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The Entrepreneur

Leveling the playing field

A cartel, strictly speaking, is a group of companies or countries that agree to fix the prices of certain commodities by controlling their production and marketing. The end goal is to increase profits by reducing competition among the cartel members.

In most countries, private sector cartels are generally outlawed through anti-trust laws, but in public cartels, which involve governments, are protected from legal actions by the governments' sovereignty.

The most prominent example of a public cartel is the Organization of Petroleum Exporting Countries (OPEC), which is able to control oil prices and supplies because the group is made up of sovereign countries.

Under its strict definition, there is no cartel in the Philippines. However, we often hear of complaints about companies or groups engaging in cartel-like activities.

In 2009, for example, the World Bank uncovered a "major cartel" involving local and international companies that participated in the bidding for a road project in the country. The bank blacklisted seven companies from participating in World Bank-funded projects. And this expose prompted a congressional investigation.

Just last year, small fishermen in Rizal complained against the proliferation of fish cartels, made up of middlemen who dictated the prices paid for the fishermen's produce.

And, of course, close to the consumers' purse is the issue of the cartel-like behavior of oil companies, which always come up whenever domestic prices of gasoline, diesel, liquefied petroleum gas (LPG) go up or down, but more often when prices go up, with very little variations in prices among competing companies.

The basic argument against cartels is that consumers end up having to pay more for the products or services they buy, while the cartel members bloat their bank accounts.

Cartels are so despicable that some governments have explored extreme measures to discourage their existence. In New Zealand, a law firm proposed criminalizing cartels and increasing penalties. The proposal was based on the argument that the threat of jail was the best deterrent to cartel-like behavior among businessmen.

Actually, New Zealand already has a law that prohibits cartels, but it only provides for civil sanctions, which are treated by violators simply as the price of doing business.

In the Philippines, we don't have such a law. We still don't have an anti-trust law, despite the numerous discussions and proposals to enact such a measure, particularly in light of the liberalization policy.

In fairness, I believe that most businesses, if we have an anti-trust law, will follow it. They will follow the rules and when we change the rules they will play by the rules.

I like to think that some companies really want to change the existing rules governing business in the country to make the field level and fair. However, when they see other companies or groups engaging in cartel-like activities like price fixing, they are compelled to do the same to survive. Why play fairly if others can play "unfairly" and make more money?

Sometimes, even the definition of "fair" is not fair. Biddings are held to ensure fairness, but in some cases the rules are stacked in favor of certain groups. Thus, the so-called public biddings amount to nothing more than a front show because the end is predetermined, so to speak.

We need an anti-trust law. The government can make changes in the rules for its capital projects to really level the playing field and allow more companies to participate in the biddings.

It is not enough to say that everybody can bid because the size of a project already reduces the number of participants. Big-ticket projects, which require large financial resources, are in effect reserved to big players. The small contractors are automatically excluded. That's not fair.

The idea is to give the winning bidder a fair return, but if the costs and expenses are not examined thoroughly, the government may end up rewarding even the most incompetent operation, regardless of the size of the contractor.

One way to further level the playing field and allow more players even in big-ticket projects is to break each project into small components and conduct separate biddings for each component.

With the reduced project component cost, small players will have a chance to get a piece of the pie.

For the government, dividing the pie also spreads the risks. Awarding a project to a single contractor means that the whole project faces delay if the contractor fails to perform according to the contract.

On the other hand, failure of the winning bidder for a small component of the project will cause delay only in that component; work on the other parts of the project continues; and the delays are minimized.

In the end, costs escalations are better controlled or even avoided, more local contractors are given a chance to participate in big-ticket projects and the government gets a better deal.

This should be a step in the right direction.

Of course, we need a more comprehensive measure to deter cartels and safeguard the interests of our consumers.

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