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ARTICLES IN THIS ISSUE

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Festschrift for Raul V. Fabella

This special edition of the *Philippine Review of Economics* honors Dr. Raul V. Fabella in his 70th year and recognizes his invaluable contribution to the economics discipline and profession. This edition comprises 13 articles from his colleagues and several generations of former students inspired or mentored by Dr. Fabella who are themselves making their mark in economics. The broad spectrum of topics covered—agricultural economics, competition policy, contract theory, game theory, history of economic thought, international economics, issues in productivity, growth and development, monetary policy, political economy and rent-seeking, public economics, and the theory of teams—are issues that Dr. Fabella himself has written on or taught his students during his long, productive years as a Professor of Economics at the UP School of Economics, nurturing an "oasis of excellence" in his spheres of influence, as well as advocated as a roving academic in his later years, endeavoring to engage policymakers and the public in general, in pursuit of welfare-improving changes for a better Philippines.

The wide gamut of topics in this issue is a testament to Dr. Fabella's eclectic intellectual interests yet unwavering devotion to upholding a high standard of academic excellence. As his biographical sketch at the National Academy of Science and Technology summarizes:

> Fabella's very development as a scholar and intellectual leader presents numerous paradoxes: a classicist turned mathematical economist; a rational-choice theorist who derives material and metaphor from both history and physics; a solitary thinker who agonizes over pedagogy; a pure theorist immersed in policy-debate; an inherently shy, private man who must deal with crowds. His career displays to the fullest the range of issues – from the mathematical to the moral – that economists can and must confront if they are to attain to that "cool head and warm heart" that was Marshall's ideal. A classicist, however, might simply recall Terentius: *Homo sum: humani nil a me alienum puto*.

Indeed, to Dr. Fabella, nothing related to human behavior is outside his interest. At 70 years of age, National Scientist of the National Academy of Science and Technology (Philippines) and Professor Emeritus at the University of the Philippines, he is yet to reach the zenith of his intellectual verve: Fabella the economist is transfiguring into Fabella the social scientist – one to whom *homo economicus* is no longer the norm, but the exception in the vast complexity of human interactions in society. It is thus unlikely that this will be the last festschrift in his honor.

Sarah Lynne S. Daway-Ducanes
Emmanuel S. de Dios

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Toward a fairer society: inequality and competition policy in developing Asia*

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Rising inequality poses a serious threat to sustained growth and poverty reduction in developing Asia. Many countries in the region have adopted competition policy—also known as antitrust—to promote economic welfare by protecting competitive processes, as well as in consideration of public interests, including social equity. This paper uses the Philippine experience to illustrate the conceptual and institutional issues in operationalizing competition policy for development. Competition policy in the Philippines has historical roots in its struggle for economic and social reforms aimed at achieving inclusive development. Effectively framing competition policy to stay close to its core guiding principle is key to its effectiveness in contributing to inclusive development. The paper concludes that, in the Philippine context, adhering to consumer welfare standards in competition policy promotes a fairer social outcome (i.e., reduction of income inequality and poverty) while improving economic efficiency.

JEL classification: I30, L40, K21, O15, O53, O57
Keywords: Competition policy, antitrust, welfare, income distribution, economic development, Philippines

1. Introduction

Globally, the past three decades saw income inequality broadly falling, largely due to the decline in *between-country* inequality as large developing countries, particularly China and India, grew rapidly relative to developed countries. However, *within-country* inequality has been rising across many countries, with the exception of some Latin American countries, and populist sentiments have

* This paper was prepared for a Festschrift for National Scientist Raul V. Fabella. The paper draws from the author's presentations at the 2019 Western Economic Association International Conference in Tokyo and the 2018 Global Forum on Competition in Paris. He is grateful to the participants for useful comments and to Danilo Atanacio, Leni Papa, and Melbourne Pana for valuable assistance. The views and interpretations herein are solely those of the author and do not necessarily reflect those of the institutions he is affiliated with.
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been spreading.[1] For some countries, such as the US, income inequality has taken the form of a sluggishly growing or stagnating median income, combined with sharply rising incomes of the top 1 percent of the population.[2] The contrast has been particularly sharp for population groups with different skill levels. Globalization and technological change have been benefitting skilled workers by far more than unskilled workers.[3]

In developing Asia, where economic growth has been particularly rapid, rising inequality has not prevented the reduction of absolute poverty at a rate or magnitude unprecedented in modern times. This is particularly true for China, the major contributor to global poverty reduction in the past three decades. For many countries in the region, the same forces of globalization and technological change, along with enabling domestic policy environments, have facilitated the structural transformation of their economies. Such transformation has opened up employment opportunities for the vast unskilled and semi-skilled population, particularly in the labor-intensive manufacturing and high-productivity services sectors.

Within developing Asia, the initial levels of economic inequality during the early stages of economic transformation varied greatly across countries. In countries with initially low inequality prior to rapid growth (e.g., China, Vietnam, Indonesia), poverty has responded strongly to industrialization-led growth (i.e., high growth elasticity of poverty reduction). The opposite is evident in countries with high inequality at the start of the growth process (e.g., Philippines, Pakistan, India): poverty has responded weakly to such growth (i.e., low growth elasticity of poverty reduction).[4]

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[1] See Kanbur [2019] for a basic narrative on global inequality and policy responses. Alvaredo et al. [2017] and IMF [2017] provide a systematic account of the patterns of income inequality—globally and across world regions and select countries—in recent decades.

