

9 APR 28 PM '12

SENATE

Senate Bill No. **3197**

RECEIVED BY: 

(In substitution of Senate Bill Nos. 123, 1122, 2544 and 3099)

Prepared by the Sub-Committee on Anti-Trust/Competition Policy (Committee on Trade and Commerce) with Senators Enrile, Santiago, Trillanes IV, Roxas and Angara as authors thereof

AN ACT
PENALIZING UNFAIR TRADE AND ANTI-COMPETITIVE PRACTICES IN
RESTRAINT OF TRADE, UNFAIR COMPETITION, ABUSE OF DOMINANT POWER,
STRENGTHENING THE POWERS OF REGULATORY AUTHORITIES AND
APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

CHAPTER 1

TITLE AND DECLARATION OF POLICY

SECTION 1. Title. – This Act shall be known and cited as the “*Competition Act of 2009.*”

SEC. 2. Declaration of Policy. – Pursuant to the constitutional mandate that the State shall regulate or prohibit monopolies when the public interest so requires and that no combinations in restraint of trade or unfair competition shall be allowed, the State shall:

- a) promote and enhance free and full competition in trade, industry and all commercial economic activities;
- b) prevent the concentration of economic power in a few persons who threaten to control the production, trade, or industry, stifle competition, distort, manipulate or constrict the discipline of free markets, or tamper with the free play of the market forces and eventually destroy free and open markets; and,
- c) penalize all forms of unfair trade, anti-competitive conduct and combinations in restraint of trade, with the objective of protecting and advancing consumer welfare.

CHAPTER 2

SCOPE AND APPLICATION, DEFINITION OF TERMS

SEC. 3. *Scope and Application.* – This Act shall be enforceable within the territory of the Republic of the Philippines and shall apply to all areas of trade, industry and commercial economic activity. It shall likewise be applicable to international trade having substantial effects in the Republic of the Philippines including those that result from acts done outside the Republic of the Philippines.

The Act shall apply to: (a) all firms as defined hereunder and all their commercial agreements, actions or transactions involving goods, services or intellectual property; and, (b) all natural persons who, acting in their capacity as owner, manager or employee of a firm, shall authorize, engage or aid in the commission of restrictive practices prohibited under this Act.

SEC. 4. *Definition of Terms.* – As used in this Act, the following terms shall be defined as:

(a) **Cartel** shall mean a combination of firms, providing goods in relevant markets, acting or joined together to obtain a shared monopoly to control production, sale and price, or to obtain control in any particular industry or commodity, or a group of firms that agree to restrict trade to their mutual benefit, which may or may not be of an international scale.

It shall also refer to firms or section of firms having common interest designed to prevent extreme or unfair competition and allocate markets, and to promote the exchange of knowledge resulting from scientific and technical research, exchange of patent rights and standardization of products;

(b) **Competition** shall mean the process by which economic agents, acting independently in a market, limit each other's ability to control the prevailing conditions in the market;

(c) **Control** refer to at least twenty percent (20%) ownership, directly or indirectly, of a firm or a group of firms by another firm;

(d) **Firm** shall include any person, partnership, combination or association in any form, engaged directly or indirectly in any economic activity: *Provided*, That, two firms, one of which is controlled by the other, shall be treated as one firm: *Provided, further*, That two or more firms that are controlled by a single firm shall be treated as one firm;

(e) **Goods** shall include all types of goods and services;

1 (f) **Market** shall refer to a place or venue for commercial activity, which may extend beyond
2 the borders of the Republic of the Philippines, where articles are bought or sold. It shall
3 also refer to the geographical or economic extent of commercial demand;

4 (g) **Monopoly** shall mean a privilege or undue advantage of one or more firms, consisting in
5 the exclusive right to carry on a particular business or trade, and/or manufacture a
6 particular product, article or object of trade, commerce or industry. It is a form of market
7 structure in which one or only a few firms dominate the total sales of a product or
8 service;

9 (h) **Monopoly Power** shall refer to a situation where a firm, either by itself or acting in
10 collusion with other firms, is in a position to control a relevant market for the sale of a
11 particular good or service by fixing its prices, excluding competitor firm, or controlling
12 the market in a specific geographical area; and,

13 (i) **Relevant Market** shall refer to the line of commerce in which competition has been
14 restrained. It shall also refer to the geographic area involved, including all reasonably
15 substitutable goods, and all nearby competitors, to which consumers could turn if the
16 restraint or abuse results in the significant increase in prices.

