

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FIFTEENTH (15th) CONGRESS

House Bill No. 4925

Introduced by Representative Arnel U. Ty

EXPLANATORY NOTE

It is said that the Philippines long and sad history of underdevelopment can be traced from lack of competition in the economy. With the advent of trade and investment liberalization, deregulation and privatization, it has led to a healthier and more vibrant market. The enactment of RA No. 8479, otherwise known as the Oil Deregulation Law revealed gains to the public brought about by the increased competition on petroleum products and services. Sadly, the fruits expected from the RA No. 8479 have not been fully satisfied.

The LPG Industry is one vital sector in the oil industry which received only partial public fulfillment from the Oil Deregulation Law. This can be gleaned from the existence of an enormous disparity of prices of LPG products between Luzon and those in Visayas and Mindanao.¹ To illustrate, the average selling price of one (1) 11 kg of LPG cylinder in Metro Manila as of 08 June 2011 ranges from P650 to P750, as against the prevailing prices of the same product in the Visayas region, which as of 15 June 2011 carries a contract price ranging from P795 to P899, and in Mindanao region, the contract price ranges from P775 to P913 as of 02 June 2011.

Whether it is considered an inadequacy in the Oil Deregulation Law or anti-trust regulation or the workings of the privilege few, such wide price gap needs to be rectified immediately for the general welfare of the public. No less than the 1987 Constitution, citing Article XII, Section 13 provides for the pivotal role of the State to rectify this disparity to sustain its National Economy, to wit: The State shall pursue a trade policy that serves the general welfare and utilizes all forms and arrangements of exchange on the basis of equality and reciprocity.

Further, Article XII, Section 19 of the same Constitution prescribes a basis for regulating and prohibiting anti-competitive behavior in the market. It states: 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.²

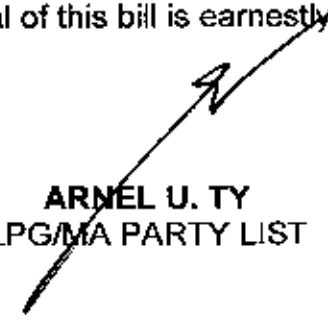
To this end, even the Supreme Court has affirmed the need to properly structure our laws against trust, monopolies, oligopolies, cartels and combinations injurious to public welfare – to restore a workable competition where it has disappeared, and to preserve where it still exists. In a word, we need to perpetuate

¹ <http://www.doe.gov.ph/opm/lpgprices.asp>

² PASCN Discussion Paper No. 2000-09

competition as a system to regulate the economy and achieve global product quality.³

This proposed bill aims to put into effect the comprehensive framework for the promotion of fair trade practices and anti-trust policy and regulation enshrined in the RA No. 8479 with the end in view of making LPG price within the reach of consumers particularly in the Visayas and Mindanao regions. In the event that the price of LPG goes down in Visayas and Mindanao, Filipino households will be dissuaded from using woods as fuel in cooking their foods; henceforth, our denuded forests, which have been the one of the causes of flash floods in the countryside, will be preserved. In view thereof, immediate approval of this bill is earnestly sought.



ARNEL U. TY
LPG/MA PARTY LIST

³ PASCN Discussion Paper No. 2000-09

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FIFTEENTH CONGRESS

First Regular Session

House Bill No. 4925

Introduced by Honorable Arnel U. Ty

AN ACT
ESTABLISHING A SYSTEM OF LPG PRODUCT ACCOMODATION AMONG
BULK SUPPLIERS IN THE PHILIPPINES TO PROMOTE FAIR COMPETITION IN
THE DOWNSTREAM FOR THE BENEFIT OF CONSUMERS, DEFINE AND
PENALIZE CERTAIN ACTS.

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

CHAPTER I
GENERAL PROVISIONS

SEC. 1. Short Title. – This Act shall be known as the "LPG Accommodation and Distribution Act of 2011."

SEC. 2. Declaration of Policy. – The State shall promote a national policy of fair competition in the LPG industry. In order to ensure a truly competitive market under a regime of fair prices, adequate and continuous supply of environmentally-clean and high-quality of petroleum products under the regime of R.A. No. 8479, otherwise known as "Downstream Oil Deregulation Law", it is the continuing policy of the State to find measures that will promote and encourage the entry of new participants in the downstream oil industry, and introduce adequate measures to ensure the attainment of the said goals.

SEC. 3. Construction and Interpretation Clause. – Any doubts in the interpretation of any provision in this Act shall be interpreted in favor of the interests of the consumers particularly to ensure access to reasonably priced LPG and the safety of the consumers and the general public.