[2] In the US, the income share of the richest 1 percent of the population increased from close to 10 percent in 1980 to 20 percent in 2016, while the bottom 50 percent decreased from more than 20 percent to 13 percent during the same period.

[3] See World Bank [2018] and ADB [2018].

[4] There is considerable literature on the connection between income inequality and economic development, starting with the "inverted U-shaped hypothesis" advanced by Simon Kuznets in the 1950s and 1960s. This hypothesis, also famously referred to as Kuznets curve, states that market forces tend to increase then decrease inequality as economic development (proxied by, say, GDP per capita) proceeds. Recent evidence (see, e.g., Bourguignon and Morrison [1998]; Scholl and Klasen [2019]) provides little support to the hypothesis, especially in the context of Asian development. In the "East Asian miracle" economies (Japan, South Korea, Taiwan, Hong Kong, Singapore, Indonesia, Malaysia, and Thailand), the exceptionally high growth between the early 1960s and 1990s did not accompany sharply rising economic inequality. Indeed, what the literature broadly suggests is that policies chosen by governments matter a great deal. For example, when governments use the resources brought about by economic growth to substantially improve access to education and health, public research and development, and connectivity infrastructure, inequality needs not rise as growth proceeds. But if rampant rent-seeking and corruption characterize governance, inequality is likely to rise, growth to eventually slow down, or the economy to even shrink.

Thus, in the developing countries of Asia with still high levels of absolute poverty, rapidly rising inequality poses a serious threat to poverty reduction. It may even undermine the sustainability of growth itself, for possibly three reasons. First, excessive inequality may lead to political polarization and a breakdown of social cohesion. This, in turn, may dampen investors' confidence in the economy, thus reducing or discouraging much needed investment for the generation of jobs and market opportunities. As theory and evidence demonstrate, investment growth is key to any enduring poverty reduction. Second, rising inequality may reduce the opportunity for the poor to invest in human capital, leading subsequently to lower productivity and income growth. For households with low human capital, poverty becomes intergenerational: given imperfect credit markets, parents are likely to pass on poverty to their children. Third, increases in economic inequality may aggravate political inequality, facilitating changes in the rules of the game in favor of the elite, which could further perpetuate economic inequality. In this setting, political activities intended to preserve monopoly rents from market power or to seek new monopoly rents, become rampant. Consequently, society suffers from economic waste—loss of opportunities for economic growth and poverty reduction—and even the undermining of democracy itself.[5]

Antitrust enforcement has been suggested as a key policy tool for addressing economic inequality, especially in breaking the link between market power and political inequality (e.g., Stiglitz [2019]). This is not new from a historical perspective (Shapiro [2019]; Baker [2019]; Colino [2018]). The Sherman Act of 1890 in the US, for instance, was a response to broad concerns about the political and economic power of industrial elites and the harm posed to fair competition. However, the subsequent practice of antitrust—beginning in the late 1970s in the US and in the late 1990s in the EU—has tilted generally toward the pursuit of a market efficiency standard—and much less on the fairness or, more specifically, the inequality of market outcomes. But for many countries, the surge in economic inequality in recent decades—in tandem with globalization and technological change—has changed the landscape for policymaking. The change has rekindled discussions on the goals and priorities of antitrust enforcement, specifically the issue of "public interest" considerations, including fairness and inequality, in competition policy.

The issue is no less contentious in developing Asia where, for many of the countries, economic inequality has risen sharply in recent decades and competition policy is a relatively new regime.[6] It is thus apt to ask whether or not competition policy, in the context of developing Asia, is an appropriate instrument

[5] Stiglitz [2019] examines the threats of rising inequality on democracy and the economy in the context of the United States. For Asian context, see ADB [2018].
[6] From a global perspective, Bradford et al. [2019] provide a comparative description of competition laws in over 130 jurisdictions for the period 1889-2010.

for addressing rising inequality. What does each country's statute provide in terms of the goal and standard of competition policy? How can competition policy be framed in the context of a broad strategy for achieving fairer societies or, in the language of contemporary policy discussions, inclusive development?

There are no straightforward answers to these questions. The countries in Asia are very economically and institutionally diverse, such as in terms of political organizations, culture and value systems, legal traditions, geographic factors, and demography. The relatively small size of many of the economies, for instance, may warrant a specially tailored competition policy that considers high industry concentration primarily due to limited economies of scale and scope. In a similar vein, the success of East Asia's industrial policy, which hinges on coordination and cooperation rather competition, has often been attributed to East Asian culture and value systems.

Fairness, inclusion, and development policy are also some of the enduring themes of Raul Fabella's contributions to the economic literature. In his recent book, *Capitalism and inclusion under weak institutions* [Fabella 2018], Raul revisits these themes and related contemporary development issues and persuasively sets out an agenda for a fairer and more progressive Philippine society. He has also touched on regulation and competition policy in the context of East Asia. Over the years, as a colleague at the UP School of Economics and the National Academy of Science and Technology, we have benefited immensely from his ideas and perspectives.

In this paper, our modest approach is to take the Philippines, a lower middle-income country, as an exploratory case to illustrate the conceptual and institutional issues in operationalising competition policy as an instrument for achieving a fairer society in a developing Asia context. The exercise suggests that competition policy, as gleaned from congressional records and the literature on Philippine development, has roots in the country's historical struggle for economic and social reforms aimed at achieving *inclusive* development. As such, competition policy is seen as part and parcel of the country's development strategy to achieve economic development and promote a fairer distribution of opportunities, incomes, and wealth. While this seems to indicate that competition policy has many goals, or that competition enforcement has considerations other than economic efficiency or consumer welfare, we argue that from a public-choice perspective (i.e., given the balance of political influence tilting in favor of the economic elite in highly concentrated markets, resulting in policy and regulatory barriers to competition), the pursuit of the consumer welfare standard in competition policy promotes a fairer social outcome (i.e., reduction in income inequality and poverty) while improving economic efficiency.

