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Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FIFTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 3244

Introduced by **HON. GLORIA MACAPAGAL ARROYO**

EXPLANATORY NOTE

Section 19 of Article XII of the 1987 Constitution mandates the State to "regulate or prohibit monopolies when the public interest so requires." Article 186 of the Revised Penal Code penalizes monopolies in restraint of trade.

In our quest for national development, an open economy that is free and fosters competition is a necessary prerequisite. A closer examination of our history would reveal that our underdevelopment was caused by lack of competition in our economy. Given this past experience and the direction in the international economy towards liberalization and globalization, various administrations have introduced reforms to promote competition in the form of lowering of trade and investment barriers, deregulation of certain industries to attract investments from more players, privatization of certain industries, among others.

Admittedly, while these measures achieved positive results, the country has yet to adopt a legislation that would institutionalize a responsive and comprehensive framework for anti-trust policy. As early as the Ninth Congress, this Representation fully aware and cognizant of the ill-effects in the economy of restrained and curtailed competition filed a legislative measure that would restore competition where it has disappeared, preserve it where it still exists and institutionalize it as a system for controlling and regulating the economy of the country pursuant to the mandate of the Constitution.

To sustain the momentum we have gained over the past nine (9) years and to ensure a healthy, open and competitive economy, the passage of his bill is urgently and earnestly requested.


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AN ACT
CREATING THE FAIR TRADE COMMISSION OF THE PHILIPPINES

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

SECTION 1. Objectives. - It is the declared policy of the State that all sectors of the economy and all regions of the country shall be given optimum opportunity to develop; that a trade policy be pursued that serves the general welfare; that when public interest so requires, the State shall regulate or prohibit monopolies; that no combinations in restraint of trade or unfair competition shall be allowed and that consumers shall be protected from trade malpractices and Filipino enterprises against unfair foreign competition and trade practices.

SEC. 2. Scope of Application. - This Act shall apply to all persons, whether natural or juridical, such as, firms, partnerships, corporations, companies, associations, or any combination thereof, irrespective of the mode of creation, or control of ownership including their branches, subsidiaries, affiliates, or other entities directly or indirectly controlled by them, which are engaged in all commercial transactions or activities, involving goods and services.

SEC. 3. Definition of Terms.- For purposes of this Act, the following definition of terms shall be adopted:

- a. Entrepreneur - means, a person, juridical or natural, who carries on a commercial, industrial, financial or any other business activity. Any officer or duly authorized employee, agent, or person, who acts for the benefit of any entrepreneur, shall also be deemed covered by this Act.
- b. Competition - means a situation in which two or more entrepreneurs, do, or may within the scope of their business activities, and without undertaking any significant change in their business activities, engage in any of the following acts:
 1. Supplying the same or similar goods or services to the same consumers or customers;
 2. Getting supplies of the same or similar goods or services from the same supplier.
- c. Unreasonable Restraint of Trade - means, such business activities, by which entrepreneurs by contract, agreement, or any other concerted activities mutually restrict or conduct their business activities in such a manner as to fix, maintain or enhance prices, or to limit production, technology, products, facilities, or customers and suppliers, thereby causing, contrary to public interest, a substantial restraint of competition in a particular field of trade.

- d. Unfair Business Practices - means any act which tends to impede fair competition and which is hereinafter designated as such by the Fair Trade Commission.

SEC. 4. Unfair Business Practices. - It shall be unlawful for any person to engage in unfair business practices. For purposes of this Act, unfair business practices shall be divided into two groups: a) general which are applicable to all fields of business, and; b) specific which are applicable to a particular field of activity.

A. General Business Practices.- The following are considered general unfair business:

1. Unreasonable refusal to deal, such as, refusing or limiting supply of commodities or services from or to an entrepreneur without any justifiable reason;
2. Discriminator business terms, such as, without justifiable reason, favorable or unfavorable treatment with respect to terms or execution of transactions on the basis of the region of the customer;
3. Group boycott, joint discrimination, such as, performing jointly without justifiable reason such acts as refusal to deal, or having trade partners perform acts rendering disadvantage to them;
4. Discriminatory Prices, such as supplying or receiving commodities/services at prices which unreasonably discriminate on the basis of region or customer;
5. Unreasonably low or high prices, such as supplying commodities or services for an unreasonably high consideration to exclude competitors;
6. Unjustifiably luring of customers from competitors such as, inducing customers to transact business with oneself by offering unfair or excessive advantages in light of normal business practices;
7. Undue representation such as, deceptively or exaggeratedly representing the items such as price size, origin, packing or deceptively stating that one's products are better than those of the competitor;
8. Undue Coercion, such as, coercing customers to transact business by threatening undue disadvantages in light of normal business practices;
9. Abuse of one's superior position, such as business, with a customer on unreasonably unfavorable terms by using the fact that one's position is superior than the customer's;
10. Transactions with exclusive terms, such as, without justifiable reason, requiring as a condition of transacting business with third parties, that they do not transact business with one's competitors;
11. Transaction with restrictive terms , such as, without justifiable reason, entering into transactions with customers on such terms as restricting the sales territory or trade partner;
12. False exaggerated advertisement, such as, inducing consumers by false or exaggerated advertisement of trade specifications.