SEC. 4. Definition of Terms. – For the purposes of this Act, the following terms are defined herein below:

- (a) "DILG" shall refer to the Department of Interior and Local Government;

- (b) "DOE" shall refer to the Department of Energy;
- (c) "DTI" shall refer to the Department of Trade and Industry;
- (d) "LGU" and "LGUs" shall refer to a local government unit or local government units, respectively;
- (e) "PNP" shall refer to the Philippine National Police;
- (f) "Auto LPG" shall refer to LPG intended to fuel, propel or otherwise provide power to motor vehicle.
- (g) "Bulk Supplier" shall refer to any person who engages in the sale or distribution of LPG in such large quantities;
- (h) "Consumer" shall refer to any person who purchases LPG for one's own consumption;
- (i) "Cylinder" or "LPG Cylinder" shall refer to any portable pressure-vessel or container for LPG, designed for the transportation and storage of LPG;
- (j) "Dealer" shall refer to any person involved in the sale or trading of LPG in cylinders to consumers and/or retail outlets;
- (k) "Industry Participants" shall refer to persons or entities engaged in activities or businesses related to the manufacture, importation, transportation, distribution or sale of LPG, including, among others, Cylinder Industry Participants and LPG Industry Participants as defined in this Act;
- (l) "LPG" shall refer to liquefied petroleum gas, which consists of commercial propane gas, commercial butane gas or mixture of the two gases, with properties conforming to the standards set forth in the PNS 22;
- (m) "LPG Industry Participants" shall refer to persons or entities engaged in activities or businesses related to the manufacture, importation, transportation, sale and distribution of LPG, including but not limited to LPG refiners, LPG importers, re-fillers; piped LPG providers, haulers, dealers, service stations, retail outlets and seal manufacturers;
- (n) "Marketer" shall refer to any person, whether natural or judicial, engaged in the sale of LPG, whether in bulk or retail;
- (o) "Primary Storage Facilities" shall refer to the plant, depot, underground caverns, refrigerated tanks, and pressurized steel tanks, and other similar facilities used for storage of LPG;

- (p) "Refiller" shall refer to (1) a service provider authorized by a cylinder owner to refill cylinders on the latter's behalf, or (2) any person or entity who refills LPG into one's own cylinders;
- (q) "Refilling Plant" shall refer to any installation that is used for refilling LPG into cylinders and has LPG bulk storage and refilling facilities thereof;
- (r) "Refiner" shall refer to any person who refines LPG through distillation, conversion and treatment of crude oil and other naturally occurring petroleum hydrocarbons;
- (s) "Retail Outlet" shall refer to any entity that sells LPG cylinders directly to a consumer in quantities as may be determined by the DOE;

CHAPTER II IMPLEMENTING AGENCIES

SEC. 5. Lead Agency. – Unless expressly stated in this Act that a particular function shall be the responsibility of another government agency, the DOE shall be the primary government agency responsible for the implementation and enforcement of this Act. The DOE shall supervise and monitor the LPG industry and its participants to ensure compliance with national product quality, environmental and worker safety, and consumer welfare standards.

SEC. 6. Additional Powers and Functions of the DOE Secretary. – In connection with the enforcement of this Act and in addition to his/her powers and functions under existing laws, the DOE Secretary shall have the following powers and functions:

- a) Administer and supervise the enforcement and implementation of this Act, including the promulgation of Implementing Rules and Regulations, and issuance, from time to time, of other regulations, orders or circulars necessary to implement this Act; and
- b) Implement the LPG Accommodation and Distribution System.

SEC. 7. Powers and Functions of DTI. - Under this Act, DTI shall extend all necessary assistance to the DOE in the implementation of measures in furtherance of the objectives of this Act.

SEC. 8. Powers and Functions of DILG. - Under this Act, the DILG shall have the following powers and functions:

- (a) Coordinate with LGUs and the PNP for the orderly and effective implementation of this Act, and of the orders, rules, and regulations and issuances pursuant thereto;

- (b) Coordinate with the DOE and the DTI in the dissemination of information relevant to the implementation of this Act, particularly to the LGUs and the PNP; and
- (c) Extend all necessary assistance to the DOE with respect to the enforcement of measures in furtherance of this Act.

