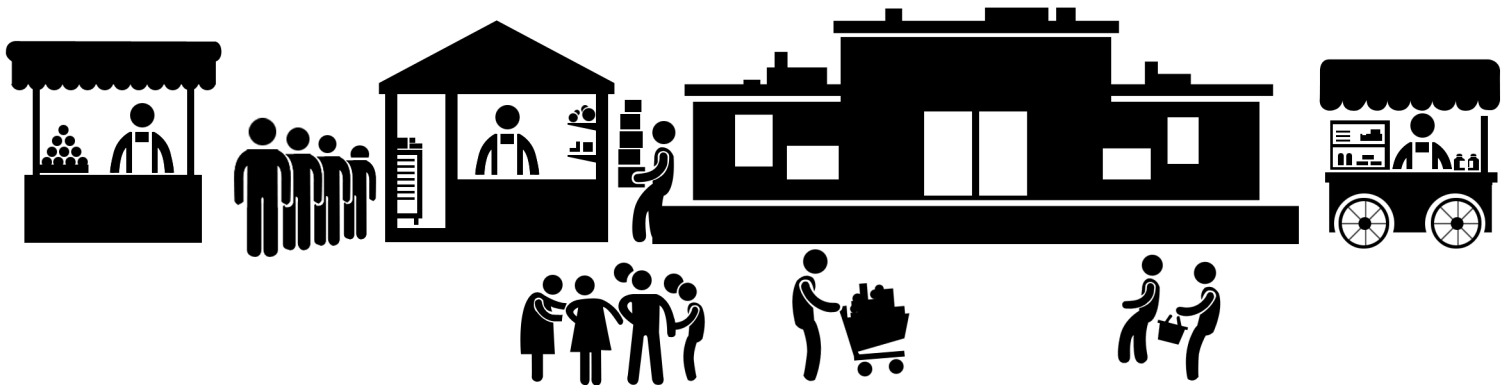


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No. **115**

ASEAN STATES COMMITTED TO INTRODUCE
COMPETITION POLICIES AND LAWS BY 2015

Towards a Comprehensive Competition Law



HIGHLIGHTS

- Under the ASEAN Economic Community's (AEC) Blueprint, ASEAN member states have committed to introduce competition policy and law in their respective jurisdictions by 2015 in order to foster a culture of fair competition in the region.
- In the Philippines, the Justice Secretary formally organized the Office for Competition (DOJ-OFC), the country's first competition authority. However, a single comprehensive anti-trust law has yet to be enacted.
- Various sources note that an independent national competition authority is instrumental in encouraging greater inward investments.
- In a February 2014 meeting with leaders of Congress, the Philippine Business Groups and Joint Foreign Chambers expressed their support for a comprehensive competition law that will create an independent Fair Competition Commission.

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BUSINESS COMPETITION IS KEY TO ECONOMIC DEMOCRACY

“We should enact an effective competition law. There is a bill that is coursing its way through Congress and there are those that are nervous that Congress, given the way it often behaves, might come up with a law protecting the interest of those already in a comfortable position vis-a-vis competition. If we consider that what we are aspiring for is a democratic business environment, then we must understand that a democratic business environment’s essence is competition. Without the competitive environment and level-playing field, then we end up with oligopolies, with a structure of society that will continue to feature an increasing gap between the very rich and the rich and an even bigger gap between the rich and the poor and so on and so forth. Yes there may be some progress even along those types of social structures, but it will not be inclusive, it will not be just, and it will not be in keeping with the dreams of most of our Filipino citizens.

So, I urge you all to keep your eye on the debates regarding the proposed Competition Law, bring in your inputs, lobby if you must, but make sure you do what you can to help Congress come up with a proper one, so that, once again, we can signal to the world that a true level playing field is on its way to fuller realization.”

– MBC Co-Vice Chairman Roberto F. De Ocampo at
3rd Anniversary Forum of Arangkada Philippines:
“More Reforms = More Jobs” (26 February 2014)

As cited by the Organisation for Economic Cooperation and Development, the term competition “refers to a situation in a market in which firms or sellers independently strive for the patronage of buyers in order to achieve a particular business objective like profits, sales, and/or market share.”

