

# Philippine Competition Act

## Republic Act No. 10667

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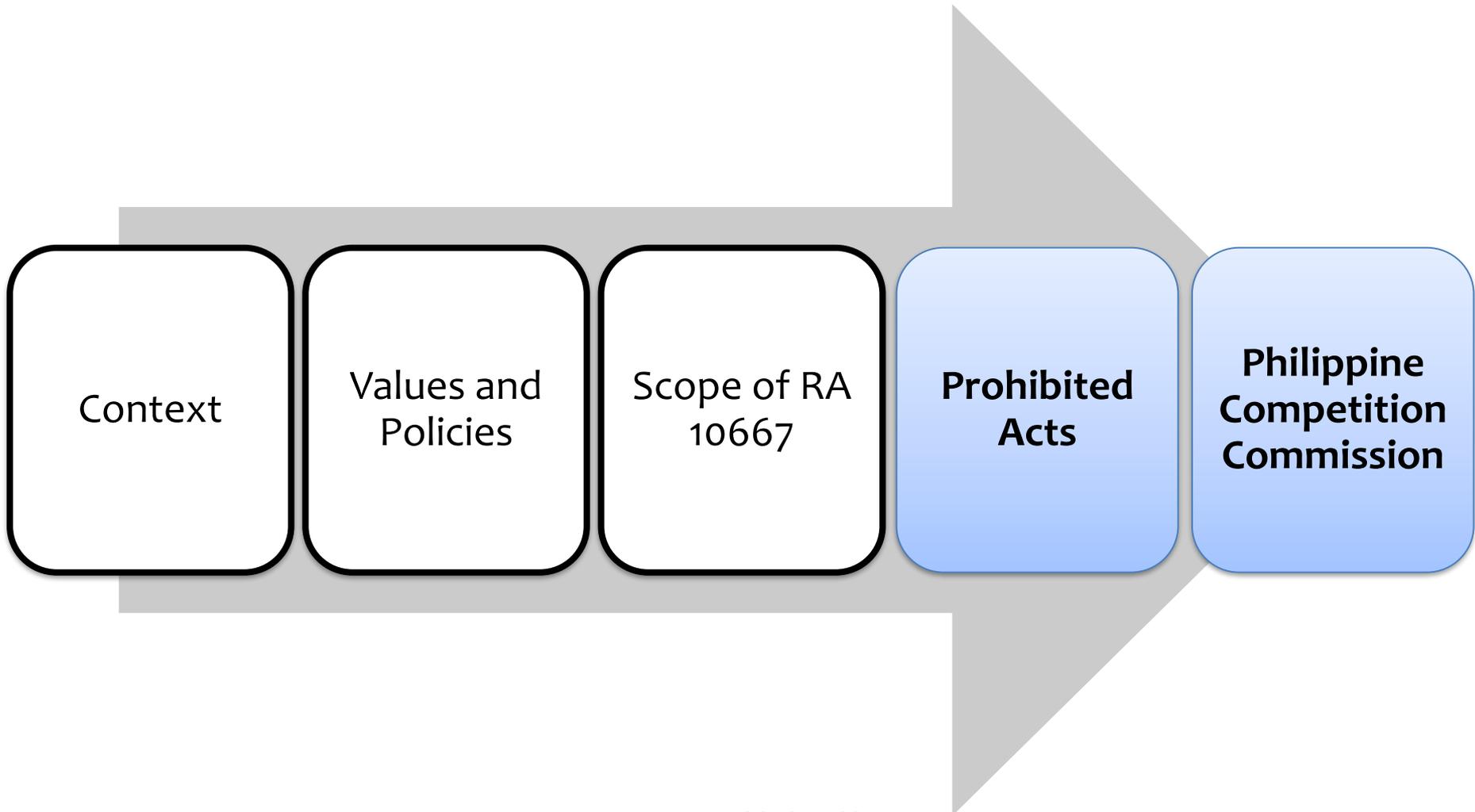
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# Discussion Flow



No Choice

No Innovation

**No Competition**

No “Real”  
Prices

No Business

# A competition law ...

“is the **government regulation of business** with the goal of **preventing and prohibiting anti-competitive behaviour and unfair business practices**. It involves the regulation of the continuous **struggle of companies for superiority** by attempting to maintain **fair competition** so that **all people and companies can benefit** from competitive prices, product choice and quality services.”

