Leveling the Playing Field amid the COVID-19 Pandemic

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<Salutations> MAP President Francisco Lim, friends from the business community, colleagues, and friends from the media who are joining us in this online discussion, ladies and gentlemen, good afternoon.

[SLIDE 1: Introduction] I thank the Management Association of the Philippines for this different-from-usual opportunity to humbly share with the business community my thoughts on the role that the Philippine Competition Commission (or PCC) is and will be playing to ensure a level playing field for businesses during these trying times.

As we all know, the COVID-19 pandemic has placed the world in a state of unprecedented uncertainty. It has upended the lives of many and has created far-reaching and long-lasting ramifications on almost all fronts, particularly the state of public health and the economy. The resulting productivity losses, supply chain disruptions, labor dislocation, and potential financial pressure on businesses and households will undoubtedly alter the global economic fabric in the months, and even years, to come.

[SLIDE 2: Is competition policy still relevant?] Given this situation, we might ask, "Is competition policy still relevant at this time and under these extreme circumstances?"

The simple and straightforward answer is, YES. Now, more than ever.

Why?

First, the supply and demand shocks due to the pandemic may present firms with an incentive to change their usual behavior to exploit the situation. Business strategies that worked before may no longer enable them to maintain their desired profit margins. To avoid losses, some firms might resort to employing extraordinary means, including anti-competitive behavior such as cartel activity and abuse of dominance.

We know that anti-competitive behavior will exacerbate the already significant economic losses that have been incurred. It will worsen the plight of consumers because anti-competitive conduct leads to higher prices, diminished choices, and lack of access to essential goods.

Second, there are longer-term dynamics that have to be considered. The economy's ability to grow in the medium to long term will be either aided or constrained by the policy choices and responses made during the crisis. Thus, these policies must be carefully crafted so that they can be removed when they are no longer needed. Otherwise, they may lead to unintended consequences of lessening competition and distorting market structures, therefore hurting long-term prospects for innovation, growth, and consumer welfare.

Competition policy is to be a useful complementary policy lever for a recovering economy. A recovery that is anchored on competitive processes will build a robust foundation for sustained and inclusive growth.

[SLIDE 3: Risk and Uncertainty] The Philippine economy faces risks and uncertainties not seen in recent decades. The economy weathered *comparatively* well the Asian financial crisis of 1997-1998 and the global economic crisis of 2008-2009, but those crises did not have the complication of health dynamics. The coronavirus is still evolving, and until a cure is found, or a vaccine is developed and made accessible, uncertainties continue. Although necessary, the transmission control measures of various country governments, including those employed by the Philippine Government, have disrupted national and global supply chains and depressed demand.

This pandemic has radically changed the game, and we are unsure what pattern of recovery our economy is going to take. Across countries, the patterns would look very different, depending partly on their demographic characteristics, institutions, including health governance, and policy responses to the pandemic. Notably, an optimistic projection is V-shape, suggesting that whatever was not consumed or produced during the pandemic is forgone, but that the economy will go back to the no-pandemic trajectory. Our country is aiming for this type of recovery. But a U-shaped or a Swoosh recovery cannot be discounted. In this case, the pandemic's effects on economic activity will linger even without social distancing, and that growth recovers slowly. If the first round of openings would be followed by a resurgence of cases and another round of lockdowns, the recovery may well be W-shaped.

In the next year, we may still see the global economy affected by drastic changes that COVID-19 has introduced via supply and demand shocks. Countries may continue to trade less as critical nodes or hubs have been severely affected by these shocks. Given these extreme circumstances, our good macroeconomic fundamentals and the lessons we have gained from past crises are not enough to get us out of the slump. To achieve an inclusive post-pandemic development, we need a relief and recovery program based firmly on compassion for the poor and highly vulnerable groups and a level playing field for businesses.

[SLIDE 4: Expected lackluster performance of the economy] Let us examine where the regional and Philippine economies are heading this year. Growth is expected to decline sharply in East Asia and the Pacific.

The Philippines' GDP growth unexpectedly fell to negative territory in the first quarter, and will likely stay there in the next two to three quarters.