Competition is, thus, often understood as rivalry among firms, which, ironically, results in many positives, both for the competing companies and the consumers as a whole. In terms of consumer welfare, competition presents more choices for buyers, given a wider range of sellers and offerings to choose from. With quality and innovation, goods and services are offered at the lowest prices possible by competitors. In terms of economic efficiency, competition results in efficient use and allocation of scarce resources, lower business costs through competitive prices, and more efficient and well-functioning markets. Competition also drives higher levels of output and productivity gains from greater efficiency, attracts investments, and generates jobs. As such, the enforcement of an effective competition policy through a strong and comprehensive law on competition is of paramount importance if these gains are to be fully harnessed.

As defined by the ASEAN Secretariat, competition policy refers

to a government’s guiding principles “that promote or maintain the level of competition in markets”, including government measures which “directly affect the behavior of enterprises and the structure of industry and markets.”

The term competition policy is commonly associated with policies on monopolies, oligopolies, cartels, mergers, and restrictive and anti-competitive trade practices. Besides these, competition policy also includes guidelines on entry barriers, liberalization, deregulation, privatization, employment, and consumer protection. It is complemented by policies on foreign investments, trade, intellectual property rights, procurement, and industrial development. As such, competition policy is broader in scope than competition law, with the latter acting as one of the means by which competition policy is enforced.

In the United States, competition law is popularly known as antitrust law. The Sherman Antitrust Act of 1890 is the United States’ first and landmark federal anti-monopoly and antitrust statute. Canada, however, came ahead of the US as the first country to adopt a competition law in 1889. As of July 2013, more than 120 countries around the world have competition laws. For the European single market, antitrust rules are found in the Treaty on the Functioning of the European Union, which was put in force in 2009.

For ASEAN member states, the Regional Guidelines on Competition Policy refer to competition law as consisting of legislation, judicial decisions, and regulations aimed at preventing anti-competitive business practices, abuse of market power, and anti-competitive mergers.

Towards this end, by end-2015, ASEAN member states should have already introduced competition policy and law in order to foster a culture of fair competition in the region as part of their commitment under the blueprint of the ASEAN Economic Community. Along this line, the ASEAN Secretariat has reported positive developments in Indonesia, Singapore, Thailand, and Vietnam, with these countries having adopted and instituted comprehensive competition laws and competition authorities.

For the Philippines, instituting a competition policy and law will be instrumental in further improving the country's competitiveness. To illustrate, while the Philippines has made great strides in its rankings, according to the World Economic Forum (WEF), ensuring healthy competition remains a challenge. As seen in the WEF Global Competitiveness Report 2013-2014, the Philippines ranks second to the last in ASEAN regarding the extent of market dominance of companies. That is, compared to first-ranked Singapore, wherein competition is spread across nu-

merous firms, the Philippine market is dominated by a select few (see next page).

This research report will focus on ongoing attempts to finally enact a comprehensive competition law in the Philippines. Succeeding sections of the report will feature competition laws in other Southeast Asian countries, the current competition authority arrangement in the Philippines, and proposed measures to institutionalize competition policy. Ultimately, the report aims to highlight the importance of having an independent competition agency, clear definitions on prohibited anti-competitive activities, and greater private sector participation in discussions on the proposed competition law.

ASEAN COMPETITION INITIATIVES

Since 2010, ASEAN has conducted various activities towards promoting fair competition in Southeast Asia. For instance, the ASEAN Regional Guidelines on Competition Policy and the Handbook on Competition Policy and Law in ASEAN and Business were launched in 2010. These were prepared by the ASEAN Experts Group on Competition (AEGC), the regional forum for discussion and cooperation on competition policy and law. In June 2013, the Handbook on Competition Policy and Law in ASEAN for Business was updated.

Extent of market dominance in ASEAN

"In your country, how would you characterize corporate activity?"

7.0 : Spaced among many firms

1.0 : Dominated by a few business groups



5.1 Singapore



4.8 Malaysia



4.4 Lao PDR



4.4 Brunei Darussalam



4.0 Indonesia



3.8 Cambodia



3.8 Viet Nam



3.7 Thailand



3.4 Philippines



2.4 Myanmar

Source: The Global Competitiveness Report 2013-2014; MBC Programs Team

Since March 2013, AEGC has been led by the Philippines with Department of Justice (DOJ) Assistant Secretary Geronimo Sy as chairperson. The group has conducted workshops to promote a level playing field and raise awareness on fair business competition among regional enterprises and transnational businesses. AEGC has also released guidelines to develop core competencies in competition policy and law based on experiences of member states and internationally recommended practices. These are in the areas of institution-building, enforcement, and advocacy.

