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SENATE

RECEIVED BY: S. B. No. 1199

Introduced by Senator **JUAN PONCE ENRILE**

EXPLANATORY NOTE

Our people have been victims to big business. It behooves the Senate to provide protection to our people against price manipulators.

In a volatile economic situation such as that which we are experiencing now, it is not very difficult to imagine how artificial prices in one or two commodities is able to directly or indirectly raise the prices of related goods and services.

In Article XII, Section 19, our Constitution provides:

“Section 19. 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.”

As proof of the importance of this Constitutional mandate, Section 22 of the same article encourages the promulgation of legislation that would impose civil and criminal sanctions against those who circumvent or negate this principle. Hence, Section 22 of the Constitution provides:

“Section 22. Acts which circumvent or negate any of the provisions of this Article shall be considered inimical to the national interest and subject to criminal and civil sanctions, as may be provided by law.”

Although previous legislations have been passed pursuant to this Constitutional mandate, the increased deviousness and complexity of schemes in perpetuating monopolies in the free market landscape necessitates an equally sophisticated legislation that would effectively address this concern.

Generally, this bill penalizes combinations or conspiracies in restraint of trade and all forms of artificial machinations that will injure, destroy or prevent free market competition.

For these reasons, the passage of this bill is earnestly recommended.



JUAN PONCE ENRILE
 Senator

shall be deemed guilty of an offense: *Provided*, That nothing herein contained shall render illegal, any agreement or contract prescribing minimum prices for the resale of a commodity which bears or the label or container of which bears, the trademark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others: *Provided, further*, That the preceding proviso shall not make lawful any agreement or contract, combination or conspiracy providing for the establishment or maintenance of minimum resale prices on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailer, or between persons, firms, or corporations in competition with each other.

SECTION 4. *Monopoly or Attempt to Monopolize.* - It shall be unlawful for any person to monopolize, or attempt to monopolize, or to combine or conspire, expressly or impliedly, with any other person or persons, to monopolize any part of the trade or commerce within the country, or with any foreign country or territory, and any such person shall be guilty of an offense. *Provided*, That nothing contained in this Act shall render unlawful the right of a patent holder or a copyright holder to enjoy the benefit of his or its patent or copyright duly registered in the Philippines or in any foreign country with which the Philippines is a co-signatory to any treaty or convention that protects rights to an invention patent or to a copyright, as the case may be.

SECTION 5. *Price Discrimination.* - (A) It shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchasers involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the Philippines, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy,

or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided*, That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing method or quantities in which such commodities are to such purchasers sold or delivered: *Provided, however*, That the Secretary of the Department of Trade and Industry in the case of non-agricultural commodities and the Secretary of the Department of Agriculture in the case of agricultural commodities may, after due notice, investigation and hearing to all interested parties, fix and establish quantity limits, and revise the same as the Secretary concerned finds necessary, as to particular commodities or classes of commodities, where such Secretary finds that available purchasers in greater quantities are so few as to render differentials on account thereof unjustly discriminatory or promotive of monopoly in any line of commerce within the jurisdiction of his Department; and the foregoing shall not be construed to permit differentials based on differences in quantities greater than those so fixed and established: *Provided, further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade: *And Provided, finally*, That nothing herein contained shall prevent price changes from time to time in response to changing conditions affecting the market for or the marketability of the goods concerned, such as but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(B) It shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for

or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(C) It shall be unlawful for any person engaged in commerce to pay or contract for the payment of anything of value to or for the benefit of a customer of such person in the course of such as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such person, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(D) It shall be unlawful for any person to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(E) It shall be unlawful for any person engaged in commerce, in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by this Section.

(F) Upon proof being made, at any hearing on a complaint under this Section, that there has been discrimination in price or services or facilities furnished, the burden of rebutting the prima-facie case thus made by showing justification shall be upon the person charged with a violation of this Section, and unless justification shall be affirmatively shown, the Secretary concerned is authorized to issue an order terminating the discrimination: *Provided, however,* That nothing herein contained shall prevent a seller rebutting the prima-facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.