SEC. 5 Monopolistic Practices. - Every person who shall monopolize, or attempt to monopolize or combine or conspire with any other person, monopolize any part of the trade or commerce within the Philippines or with foreign countries, shall be deemed guilty under this Act and shall be punished by a fine of at least P150,000 or by imprisonment of a maximum period of six years or both.

The following are considered monopolistic and are illegal:

1. Where a person either by himself or acting together with a few enterprises is in a position to control the relevant market for a particular good or service or groups of goods or services through the following abusive acts:

- a. Predatory behavior towards competitors, such as, using below-cost pricing to eliminate competitors;
 - b. Discriminatory pricing or terms or conditions in the supply or purchase of goods or services, including by means of the use of pricing policies in transactions between affiliated enterprises which overcharge or undercharge for goods or services purchased or supplied as compared with prices for similar or comparable transactions outside the affiliated enterprises;
 - c. Fixing the prices at which goods sold can be resold including those imported and exported;
 - d. Partial or complete refusal to deal on an enterprise's customary commercial terms, so as not to ensure equality, safety or adequate distribution of goods or services;
 - e. Making the supply of particular goods or services dependent upon the acceptance of restrictions on the distribution or manufacture of competing or other goods so as not to ensure equality, safety or adequate distribution of goods or services;
 - f. Imposing restrictions concerning where, to whom, or in what form, or qualities, goods supplied or other goods may be resold or exported;
 - g. Making the supply of particular goods or services dependent upon the purchase of other goods or services from the supplier or his designee;
2. Mergers, takeovers, joint ventures, or other acquisitions of control, including interlocking directorships, whether horizontal, vertical or conglomerate in nature when the resultant market share in the country as a whole or in any region relating to any product or service, will amount to more than fifty (50%) percent of the relevant market, or any of the participating enterprises, including those under common control, whether or not established in the country has a total asset value of more than P20M.

This section shall not apply to mergers or consolidations of financial institutions under the system of universal banking where such merger or consolidation is approved by the Monetary Board of the Bangko Sentral ng Pilipinas.

This section likewise overrules liability when the person who has acquired an overwhelming share of the market owes its share solely to the support skill, superior products, natural advantages (including accessibility to raw materials or markets), economic or technological efficiency (including scientific research), low margins of profits maintained permanently and without discrimination or license conferred by and used within the limits of law (including patents on one's own inventions, or franchise granted directly to the enterprise by a public authority.)

SEC. 6 Unfair Trade Practices by Trade Associations.- A trade association is an organization, or association of producers or distributors of a commodity or service for the benefit of the member and for the purpose of promoting the business of its branch of industry or commerce. It may be incorporated or unincorporated, and national or local in scope.

The following activities of trade associations are declared illegal and, therefore, punishable under this Act by a fine of not less than P 1M or maximum imprisonment of 6 years or both at the discretion of the court:

- a. Fixing or attempting to fix, establish or maintain prices at which handlers or processors of certain goods or commodities to the purchasers thereof;
- b. Restricting, limiting, or attempting to do so, the volume or quantity of goods to be distributed or sold to purchasers;
- c. Restricting or denying membership or using meeting to control trade practices;
- d. Unreasonable trading time limitations;
- e. Conspiring with intent to boycott;

- f. Acts tending monopoly; and,
- g. All other acts which restrain or suppress competition.