During the 3rd ASEAN Competition Conference in Singapore in July 2013, speakers voiced out the need to have harmonized and rationalized competition laws for the single ASEAN market, which is already a step ahead from the present regional competition guidelines.

Following this, last November 2013, AEGC launched its competition policy and law web portal during its 12th AEGC Conference in Cebu. It contains information on competition law and developments on competition issues in ASEAN member states. Posted collaterals also give businesses and consumers information on the key principles of competition policy.

WANTED: COMPREHENSIVE COMPETITION LAW

Since the 1980s, the Philippines has yet to enact a single compre-

hensive antitrust law that would contribute to an effective enforcement of competition policy in the country.

Inspired by the US Sherman Act, Article XII, Section 19 of the 1987 Philippine Constitution mandates the State to regulate and prohibit monopolies in restraint of trade. Monopolies and combinations in restraint of trade have long been defined and penalized in Article 186 of the Revised Penal Code of 1932. Furthermore, Article 28 of the Civil Code of the Philippines of 1949 provides for the collection of damages arising from unfair competition in agricultural, commercial, or industrial enterprises. However, outdated penal provisions of the country's laws no longer serve as effective deterrents to monopolies and combinations in restraint of trade.

As a probable response to the need to foster greater competition in Philippine markets, President Benigno Aquino III stated in his first State of the Nation Address that an antitrust law will be among his administration's priorities. As said by the President in 2010: "According to our Constitution, it is the government's duty to ensure that the market is fair for all. No monopolies, no cartels that kill competition. We need an **Antitrust Law** that will give life to these principles, to afford Small- and Medium-Scale Enterprises the opportunity to participate in the growth of our economy."

Progress on Competition Law and Competition Authorities in ASEAN



Note: As of 6 February 2014

Sources: ASEAN Economic Community Scorecard 2012, WEF Global Competitiveness Report 2013-2014, Asia Legal Business Online, Tariff Commission

Despite this statement, the 15th Congress adjourned on 6 June 2013 without passing a comprehensive competition law.

COMPETITION AUTHORITIES IN ASEAN

A key element in the enforcement of competition policy and law is the existence of an agency that will guard against anti-competitive behavior. Certain countries in Southeast Asia already have such agencies in place,

while the Philippines is in the process of institutionalizing one.

In Indonesia, Law No. 5 of 1999, which prohibits monopolistic business practices and unfair business competition, is enforced by the Commission for the Supervision of Business Competition, an independent institution free from the influence of government and other stakeholders, but accountable to the President of Indonesia. To further improve its competitive environment,

Law No. 5 has already undergone three rounds of amendments.

Thailand's Trade Competition Act B.E. 2542, enacted in 1999, covers anti-competitive practices and restrictive/unfair commercial practices, and regulates business mergers. It is enforced by the Trade Competition Commission. An Office of Trade Competition was also established in the Department of Internal Trade within the Ministry of Commerce.

Singapore's Competition Act, enacted in 2004, meanwhile, defines prohibited agreements and mergers and abuse of dominant position. It is enforced by the Competition Commission of Singapore, which is an independent statutory board under the Ministry of Trade and Industry. The Commission's decision imposing financial penalties may be appealed before a special independent tribunal, the Competition Appeal Board.

Vietnam's Competition Law No. 27/2004/QH11 is enforced by two authorities: an investigative body called the Vietnam Competition Authority, established within the Ministry of Industry and Trade, and an adjudicating body to handle cases, called the Vietnam Competition Council. The Law covers "competition-restriction acts" and "unfair competition acts." Vietnam's Competition Law is also being amended at present.

In the Philippines, President Aquino issued Executive Order No. 45 last 9 June 2011 which designates the Department of Justice as the Competition Authority. On 10 October 2011, the Justice Secretary formally organized the Office for Competition (DOJ-OFC) under Department Order No. 844.