SECTION 6. *Prohibited Stipulations in Lease or Sales Contracts* – It shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for the sale of goods, wares, merchandise, machinery, supplies, or other commodities, whether patented or unpatented, for use, consumption, or resale within the Philippines, or fix a price charged therefore, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement, or understanding may be to lessen competition or tend to create a monopoly in any line of commerce.

SECTION 7. *Prohibited Stock or Asset Acquisition.* - No person engaged in commerce or in any activity affecting commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share-capital or the whole or any part of the assets of another person engaged also in commerce or in any activity affecting commerce, where in any line of commerce in any activity affecting commerce in the country or in any part of the country, the effect of such acquisition may be substantially to lessen competition or tend to create a monopoly.

SECTION 8. *Prohibited Grant of Proxies or voting Rights.* - No person shall acquire, directly or indirectly, the whole or any part of the stock or other share capital, nor shall any person acquire the whole or any part of the assets of one or more persons engaged in commerce or in any activity affecting commerce, where in any line of commerce in any activity affecting commerce in the country or in any part of the country, the effect of acquisition of such stock or assets, or of the use of such stock by the voting or granting of proxies or otherwise, may be substantially to lessen competition, or tend to create a monopoly. This Section shall not apply to persons purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall



anything contained in this Section prevent a corporation engaged in commerce or in any activity affecting commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extension thereof, or from owning and holding all or part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Nothing contained in this Section shall be held to affect impair any right heretofore legally acquired: *Provided*, That nothing this Section 8 shall be held or construed to authorize or make anything heretofore prohibited or made illegal by any anti-trust law of the Philippines, particularly Article 186 of the Revised Penal Code of the Philippines, nor exempt any person from the penal provisions thereof or the civil remedies provided therefore, if any.

Section 9. *Prohibited Board Memberships in Two or More Corporations.* - No person shall be a director in any two or more corporations engaged in whole or in part in commerce in the Philippines at the same time, other than banks, banking associations, investment companies, and trust companies, if such corporations are or shall have been theretofore, by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any provisions of this Act or any anti-trust law of the Philippines, particularly Article 186 of the Revised Penal Code of the Philippines.

SECTION 10. *Exemption of Labor, Agricultural, or Horticultural Organizations.* - The labor of a human being is not a commodity or article of commerce. Nothing contained in this Act, therefore, shall be construed to forbid the existence and operation of any, labor, agricultural or horticultural organizations, instituted for purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the

legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under this Act.

SECTION 11. *Penalties for Violations of Section 3 and Section 4.* - Any person that shall be found to have violated Section 3 or Section 4 of this Act shall, for each and every such violation, be punished by a fine not exceeding ten million pesos (P10,000,000.00) if a corporation or association, or, one million pesos (P1,000,000.00) if a natural person or by imprisonment not exceeding five (5) years, or both fine and imprisonment, in the discretion of the court.

SECTION 12. *Penalties for Violations of Sections 5, 6, 7, 8, and/or 9.* - Any person that shall be found to have violated Sections 5, 6, 7, or 9 or any combination of such sections of this Act shall, for each and every violation, be punished by a fine not exceeding five million pesos (P5,000,000.00), or by imprisonment not exceeding two and one-half (2 ½) years, or both fine and imprisonment in the discretion of the court.

SECTION 13. *Imposition of a Higher Penalty.* - If the same Act or Acts are chargeable and punishable under Article 186 the Revised Penal Code and under the provisions of this Act, the penalties imposed under the provisions of the Revised Penal Code or under the provisions of this Act, whichever is the heavier, shall imposed.

SECTION 14. *Exclusion of Civil Action from Criminal Action.* - The institution of a criminal action under this Act against a defendant shall not be deemed to include any claim for damages in favor of any person that may have suffered any monetary injury because of any violation of this Act.

SECTION 15. *Civil Action of Private Parties for Monetary Injury.* - In addition to the penalties provided in Sections 11 and 12 of this Act, any person that shall be

injured in his or its business or property and thereby suffers monetary injury by reason of anything forbidden under Sections 3, 4, 5, 6, 7, 8, or 9 of this Act may institute a separate and independent civil action, irrespective of the amount involved in the controversy, against the defendant or defendants and shall recover threefold of the monetary injury by him or by it sustained, and the cost of suit, including a reasonable attorney's fee.