The rest of the paper is organized as follows. The next section situates the character of economic inequality in the broader development experience and political economy of the Philippines. Sections 3 and 4 examine the context of competition policy as seen from the prism of the country's socioeconomic development agenda and legal systems. Section 5 elaborates on the standard of competition policy, especially its framing in a developing economy characterized by policy distortions, market concentration, and rent-seeking activities. The final section gives concluding remarks.

2. Inequality in Philippine development

Many observers of the Philippine economy have long pointed out its high level of inequality in income and asset distribution.[7] The country's income Gini coefficients have been higher than those of other Asian countries, except Malaysia and China, in recent years.[8] Moreover, in contrast to Thailand, China, and many other countries in the region, where rising inequality has been a phenomenon seen mostly in recent decades, the Philippines has depicted a persistently high and stable inequality despite major fluctuations in the country's macroeconomic performance during the past 50 years.

A widely held view of economic inequality and development in the Philippines has been that public policy has favored Luzon (northern Philippines) and discriminated against the Visayas (central Philippines) and (especially) Mindanao (southern Philippines). Proponents of this view claim that this development pattern has led to substantial regional differences in access to economic opportunities, rates of poverty reduction, and the incidence of armed conflict. Moreover, they have partly attributed the relatively poor performance of the Philippine economy for most of the postwar period to the relatively large variation in access to infrastructure and social services between major urban centers and rural areas.

While spatial inequality is sizeable, it is not an overwhelming portion of the national-level income inequality.[9] No more than one-fifth of the variation in per capita incomes can be accounted for by spatial inequality (i.e., income disparity between rural and urban areas or disparity across the country's regions or

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[7] Balisacan [2003] provides a historical account of development planning and development experience, including inequality and poverty outcomes, from the postwar period to the turn of the current century. Clarete, Esguerra, and Hill [2018] distill the lessons learned from recent development experience and explore scenarios for the Philippine economy moving forward. Using disparate data patched from official documents and other sources across the 20th century, Williamson [2017] shows that "there was an inequality rise up to World War 1, a fall between the world wars, a rise to high levels by the 1950s, and an almost certain rise up to the end of the century".

[8] The World Bank [2018:24] claims that income inequality in the Philippines is "among the highest in the world" and has declined only slightly between 2006 and 2015, with the income Gini coefficient falling from 47 percent to 44 percent. Balisacan's [1994:436] estimate of income inequality for earlier periods, between 1961 and 1988, showed persistently high inequality, with the family income Gini coefficient oscillating between 49 percent and 44 percent. A different set of normalized household data showed Gini coefficients ranging from 40 percent to 43 percent between 1985 and 2000 [Balisacan and Fuwa 2006]. Wealth inequality, as reflected in the landholding Gini coefficients, was about 50 percent in each of the land census years of 1960, 1971, and 1980 [Balisacan 1992:475].

[9] See Balisacan [2003] and Balisacan and Fuwa [2006].

provinces). The overwhelmingly large proportion of the variation comes from such factors as household's human capital stock, sector of employment, and access to infrastructure. This suggests that inequality *within* regions or areas tends to be the hugely more important source of overall inequality than inequality *across* regions or *between* urban and rural areas. From a policy perspective, this suggests that addressing inequality requires improving access of the population, regardless of their geographic location, to social and economic services, particularly education, health, and infrastructure.

The high levels of economic inequality weaken the link between economic growth and the pace of poverty reduction. As noted earlier, the response of poverty reduction to income growth in the Philippines has been quite low by international standards. Estimates of this response (i.e., growth elasticity of poverty reduction) for the Philippines are much smaller than comparable estimates for other developing countries in Asia, particularly the country's neighbors.[10] Hence, the Philippines' unenviable record in poverty reduction in recent decades is the outcome not only of its comparatively low per capita GDP growth rates but also of its weakness in transforming any rate of income growth into poverty reduction.

As mentioned previously, the development literature posits a causal link running from high income inequality to subsequently lower income growth.[11] In the Philippine case, a plausible channel for this link is the negative impact of high inequality on the poor. Given imperfect credit markets, the poor may more likely be unable to finance their education or to take advantage of opportunities from new technologies, markets, and migration. Excessively high inequality thus gives rise to wastage of human resources and opportunities, thereby diminishing the country's potential for future growth.[12]

To some extent, the high economic inequality in the Philippines is a historical legacy. The highly unequal pattern of agricultural land ownership is, for example, a Spanish-American legacy of land rights (Williamson [2017]; Corpuz [1997]). But the high inequality is also a recent and continuing effect, partly emanating from a culture of seeking advancement through rent-seeking or corruption. In a rent-seeking society, the economy is reduced to a contest on who gets what size of the pie, even if the pie itself is shrunk owing to the waste of productive resources.

[10] Using provincial level data for 1988-2003, Balisacan [2007] estimated the elasticity to be around 1.3; that is, a 1 percent increase in the rate of mean income growth increases the rate of poverty reduction by roughly 1.3 percent. Estimates reported for other developing countries are much higher (in absolute value): 2.9 for China, 3.0 for Indonesia, 3.5 for Thailand, and an average of 2.5 for 47 developing countries. Using another set of provincial data (1991-2006), Fuwa et al. [2015] confirmed the relatively small growth elasticity of poverty reduction in the Philippines.