THE DOJ-OFC

In laying down government's competition policy, EO 45 took note that competition in domestic and international trade

is a main advocacy of the World Trade Organization, ASEAN Free Trade Area, and Asia-Pacific Economic Cooperation. Furthermore, as pointed out by the Tariff Commission, there are already chapters on competition policy contained in the Philippines-Japan Economic Partnership Agreement (2006), ASEAN-Japan Comprehensive Economic Partnership Agreement (2008), and ASEAN-Australia-New Zealand Free Trade Agreement (2010).

EO 45 likewise cited Republic Act 4152, approved on 20 June 1964, which tasked the Justice Secretary to study laws on trusts, monopolies, and combinations for the purpose of drafting updated or revised legislation, investigating violations of such laws, and instituting preventive or remedial measures against anti-competitive practices.

Given such historical and legal mandates, the DOJ-OFC is, therefore, tasked to investigate cases of violation of competition laws; enforce competition policies and laws to protect consumers; supervise competition in markets; monitor and implement measures to promote transparency and accountability in markets; prepare, publish, and disseminate studies and reports on competition for the guidance of industry and consumers; promote international cooperation; and strengthen Philippine trade relations with

Table 1: Competition Bills in the 16th Congress

Bill	Author	Proposed Competition Authority	Prohibited Acts
HB 211	Salvacion Ponce Enrile	N/A	
HB 1281	Reynaldo Umali	National Consumer Affairs Council	<ul style="list-style-type: none"> • Monopolies • Attempt to monopolize an industry • Manipulation of prices of commodities • Asset acquisition • Interlocking memberships in board of directors • Price discrimination among customers
HB 2672	Diosdado Macapagal Arroyo Gloria Macapagal Arroyo	Department of Justice	<ul style="list-style-type: none"> • Cartels • Monopolies • Abuse of Market Power
HB 4090	Niel Tupas Jr.	Competition Authority (out of existing DOJ-OFC)	<ul style="list-style-type: none"> • Anti-competitive agreements • Abuse of dominant position • Anti-competitive mergers
SB 41	Sergio Osmeña III	Fair Trade Commission	<ul style="list-style-type: none"> • Anti-competitive agreements • Abuse of dominant position • Anti-competitive mergers
SB 1210	Miriam Defensor-Santiago	Competition Regulatory Commission	<ul style="list-style-type: none"> • Abuse of dominant position • Unfair competition
SB 1293	Jinggoy Estrada	Department of Justice-Office for Competition	<ul style="list-style-type: none"> • Anti-competitive conduct • Abuse of dominant position • Anti-competitive mergers
SB 473	Teofisto Guingona III	Philippine Fair Competition Commission	<ul style="list-style-type: none"> • Anti-competitive agreements • Abuse of dominant position • Anti-competitive mergers
SB 1027	Bam Aquino		
SB 1453	Miriam Defensor-Santiago		
HB 388	Rufus Rodriguez Maximo Rodriguez, Jr.		
HB 453	Marcelino Teodoro		
HB 1133	Feliciano Belmonte, Jr.		
HB 3366	Teodoro Haresco, Jr.		

Note: Compiled by MBC Programs Unit

other countries and institutions in trade agreements.

Since its establishment, the DOJ-OFC has adopted a sectoral approach to the implementation of competition policy and law, given that there are more than 60 sector regulators and at least 30 sector competition laws in the country. This direction led to the formation of the Sector Regulators Council, focused on five clusters, namely utilities, commodities and services, logistics and transport, international trade, and finance.

Among the sectors, DOJ-OFC has prioritized telecommunications, energy, and transport, considering these sectors' impact on consumers. Its study and consultations led to the removal of customs, immigration, and quarantine charges in the airline industry, as well as the removal of airline taxes—the 2.5% gross Philippine billings tax and the 3% common carriers tax on international carriers. Currently, DOJ-OFC is studying competition in ports in preparation for shifting container shipment volume from Manila to Batangas and Subic.

In the area of enforcement, DOJ-OFC has released issuances on its procedures for case investigation; guidelines providing legal assistance to sector regulators in cases related to the performance of their functions; joint handling of consumer complaints with the Department of Trade and

Industry; airline ticket sales; role and functions of a competition authority and sector regulators; and customs, immigration, and quarantine charges.

In terms of its national advocacy among businesses and consumers, the competition authority is supported by Presidential Proclamation 384, dated 18 May 2012, which orders the observance of a National Competition Day every December 5. In addition, law and business graduate students in a leading university have incorporated the study of competition policy and law in its curriculum.