The complaint for the civil action may be filed or instituted in the Regional Trial Court where the defendant or any of the defendants, if more than one, resides or is found or has an agent, or in the Regional Trial Court where the plaintiff resides. Any complaint for civil action that may be filed or instituted against a defendant to recover monetary injury suffered as a consequence of a violation of this Act shall be exempted from the payment of any filing fee.

SECTION 16. *Civil Action of the Republic of the Philippines.* - In addition to any criminal action he may have instituted against any defendant or defendants for any violation of this Act, the Secretary of Justice may bring a civil action in the name of the Republic of the Philippines, as *parens patriae*, on behalf of natural persons residing in the Philippines, in any Regional Trial Court having jurisdiction over the defendant, to secure treble damages for any monetary injury sustained by such natural persons by reason of any violation of this Act, plus the cost of suit and a reasonable attorney's fee.

Any civil action brought by the Secretary of Justice under this Act in the name of the Republic of the Philippines, as *parens patriae*, shall likewise be exempted from the payment of any filing fee.

SECTION 17. *Determination of Monetary Relief to be Awarded in A Suit of the Republic of the Philippines.* - In the event of such a civil action brought by the Secretary of Justice becoming successful, the Regional Trial Court having jurisdiction

over the case shall exclude from the amount of the monetary relief awarded in such action, the amount: (1) which duplicates amounts of monetary relief that have been awarded for the same injury, or (2) which is properly allocable (A) to natural persons who have excluded their claims from the civil action instituted by the Secretary of Justice in the name of the Republic of the Philippines, and (B) to any business entity.

SECTION 18. *Requirement of Notice by Publication in a Suit of the Republic of the Philippines.* - In any civil action brought by the Secretary of Justice under this Act in the name of the Republic of the Philippines, as *parens patriae*, the Secretary of Justice shall, at such times and in such manner, and with such content as the Regional Trial Court having jurisdiction may direct, cause notice thereof to be given by publication. However, if such Regional Trial Court finds that notice given solely by publication would deny due process of law to any person or persons, that court may direct further notice to such persons according to the circumstances of the case.

SECTION 19. *Exclusion from the Suit of the Republic of the Philippines.*- Any person on whose behalf a civil action has been brought by the Secretary of Justice under this Act in the name of the Republic of the Philippines, as *parens patriae*, may elect to exclude from adjudication the portion of the claim of the Republic of the Philippines for monetary relief attributable to him by filing notice of such election with the Regional Trial Court having jurisdiction over the civil action within such time as specified in the notice given pursuant to the immediately preceding Section 16 hereof.

SECTION 20. *Effect of Final Judgment in a Suit of the Republic of the Philippines.* - The final judgment in an action brought by the Secretary of Justice under this Act in the name of the Republic of the Philippines, as *parens patriae*, shall be *res judicata* as to any claim by any person on behalf of whom such action was brought and who fails to give the notice of election under Section 17 hereof within the period directed

and specified by the Regional Trial Court having jurisdiction of the case in accordance with Section 16 of this Act.

SECTION 21. *Suit of the Republic of the Philippines to Recover its Own Damages.* - Whenever the Republic of the Philippines is hereafter injured in its business or property by reason of anything forbidden or rendered unlawful in this Act, it may sue thereon in the Regional Trial Court in which the defendant or any of the defendants, if there are more than one defendant, resides or is found or has an agent, without respect to the amount in controversy and shall recover actual damages by it sustained and the cost of suit.

SECTION 22. *Approval of the Court Required to Dismiss or Compromise a Civil Action.* - Any civil action filed under this Act shall not be dismissed or compromised without the approval of the court having jurisdiction of the case, and notice of any proposed dismissal or compromise shall be given to the public and to the parties in such manner as the court directs.

SECTION 23. *Attorney's Fee for the Prevailing Defendants.* - In any civil action filed against a defendant under this Act, the court having jurisdiction of the case may award a reasonable attorney's fee in favor of a prevailing defendant upon a finding that the Secretary of Justice or the plaintiff has acted in bad faith, vexatiously, wantonly, or for oppressive reasons.

