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Republic of the Philippines

House of Representatives
Quezon City, Metro Manila

FIFTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. — 3534

Introduced by Rep. Lorenzo R. Tañada III

EXPLANATORY NOTE

Article XII, Section 19 of the 1987 Constitution of the Republic of the Philippines mandates that "The State shall regulate or prohibit monopolies when the public interest so requires. No combinations in restraint of trade or unfair competition shall be allowed". Section 22 thereof states that "Acts which circumvent or negate any of the provisions of [Article XII] shall be considered inimical to the national interest and subject to criminal and civil sanctions as may be provided by law". To this end, the Constitution directs the State to protect Filipino enterprises against unfair competition and trade practices.

With the government's push to deregulate and privatize state-owned public utilities and to promote micro, small and medium enterprises and considering that laws governing anticompetitive behavior, monopolies, combinations in restraint of trade and other frauds in commerce and industry, provide inadequate penalties to deter violations thereof, coupled with lack of effective enforcement mechanism and that there is a need to regulate a market scheme wherein competition forces the players to produce products of high quality and in lower prices, the passage of this bill is, therefore, imperative.

The purpose of the bill is to provide a comprehensive and general law which shall regulate anticompetitive behavior and business practices unfettered by limitations based on self-interest, by strengthening prohibitions against monopolies, cartels, combinations in restraint of trade and other anti-competitive practices and conduct, as a means of attaining a more equitable

distribution of opportunities, income and wealth, while recognizing permissible concerted actions that need not be curtailed by an antitrust law.

The bill is distinctive as it promotes competition in the market, with utmost consideration for the development of micro, small and medium enterprises, by classifying price discrimination as a form of illegal trade practice and by enumerating contracts, concerted actions or combinations in restraint of trade, while distinguishing mere growth or development as a consequence of a superior product, business acumen or historic accident. Finally, the bill completes and harmonizes current laws of the country with respect to intellectual property, corporations, right to form organizations and the right to collective bargaining.

It is, therefore, earnestly requested that this bill be urgently approved.


LORENZO R. TAÑADA III
Representative
4th District, Quezon

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FOURTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 3534

Introduced by Representative Lorenzo R. Tañada III

AN ACT PRESCRIBING AN ANTITRUST LAW TO STRENGTHEN THE PROHIBITION AGAINST MONOPOLIES, CARTELS, COMBINATIONS IN RESTRAINT OF TRADE AND OTHER ANTICOMPETITIVE PRACTICES AND CONDUCT, AND FOR OTHER PURPOSES.

SECTION 1. *Title* – This Act shall be known as the "Philippine Antitrust Act".

SECTION 2. *Declaration of Policy* – It is the declared policy of the State to achieve a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all by espousing competition and protecting Filipino enterprises from unfair trade practices.

SECTION 3. *Definition of Terms* – As used in this act, the following terms shall be taken to mean as follows:

- a. Antitrust Laws – this Act, statutes and all other statutes hereinafter enacted by Congress relating to or governing monopolies, oligopolies, cartels, combinations, contracts and/or agreements or arrangements in restraint of trade, production, commerce or industry or which make available to national or local governments, or any private person whose rights have been or in danger of being impaired, any civil and/or criminal remedies or administrative proceedings before the Regional Trial Court or administrative agency with respect to any act, contract, agreement, rule, control, course of conduct, or other activity by, between or among persons constituting a restraint upon or monopolization of domestic or foreign trade, commerce or industry or methods of competition in or affecting such trade, commerce or industry.