17 CHAPTER 3

18 PROHIBITED ACTS

19 **SEC. 5. Cartels.**— It shall be unlawful for firms providing goods in relevant markets to
20 join together to monopolize, or to control production in a particular industry or commodity, the
21 sale and price of such good, and to agree to restrict trade for their mutual benefit, which may or
22 may not be on an international scale. This shall also include an association by agreement of
23 firms or sections of firms having common interests designed to promote the interchange of
24 knowledge resulting from scientific and technical researches, exchange of patent rights and
25 standardization of products.

26 Restrictive agreements resulting from cartel-like behavior of firms, in any form, are
27 hereby *per se* deemed illegal. These shall include, but not limited to, the following:

28 (a) Agreements to fix selling price of goods or other terms of sale;

29 (b) Agreements to limit supply or output;

1 (c) Agreements to divide the market, whether by volume of sales or purchase or by
2 territory, by type of goods sold, by customers or sellers, or by any other means;

3 (d) Agreements exclude or limit dealings with particular suppliers or sellers from
4 supplying or selling goods, or customers from acquiring or buying goods; and,

5 (e) Agreements to fix setting price at auctions or in any other form of bidding.

6 There shall be a *prima facie* case for the existence of a cartel if and when the Department
7 of Trade and Industry (DTI) or concerned regulatory agency finds that two or more persons or
8 firms competing for the same relevant market perform uniform or complementary acts among
9 themselves which tend to bring about artificial and unreasonable increase in the price of any
10 goods or when they simultaneously and unreasonably increase the prices of their competing
11 goods thereby lessening competition among themselves.

12 **SEC. 6. *Monopolies.*** – It shall be unlawful for any firm to willfully monopolize, or
13 knowingly attempt to monopolize, the trade of goods or any part of the trade or commerce within
14 the Republic of the Philippines or with any foreign country or territory. As prohibited in this
15 Act, the essential elements of the crime of monopolization are the possession of monopoly power
16 and its willful acquisition, maintenance or abuse to exclude competitors from any part of trade,
17 commerce or industry as distinguished from natural growth or development of a firm as a
18 consequence of a superior product, business acumen or historic accident: *Provided*, That, a firm
19 that has at least fifty percent (50%) of the relevant market as found and certified by the
20 Department of Trade and Industry or the concerned regulatory agency shall be deemed a
21 monopoly or in dominant position.

22 **SEC. 7. *Monopoly Power or Abuse of Market Power by One in Dominant Position.*** – It
23 shall be unlawful for one or more firms with market power within relevant markets to abuse their
24 monopoly power or dominant position, by engaging in unfair methods of competition, or
25 engaging in unfair or deceptive trade practices, or entering into agreements, combinations in the
26 form of trust or otherwise, or conspiracy, with the purpose and effect to prevent, restrict, or
27 distort competition. Abusive agreements such as, but not limited to, any of the following, shall
28 be deemed to fall under the crime of abuse of monopoly power or market power by one in
29 dominant position:

1 A. **Price Fixing** – Any agreement to fix the selling price of goods or other terms of sale,
2 with the purpose and effect of creating a monopoly or cartel, or lessening
3 competition.

4 B. **Bid Rigging** – Any agreement to fix price at auctions or in any other form of bidding,
5 with the purpose and effect of creating a monopoly or cartel, or lessening
6 competition.

7 In determining whether there is price fixing or bid rigging, the following
8 circumstances may be considered:

9 (1) generally, any considered evidence that two sellers of similar goods have agreed to
10 set the price of their goods, to sell only a certain amount of their goods, or to sell
11 only to a limited number of buyers or consumers;

12 (2) a drastic change in prices of goods and services involving more than one seller of
13 similar goods of different brands, particularly if the changes in prices take place in
14 equal amount and about the same time;

15 (3) a seller refusing to sell based on an agreement with a competitor;

16 (4) the same firm has repeatedly been the low bidder who has been awarded contracts for
17 a certain service or a particular bidder seems to win bids on a fixed-rotation;

18 (5) there is an unusual and unexplainable difference between the winning bid and all
19 other bids; and,

20 (6) the same bidder bids substantially higher on some bids than on others, and there is no
21 logical cost reason to explain the difference.

22 C. **Limitation and Control of Markets** – Any agreement to limit or control production,
23 markets, technical development, or investment with the purpose and effect of creating
24 a monopoly or cartel, or lessening competition.