[11] See, e.g., Deininger and Squire [1998]. Van der Weide and Milanovic [2018] summarize the findings from the empirical literature. Using data on US states for the 1960-2010 period, they found a negative relationship between current inequality and future rate of economic growth. See Stiglitz ([2019]) for an elaborate discussion on how inequality weakens the economy, undermines democracy, and divides society.

[12] A related finding involving data on US states suggests that high income inequality tends to be bad on the income of the poor but good on the income of the rich. See Van der Weide and Milanovic [2018].

In this contest, it is typically the less well-off members of society who lose, relatively and even absolutely. As discussed below, the highly protectionist policy regime that shielded local industrialists from competitive pressure during most of the postwar period hurt less well-off consumers and effectively stifled the growth of productive employment opportunities for the rapidly growing labor force.

The good news is that the Philippine economy has picked up pace in recent years. From an annual average of 2.8 percent in the 1990s, growth has accelerated to 4.5 percent in the 2000s and further up to 6.3 percent in the 2010s. The economy's performance in the 2010s placed the country among the fastest growing economies in Asia and among emerging economies in the world. This is a remarkable change from the country's previous depiction of being Asia's basket case.

Moreover, while capital and labor accumulation continue to be a key driver of overall growth, total factor productivity (TFP) has become an increasingly important contributor to growth, rising from negative, on average, in the 1980s and 1990s to a third of observed GDP growth in the 2000s and 2010s [World Bank 2018b]. This is significant since, over the long haul, as shown in the economic history of nations, it is TFP growth that sustains GDP growth.

However, as noted above, the country's high GDP growth has not translated to significant poverty reduction, at least in comparison to the pace of its regional peers. One reason is the stunting of real wages despite labor productivity's growth since the late 1990s and acceleration since the beginning of the 2010s [World Bank 2018a]. In theory, productivity growth drives structural transformation and real wage increases. The transformation is driven initially by increases in agricultural productivity and later, increasingly by industrial productivity. The growth of manufacturing and the modern sector spurs innovations in these sectors especially through horizontal and vertical specialization. This in turn raises the demand for human capital, pulling up real wages along with savings and capital ownership of workers. With increases in the supply of human capital, wages rise and income equality improves as structural transformation proceeds. In other words, labor productivity growth within each sector is central to efficient structural change, i.e., one characterized by growth with equity.[13]

In the Philippine case, labor productivity growth since the late 1990s has come mainly from within the manufacturing and, to some extent, the services sector [World Bank 2018b]. Because the labor that moved out of agriculture ended up largely in informal, low-end services sector (a sector with average labor productivity higher than agriculture but lower than manufacturing), overall labor productivity growth has paled in comparison with the country's regional peers. In agriculture, trade and market distortions and low public investments, including

[13] What the theory suggests is that the hump in Kuznets' inverted-U shaped curve is not inevitable. Indeed, as indicated earlier (note 4), recent evidence, particularly on Asia, does not lend support to the view that market forces systematically cause income inequality to rise first before it falls as development proceeds.

those for agricultural research and education, have substantially limited the sector's potential for productivity growth. Moreover, as discussed below, public policies creating barriers to entry and competition have persisted in many areas of the industrial and services sectors, particularly in public utilities and nontraded sectors of the economy (e.g., transport, power, telecom, and construction). These barriers have effectively prevented efficient backward and forward integration, making growth short-lived and highly concentrated to a few sectors or areas of the economy. Thus, the Philippine pattern of growth stands in stark contrast to those in the country's regional peers where structural change is characterized by broadly-based productivity growth, real wage growth, and, consequently, poverty reduction.

While policy and institutional reforms began making a headway in the country in the early 1990s, the depth and breadth of reform efforts have been insufficient in addressing the critical constraints to rapid and sustained growth and development, particularly in dismantling barriers to effective competition and enabling a more equitable distribution of opportunities. Thus, despite the rapid economic growth and macroeconomic stability in the first half of the 2010s, discontent and populist sentiments, among other factors, combined to steer victory in the national elections away from the political candidates of the incumbent administration then. This is not unique to the Philippines, however. Around the world, many countries, particularly in North and Latin America and Europe, have seen populism taking hold even though their economies have been doing comparatively well, driven in part by globalization and technological change.[14]

3. Competition policy in the development agenda

Economic reforms began to gain momentum from the 1990s through the 2010s, though political commitment to reforms differed from one administration to another.[15] The reforms included measures to achieve a more vibrant competition landscape for the economy. Reform proponents—both within and outside government, including external development agencies—recognized well that the effectiveness of competition measures depends on the implementation of the other components of the reform agenda.[16] Accordingly, partly to ensure

[14] Rodrik [2018] observes that, in modern economic history, advanced stages of globalization have often produced political backlash, though the reactions across countries come in different shades, covering both left-wing and right-wing variants.

[15] Bernardo et al. [2019] provide a unique collection of commentaries – originally columns in a national business daily, including those by Raul Fabella – on the nature, causes, and consequences of various policies and reform initiatives during this period.