- b. Person – any natural person, firm, company, corporation, society, association, partnership, joint-stock company, or any other legal entity including any person acting under color or authority of law.
- c. Commerce – intercourse by way of trade and traffic between different regions, provinces, towns or cities in the Philippines and the citizens or inhabitants thereof, including not only the purchase, sale and exchange of commodities, goods, articles, services, productions or property of any kind, but also the instrumentalities and agencies by which it is promoted and the means and modes by which it is carried on.
- d. Export trade – trade or commerce in goods, wares, merchandise or object of trade, commerce or industry exported, or in the course of being exported from the Philippines to any foreign country.
- e. Implementing Agencies – shall refer to administrative agencies vested by law with jurisdiction to regulate competition and grant administrative relief in specific industries and/or sectors.
- f. Industry – any department or branch of art, occupation or business conducted as a means of livelihood or for profit, especially one which employs much labor and capital and is a distinct branch of trade.
- g. Trade – mercantile or commercial business in general, or the buying and selling, exchanging, of commodities and services, either by wholesale or retail.
- h. Trusts – an association or combination of persons or corporations having the intention and power, or the tendency to create a monopoly, control production, interfere with the free course of trade, or to fix and regulate the supply and the price of commodities and services.
- i. Unfair trade practices – refers to any act that impedes fair competition such as unjustly discriminating between persons, dealing at unjust prices, unjustly inducing or coercing customers of a competition to deal with oneself, dealing with another party on such terms as will unjustly restrict the business activities of the said party, and dealing with another party by unjust use of one's bargaining position.

SECTION 4. *Contracts, Concerted Actions or Combinations in Restraint of Trade* – It shall be unlawful for any person to enter into any contract or agreement or shall take part in any conspiracy or combinations in the form of trusts or otherwise or any other form of mutual understanding with a competing person.

- a. To limit unduly the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any product;
- b. To prevent, limit or lessen, by artificial means, the manufacture or production of a product or to enhance unreasonably the price thereof;
- c. To prevent or lessen, unduly, competition in the production, manufacture, purchase, barter, sale, storage, rental, transportation or supply of a product, or in the price of insurance on persons or property; or
- d. To otherwise restrain or injure competition through unfair trade practices.

SECTION 5. *Monopoly or Attempt to Monopolize* – It shall be unlawful for any person to monopolize, or attempt to monopolize, or to combine or conspire, expressly or impliedly, with any other person or persons, to monopolize any part of the trade or commerce within the country, or with any foreign country or territory. *Provided*, that nothing contained in this Act shall render unlawful the right of a patent holder or a copyright holder to enjoy the benefit of his or its patent or copyright duly registered in the Philippines or in any foreign country with which the Philippines is a co-signatory to any treaty or convention that protects the rights to an invention, patent, or to a copyright as the case may be.

As prohibited in this Act, it has two elements: (1) possession of monopoly power in relevant markets, and (2) willful acquisition or maintenance of that power to exclude competitors from any part of trade, commerce or industry, as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident.

SECTION 6. *Price discrimination* – It shall be considered an illegal trade practice for a person engaged in business to be party or privy to:

- a. Any sale that discriminates to his knowledge, directly or indirectly, against competitors of a purchaser of articles from him in that any discount, rebate, allowance, price concession or other advantage is granted to the purchaser over and above any discount, rebate, allowance, price concession or other advantage that, at the time the articles are sold to the purchaser, is available to the competitors in respect of a sale of articles of like quantity and quality;
- b. Engage in the policy of selling products in areas of the Philippines at prices lower than those exacted by him elsewhere in the country, having the effect or tendency of substantially lessening competition or eliminating a competitor in that part of the Philippines, or designed to have that effect;
- c. Engage in a policy of selling products at prices unreasonably low, having the effect or tendency of substantially lessening competition or eliminating a competitor, or designed to have that effect.

SECTION 7. *Bid-Rigging* - No person shall enter into an agreement or arrangement whereby one or more of those persons agree or undertake not to submit a bid in response to a call or request for bids or tenders; or shall agree to make a submission of bids or tenders arrived at by agreement or arrangement between or among two or more bidders or tenderers in response to a call or request for bids or tenders.