25 D. **Market Allocation** – Any agreement to divide the market, whether by volume of
26 sales or purchase or by territory, by type of goods sold, by customers or sellers or by
27 any other means, with the purpose and effect of creating a monopoly or cartel, or
28 lessening competition.

1 E. **Arrangements to Share Markets or Sources of Supply** – Any agreement to share
2 markets or sources of supply of raw materials, with the purpose and effect of creating
3 a monopoly or cartel, or lessening competition.

4 F. **Price Discrimination** – Any agreement prescribing or charging, directly or
5 indirectly, discriminatory pricing terms or conditions in the supply or purchase of
6 goods of like grade and quality with the purpose and effect of creating a monopoly or
7 cartel, or substantially lessening competition: *Provided*, That nothing contained
8 herein shall be construed to prohibit permissible price differentials unless the same
9 shall have the effect of preventing, restricting or distorting competition: *Provided*,
10 *further*, That for the purpose of this section, the following shall be considered
11 permissible price differentials:

12 (1) **Socialized Pricing** – Socialized pricing for the less fortunate sector of the
13 economy;

14 (2) **Volume Discounts** – Price differentials which reflect an allowance for differences
15 in the cost of manufacture, sale, or delivery resulting from differing methods or
16 quantities in which the goods are sold or delivered to the purchasers;

17 (3) **Competitive Pricing** – A price differential or other terms of sale in response to
18 the competitive price of payments, services or facilities furnished by a competitor;

19 (4) **Bona fide Selection of Customers** – The selection of customers on *bona fide*
20 transaction; and,

21 (5) **Price Differentials Due to Changing Market Conditions or Marketability of**
22 **Goods** – Price changes from time to time in response to changing conditions
23 affecting the market or the marketability of the goods concerned such as, but not
24 limited to, actual or imminent deterioration of perishable goods, obsolescence of
25 seasonal goods, distress sales under court process, or sale on good faith in
26 discontinuance of business.

27 G. **Exclusivity Arrangement** – Any agreement imposing restrictions on the lease or
28 contract for sale or trade of goods concerning where, to whom, or in what forms
29 goods may be sold or traded, such as, but not limited to fixing prices, or giving

1 preferential discounts, or rebate upon such price, or imposing conditions not to deal
 2 with competing firms, where the purpose of such agreement is to lessen competition:
 3 *Provided*, That nothing contained herein shall prohibit or render unlawful permissible
 4 franchising, licensing or exclusive distributorship agreements.

5 **H. Tie-In Arrangements** – Any agreement making the supply of particular goods
 6 dependent upon the purchase or lease of other goods from the supplier or his
 7 consignee, where the purpose and effect of such sale or lease or such condition is to
 8 substantially lessen competition or to create a monopoly or cartel.

9 **I. Boycott** – Any concerted refusal to sell or conspiracy not to sell or to stop doing
 10 business on the part of the suppliers of any goods, unless for a legitimate purpose,
 11 such as but not limited to:

12 (1) **Defaulting Borrowers** – refusal by one or more credit institutions to extend
 13 loans to defaulting debtors;

14 (2) **Defaulting Buyers** – refusal by one or more manufacturers or sellers to sell on
 15 credit to defaulting customers; and,

16 (3) **Violators of Intellectual Property Rights** – refusal by manufacturers or sellers
 17 to have any commercial dealings with one or more firms who violate the
 18 intellectual property rights of the owners of patents, copyrights, trademarks and
 19 other intellectual property.

20 CHAPTER 4

21 PENALTIES

22 **SEC. 8. Penalties.** – Without prejudice to the violation of other laws, any firm that shall
 23 be found to have violated Sections 5, 6 and 7 of this Act, or any combination thereof, shall, for
 24 each and every violation, be punished by a fine of not less One million pesos (Php1,000,000.00)
 25 and not exceeding Ten million pesos (Php10,000,000.00) if a natural person; by a fine of not less
 26 than Ten million pesos (Php10,000,000.00) but not exceeding One hundred million pesos
 27 (Php100,000,000.00) if a firm, and by imprisonment not exceeding ten (10) years, or both, at the
 28 discretion of the court.

CHAPTER 5

ENFORCEMENT

1
2
3 **SEC. 9. *Preliminary Inquiry.*** – The Department of Justice (DOJ), in coordination with
4 the Department of Trade and Industry (DTI), other regulatory and/or appropriate government
5 agency, shall *motu proprio*, upon the filing of a verified complaint by an interested party or upon
6 referral by the concerned regulatory agency, initiate a preliminary inquiry for the enforcement of
7 this Act based on reasonable grounds.