SEC. 7. Consumers' Protection. - Manufacturers, producers, importers, wholesalers and retailers are prohibited from engaging in the following acts:

- a. Hoarding or destroying or consumer goods or rendering them unserviceable, or destroying the means or production or distribution, whether directly or indirectly or through third parties, with the purpose of bringing about a price increase;
- b. When engaged in the manufacture or importation of products, failing to ensure an adequate supply of spare parts and replacements, or failing to maintain an adequate after-sales service for consumers, except for reasons outside their control;
- c. Declining liability for defective products or services rendered not meeting the supplier's description of such goods and services.
- d. In connection with the supply of product or services, making any warranty:
 - i. limited to a particular geographic area or sales point;
 - ii. falsely representing that product are of a particular style or model;
 - iii. falsely representing that the goods are new or of a specified age;
 - iv. representing that products or services have any sponsorship, approval, performance and quality characteristics, components, materials, accessories, uses or benefits which they do not have.
- e. Engaging in conduct that is liable to mislead the public as to the nature, price, availability, characteristics, suitability for a given purpose, or quality of any products or services;
- f. Engaging in the offering of gifts and prizes with the intention of not providing them and offering price reductions for products available in unreasonably limited quantities; and
- g. Supplying any product which is liable to cause injury to health or physical harm to consumers, when properly used, or which does not comply with a consumer safety standard which has been prescribed. Any person who is guilty of any of the acts hereunder enumerated shall be punished by a fine of not less than P150,000 or by imprisonment of a maximum period of six years or both in the discretion of the court.

SEC. 8. Implementing Agency.- The Department of Trade and Industry (DTI) shall be the administrative implementing body of the provisions and intent of this Act. Where a claim is cognizable in the first instance by the DTI alone, judicial interference shall be withheld until the administrative process has run its course.

To enable the Department to effectively implement the provisions and intent of this Act and its implementing rules and regulations it is hereby authorized to:

1. Prescribe and promulgate within six (6) months such rules and regulations, as it may deem necessary to effectively implement the provisions and intent of this Act, and said rules and regulations shall take fifteen (15) days following their publication in a newspaper of general circulation or in the Official Gazette;
2. Conduct investigation, hearing and inquiry, as it may deem necessary for the following purposes, *inter alia*:
 - a. determine if this Act needs amendments;
 - b. determine the appropriate rules and regulations, policies and programs for this Act;
 - c. determine the nature, organization, and resources of any person, firm, entity or association doing business in the Philippines;
 - d. determine the practices, acts, methods, schemes, and arrangements used in the trade, industry, and business: and.

- e. determine if a certain person, firm, entity or association has violated or is about to violate any provisions of this Act or its rules and regulations.

The officials and employees authorized to conduct the investigation, hearing and inquiry referred to in this subsection shall have the power to administer oath, issue *subpoena* and *subpoena duces tecum* to compel the attendance of witnesses and the production of the necessary papers and documents, take data, testimony, and evidence, and to punish direct and indirect contempt as granted to superior courts under Rule 71 of the Rules of Court.

3. Require any person, firm, entity or association to submit to it periodically or whenever necessary, such report, data, information, paper or document it may deem necessary;
4. Administratively adjudicate violations of this Act and its rules and regulations in accordance with executive Order No. 913, Series of 1983 and its implementing rules;
5. Inspect, periodically or whenever necessary
 - a. Any pertinent factory, shop, laboratory, establishment, store, warehouse, any means of transportation, and the like;
 - b. Any pertinent equipment, finished or unfinished products, raw materials, containers, labellings, and other pertinent properties found therein;
 - c. Any pertinent papers, documents and records found therein; and,
 - d. Any pertinent work/activity being undertaken in said place.

The officials/employees authorized to conduct such inspection may obtain reasonable quantity of samples of the properties (except equipment) mentioned in the preceding paragraph; to take pictures or video tape of the places and things mentioned in paragraphs (a) and (b); and secure copies of the papers mentioned in paragraph (c). All acts authorized under this subsection shall be conducted at reasonable hours, with reasonable promptness, in a professional manner, and without undue disturbance to any legitimate work/activity being undertaken inside said places. Receipts shall be issued for samples so obtained; and,

6. Perform such other functions as may be necessary to effectively implement the provisions and intent of this Act. And regulations or to determine compliance therewith.

Whenever any violation of the provisions of this Act is committed by a corporation/association, the officer or employees immediately responsible, the President, as well as, the Directors and manager of said corporation/ association, or the agent representative in the Philippines in case of a foreign corporation/association, who shall have knowingly permitted or failed to prevent the commission of such violations, shall be held as principals thereof.

Any property used in the commission of said violation shall be forfeited in favor of government.

SEC. 9 Repealing Clause. - Articles 186,187, and 188 of the Revised Penal Code are hereby repealed. All laws and rules inconsistent with the provisions herein are hereby repealed, amended or modified accordingly.

SEC. 10 Affectivity Clause- This Act shall take effect upon its approval.

Approved,