SECTION 8. *Permissible Concerted Action* – Contracts, agreement resulting to concerted action between competing persons is permissible only upon approval and determination by the proper implementing agencies that the planned concerted action shall be beneficial to the economy as a whole and in the public interest. Applications for permissible concerted action may be made for the following purposes:

- a. Unifying the specifications or models of goods for the purpose of reducing costs, improving quality, or increasing efficiency;
- b. Joint research and development on goods or markets for the purpose of upgrading technology, improving quality, reducing costs, or increasing efficiency;
- c. Arrangements to develop a separate and specialized area for the purpose of rationalizing operations;
- d. Entering into agreements concerning solely the competition in foreign markets for the purpose of securing or promoting exports;
- e. Joint acts for the purpose of improving operational efficiency or strengthening the competitiveness of small and medium enterprises.

SECTION 9. *Acquisitions of Corporate Stocks and Assets* – No person engaged in commerce or in any activity affecting commerce shall acquire, directly or indirectly, the whole or part of the stock or share capital, or acquire the whole or any part of the assets of another person engaged also in commerce or in any activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition or tend to create a monopoly. Provided, this section shall not apply to persons purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce or in any activity affecting commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

SECTION 10. *Interlocking Directors* – No person shall, at the same time, serve as a director or officer in any two corporations that are engaged in whole or in part in commerce and by virtue of their business and location of operation, competitors, to the effect that an agreement to eliminate competition between them would constitute a violation of any antitrust law except:

- a. Between parent and subsidiary companies;
- b. Between or among affiliates defined to mean ownership by one of not less than twenty percent (20%) but not more than fifty percent (50%) if the shares of stock of the other;
- c. The co-venturers in joint venture companies; and
- d. Family corporations.

SECTION 11. *Labor, Agricultural or Horticultural Organizations* – The labor of a human being is not a commodity or Article of commerce. Nothing contained in this Act,

therefore shall be construed to forbid the existence and operation of any labor, agricultural or horticultural organizations, instituted for purposes of mutual help, and not having capital stock or conducted for profit, or to forbid, restrain, individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed as to be illegal combinations of conspiracies in restraint of trade.

SECTION 12. *Collective Bargaining* – Nothing in this act shall apply to combinations or activities of workmen or employees for their own reasonable protection as such workmen or employees and contracts, agreements or arrangements between or among two or more employers in a trade, industry, or profession, whether effected directly between or among the employers or through the instrumentality of a corporation or association of which the employers are members, pertaining to collective bargaining with their employees in respect of salary or wages and terms or conditions of employment.

SECTION 13. *Liability of Directors, Officers and Agents* – Whenever a corporation shall violate any of the provisions of this Act, such violation shall be deemed to be also that of the individual directors, officers or agents of such corporation who shall have authorized, ordered, or done any of the acts constituting in whole or in part such violation.

SECTION 14. *Penalties for Violations* – Any person found guilty of committing any acts in violation of sections 4, 5, 6 and/or 7 or any combination of such sections of this Act shall, for each violation be punished by a fine not exceeding twenty million pesos (Php 20,000,000.00) if a corporation or association, or, four million pesos (Php 4,000,000.00) if a natural person, or imprisonment not exceeding five (5) years or both fine and imprisonment in the discretion of the court.

Any person found guilty to have violated Sections 9 and/or 10 of this Act or any combination of such sections, shall for each and every violation, be punished by a fine not exceeding five million pesos (Php 5,000,000.00), or by imprisonment not exceeding two (2) years, or both fine and imprisonment upon the discretion of the court.

SECTION 15. *Jurisdiction* – The Regional Trial Court shall have original jurisdiction to try and decide all criminal and civil cases involving violations of this Act. Any administrative agency that is vested by law with jurisdiction to grant administrative relief in specific cases shall continue to exercise such jurisdiction, however availment of a remedy under this Act shall not be precluded if it be found more convenient, adequate and expeditious for his immediate protection and relief.

SECTION 16. *Jurisdiction of Specialized Agencies* – The exclusive and original jurisdiction conferred upon by law to specialized agencies to regulate, enforce

competition laws, and handle administrative cases on specific industries shall be discharged by the specialized agency concerned.

SECTION 17. *Exclusion of Civil Action from the Criminal Action* – The institution of a criminal action under this Act against a defendant shall not be deemed to include any claim for damages in favor of any person that may have suffered any monetary injury because of any violation of this Act.