[16] For example, the benefits to farmers of removing trade barriers to critical farm inputs, such as fertilizers, are likely to rise with declines in transaction costs resulting from improvement in, say, farm-to-market roads or access to credit. See Fuwa and Balisacan [2015].

legal certainty in competition enforcement, they pushed repeatedly, beginning in the early 1990s, for the passage of a comprehensive competition law that would create and maintain a competitive environment for businesses of all sizes and origins. However, all attempts to enact the law failed to go beyond the legislative mill's "first reading", until 2015, when then-President Benigno Aquino III used his political capital to put in place this key missing element in the country's development agenda for promoting a fairer society. It bears noting that this inordinate, nearly 25-year-long delay in the passage of the competition law reflects the political influence of the oligarchs and interest groups representing highly concentrated industries and markets.

To be sure, the economic reforms from the 1990s to the 2010s have succeeded in gradually opening up the economy to competition. Tariffs have declined over time in the manufacturing and agriculture sectors (World Bank [2018b]; Medalla et al. [2018]), except for politically sensitive commodities such as rice and sugar. Deregulation and privatization policies, especially in the services sector, accompanied trade liberalization reforms. Regulatory reforms were initiated as well in the banking and utilities sectors, including telecommunication, power, water, air transport, and domestic shipping. Restrictions on foreign investments were eased, though these have remained to be among the most restrictive in the region. Nonetheless, the country's policy regime has evolved gradually from being highly protectionist to a relatively more open trade system.

Still, the economic reforms had not been wide enough to yield the type of poverty reduction or improvement in social outcomes associated with the growth experience in East Asia. Market concentration in key sectors such as telecommunication, electricity, and transport has remained high and, with government restrictions on the entry of new players, has bred market power, leading to high prices and limited choices of services. The inefficiency in these sectors has effectively stifled structural transformation and, consequently, the generation of high-quality employment opportunities. In the East Asian context, efficient structural transformation has been key to the generation of better employment opportunities for unskilled and semi-skilled labor in manufacturing and within the agriculture and services sectors; it was instrumental in raising labor productivity and wages in these sectors.[17]

The passage of the Philippine Competition Act in 2015 is thus a key reinforcement of past reform efforts toward establishing a more effective competition environment, thereby helping sustain rapid economic growth and achieve fairer outcomes of this growth.

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[17] See Ravago et al. [2019] on the consequence of high power costs on "premature" de-industrialization in the Philippines.

The ASEAN, of which the Philippines is a principal founding member, added pressure to the enactment of the competition policy. Back in 2007, the ASEAN Leaders adopted the ASEAN Economic Community (AEC) Blueprint 2015, which provides for action items to be undertaken and completed by each member state toward the establishment of the ASEAN Community and the AEC by 2015 (later on extended to 2025). Under Clause 41i of the AEC Blueprint, each member state was expected to adopt a competition policy by 2015. By late 2014, of the ASEAN's five original founding members, only the Philippines had not passed a comprehensive law on competition.[18] That Manila was to host the 2016 ASEAN Leaders added urgency to the passage of the law. As host country and principal co-founder of ASEAN, it would have been a "loss of face" for Manila if it did not demonstrate political commitment to this key element of the vision for ASEAN economic integration.[19,20]

4. The legal context of the Philippine Competition Act

The adoption of a comprehensive law on competition—the Philippine Competition Act (PCA) of 2015—signified the intent of the country's political leadership to sustain the gains from recent liberalization reforms and pave a more inclusive development path for the country. For the framers of the law, the PCA is a critical piece of legislation that fills the missing link in the enabling environment for a level playing field in the marketplace.

To be sure, prior to the PCA's passage, the country's legal system did have provisions that control practices and conduct deemed harmful to market competition. However, these provisions were fragmented, outdated, and spread

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[18] The other four original members are Indonesia, Malaysia, Thailand, and Singapore. Indonesia and Thailand passed their respective laws as early as 1999, while Singapore and Malaysia did so in 2004 and 2010, respectively. Vietnam adopted a competition law regime in 2010. Thailand amended its competition law in 2019, giving the competition authority more independence and enforcement power. For an extensive discussion of competition law regimes in ASEAN member states and a wide range of issues on the regionalization of competition policy in Southeast Asia, see Ong [2018] and the various contributions therein.

[19] The Blueprint does not mandate the establishment of a *regional* competition policy regime, however. Rather, it gives maximum flexibility to the member states to develop their respective *national* competition policy regime, taking into account each state's socioeconomic and political landscapes.

[20] The author, then socioeconomic planning secretary of the Cabinet, was a witness to the near collapse of efforts to enact the competition law in 2015. The Department of Justice had written Congress about its serious objections to the bill, particularly the provisions on PCC. Its preference was that its Office of Competition, created by an Executive Order, be the primary implementing agency of the competition law. Patterned after the other jurisdictions, the bill proposed the creation of an independent, quasi-judicial agency to implement the National Competition Policy. The chair of the Senate Committee on Trade and Commerce at the time called a special meeting with the Secretaries of Justice, Trade and Industry, and NEDA to break the deadlock. At this meeting, clarified on the issue and the critical importance of the law to the Philippine economy and to the administration's economic reform agenda, the DOJ withdrew its objections. The Justice Secretary's support was crucial because the DOJ's position was expected to matter in the decision of the President to approve or veto the enrolled bill.

across various statutes over a century.[21] Broadly, these statutes sought to prohibit certain anticompetitive practices in particular sectors or areas of the economy and were enforced by various government agencies. However, they could not consistently deal with the wide range of anticompetitive acts and practices across sectors and circumstances. Moreover, under the pre-PCA regime, bringing criminal and civil actions under court proceedings had been difficult. Hence, successful prosecutions of prohibited acts and practices were few and far between. A change in law was needed, to one that would establish an administrative body with the power to prohibit or regulate anticompetitive conduct, block or remedy anticompetitive mergers, and impose sanctions and penalties on antitrust infringements. In having such a body, administrative procedures were expected to be shorter and less costly than regular court proceedings, making it possible to stop or remedy anticompetitive conduct or merger sooner than a court case would, hence minimising harm to market competition.