DOJ-OFC has likewise established linkages with the International Competition Network, Global Forum on Competition of the Organization for Economic Cooperation and Development, Intergovernmental Group of Experts of the United Nations Conference on Trade and Development (UNCTAD), and Competition Policy and Law Group of the Asia-Pacific Economic Cooperation.

BILLS IN CONGRESS

Numerous competition bills have been filed in Congress, with differing provisions on the nature and composition of the designated competition authority. Table 1 on page 10 provides a snapshot of the said bills, particularly their preferred competition authorities and the covered prohibited acts.

The ASEAN guidelines for legislation on competition prescribes three modes on the establishment of a competition regulatory body: 1) establishment of a standalone independent competition authority for policy administration and enforcement; 2) creation of different statutory authorities respectively responsible for competition policy administration and enforcement within specific sectors; and 3) retention of competition regulatory functions within the relevant government department.

Presently, there are 14 competition bills in Congress. Nine of these bills echo the first mode in the ASEAN guidelines. The remaining five, on the other hand, resonate with the third mode.

With regard to the last category, **HB 4090** authored by Rep. Niel Tupas, Jr. is similar with the draft bill submitted by the DOJ-OFC to the Senate Committee on Trade, Commerce, and Entrepreneurship. Both bills retain the present DOJ-OFC and its personnel, and expands its functions as the Competition Authority. The authority's decisions are subject to appeal and review by an administrative body known as the Competition Commission. The decisions of this commission shall be deemed final but may, however, still be raised to the Court of Appeals. For budget purposes, appropriations for the Commission shall be placed under the Office of the President. Furthermore, the bills create a bicameral Congressional Oversight

Committee on Fair Competition to oversee the implementation of the law.

Not far from the aforementioned is **SB 1293** by Senator Jinggoy Estrada, which also seeks to establish the Office for Competition under the Department of Justice. **HB 2672** by Representatives Diosdado and Gloria Macapagal Arroyo' also lodges the enforcement of provisions against cartels, monopolies, and abuse of market power within the DOJ.

Meanwhile, Representative Reynaldo Umali's **HB 1281** seeks to grant antitrust powers and functions to the existing National Consumer Affairs Council. Similar to Representative Salvacion Ponce Enrile's **HB 211**, HB 1281 also penalizes agreements, contracts, combinations and conspiracies in restraint of trade and price manipulation; monopolies and attempts to monopolize, and unlawful price discrimination, among others.

Regarding the suggested mode of establishing a standalone competition authority, most of the bills—**SBs 473, 1027, and 1453**; and **HBs 388, 453, and 3366**—call for the creation of an independent competition commission. The bills enable the President to appoint a chair and four associate commissioners for a fixed regular term of six years, without reappointment.

Besides these, Senator Sergio Osmeña's **SB 41** creates the **Fair Trade Commission**, which shall be technically and operationally

autonomous. Five commissioners shall be appointed by the President for a term of six years, which may be renewed. They may only be removed from office for duly justified serious reasons. They may not engage in any work or practice any profession, except in a teaching capacity. They are disqualified from deciding on regulations where they have direct or indirect interest.

Senator Miriam Defensor Santiago's **SB 1210**, creates an independent **Competition Regulatory Commission**. With recognized probity and integrity, the chair and four associate commissioners shall be appointed by the President for a term of seven years without reappointment.

To ensure a competent, credible, and independent competition authority, as well as avoid conflict of interest, eight of these bills prohibit commission members from holding any office, practicing any profession, participating in any business, or being financially interested in any contract with, franchise or special privilege granted by the government. These bills likewise create a bicameral Congressional Oversight Committee on Fair Competition to oversee the implementation of competition law.

INDEPENDENT AUTHORITY AS BEST PRACTICE

UNCTAD's Model Law on Competition assumes that the most efficient type of authority in

enforcing competition is one that is independent from the government, with "strong judicial and administrative powers for conducting investigations and applying sanctions" and with "the possibility of recourse to higher judicial body." Independent regulators are also recommended by the World Trade Organization, World Bank, International Monetary Fund, regional development banks, and the Organization for Economic Cooperation and Development.