SECTION 18. *Private Suits for Monetary Injury* – Any person who may be injured in his business or property by reason of the violation of any provision of this Act or its implementing rules and regulations may sue in the Regional Trial Court in the principal place of business of the defendant/s, regardless of the amount in controversy. He shall be entitled to recover not more than threefold the damages sustained by him, plus the costs of suit, including reasonable attorney's fees at the discretion of the Court.

SECTION 19. *Parens Patriae Suit* – In addition to the criminal action instituted by the Secretary of Justice, a civil action may be instituted in the name of the Philippines, as *parens patriae*, on behalf of natural persons residing in the Philippines to secure treble damages for any monetary injury sustained by such natural person by reason of any violation of this Act.

Any person on whose behalf a civil action has been brought by the Secretary of Justice under this Act in the name of the Republic of the Philippines may elect to exclude from adjudication the portion of the claim of the Republic of the Philippines for monetary relief attributable to him by filing such notice of election with the Regional Trial Court having jurisdiction over the civil action within such time specified the rules.

SECTION 20. *Effect of a Final Judgment in a Parens Patriae Suit* – The final judgment rendered in a *parens patriae* suit shall be *res judicata* as to any claim by any person on behalf of whom such action was brought by the Republic of the Philippines and who fails to give a notice of election to exclude from adjudication his portion of the monetary relief.

SECTION 21. *Suit of the Republic of the Philippines to Recover its Own Damages* – Whenever the Republic of the Philippines is hereafter injured in its business or property by reason of anything forbidden or rendered unlawful in this Act, it may sue correspondingly sue the defendants in the proper Regional Trial Court for the recovery of actual damages sustained by it and the costs of suit,

SECTION 21. *Evidential Effect of a Final Judgment Rendered in a Criminal Case* – Any final judgment or decree rendered in any criminal action brought by the People of the Philippines, or any civil action instituted on behalf of the Republic of the Philippines to the effect that the defendant was found to have violated any provision

of this Act shall be prima facie evidence against such defendant in any civil action brought by any party against such defendant under this Act. This Section shall not apply to any consent judgment or degree entered into by the parties concerned.

SECTION 22. *Consent Judgment* -- At any time in the course of a civil action brought by or on behalf of the Republic of the Philippines under this Act, the Republic of the Philippine through the Secretary of Justice, may propose in a proper pleading to the defendant or defendants a consent judgment. Any such proposal for consent judgment must be filed with the Regional Trial Court having jurisdiction over the case. The Regional Trial Court shall correspondingly evaluate and examine the proposal for consent judgment and determine if entry of such judgment shall be in the public interest.

In making its determination, the Regional Trial Court may: (1) take the testimony of the government officials or such expert witnesses, as the Regional Trial Court may require; (2) appoint such outside consultants; (3) request and obtain the views, evaluations, or advice of any individual group, or agency of the government with respect to any aspects of the proposed consent judgment or the effect of such consent judgment; (4) authorize full or limited participation in the civil proceedings before the Regional Trial Court having jurisdiction of the case by interested persons or agencies of the government, including the appearance of amicus curiae, intervention as a party pursuant to provisions of the Rules of Court, examination of witnesses or documentary materials, or participation any other manner and extent which serves the public interest as the Regional Trial Court may deem appropriate.

SECTION 23. *Prescription* -- Any criminal, civil action or any private suit, shall be barred unless commenced within five (5) years from the discovery of the crime or of the act or agreement giving rise to the cause of action, or which would be a valid basis for the commencement of any legal action.

SECTION 24. *Separability Clause* -- Any portion or provision of this Act that may be declared unconstitutional shall not have the effect of nullifying other portions or provisions hereof, as long as such remaining portions or provisions can still subsist and be given effect in their entirety.

SECTION 25. *Repealing Clause* -- All provisions of law, orders, decrees, executive orders, including rules and regulations or parts thereof which are contrary to or inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SECTION 26. *Effectivity* -- This Act shall take effect after fifteen (15) days from the completion of its publication in at least two (2) newspapers of general circulation.