

Column for Business Mirror
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The Entrepreneur

Time to pass an anti-trust law
(First of two parts)

The time is ripe for the Philippines to enact a comprehensive anti-trust law. Let me tell you why.

First, the global financial crisis of 2008, which plunged two-thirds of the world into recession and which continues to threaten the developed economies, has shifted the flow of capital into emerging markets, such as the Philippines, which are now leading economic growth and offering better returns for investments.

The Philippines can expect a bigger share of foreign investments as a result of this shift in capital flow because of its strategic location. It is close to China, which is aggressively investing in other countries not only to make money but to ensure adequate supplies of raw materials and intermediate goods for its own industries.

Second, the volatility in the prices of essential goods like oil and other food commodities, which must be imported. We have to import rice because of our inability to produce enough rice for domestic consumption. We also have to import wheat (for flour) because we don't grow this cereal.

Third, there are so few players in many of our industries, providing the temptation and the environment for the operation of cartels and monopolies.

The hearings conducted by Senate Committee on Economic Affairs, which I chair, and the Committee on Trade and Commerce, on several bills and a resolution proposing the enactment of an anti-trust law underscored the relevance and the urgency of such legislation.

In particular, Senate Resolution No. 123, which I introduced, expresses concern about the undue advantage that cartels and monopolies pose over our micro, small and medium enterprises.

During the hearings, Trade and Industry Undersecretary stressed that a competition or anti-trust law would promote investments and facilitate trade between the Philippines and other countries. Atty. Lorna Patajo-Kapunan explained that anti-trust provisions could be found in existing laws like the Revised Penal Code, New Civil Code and the Consumer Act of the Philippines.

However, these provisions do not provide for clear-cut guidelines or evidence to determine whether an act constitutes unfair competition, monopolistic behavior or restraint of trade.

Atty. Anthony Abad, managing director of the Trade Advisory Services of the Ateneo Center for International Economic Law, said it was fortunate that the 15th Congress was prioritizing the anti-trust bill, enactment of which would have a transformative effect on the way business is done in the country.

The Constitution itself provides the basis for the enactment of an anti-trust law. Under Article XII, Section 19, the state is mandated to “regulate or prohibit monopolies when public interest so requires” and disallows “combinations in restraint of trade or unfair competition.” Section 22 of the same article provides: “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.”

Monopolies exist when one major company has enough power to dictate the prices, quality and selection of products and services, thereby becoming very powerful because competitions are not big enough to threaten that company.

On the other hand, a cartel is a group of companies producing the same product or service which, instead of competing with each other, agree to jointly control the price or supply of their common product or service, to the detriment of consumers.

Since consumers have no other product choices, monopolies or cartels can increase or decrease prices at will. In the end, the people who suffer most are those who already have low purchasing power like the minimum wage earners or small entrepreneurs.

To this day, the Philippines does not have a comprehensive and developed legislation relating to anti-trust and monopoly activities.

We need a comprehensive law that will give meaning to the principles of fair market and discourage monopolies, to afford our micro, small and medium enterprises the opportunity to participate in the growth of our economy.

The Senate Committees on Economic Affairs and on Trade and Commerce have come up with a draft bill, which consolidates Senate Bill No.1 introduced by Senate President Juan Ponce Enrile together with Senators Ralph Recto and Antonio Trillanes; Senate Bill No. 123 by Senator Serge Osmeña; Senate Bill No. 1838 by Senator Miriam Santiago and my Senate Resolution No. 123.

The consolidated measure, when enacted into law, will encourage competition in the market place, help reduce prices, and increase the quality of products or services for the benefit of consumers.

(Next: The proposed Antitrust Law)

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