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# Core Values and Policies

Free and Fair  
Competition

Economic  
Efficiency

Free Markets

Equal  
Opportunities

Equitable  
Distribution

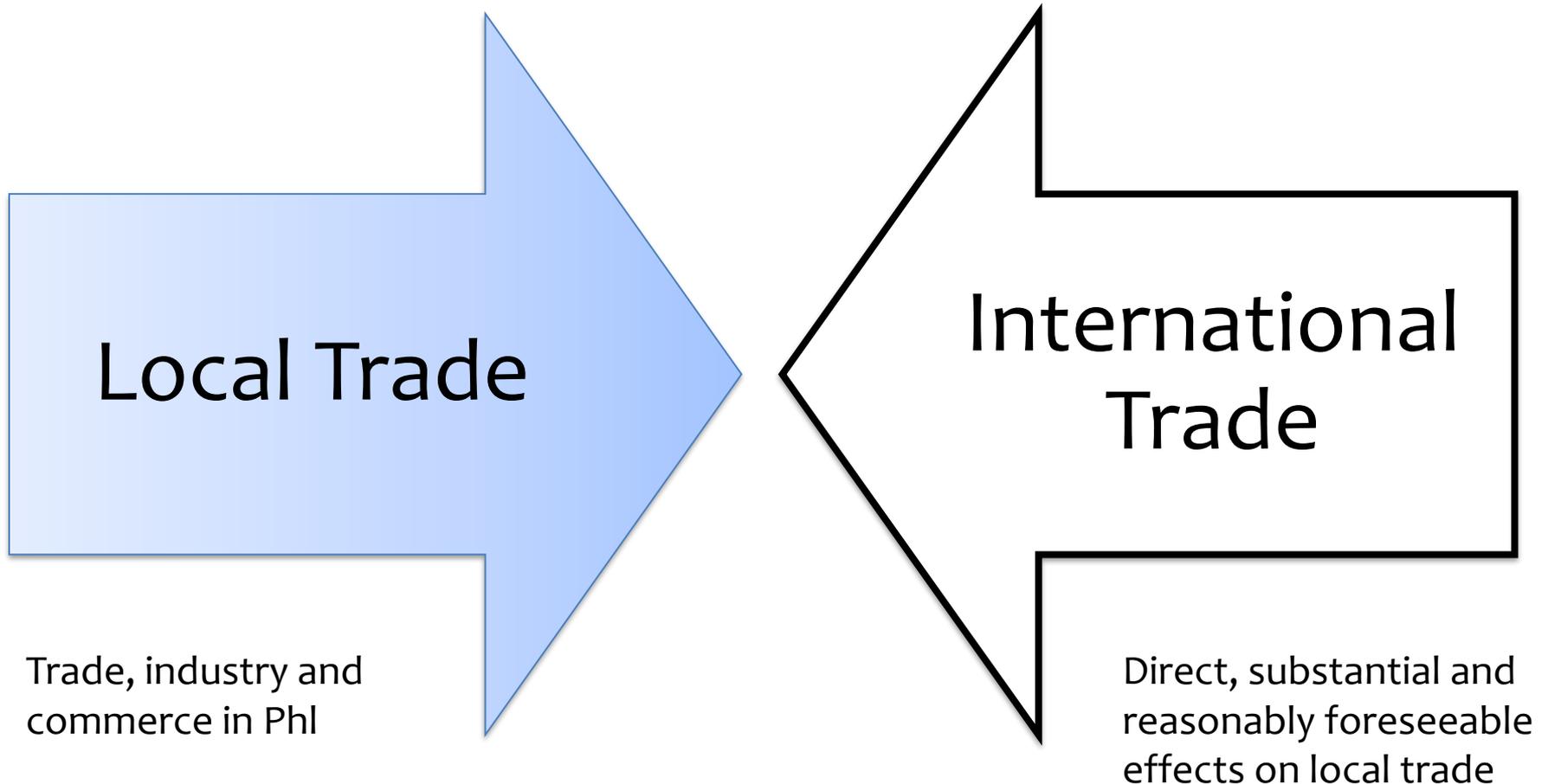
Consumers'  
Right of Choice

Private  
Investment

Entrepreneurial  
Spirit

Quality of Life

# Territorial Jurisdiction



# Prohibited Acts

**1**

Anti-Competitive Agreements

**2**

Abuse of Dominant Position

**3**

Anti-Competitive Mergers and Acquisitions

# (1) Anti-Competitive Agreements

*Between/ among competitors*

<b>(1) Per se prohibited</b>	<b>(2) Effect-Based</b> Substantially preventing, restricting or lessening competition	<b>(3) Others</b> Substantially preventing, restricting or lessening competition
<ol style="list-style-type: none"><li>1. Restricting competition as to price or other terms</li><li>2. Fixing price at an auction/ bidding</li></ol>	<ol style="list-style-type: none"><li>1. Setting, limiting or controlling production, markets, technical development or investment</li><li>2. Dividing or sharing the market (volume, territory, goods, buyers/ sellers)</li></ol>	Not included in (1) and (2)

# (1) Anti-Competitive Agreements

Relevant  
Market

Substantial  
Adverse  
Impact

Future Market  
Developments

Past Behavior  
of Parties

Development  
of Priority  
Areas

Totality of  
Evidence

**Factors**  
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## (2) Abuse of Dominant Position

*Dominant position* refers to a position of **economic strength** that an entity or entities hold which makes it **capable of controlling the relevant market independently** from any or a combination of the following: **competitors, customers, suppliers or consumers.**

*Relevant market* refers to the **market** in which a **particular good or service is sold** and which is a combination of the relevant product market and the relevant geographic market (product or geographic).

# (2) Abuse of Dominant Position

Market Share

Ability to Fix  
Prices unilaterally  
or restrict supply

Existence of  
Barriers

Power of  
Competitors

Input Access by  
Competitors

Power to Switch  
to other Goods

Recent Conducts

50% or more  
Market Share

***Factors***

## (2) Abuse of Dominant Position

Entity in **dominant position** who engages in conduct that would **substantially prevent, restrict or lessen competition**:

1. Selling **goods or services below cost** with the **object of driving competition out** of the relevant market
2. Imposing **barriers to entry** or committing acts that prevent competitors from **growing within the market** in an **anti-competitive manner**