8 **SEC. 10. *Powers of Concerned Regulatory Agencies.*** – Notwithstanding the provisions
9 of the preceding section, the exercise of regulatory powers by different government agencies
10 over an industry or a sub-sector of an industry shall be cumulative and shall not be construed in
11 any way as derogating from the power and authority of the concerned agency. The government
12 agencies shall cooperate and coordinate with one another in the exercise of their powers in order
13 to prevent overlap, to share confidential information, or for other effective measures.

14 **SEC. 11. *Power to Investigate.*** – The DOJ may, through its duly authorized inquiring
15 officer, by written notice, require a firm or natural person to produce a specified document, or to
16 provide specified information which the DOJ considers as relevant its investigation. The
17 inquiring officer, upon the authority granted by the Secretary of Justice, shall engage the services
18 of consultants or experts to aid in the inquiry. He shall also make use of any available or
19 analogous means under existing laws and procedures to determine if any provision of this Act
20 has been violated. For this purpose, he shall have the power to punish for contempt any firm
21 which does not comply with the notice or order for document, information or such other relevant
22 matters and to impose a fine not exceeding One hundred thousand pesos (Php100,000.00) for
23 non-compliance with each notice or order.

24 **SEC. 12. *Self-incrimination and Privileged Communication Exclusion.*** – Pursuant to
25 the preceding section, a person subject of any investigation by the DOJ shall produce the
26 specified document or information when so required by written notice: *Provided*, That no person
27 shall be excused from disclosing any document or information to the inquiring officer on the
28 ground that the disclosure of the information or document may be incrimination: *Provided*,
29 *however*, That such document or information produced by the person subject of investigation
30 shall not be admissible as evidence against him in criminal proceedings: *Provided, finally*, That

1 such document or information shall be admissible in evidence in civil proceedings including
2 those arising from or in connection to the implementation of this Act.

3 Nothing in this section shall compel the disclosure of privileged communication:
4 *Provided*, That the person who refuses to disclose the information or produce the document or
5 other material required by the inquiring officer in relation to the preliminary inquiry being
6 conducted shall nevertheless be obliged to give the name and address of the firm to whom, or by
7 whom, or on whose behalf, such privileged communication was made.

8 **SEC. 13. Immunity from Suit.** – Any person or firm which cooperates or furnishes any
9 information, document or data to the DOJ before or during the conduct of the preliminary inquiry
10 that constitutes material evidence as determined by the DOJ under this Act shall be immune from
11 any suit or charge including from affected parties and third parties: *Provided, further*, That any
12 person or firm which cooperates or furnishes information, document or data to the DOJ in
13 connection to an investigation being conducted shall not be subjected to any form of reprisal or
14 discrimination: *Provided, furthermore*, That such reprisal or discrimination shall be considered a
15 violation of this Act and subjected to the penalties provided for under Section 8: *Provided*,
16 *finally*, That, notwithstanding the provisions of Section 17 hereof, the firm which cooperates
17 with the DOJ in its investigation shall be entitled to a reward equivalent to twenty percent (20%)
18 of any monies paid by the firm subject of the inquiry, or the monetary relief recovered from court
19 action.

20 **SEC. 14. Termination of Preliminary Inquiry.** – The Department of Justice, after
21 considering the statements made, or documents or articles produced, in the course of an inquiry
22 conducted by it, shall terminate the preliminary inquiry by issuing a resolution ordering its
23 closure if no violation or infringement of this Act is found; or by issuing a *nolo contendere*
24 resolution; or to, singly or cumulatively, (a) endorse the findings to the regulatory agency for the
25 imposition of administrative fines; (b) institute a civil case for damages; or (c) file a criminal
26 case for violation of this Act or other relevant laws: *Provided*, That, for purposes of this Act, the
27 preliminary inquiry referred to in Section 9 of this Act shall fulfill the requirements of a
28 preliminary investigation: *Provided, further*, That the resolution shall not be subjected to any
29 petition for review.

1 **SEC. 15. *Nolo Contendere Resolution.*** – Any firm under inquiry under the provisions of
2 this Act may submit to a *nolo contendere* resolution at any time before the termination of the
3 preliminary inquiry by: a) the payment of an amount within the range of penalties provided for
4 under Section 8; b) by entering into an undertaking to effectively stop and rectify the acts
5 complained against, make restitution to the affected parties, whether or not the parties are
6 complainants or witnesses; and, c) by submitting regular compliance reports as may be directed:
7 *Provided*, That, five percent (5%) of the amounts paid under this section shall equitably accrue to
8 the government agencies involved in the inquiry: *Provided, further*, That a *nolo contendere*
9 resolution shall not bar any inquiry for the same or similar acts if continued or repeated.