SECTION 24. *Use of Statistical or Sampling Methods to Prove and Assess Damages.* - In any civil action under this Act in which there has been a determination that a defendant agreed to fix prices in violation of the provisions of this Act, damages may be proved and assessed in the aggregate by statistical or sampling methods, by the computation of illegal overcharges, or by such other reasonable system of estimating aggregate damages as the court having jurisdiction of the case in its discretion may



permit without necessarily proving the individual claim of, or the amount of damage to, persons on whose behalf the suit was brought.

SECTION 25. *Distribution of Monetary Relief Recovered in Suit of the Republic of the Philippines.* - The monetary relief recovered in a civil action filed by the Secretary of Justice in the name of the Republic of the Philippines, as parens patriae, in accordance with the provisions of Section 16 hereof shall (1) be distributed in such manner as the Regional Trial Court having jurisdiction of the case in its discretion may authorize; or (2) be deemed a civil penalty by the Regional trial Court and deposited with the National Treasury as a part of the general fund of the government, subject in either case to the requirement that any distribution procedure adopted by the Regional Trial Court shall afford each person having an interest in the monetary relief a reasonable opportunity to secure his appropriate portion of the net monetary relief obtained.

SECTION 26. *Evidential Effect of a Final Judgment Rendered in a Criminal Action Against a Defendant.* - Any final judgment or decree heretofore or hereafter rendered in any criminal action brought by or on behalf of the People of the Philippines as well as any final judgment or decree heretofore or hereafter rendered in any civil action brought by or on behalf of the Republic of the Philippines under this Act to the effect that a defendant has violated any or all of the provisions of this Act shall be prima facie evidence against such defendant in any civil action brought by any other party against such defendant under this Act as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto: *Provided*, That this Section shall not apply to consent judgment or decree, as hereinafter provided in Section 27 hereof, entered before any testimony has been taken.

SECTION 27. *Proposal for a Consent Judgment.* - At any time in the course of a civil action brought by or on behalf of the Republic of the Philippines under this Act, the Republic of the Philippines through the Secretary of Justice, may propose in a proper

pleading to the defendant or defendants a consent judgment by the latter based on the facts alleged by the parties in their respective pleadings.

Any such proposal for a consent judgment for entry in such civil action shall be filed with the Regional Trial Court having jurisdiction of the case. A summary of the terms of the proposal for the consent judgment with a competitive impact statement which shall recite (1) the nature and purpose of the proceeding; (2) a description of the practices or events giving rise to the alleged violation of this Act; (3) an explanation of the proposal for a consent judgment, including an explanation of any unusual circumstances giving rise to such proposal or any provision contained therein, relief to be obtained thereby, and the anticipated effects on competition of such relief; (4) the remedies available to potential private plaintiffs damaged by the alleged violation in the event that such proposal for the consent judgment entered in such proceeding; (5) a description of the procedure available for modification of such proposal; (6) a description and evaluation of alternatives to such proposal actually considered by the Republic of the Philippines; and (7) a list of the materials and documents which the Republic of the Philippines shall make available for purposes of meaningful public comment, and the place where such materials and documents are available for public inspection, shall be published at least sixty (60) days prior to the effective date of such consent judgment for seven (7) days over a period of three (3) weeks in at least two (2) newspapers of general circulation.

Copies of the proposal for a consent judgment or any other materials and documents which the Republic of the Philippines considered determinative in formulating its proposal for a consent judgment shall be made available to the public at the Regional Trial Court having jurisdiction of the case.

SECTION 28. *Public Comments Relating to the Proposal for a Consent Judgment.* - During the sixty (60) day period mentioned in Section 27 hereof, and such

additional time as the Republic of the Philippines may request and the Regional Trial Court may grant, the Republic of the Philippines shall receive and consider any written comments relating to the proposal for the consent judgment filed with the Regional Trial Court having jurisdiction of the case in accordance with Section 27 of this Act. At the close of the period during which such comments may be received, the Republic of the Philippines shall file with the Regional Trial Court having jurisdiction of the case, not later than thirty (30) days from the date the last comment was filed with the Regional Trial Court, a response to such comments.