3. Making a **transaction** subject to acceptance by the other parties or other obligations which, by their nature or according to commercial usage, have **no connection** with the transaction

## (2) Abuse of Dominant Position

4. Setting **prices or other terms** or conditions that **discriminate unreasonably** between customers or sellers of the same goods or services, where such customers or sellers are **contemporaneously trading** on similar terms and conditions
5. Imposing **restrictions on the lease or contract for sale or trade** of goods or services concerning where, to whom, or in what forms goods or services may be sold or traded, such as **fixing prices**, giving **preferential discounts or rebate upon such price**, or imposing conditions **not to deal with competing entities**, where the **object or effect of the restrictions is to prevent, restrict or lessen competition substantially**
6. Making **supply of particular goods or services dependent** upon the purchase of other goods or services from the supplier which have **no direct connection** with the main goods or services to be supplied

## (2) Abuse of Dominant Position

7. Directly or indirectly imposing **unfairly low purchase prices** for the goods or services of, among others, marginalized agricultural producers, fisherfolk, micro-, small-, medium-scale enterprises, and other marginalized service providers and producers;
8. Directly or indirectly **imposing unfair purchase or selling price on their competitors**, customers, suppliers or consumers, provided that prices that develop in the market as a result of or due to a superior product or process, business acumen or legal rights or laws shall not be considered unfair prices; and
9. **Limiting production**, markets or technical development to the prejudice of consumers

# (3) Anti-Competitive Mergers and Acquisitions

## Covered

Substantially prevent, restrict or lessen competition (SPRLC) in the relevant market or in the market for goods or services

## Not Covered

1. Gains in **efficiencies** > **effects** of any limitation on competition
2. A party to the merger or acquisition agreement is faced with actual or imminent **financial failure**, and the agreement represents the least anti-competitive arrangement among the known alternative uses for the failing entity's assets

# (3) Anti-Competitive Mergers and Acquisitions

## Compulsory Notification

- Transaction value > P1Billion
- 30-day ban on consummating agreement
- Information based on form prescribed in IRR
- Violation: void transaction and fine
- Inaction amounts to approval

