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The Entrepreneur

First Competition Law in East Asia

Part 2

LAST week I mentioned some of our neighboring countries that have enacted competition or antitrust laws, such as Japan, Australia, China, Vietnam, Singapore and Malaysia.

Among these countries, Japan was the first to adopt an antitrust law. It enacted the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade in 1947, when it was still under American rule.

Let me clarify, however, that competition law is not entirely something new to the Philippines. In the introduction to an article, "The evolution of competition law in East Asia," author Ping Lin says: "The Philippines was the first East Asian country to introduce a competition law, under American rule in 1925."

As I mentioned earlier, our Constitution provided the principal groundwork for anti-competitive behavior in the market.

In fact, eight separate laws are in place to define what constitutes monopolies or unfair competition and sets the sanctions for violations, in line with the provisions of the Constitution.

Republic Act (RA) 3815 or the Revised Penal Code, specifically Article 186, would probably be considered the oldest law addressing anti-competitive behavior as penal or criminal in nature.

The more than 60-year-old Civil Code of the Philippines allows for the collection of damages arising from unfair competition in agricultural, commercial and industrial enterprises.

Although this law does not expressly define what unfair competition is, it enumerates the methods by which unfair competition can be committed, that is, by force, intimidation, deceit, machination, or any other unjust, oppressive or high-handed method.

RA 165, otherwise known as An Act to Prohibit Monopolies and Combinations in Restraint of Trade, allows recovery of treble damages for civil liability arising from anti-competitive behavior.

Special statutes have also been enacted to specifically address some unfair trade practices, such as:

The Intellectual Property Code of the Philippines (RA 8293), provides for the protection of patents, trademarks and copyrights.

The Corporation Code of the Philippines (Batas Pambansa Blg. 68), sets the rules regarding mergers and consolidations, and the acquisition of all or substantially all the assets or shares of stock of corporations.

Complementary to the Corporation Code, the Revised Securities Act, as amended by the Securities Regulation Code (RA 8799), which proscribes the manipulation of security prices and insider trading.

In terms of consumer welfare and protection, an important aspect which must be addressed by competition laws, the most significant laws are the Price Act (RA 7581), which defines and identifies illegal acts of price manipulation such as hoarding, profiteering and cartels; and the Consumer Act of the Philippines (RA 7394) which, among other things, provides for consumer product quality and safety standards.

Thus, competition law is not entirely something new to the Philippines. Unfortunately, existing laws have proven inadequate and ineffective in inhibiting anti-competitive structures and practices.

Moreover, the presence of these diverse laws, although well-intentioned, address only specific situations, which at times, can negate the positive effects of the other.

In short, the Philippines has no comprehensive and codified antitrust law to speak of, and Senate Bill (SB) 3098 seeks to fill that void.

“Philippines-Causes of Poverty,” an online article I found on the web site Mongabay.com, traces the country’s unemployment and poverty problems to the “monopoly structure of the Philippine economy,” which has existed for many decades.

At this point, I believe it is important to stress that SB 3098 is not only about business or consumer rights; promoting competition and discouraging monopolistic practices will also address our nation’s most serious and long-lasting problems—poverty and unemployment.

I will discuss the pertinent provisions of this much-needed legislation next week.

(To be continued)

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