Different institutions have downgraded their GDP growth forecasts for the Philippines. The most optimistic estimate, which was given before the lockdown, is 3%. Many other institutions predict a lower rate, with the lower bound at around -5% to -7%. The government's Development Budget Coordination Committee (DBCC) projects that the economy will shrink by 2% to 3.4%, which is at the median of the other forecasts. Nonetheless, all of these projections compare unfavorably to the no-pandemic growth scenario forecast of around 6%.

[SLIDE 5: Policy responses for relief and recovery] How do governments cushion against the negative economic effects posed by the pandemic? In other words, how do governments minimize tradeoffs between lives and livelihoods?

Countries have been adjusting both their health and macroeconomic policies. To "flatten the pandemic curve," many governments have implemented lockdowns and travel restrictions. In parallel, to "flatten the recession curve," governments are taking monetary, fiscal, and structural measures.

Fiscal and monetary policies through transfers and injections of liquidity into the economy have been deployed to counter the effects of the pandemic on the supply and demand sides. Although expansionary macroeconomic policy will be less effective in increasing production and employment with the required social distancing and mobility restrictions, it still plays a critical role in recovery.

Most governments have given social protection to households, especially the most economically vulnerable. Expanded safety nets and cash and in-kind transfers have provided temporary relief to families whose earnings have been adversely affected—some completely wiped out—by the outbreak.

Firms, especially small and medium enterprises, have been given liquidity injections to help them stay in business. Most governments have helped businesses in the form of loan guarantees, deferral of tax and social contributions, debt relief for distressed borrowers, and subsidies to maintain employment. With these policy responses, governments are hoping to “prevent a temporary shock from having permanent effects on the business environment.”

To avoid financial instability, central banks have cut monetary policy rates, lowered reserve requirements, and engaged in asset purchases. They have also exercised regulatory forbearance and flexibility. These have helped households to “smooth consumption through easier access to credit” and firms to “survive the disruption through easier access to liquidity.”

[SLIDE 6: Broad Policy Responses of the Philippine Government] The biggest health and economic crisis to befall the Philippines in recent decades necessitates a robust whole-of-government response. Guided by the imperative to advocate policies that support the overall welfare of Filipinos in these critical times, PCC supports the enactment of laws geared toward reviving and stimulating the national economy.

To strengthen health policy responses to COVID-19 and to ensure that Filipinos have the resources to survive these difficult times, the government's economic team has proposed the Philippine Program for Recovery with Equity and Solidarity or PH-PROGRESO, for short. This program comprises three stages—emergency stage, recovery stage, and resiliency stage.

To respond to the emergency stage, the Bayanihan to Heal as One Act was passed. This law has granted the President special powers to address the COVID-19 outbreak in the country. Examples of direct policy responses to the rise of COVID-19 cases are budget and procurement flexibility for essential goods, as well as equipment and financial support for the front liners. To mitigate the immediate economic consequences to consumers and businesses, the government provided emergency cash aids, lowered interest rates and reserve requirements, and extended deadlines for taxes and payments.

For a longer-term policy response in the recovery stage, several economic stimulus proposals have been put forward in the executive branch and the legislative branch.

The PH-PROGRESO's proposed policy response during the recovery stage will be executed under "Bayanihan II" and the Corporate Recovery and Tax Incentives for Enterprises Act or CREATE, for short. The first phase of the recovery plan includes credit guarantees and a wage subsidy program for small and medium enterprises, and a "targeted equity support" for large firms. The second phase includes the reduction of the corporate income tax (CIT) rate from the current 30% to 25%. The third phase involves funding for projects meant to improve the health care system and the agriculture sector, as well as for infrastructure projects in the "Build, Build, Build" program.

Several economic stimulus bills are now pending in the Congress. Allow me to briefly go over the most comprehensive one.

The Philippine Economic Stimulus Bill (or PESA, for short) includes wage subsidies, regulatory relief for businesses, loans to firms (including micro, small and medium enterprises), equity acquisitions by the government through the creation of the National Emergency Investment Corporation, and a programmed infrastructure spending. These interventions aim to mitigate losses in sectors most affected by the crisis.

As a part of the resiliency stage and because of limited resources, the Philippine government has been realigning its 2020 budget and taking loans to fund the policy responses to COVID-19. It has adjusted its fiscal program for the next three years, reducing expected collections and increasing disbursements, which constitute more than a fifth of the GDP.