## If found anti-competitive

1. Implementation prohibited
2. Implementation prohibited conditionally (subject to changes imposed by PCC)
3. Implementation prohibited until new agreement reached

# (3) Anti-Competitive Mergers and Acquisitions

>Php 1,000,000,000,00 (threshold)

- Annual gross revenues or value of assets
- Value of the transaction
  - In and/ out of the Philippines
  - Acquisition of voting shares (value of assets or gross revenues, and 35%/ 50% voting share)
- Combined asset value in joint venture
- Successive transactions in 1 year = 1 transaction

# (3) Anti-Competitive Mergers and Acquisitions

- Assess if SPRLC
- Consider substantiated efficiencies
- Compare competitive conditions (now and if)
- Case-to-case basis analysis
  - Structure of relevant market
  - Market position
  - Presence of competition
  - Availability of alternatives
  - Barriers to entry

***Review Parameters***

# (3) Anti-Competitive Mergers and Acquisitions

## Procedure

### Pre-Notification

- Inform PCC
- Consultation
- Non-binding advice

### Notification Proper

#### Phase 1 Review

- Submit forms and pay fee
- PCC determines completeness (15 days)

#### Phase 2 Review

- 30-day waiting period begins
- May be extended (60-90 days)
- Assess and evaluate

### Action

PCC approves or prohibits

# Philippine Competition Commission

## Nature

- Statutorily-created
- Independent
- Attached Agency of OP
- Administrative Agency
- Public Office
- Not a GOCC

## Commission Proper

- 5-member Collegial Body
- 7-year fixed term (staggered)
- No reappointment
- Security of tenure
- Prohibitions and Disqualifications
- SSL-exempt
- Immune from suit (unless bad faith)
- Free and harmless (unless violate Act, bad faith)

# Philippine Competition Commission

Adjudicatory

Investigative

Rule-making

Review  
Authority

Advisory

Enforcement

# Philippine Competition Commission

## Quasi-Judicial

- Violation of the Act
- Motu proprio, complaint or referral by regulatory agency
- Institute civil or criminal proceedings
- Conduct administrative proceedings and impose sanctions
- Prohibit anti-competitive mergers and acquisitions
- Issue injunctions, requirement of divestment and disgorgement of excess profits (anti-competitive agreements/abuse of dominant position)

## Quasi-Legislative

- Issue rules (supplementary, interpretative, procedural, internal and contingent)
- Together with Sector Regulators, issue rules

# Philippine Competition Commission

## Investigation

- Violation of Act
- Fact-finding or preliminary inquiry
- Motu proprio, complaint or referral by regulatory agency
- May issue cease and desist order
- Outcome: Closure of inquiry, full blown proceedings or initiate criminal case

## Enforcement and Remedies

- Enforce Act
- May issue writ of execution
- Payment of administrative fines
- Non-adversarial remedies
  - Binding Ruling (no case)
  - Show Cause Order
  - Consent Order (no admission)
  - Compliance Monitoring

# Philippine Competition Commission

## Forbearance, if ...

- Unnecessary to attain objectives
- Not impede competition
- Consistent with public interest
- Benefit consumers

## Leniency Program

- Immunity from suit or reduction of fine in exchange of voluntary disclosure of information
- Whistleblower Immunity from suit
  - No information received yet by PCC
  - Prompt action
  - Terminated its own action
  - Continuous cooperation
  - No coercion

# Philippine Competition Commission

## Nolo Contendere

- In criminal proceedings
- Accepts punishment without denying or accepting responsibility
- Entered up to arraignment
- Court permission

## Coercive Powers

- Subpoena
- Contempt
  - Misconduct
  - Refusal to obey subpoena

# Philippine Competition Commission

## Office for

### Competition

- OFC retained under DOJ
- Conduct preliminary investigation and prosecute
- May grant leniency or immunity

### Courts

- RTC has jurisdiction (civil and criminal)
- PCC decisions appealable to Court of Appeals
- PCC decision not stayed unless so declared by CA
- Injunction by SC or CA only
- Upon order of Court, PCC can inspect business premises

### Regulatory Agencies

- Sector Regulators consulted
- May provide favorable recommendation
- PCC has original and primary jurisdiction
- May issue joint rules
- Deputize enforcement agencies
- PCC can participate in regulatory proceedings
- Assist NEDA

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**THANK YOU.**