws dealing with competition, including the *1930 Revised Penal Code, the 1961 Act to Prohibit Monopolies and Combinations in Restraint of Trade, 1949 Civil Code, the 1980 Corporation Code, the 1991 Price Act, and the 1992 Consumer Act.* However, enforcement agencies do not effectively enforce these laws, as they do not have the resources or capability to challenge well entrenched economic and political interests.

The Constitution provides the basis for regulating and prohibiting anticompetitive behaviour in the market. Enforcement and regulation, or monitoring, of unfair trade practices and anticompetitive behaviour, are vested in numerous agencies, such as the Tariff Commission, and Bureau of Import Services.

Present laws have proven inadequate or ineffective to prevent anticompetitive structures and behaviour in the market. Despite the number of laws and their diverse nature, competition has neither been fully established in all sectors of the economy, nor has existing competition been enhanced in other sectors. Since each law is meant to address specific situations, there runs the risk of one law negating the positive effects of another.

Consumer Protection

The Philippines Consumer Act took effect on July 15, 1992. The objectives of the Act are the:

- protection of consumers against hazards to health and safety;
- protection of consumers against deceptive, unfair and unconscionable sales acts and practices;
- provision of information and education to facilitate sound choice and the proper exercise of rights by the consumer;
- provision of adequate rights and means of redress; and
- involvement of consumer representatives in the formulation of social and economic policies.

The National Consumer Affairs Council (NCAC) is the body created by the Consumer Act, to improve the management, coordination and effectiveness of consumer

Box 27.2: Tacit Price Collusion in the Philippine Cement Industry?

The Philippine cement industry was developed under heavy government protection and promotion in the 1970s, through the imposition of high tariffs and import restrictions, and the granting of incentives under the Board of Investment's (BoI) rehabilitation, modernisation and rationalisation programme.

Collusion took place through the firms' informal agreement to set production quotas and to assign geographic markets amongst themselves. The Philippine Cement Corporation held regular monthly meetings to set production quotas. It also arranged for the geographical division of the markets, wherein the Luzon plants were to sell only in the Luzon area and the Visyas/Mindanao plants to confine their sales only in their area.

With the liberalisation and deregulation of the cement industry in the late 1980s, however, talks about the cement cartel died down. But just as the industry's cartel image was about to be shed off, the industry's observed pricing behaviour, from January 1999 to May 2000, triggered renewed concerns from some sectors on the possible resurrection of the cartel.

It is far from possible that the sequence of observed price increases, occurring in the industry since January 1999, could be explained in terms of competitive interactions. Under competitive conditions, the simultaneous price increases that the firms have been engaged in would be quite unbelievable, considering that the demand for cement is still low and imports are still available. The firms seem to have different cost structures and yet, the prices that they are quoting have, on the average, very low variation.

As the observed price behaviour is inconsistent with competitive behaviour, the only way to explain it would be in a framework where firms coordinate their actions, i.e. firms colluding on prices.

Source: Tacit Price Collusion in the Philippine Cement Industry? Rafaelita A M Aldaba, PIDS, The Philippines

programmes and policies of the different government agencies as well as private organisations.

Concluding Observations and Future Scenario

There is a need for an effective antitrust law in the Philippines. Besides, there is a serious need to re-examine and re-evaluate government policies that impact competition. Such tasks, however, would not be complete, and in many cases, would be difficult to carry out, without the necessary information and education campaigns, as well as adequate advocacy work. There are, thus, four major elements of an ideal competition policy for the Philippines:

- creation and enforcement of antitrust legislation, aimed at preventing restrictive business practices that significantly lessen competition and result in abuse of dominant position, inefficiency, and reduction in welfare;
- review of government regulations and policies, with respect to its impact on competition and competition policy objectives;
- advocacy for competition policy, to facilitate and implement the required reforms in governmental policy with welfare-reducing anticompetitive effects; and
- information and education campaign.

If the required policy reforms, consistent with competition policy objectives, are to be implemented, vigorous advocacy is required. The competition policy authority, whatever form it finally takes, should ultimately be based on public support. Advocacy is thus a crucial element of competition policy.

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