As these programs are rolled out, it is crucial to recognize several risks to the competition landscape brought on by the conditions under the pandemic and by the unintended consequences that these initiatives may create. To be sure, the health and economic crisis would have both short-term and long-term effects on competition.

[SLIDE 7: Short-term impacts of COVID-19 & economic crisis] In the short term, we may see firms exhibiting a pricing behavior different from that in normal times. When profits are down, collusive or other forms of anti-competitive behavior that attempt to exploit crisis conditions to raise prices are more likely. Price fixing and bid rigging are examples of such conduct.

To limit price surges, some jurisdictions have already imposed price caps or price ranges. However, governments should use price controls with caution. Imposing price ceilings may be counterproductive since they may deter the entry of other firms to produce more goods, especially essential goods. Additionally, price pegs may function as reference points for collusion, even after the lifting of price controls.

During times of crises, opportunities for cooperation are sought to solve supply shortages, especially of essential goods. Indeed, undertaking temporary joint R&D activities, coordinating production, or sharing distribution facilities can improve efficiency in the production and distribution of essential goods. The resulting additional quantity of goods and the corresponding lower prices are beneficial for consumers.

However, there is a significant risk that cooperation might spill over to hard-core restrictions like price fixing, since competitors may then regularly obtain information on the other firms' inventories and pricing strategies. Price fixing (output fixing) is welfare reducing because it artificially sets the prices higher (output lower).

Furthermore, if information exchange is enabled between firms, it is highly likely that their coordination will be preserved even after the crisis. After establishing contact focal points and sharing business processes, competitors will find it easier to cooperate in the future and make decisions that will jointly maximize their profits. This is cartel behavior and is prohibited under the law.

[SLIDE 8: Medium-term impacts of COVID-19 & economic crisis] The impacts of disruptions in supply chains and demand conditions are expected to linger beyond the pandemic. Losses and uncertainty will lead to market exits of firms, especially the smaller ones. There will also be increased appetite for mergers and rescue mergers as firms attempt to recover and strengthen their market positions during and after the crisis. The resulting increase in market concentration as failing firms exit or as firms merge may lead to monopolization or substantially raise market power, possibly giving rise to harm to consumers if such market power comes with the ability and incentive to exercise that market power in the form of higher prices, lower quality of goods and services, or less innovation.

[SLIDE 9: Applying the competition lens] To avoid or mitigate the impact of short-term and medium-term implications of the COVID-19 crisis on market conduct and market structure, it is crucial to apply the competition lens to government policy responses.

Almost all of these measures—subsidies, bailouts and nationalizations, price controls, cooperation of competitors and mergers—come with the associated risks of distorting the playing field for businesses. These risks can be mitigated, however, through pro-competitive solutions.

For example, subsidies, if not carefully crafted, can be both *ad hoc* and selective, thereby distorting the playing field of businesses within and among different industries. To avoid this consequence, the state aids need to be based on objective criteria, clear and transparent rules, and applicable to all businesses within an industry, not skewed toward select businesses. Furthermore, support measures should be time bound to reduce the risk of rent-seeking behavior and to ensure that undistorted market dynamics will produce competitive outcomes in the long run.

As the country's competition advocate and champion, PCC strives to inject the competition lens in the crafting of policies that may affect market competition.

[SLIDE 10: Competition enforcement amid the pandemic] To ensure a level playing field that protects both consumers and producers, PCC continues to strictly enforce the Philippine Competition Act. It stands vigilant and constantly monitors the market through different channels to guard against breaches of the competition law. Hard-core restrictions like price fixing and bid rigging will be actively prosecuted and duly penalized.

The Bayanihan Act also enforces measures to protect the people from cartels, monopolies, and other combinations in restraint of trade affecting the supply, distribution, and movement of essential goods and services. Enabled by memoranda of agreement, PCC and the Department of Trade and Industry (DTI) as well as the Department of Justice (DOJ) have established enforcement support on detecting and prosecuting firms that are taking advantage of the current situation, particularly on the supply and prices of essential goods.

[SLIDE 11: Merger control amid the pandemic] Our guidelines on merger processes and timelines have been responsive to the mobility and health restrictions placed by the government during the pandemic. Since May 18, our Mergers and Acquisitions Office have resumed to accept notification forms and letters of non-coverage, this time through online filing. We also waived the 30-day compulsory notification period. These guidelines will last for the duration of the Extended Enhanced Community Quarantine.