According to UNCTAD, most developed economies and majority of developing economies give competition authorities administrative autonomy from government ministries, although there are cases when the investigative arm of the competition authority is established within a ministry and the adjudicative arm is formed as a separate collegial body.

Most of the pending competition bills in Congress are classified into the former category, while three bills and the DOJ-OFC version would fall into the other classification. With regard to the latter, it may be noted that the Antitrust Division of the US Department of Justice and the German Bundeskartellamt under the Minister of Economics both lack formal independence but exercise actual independence from the executive branch.

The importance of shielding national competition authorities from influence of elected officials

and lobbying by narrow interest groups cannot be understated. As noted by international best practice, consistency, certainty, predictability, impartiality, and objectivity in implementing competition law reduces regulatory risks and costs for and brings efficiency to business firms.

Furthermore, Mattia Guidi's 2012 doctoral thesis at the European University Institute Department of Political and Social Sciences stated that competition authorities must be independent because they perform almost judicial functions. Independence is also a condition in attracting private investments and creating "a business environment that cannot be influenced by political fluctuations." The study concluded that formal independence positively affects performance in terms of regulatory output. The less these agencies are answerable to their parliaments and governments, "the more actively they perform their tasks."

PENALIZING ANTI-COMPETITIVE ACTS

Compliant with ASEAN regional guidelines, the DOJ-OFC proposal and HB 4090 penalizes anti-competitive agreements or conducts, abuse of dominance, and anti-competitive mergers, sets criminal penalties of up to 10% of the annual sales of the infringed or up to 10% of the value of the assets of the infringed, and administrative fines of up to 10% of the entity's total turnover in the preceding business year.

Furthermore, the Competition Authority envisioned by the

Table 2: Prohibited Acts covered by SB 1027

Anti-competitive agreements

Price fixing	Agreement among competitors to raise, suppress, fix, or otherwise maintain the prices of their goods or services, covering practices such as: <ul style="list-style-type: none"> • establishing or adhering to price discounts • adopting a standard formula for competing prices • maintaining certain price differentials between different types, sizes or quantities of products • adhering to a minimum fee or schedule • other analogous schemes with the effect of creating monopolies or cartels or lessening competition
Bid rigging	Agreement to fix price at auctions or in any other form of bidding, with the purpose and effect of creating a monopoly or cartel, or lessening competition such as, but not limited to, cover bidding, bid suppression, bid rotation and market allocation, and analogous practice of bid manipulation
Monopoly	Undue advantage of one firm, consisting in the exclusive right to carry on a business and/or manufacture a particular product
Cartel	Horizontal agreements that result to a dominant position for the purpose of engaging in price fixing, output restriction, market allocation, bid-rigging, and other anti-competitive conduct to control an industry or commodity

Abuse of dominant position

Predatory behavior towards competitors	Any agreement including, but not limited to, selling goods at below relevant cost with the intent of driving competitors out of the market or creating barriers to entry
Limitation and control of markets	Any agreement to limit or control production, markets, technical development, or investment with the effect of creating a monopoly, cartel, or lessening competition
Market allocation	Any agreement to divide the market, whether by volume of sales or purchase or by territory, by type of goods sold, by customers or sellers or by any other means, with the effect of creating a monopoly or cartel or lessening competition

Abuse of dominant position

Arrangements to share markets or sources of supply	Any agreement to share markets or sources of supply of raw materials, with the effect of creating a monopoly or cartel, or lessening competition
Price discrimination	<p>Any agreement prescribing or charging, directly or indirectly, discriminatory pricing terms or conditions in the supply or purchase of goods of like grade or quality with the purpose of creating a monopoly or cartel, or substantially lessening competition</p> <p>Socialized pricing, volume discounts, competitive pricing, bonafide selection of customers, price differentials due to changing market conditions or marketability of goods shall be considered as permissible price differentials</p>
Exclusivity arrangement	<p>Any agreement imposing restrictions on the lease or contract for sale or trade of goods concerning where, to whom, or in what forms goods may be sold or traded</p> <p>Franchising, leasing, and exclusive distributorship agreements shall be permitted.</p>
Tie-in arrangements	Any agreement making the supply of particular goods dependent upon the purchase or lease of other goods from the supplier or his consignee, where the purpose and effect of such sale or lease is to substantially lessen competition or to create a monopoly or cartel
Boycott	Any concerted refusal to sell or conspiracy not to sell or stop doing business on the part of the suppliers of any goods, unless for a legitimate purpose

above bills also has the power to issue adjustment or divestiture orders, including orders for corporate reorganization or divestment. At the same time, upon ex parte order of the court, the Competition Authority is also empowered to undertake inspections of business and other premises during business hours.