SECTION 29. *Duty of the Regional Trial Court Before Entering Any Consent Judgment.* - Before entering any consent judgment proposed by the Republic of the Philippines under Section 27 of this Act, the Regional Trial Court having jurisdiction of the case shall determine that the entry of such judgment is in the public interest.

For purposes of determining that the entry of such judgment is in the public interest, the Regional Trial Court may consider: (1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment; and (2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint, including consideration of the public benefit, if any, to be derived from the determination of the issues at the trial.

SECTION 30. *Powers of the Regional Trial Court in Making the Determination under Section 29.* - In making its determination under Section 29 of this Act, the Regional Trial Court may: (1) take the testimony of government officials or experts or such expert witnesses, as the Regional Trial Court may deem appropriate; (2) appoint such outside consultants or experts witnesses as the Regional Trial Court may

deem appropriate; (3) request and obtain the views, evaluations, or advice of any individual, group, or agency of the government with respect to any aspects of the proposed consent judgment or the effect of such consent judgment, in such manner as the Regional Trial Court having jurisdiction of the case deems appropriate; (4) authorize full or limited participation in the civil proceedings before the Regional Trial Court having jurisdiction of the case by interested persons or agencies of the government, including appearance amicus curiae, intervention as a party pursuant to the provisions of the Rules of Court, examination of witnesses or documentary materials, or participation in any other manner and extent which serves the public interest as the Regional Trial Court having jurisdiction of the case may deem appropriate; (5) review any comments including any objections filed with the Republic of the Philippines concerning the proposed consent judgment and the responses of the Republic of the Philippines to such comments and objections, in accordance with the provisions of Section 28 of this Act; and (6) take such other action in the public interest as the Regional Trial Court may deem appropriate

SECTION 31. *Certifications of the Defendants.* - Not later than fifteen (15) days following the date of the filing of any proposal for a consent judgment under Section 27 of this Act, each defendant shall file with the Regional Trial Court having jurisdiction of the case a description of any and all written or oral communications by or on behalf of such defendants, including any and all written or oral communications on behalf of such defendants, or other person, with any officer or employee of the Republic of the Philippines or relevant to such proposal, except that any such communications made by counsel of record with the Secretary of Justice or the employees of the Department of Justice shall be excluded from the requirements of this Section. Prior to the entry of any consent judgment pursuant to this Act, each defendant shall certify under oath to the Regional Trial Court having jurisdiction of the case that the requirements of this Section have been complied with and that such filing is a true and complete



description of such communications known to the defendant or which the defendant reasonable should have known.

SECTION 32. *Evidential Value of Proceedings in a Proposal for a Consent Judgment.* - Proceedings before the Regional Trial Court having jurisdiction of the case under Section 29 and Section 30 of this Act, shall not be admissible against any defendants in any action or proceeding brought by any other party against such defendant nor constitute a basis for the introduction of the consent judgment as a prima facie evidence against such defendants in any such action or proceeding.

SECTION 33. *Statute of Limitations.* - Any civil or criminal action to enforce any cause of action arising from a violation of any provision of this Act shall be forever barred unless commenced within five (5) years after the cause of action accrued. Whenever any civil or criminal proceeding is instituted by the Republic of the Philippines in case of a civil action or by the People of the Philippines in case of a criminal action to prevent, restrain, or punish any violation of any provision of this Act, the running of the statute of limitation provided in the immediately preceding sentence in respect of every private or sovereign right of action arising under this Act and based in whole or in part on any matter complained of in said proceeding shall be suspended during the pendency thereof and for one year thereafter.

SECTION 34. *Separability Clause.* - If any clause, sentence, section or part of this Act shall be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this Act, but shall be confined in its operation to the clause, sentence paragraph, section, or part thereof directly involved in the controversy.



SECTION 35. *Repealing Clause.* - All provisions of law, orders, decrees, executive orders, including rules and regulations or parts thereof which are contrary to or inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SECTION 36. *Effectivity Clause.* - This Act shall take effect fifteen (15) days following its publication in the Official Gazette or at least two (2) national newspapers of general circulation.

Approved,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.