10 **SEC. 16. *Court Action.*** – In addition to any criminal action, the DOJ, when instituting
11 the civil action, shall bring it in the name of the Republic of the Philippines, as *parens patriae*,
12 on behalf of persons residing in the Philippines, to secure treble damages for any monetary injury
13 sustained by such natural persons by reason of any violation of this Act plus the cost of suit and a
14 reasonable attorney's fee.

15 **SEC. 17. *Effect of Final Judgment.*** – The final judgment in an action brought under the
16 preceding section shall be *res judicata* as to any claim by any person on whose behalf such
17 action was brought: *Provided*, That such person notifies the court having jurisdiction of the case
18 within the period given by the court: *Provided, further*, That such period shall not be less than
19 ninety (90) days.

20 **SEC. 18. *Distribution of Monetary Relief Recovered.*** – The monetary relief recovered
21 in a civil action under Section 15 of this Act shall be distributed in the following manner: (1) as
22 determined and to be authorized by the Regional Trial Court having jurisdiction of the case; (2)
23 ten percent (10%) of the total amount of monetary relief shall accrue to the DOJ to be used in the
24 enforcement of this Act; and, (3) the remainder of which total amount of monetary relief shall be
25 deemed a civil penalty by the Regional Trial Court and shall be deposited to the National
26 Treasury as part of the general fund of the government: *Provided*, That any distribution
27 procedure adopted by the Regional Trial Court shall afford each person having an interest in the
28 monetary relief a reasonable opportunity to secure his appropriate portion of the net monetary
29 relief obtained.

1 *Provided, further*, That, the applicant shall file a bond, in an amount to be fixed by the court, but
2 in no case shall it be less than half of the imposable fines provided for under Section 21 of this
3 Act: *Provided, finally*, That in the event that the court finally decides that the applicant was not
4 entitled to the relief applied for, the bond shall accrue in favour of the regulatory agency.

5 Any temporary restraining order, preliminary injunction or preliminary mandatory
6 injunction issued in violation of this section is void and of no force and effect. Any judge who
7 violates this section shall be penalized by suspension of at least one (1) year without pay in
8 addition to other criminal, civil or administrative penalties.

9 The Supreme Court may designate regional trial courts to act as commissioners with the
10 sole function of receiving facts of the case involving the acts of the regulatory agency. The
11 designated Regional Trial Court shall, within thirty (30) days from the date of receipt of the
12 referral, forward its findings of facts to the Supreme Court for appropriate action.

13 **SEC. 23. Intellectual Property Rights.** -- The implementation of the provisions of this
14 Act shall be without prejudice to the rights, liabilities and remedies under Republic Act No.
15 8293, otherwise known as the Intellectual Property Code of the Philippines: *Provided*, That, the
16 exercise of intellectual property rights shall not in any way be used to justify violations of this
17 Act.

18 **SEC. 24. Guidelines.** -- The DOJ, in consultation with the DTI, shall prepare the
19 necessary guidelines for the implementation of this Act: *Provided*, That, where the guidelines
20 would apply to an industry or a sub-sector of industry that is subject to the jurisdiction of a
21 regulatory agency, the DOJ shall, in preparing the guidelines, consult with the concerned
22 regulatory agency: *Provided, further*, That the DOJ may revise such guidelines it deems
23 necessary: *Provided, however*, That such revised guidelines shall only take effect following its
24 publication in two newspapers of general circulation.

25 **SEC. 25. Separability Clause.**— If any clause, sentence, section or part of this Act shall
26 be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect,
27 impair or invalidate the remainder of this Act, but shall be confined in its operation to the clause,
28 sentence paragraph, section, or part thereof directly involved in the controversy.

1 **SEC. 26. *Repealing Clause.***— All provisions of law, orders, decrees, executive orders,
2 including rules and regulations or parts thereof, which are contrary to or inconsistent with the
3 provisions of this Act are hereby repealed or modified accordingly.

4 **SEC. 27. *Effectivity Clause.***— This Act shall take effect fifteen (15) days following its
5 publication in the Official Gazette or in at least two (2) national newspapers of general
6 circulation.

7 Approved,