The PCA provides a comprehensive enabling law for this administrative body. It established the Philippine Competition Commission (PCC), which is mandated to enforce the constitutional provisions against acts and practices that stifle competitive market conditions. The crafting of the law and, subsequently, its implementing rules and regulations, benefitted from the experience and lessons learned from mature jurisdictions, particularly the US and the EU as well as the ASEAN model.[22] Evidently, as noted by Abrenica and Bernabe [2017], the PCA meets the high OECD standards of an effective competition law.

Section 2 ("Declaration of Policy") of the PCA restates the fundamental policy of the State, as enshrined in Article XII, Section 19 of the 1987 Constitution, to protect market competition, to wit:

> The State shall regulate or prohibit monopolies when the public interest so requires. No combinations in restraint of trade or unfair competition shall be allowed.

The same section mentions the "constitutional goals for the national economy to attain a more equitable distribution of opportunities, income, and wealth" and provides for the prevention of "economic concentration which will control production, distribution, trade, or industry that will unduly stifle competition". The section also sets the goals of competition policy: "[P]enalize all forms of anticompetitive agreements, abuse of dominant position, and anticompetitive mergers and acquisitions, with the objective of protecting consumer welfare and advancing… domestic and international trade and economic development."

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[21] In fact, competition policy is not new to the Philippines since old antitrust provisions of US laws (e.g., Sherman and Clayton Acts) had found their way into various Philippine laws such as the Revised Penal Code of 1932. For an account of the competition regime before the PCA, see Abrenica and Bernabe [2017]. See also Marquis [2018] for a discussion on the institutional and legal contexts of the PCA.

[22] The ASEAN model refers to the ASEAN Regional Guidelines on Competition Policy issued in 2010.

Case law recognizes that the Philippines' "free enterprise system" cannot pursue "a strict hands-off policy" or adopt a "let-the-devil-devour-the-hindmost rule",[23] hence, the constitutional mandate of the State to intervene in the market if public interest so requires. The determination of when public interest demands such intervention is left to the State, through its legislative and the executive instrumentalities.[24] The PCA is deemed part of the legal architecture, providing guidance to such determination, particularly in the context of protecting consumer welfare and advancing economic development.

5. Standard of competition policy—framing and public choice

The chief aim of competition policy is to create and maintain conditions for effective competition to maximize economic welfare. As a standard concept in economics, economic welfare is a measure that aggregates the welfare (or surplus) of different groups in society or industries in the economy. In a group or industry, total welfare (*total surplus*) is the sum of the surpluses of consumers (*consumer surplus*) and producers (*producer surplus*). In its basic form, total surplus abstracts from consideration of income distribution between consumers and producers, or between individuals within group or industry. That is, total welfare gives a summary measure of how efficient a given industry or the economy is, without regard to how equal or unequal the distribution of welfare is. This is not to say that such consideration is irrelevant or that achieving a fairer distribution of income is not a public policy objective. The assumption is simply that economic welfare (efficiency) and income distribution (equity) objectives can be dealt with separately using different policy tools.

Thus, given the welfare objective, competition authorities train their lens broadly on preventing competition infringements or significant departures from competitive market outcomes. However, ambiguity arises when in so doing they also consider goals of public policy other than the core economic goal of efficiency—that is, "public interest" considerations, such as social equity, environmental protection, employment preservation, and, more recently, privacy. One argument for this policy stance is that the other policy tools are inadequate to achieve the public-interest objective. It is presumed, for example, that taxation and expenditure policies alone would be insufficient to curtail the rapid rise of income and wealth inequality arising from globalization and digital revolution (Stiglitz [2019]; Baker [2019]).

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[23] See Francisco Tatad vs. Secretary of the Department of Energy and the Secretary of the Department of Finance, G.R. No. 124360, 5 November 1997.

[24] Philippine Long Distance Telephone Co. vs. National Telecommunications Commission, 190 SCRA 717 (1990).

There may be also a political economy element to the policy stance. A specialized regulatory agency mandated to secure or protect a public-interest concern may be more vulnerable to “regulatory capture” than a competition agency. This is perhaps because the parties (firms) may find it worth their while to invest in a relationship with the regulator owing to their frequent interactions with it; whereas in the case of a competition agency, they would seldom transact with it, if at all, during the life of their project or business.

Across the world, competition authorities have different practices in exercising their mandate, given their respective legal systems, institutional legacies, and historical circumstances (Bradford et al. [2019]; OECD [2018]). In the US, for instance, the object of antitrust enforcement since the late 1970s has been confined to economic efficiency, particularly the preservation of competitive processes to protect consumer welfare. To the extent that non-economic considerations are relevant, the antitrust agencies tend to leave the matter to the relevant regulatory agencies specifically charged with or better suited to address these noncompetition concerns. In the EU, while merger decisions informed by public-interest considerations can be found in the history of antitrust among the member countries, those decisions are not common and are usually in the context of financial or other crises [OECD 2016].

