

Column for Business Mirror
MANNY VILLAR
July 16, 2012

The Entrepreneur

The Competition Act of 2011

Conclusion

SENATE Bill 3098 will fill the void resulting from the absence of a comprehensive and codified antitrust law in the Philippines.

This landmark legislative measure has three salient points. First is the creation of the Office for Competition under the Department of Justice. Some of its most important functions, among others, are the following: To investigate and inspect violations concerning anti-competitive conduct, abuse of dominance, and anti-competitive mergers and perform all functions relevant to the institution of cases relative to the same; issue subpoena duces tecum to require the production of documents; undertake inspections of premises; conduct administrative proceeding; institute civil or criminal proceedings; deputize any government agency to assist the Office in the discharge of its functions; and monitor compliance.

Second, defining prohibited acts, such as anti-competitive conduct, abuse of dominance and anti-competitive mergers. Anti-competitive conduct includes the acts or practices of companies that prevent, restrict or substantially lessen competition. These include price fixing, limiting production and other acts that tend to achieve the same result—to annihilate competition.

Abuse of dominance occurs when a firm abuses its market position by engaging in unfair competition with the purpose of preventing, restricting, or reducing competition. Examples are the selling of goods or services below cost, unless for clearance, inventory, sale or any other valid purpose; imposing barriers to entry; or setting prices or other terms or conditions that differ or discriminate between the customers and sellers.

Anti-competitive merger is probably the most controversial prohibited act. Companies engaged in commerce, trade or industry are prohibited from acquiring, directly or indirectly, the whole or any part of the stock or other share capital, assets or voting rights of one or more firms engaged in any commerce, trade or industry where the object or effect of such conduct is to prevent, restrict or substantially lessen competition.

In other words, the Competition Act will prevent the concentration of economic power in a few people who threaten to control the production, distribution or trade to stifle competition, distort, manipulate or constrict the discipline of free markets and increase market prices.

The third salient point considers as criminal offense any of the following acts: fixing, maintaining, increasing or controlling the price or the supply of goods or services; allocating sales, territories, customers or markets for the production or supply of goods or services; or fixing, maintaining, controlling, preventing, lessening or eliminating the production or supply of goods or services.

Violations of these provisions are punishable with a fine of up to 10 percent of the respondent's gross revenue for the immediately preceding fiscal year. Conviction must be proven beyond reasonable doubt. The bill includes a provision that will encourage people to blow the whistle and provide information regarding price fixing and other violations of the proposed antitrust law.

Specifically, whistle-blowers are accorded immunity from suit and are protected from any form of reprisal or discrimination.

More than the penal provisions, I want to stress what the proposed law can achieve: to uphold free and fair competition among our industries vis-à-vis foreign companies, to promote consumer welfare, and bring about increased economic efficiency.

We all know that free and open markets are the foundation of a vibrant economy. Competition among sellers in an open marketplace gives the consumers the benefits of lower prices, high- quality products and services, adequate supply, and a wider array of choices. Fair competition also encourages manufacturers trying to continuously improve their products in terms of quality and innovation, which translates to goods with better value for money.

That's the ideal situation. In real life, however, consolidations and mergers still occur, which brings entire industries under the influence of a few people who are able to influence the price and supply of goods, to the detriment of the consumers. Also, the so-called monopolies and cartels pose undue advantage over the micro, small and medium enterprises, thereby making it easier to drive out these smaller players from an industry.

In conclusion, I firmly believe that it is to our nation's economic advantage, and the Filipino consumers' benefit, that this all-important bill is made into a law.

For comments/feedback e-mail to mbv_secretariat@yahoo.com. Readers may view previous columns at www.senatorvillar.com.

LINK:

<http://www.businessmirror.com.ph/home/opinion/30016-the-competition-act-of-2011>