Given the expected increase in the consolidation of firms, PCC maintains its proactive stance with respect to merger control. History has proven, time and time again, that unchecked consolidation leads to coordinated conduct and a rise in market power. As this crisis is hoped to be temporary, a sharp rise in concentration within industries may create greater harm to consumers in the long run.

It should be noted that mergers and acquisitions (M&As) that use failing firm defense to justify consolidation should meet the standard of proof stipulated in the PCA. Before clearing these types of M&As, PCC will carefully analyze the transactions to mitigate risks and avoid long-lasting negative impacts on the structure and dynamics of markets. We will continue to exercise due diligence in our merger reviews, especially of transactions that might lead to a sector being controlled by one or a few dominant entities.

[SLIDE 12: Competition advocacy amid the pandemic] PCC advocates the use of the competition lens in the crafting of national government's interventions. While the objective is to protect jobs and ameliorate suffering of the vulnerable groups in the short run, it is crucial that these interventions avoid introducing distortions and creating an uneven playing field. Failing to do this will be detrimental in the medium to long term.

These efforts to inject competition in the whole government is embodied in the National Competition Policy (NCP), which serves as a framework that would steer state policies and administrative regulations toward the promotion of robust and fair market competition. It rests on three fundamental pillars: (1) effective implementation of the PCA, (2) enactment of pro-competitive government regulations, and (3) internalization of the principle of competitive neutrality.

This brings me back to the point on the role of clear and transparent rules that are guided by the principles of healthy and effective competition. Misguided interventions may cause market distortions and create an uneven playing field, unduly protecting failing or inefficient firms. By applying the competition lens, policies and state aid can enhance economic efficiency through proper allocation of scarce resources to critical sectors that need stimuli for production or innovation.

[SLIDE 13: Competition advocacy amid the pandemic] Proactive competition advocacy will be especially potent in significantly improving the present and future landscape faced by businesses and consumers. The matter of mainstreaming sound competition principles has taken on a greater sense of urgency in a COVID-19-disrupted world, where the economy's swift recovery matters more than ever.

PCC has actively put forward its position and provided inputs whenever Congress requests an analysis of the competitive effects of certain legislations.

For example, the Commission expressed its support for the Philippine Economic Stimulus Bill to keep the economy afloat amid global uncertainty. In our position paper on this Bill, we recommended that the provision on wage subsidies be recalibrated so that it will be more equitable to and inclusive of smaller firms. We also advised to maintain strict regulation over natural monopolies to avoid possible abuse of market power, to promote transparent and nondiscriminatory access to subsidies, and to exercise caution in the consolidation of troubled businesses.

Next week, our Legislative Liaison Office will conduct a seminar for the House legislative staff to advocate the use of competition principles in crafting laws.

Through these inputs, we hope to instill the competition perspective and foster a deeper appreciation for sound competition principles among our legislators.

As we transition to the ‘new normal’, PCC will continue to actively monitor markets and provide evidence-based guidance on policy interventions during the recovery period.

[SLIDE 14: Takeaways] And so, to the question “is competition policy relevant during this current health and economic crisis?” the answer is a resounding ‘YES’! Competition law is relevant during the pandemic, and becomes even more so during the recovery period, as we work together to build a resilient and inclusive economy.

The design of policy responses to the crisis—relief, recovery, resiliency—needs to be mindful of risks and pro-competitive solutions. This is to avoid the unintended consequences of weakening competitive processes and distorting market structures that harm consumers’ welfare and the country’s prospects for sustained and inclusive growth.

Again, let me assure you that as we transition to the ‘new normal’, PCC will remain vigilant in market monitoring, enforcement, and evidence-based advocacy. This is to ensure that consumer welfare is protected, that businesses are playing fairly, and that government interventions are pro-competitive. An equal playing field during and post-pandemic will ensure a faster and more stable economic recovery.

As I end this talk, let me enjoin you, members of the business community, to be our partners and champions for competition, especially in these trying times. Let us work together in complying with the competition law and PCC processes, in competing fairly with rivals in the market, and in building a robust culture of competition in the Philippines. Together, as we heal as one, we can steer the economy back to its high-growth trajectory.

Thank you and a pleasant day to all.