In contrast, many developing countries, such as China, India, and South Africa, have framed their competition policy in ways that accommodate broad and specific public-interest considerations. The common argument is that such considerations carry more weight in competition policy owing to certain structural and institutional characteristics of their economies (Fox and Bakhoum [2019]; Gal [2003]; Goldberg [2019]). For instance, market size in small market economies limits economies of scale and scope. Local industries thus tend to exhibit high market concentration. But for the tradable sectors of the economy, an open trade policy may effectively limit the exercise of market power even in highly concentrated markets. Suppose industrial development is another public policy objective. Balancing goals may then require allowing some degree of market concentration by limiting trade openness in support of the industrial development objective, while creating and maintaining the conditions for workable competition to promote social welfare (or, narrowly, consumer welfare).

This consideration of public interest in competition policy potentially complicates enforcement. For one, what constitutes public interest may be quite vague, conceptually and operationally. Lack of guidance based on objective, measurable criteria may make public interest a convenient argument for exemption from certain competition infringements.[25] For another, even in cases where public interest is well-defined by statutes, the assignment of welfare weights to potential

[25] Indeed, public interest considerations—or the goals of competition policy beyond the protection of competitive process to advance total welfare or consumer welfare—vary wildly across jurisdictions [OECD 2016; Bradford et al. 2019].

winners and losers of enforcement action may influence the relative ranking of options with respect to the competing goals. This complexity creates uncertainties in enforcement and raises the cost of compliance to competition policy. It can also make the competition agency vulnerable to influence-peddling by interest pressure groups including political entities.

In practice, many competition authorities, including PCC, periodically set enforcement priorities to sharpen their goals, minimize arbitrariness in case selection, maximize the impact of enforcement actions, and achieve efficiency in the deployment of limited resources.[26] In considering whether or not a potential anti-competitive practice is of public interest, PCC may examine whether such practice involves any of its priority sectors, whether it may result in widespread harm to consumers, and whether it has precedential value or will have a significant deterrent effect. In addition, it may consider the likelihood of a successful outcome of an enforcement action, and whether there are other reasonable grounds to conduct an enforcement action.[27] Enforcement prioritization is particularly critical for a developing country in view of limited agency resources and the conflicting demands for investment in other critical areas of development, such as education, health, infrastructure, and rule of law.

Moreover, mobilizing competition policy from a broader strategic framework would help focus the goal of enforcement action. As theory and evidence suggest, competition policy works best when the other policy tools of development are in place. In the Philippine case, PCC, through the National Economic and Development Authority, has taken the approach of mainstreaming competition policy in the government's development agenda by clearly identifying the development or societal objective that the policy is best suited to address, the measurable development outcomes (targets) expected from its implementation, and the ways by which the competition policy complements the other policy tools of the government to achieve society's development goals.[28]

Arguably, the prioritization filters, along with the policy mainstreaming strategy, effectively limit deviation from the total welfare or consumer welfare standard of competition policy. In other words, the enforcement of competition policy is framed in such a way that the tool is broadly consistent with the welfare objective, while recognizing the comparative efficiency of other policy tools in addressing other societal goals such as equity.

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[26] See, e.g., Kovacic and Lopez-Galdos [2016] for a discussion on what competition agencies in varying stages of their lifecycles do to build an effective enforcement regime.

[27] Commission Resolution No. 20-2018, Approving and Adopting the Enforcement Strategy and Prioritization Guidelines.

[28] Philippine Development Plan 2017-2022, the government's blueprint for socioeconomic development in the medium term, seeks to "enhance market competition by fostering an environment that penalizes anti-competitive practices, facilitates entry of players, and support its regulatory reforms to stimulate investments and innovation". The Plan's Chapter 16 (Leveling the Playing Field through a National Competition Policy) provides the strategic framework (targets and strategies) for the implementation of the NCP. This is the first time in the country's postwar planning history that a dedicated chapter on competition policy appears in the government's blueprint for development.

PCC's decisions on enforcement cases since the agency's formation in 2016 show a deep respect for the core guiding principle of competition policy: to protect the competitive process and advance consumer welfare. For example, PCC's decisions on 133 cases of mergers and acquisitions from June 2016 (when the PCA Implementing Rules and Regulations became effective) to December 2019 solely rested on the standard of competition policy. That is, PCC's review of the transactions focused entirely on whether or not the merger would "substantially lessen competition" in the relevant market.[29]

Similarly, for its first abuse of dominance case, PCC employed no other considerations but the harm done to the competitive process and the welfare of consumers. This landmark case involved Urban Deca Homes (UDH), a property developer that imposed a sole internet service provider on its residents, preventing them from availing themselves of alternative and cheaper internet service.[30] PCC's Enforcement Office filed a complaint against UDH. Instead of contesting the complaint, the developer proposed to correct its anticompetitive conduct through a settlement. The Commission approved the settlement, ordering UDH to cease its admitted misconduct, pay a fine of ₱27 million, and comply with the terms of settlement, which included inviting other internet service providers to offer their services to its residents.

Note that, even as most economists prefer total welfare as the standard, many jurisdictions, including PCC, employ the simpler consumer welfare standard. The preference for the latter is broadly consistent with institutional and economic realities, including the political economy of policymaking. As history shows, antitrust (in the US) and competition policy (in the EU and elsewhere) are partly an outcome of populism, emerging and then fortified during periods of political backlash spurred by widening wealth disparity and rising industrial concentration and market power. The political mantra during such periods is to give back to consumers what they have been robbed by the elite. As discussed in section 3, numerous anticompetitive practices in the Philippines have deep-seated roots in government policies and regulations, spawned by oligarchs whose control and dominance of the economy have been fortified by barriers to entry in many industries and in politics. These have harmed consumers, prevented the expansion of productive employment opportunities, and stifled inclusive economic development.