Nevertheless, during the public hearing of the Senate Committee on Trade, Commerce, and Entrepreneurship last February 2014, competition policy and

law expert Dr. Erlinda Medalla of the Philippine Institute for Development Studies noted that SB 41 by Senator Osmeña and SB 1027 by Senator Bam Aquino contain the essential elements for a comprehensive competition policy and law. SB 1027 also has the support of the Philippine Chamber of Commerce and Industry, which has taken the lead among Philippine business groups in advocating for a competition law. SB 1027, likewise, conforms to the guidelines for ASEAN member countries regarding competition policy.

As mentioned, SB 1027, which will establish an independent Philippine Fair Competition Commission, seeks to guard against three major offenses against fair competition: anti-competitive agreements, abuse of dominant position, and anti-competitive mergers. Specific offenses under the two of the three major categories are summarized in Table 2.

The bill defines **anti-competitive agreements** as horizontal and vertical arrangements between firms that prevent, distort, or restrict competition, unless such an agreement is exempted. **Abuse of dominant position**, meanwhile, denote unfair methods of competition, deceptive trade practices, acts of conspiracy engaged by one or more firms to prevent, restrict, or distort completion.

Anti-competitive mergers take place when a firm, directly or indirectly, acquires the whole or part of the stock or the assets of one or more firms, where the effect of such acquisitions lessens competition or creates monopolies. The Philippine Fair Competition Commission is required to be informed in the event that proposed acquisitions will result in the acquiring firm owning 20% or more of the stocks and assets of the acquired firm. But the bill also provides for permissible stock or asset acquisition or ownership and for exemptions from prior notice requirement.

Firms violating the prohibited acts above will be slapped, among others, with criminal fines ranging from P10 million to

P50 million and administrative penalties from P250 million to P750 million, respectively. The Commission also has the power to investigate *motu proprio* or upon filing of a verified complaint, summon witnesses and issue subpoena duces tecum, as well as issue binding rulings, cease and desist orders, and approved consent judgments.

BUSINESS SUPPORT

Discussions on the various competition bills have been steadily gaining steam, with the pertinent committees in both chambers of Congress regularly conducting public consultations on the pending measures. This is on top of separate meetings that took place between the Philippine Business Groups and Joint Foreign Chambers (PBG-JFC)—of which the Makati Business Club is a member—and the leaders of the House and the Senate last February 2014 to discuss priority legislation.

In the aforementioned meetings with the Congressional leaders, the PBG-JFC stated its support, in general terms, for the immediate enactment of a

comprehensive competition law that will create an independent Competition Commission and will prevent anti-competitive agreements, abuse of dominant position, and anti-competitive mergers.

For its part, MBC has already been advocating for the establishment of such an independent competition authority, and that this body shall be proactive in enforcing the rules and shall focus on punishing misbehavior of firms, rather than concentrating on the size of the company. Clear and reasonable definitions of offenses that constitute acts against competition should also be stated in the proposed law.

While the above positions of the business community appear consistent with the provisions of particular competition bills, concerns have been raised over the proposed retroactive application of the law, and the excessive monetary penalties imposed. In particular, it was noted that the proposed penalty of P250 million to P750 million may be unrealistic, giv-

en the fact that certain bills do not take into account the actual turnover of the offending firm. Moreover, the proposal to allocate proceeds arising from a civil action to the Competition Commission may affect the agency's impartiality due to potential conflict of interest. Other provisions could also violate constitutional guarantees on privileged communications and against self-incrimination.

With 2015 less than two years away, a more intensified drive towards enacting a comprehensive competition law is needed. However, more important than the speed of the competition bill's passage into law is ensuring that it will indeed guarantee a very active and fair business environment for firms. Particular bills already contain a number of the ideal provisions noted by international guidelines and best practice, but kinks to be ironed out continue to remain. As the competition law steadily gains shape, greater participation by all stakeholders is crucial in the quest to create a genuinely competitive Philippines. ■

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