There is also a *public choice* dimension to the consumer welfare standard. Policies and regulations affecting industrial organization—structure, conduct, and performance—do not come from a vacuum. Interest groups exert influence

[29] The figure excludes the pre-IRR merger cases numbering 55. See *PCC 2019 Year-End Report*. Available at https://phcc.gov.ph/press-releases/pcc-year-end-report-2019/.

[30] Competition Enforcement Office of the Philippine Competition Office v. Urban Deca Homes Manila Condominium Corporation and 8990 Holdings, Inc., PCC Case No. E-2019-001. https://phcc.gov.ph/commdecisionno-01e0012019-enforcement-vs-urbandecahomes-8990holdings-30sept2019/.

on the formation of these policies and regulations. Consider the domestic market for industrial goods. Consumers are numerous, geographically disperse, and, especially in developing countries, have generally low levels of educational attainment and poor access to information. The cost of coalition formation may thus be high. Also, the incentive (benefit) to contribute to the group effort is likely low since each consumer's share in the total consumer surplus resulting from the change in policy is small. As such, the amount of investment in political influence (time and money) that the consumers can mobilize is small even though they are a big group numerically. On the other hand, industrial producers are small in number and geographically concentrated (usually in urban or near-urban areas) owing to agglomeration economies and other considerations such as access to infrastructure and support services. Both cost and benefit considerations in coalition formation favor high investment in influence-peddling by this group. Thus, in the competition by interest groups for influence, the "equilibrium policy" that comes to play tends to favor the industrialists. This policy may take the form of barriers to entry against potential competitors or higher tariffs against competitive imports. The results are higher prices, poorer quality and less variety of goods and services, and less innovation.

The economically wasteful influence-peddling activities push the economy down from its potential, i.e., inside the production possibility frontier.[31] The consequences are lower long-term growth, higher poverty, and higher income inequality than otherwise would be the case. Society becomes less fair: the numerically large losers are consumers and the numerically small gainers are producers. The producers (sellers) may also be consumers but they are net gainers to the extent that they are net sellers in the market, i.e., they produce more than what they consume.

Viewed from this perspective, the independent competition authority acts on behalf of consumers—as a countervailing force—to make markets work better by effectively removing barriers to competition and other business practices that substantially hinder, prevent, or lessen competition. Thus, by promoting consumer welfare, competition policy enhances economic efficiency, thereby moving the economy to its potential (toward the production possibility frontier), creating more productive employment opportunities, raising growth, and reducing poverty. Society becomes fairer.

Empirical evidence from developing countries shows positive effects of competition policy on household welfare, economic growth, and other dimensions of development, including equity.[32] Competition policy is most

[31] Raul Fabella has made important contribution to the economic literature on rent seeking (see, e.g., Fabella ([1995]; [1996]).

[32] World Bank [2017] provides an excellent discussion of the evidence on the direct and dynamic (indirect) effects of competition policies on household welfare, productivity, innovation, and growth in developing countries.

effective in reducing poverty and inequality by boosting enforcement in sectors or markets that are most relevant for the less well-off households. Food markets, for example, tend to be vulnerable to cartelistic behavior, partly due to the high degree of homogeneity for certain food products, and partly to the inelasticity of consumer demand for food, especially staples. Since food products account for a high proportion of the total consumption basket of less well-off households, protecting food markets from any form of anticompetitive practice is good for the poor and shared prosperity.

6. Concluding remarks

Competition policy and effective enforcement are not framed in a vacuum. They are situated in a particular space and time, including the country's institutional legacies. In the case of the Philippines, competition policy has roots in the country's struggle for social and economic reforms aimed at achieving inclusive development. It has emerged as a tool to address market inefficiencies and inequities perpetuated by the mutually reinforcing effects of policy action, market power, and political influence and power.

While this seems to suggest that competition policy is loaded with goals and considerations more than what is at its core, the operational framing of policy enforcement matters: it must be done in a way such that the tool is broadly consistent with the total welfare objective. For instance, mainstreaming competition policy in the country's development agenda, along with deployment of robust prioritization filters in enforcement, helps sharpen the focus of antitrust enforcement, while cognisant of the interplay between competition policy and other development policy tools in addressing societal goals, including equity.

It is not uncommon in developing countries that low-income consumers, despite their large number and having much to gain from undoing anticompetitive practices, tend to lose—and the economic elites to win—in the competition for political influence over public policies governing markets. The competition agency, acting on behalf of consumers, has the power—in the Philippine case, under the Philippine Competition Act—to make markets work better so consumers reap the full benefit of vigorous competition. This countervailing force—prohibiting cartels, abuse of dominance, and anticompetitive mergers—enhances efficiency (total welfare). It is in this sense that the consumer welfare standard in competition policy promotes efficiency while also contributing to the goal of achieving a fairer society.

As a new regime emerging during an advanced period of globalization and rapid technological change, antitrust enforcement in the Philippines has many challenges. For one, PCC, a young competition agency, has to quickly develop its enforcement capacity, in light of expectations for competition enforcement to contribute to sustaining rapid growth and achieving inclusive development.

Identifying its role in markets characterized increasingly by big data, digital platforms, and artificial intelligence requires a nuanced understanding of the economic underpinnings of disruptive technologies and the Fourth Industrial Revolution. Apart from understanding fully the complexities introduced by big tech, PCC also needs to work closely with sector regulators, government agencies, and competition authorities around the world, particularly in more mature competition jurisdictions.

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