SEC. 9. Power and Functions of LGU's. – LGU's pursuant to their powers provided by law especially under Republic Act No. 7160, otherwise known as the Local Government Code, or, upon recommendation of the DOE, and upon due notice and hearing, shall have the power to suspend or revoke the business permit or license of any LPG industry participants within their respective areas of jurisdiction for violation of the provisions of this Act:

CHAPTER III THE LPG ACCOMODATION AND DISTRIBUTION SYSTEM

SEC. 10. LPG Accommodation and Distribution Among Bulk Suppliers to Promote Fair Competition. – Only bulk suppliers of LPG, that have at least one primary storage facility, such as terminal or depot in any region in the country, shall participate in the LPG Accommodation and Distribution System in the Philippines making all participants Creditor and Debtor of each other, through the sharing-swapping scheme.

These bulk suppliers shall set aside twenty percent (20%) of their total LPG inventory in the Philippines, to be used solely in the LPG Accommodation and Distribution System to serve public interest, achieve efficiency and cost reduction, ensure continuous supply of LPG products, and enhance environmental protection, particularly in those regions where the price of LPG is very high.

Hence, all bulk suppliers shall accommodate each other by allowing those bulk suppliers, who do not have LPG primary storage facilities in other regions in the Philippines, to withdraw LPG from their terminals or depots: Provided, That the LPG withdrawn shall be made available only to refilling plants that cater to other brands for distribution to households, commercial, transport and agricultural needs of the said region in order to promote and ensure competition in the market: Provided further, That these other brands are not owned by LPG industry participants whose brands are already available in the market of the said regions.

The volume of LPG withdrawn from each other bulk suppliers shall be accounted and settled at the end of every month.

Sec. 11. Participation in the LPG Accommodation and Distribution System. – Pursuant to national development objectives on free enterprise and consumer welfare, in order to harness and maximize existing resources in the LPG industry, participation in the Accommodation and Distribution System as specified in Sections 10 hereof shall be mandatory, subject to such guidelines, rules and regulations as may be issued by the supervising government agencies.

Deliberate refusal to participate in the system shall be dealt with administratively.

CHAPTER IV PROHIBITED ACTS, FINES AND PENALTIES

SEC. 12. Imposition of Administrative Penalty. – A bulk supplier, that has primary storage facilities in a region, shall be penalized with a fine of One Hundred Thousand Pesos (Php100,000.00) for every act of refusal to participate in the LPG Accommodation and Distribution System by refusing to let other bulk supplier to withdraw from its inventory: Provided, That the maximum fine to be imposed shall be Five Million Pesos (P5,000,000.00).

The same administrative penalty shall be imposed to a bulk supplier, that withdraws LPG under the LPG Accommodation and Distribution System, for every act of refusal to make the said LPG available to refilling plants that cater to other brands for distribution to households, commercial, transport and agricultural needs of the said region.

Any person, including but not limited to the chief operating officer, chief executive officer or chief finance officer of the partnership, corporation or any entity involved, shall suffer the penalty of at least six (6) months but not more than two (2) years, or both fine and imprisonment, at the discretion of the court, who is found guilty of the following:

- 1) Deliberate refusal to participate in the LPG Accommodation and Distribution System;
- 2) Deliberate refusal to make the said LPG available to any refilling plants that cater to other brands for distribution to households, commercial, transport and agricultural needs; or
- 3) By any agreement, combination or concerted action of LPG industry participants circumvent the provision of this law by using the LPG withdrawn from bulk supplier to distribute the same to refilling plants that cater to owners of LPG brand already available in the market in the said region.

SEC. 13. Violation of Corporation, Partnership, Association or other Entity. – Whenever a corporation, partnership, association, firm or other entity, whether domestic or foreign, shall commit any of the acts declared to be unlawful under this Act, the Chairmen of the Board of Directors, the President, The General Manager of the corporation, the general partners of the partnership, and other officers and employees directly responsible, shall jointly and severally be liable with the fine imposed therein.

Should the offense be committed by a foreign corporation licensed to do business in the Philippines, the person or persons, directly responsible in the

Philippines for the management and operation thereof, shall be liable. In addition, its license to do business in the Philippines shall be cancelled.

It shall not be a defense for the Chairman of the Board of Directors, the President or the General Manager of the corporation, the General Partners of the partnership, or the persons responsible for the management and operation of a foreign corporation licensed to do business in the Philippines, that he was unaware of the violation, unless, he shall have established to the satisfaction of the court that even with the exercise of due diligence and proper supervision, he could not have avoided or prevented the violation.

SEC. 14. Prosecution Under Separate Laws. – Prosecution under this Act shall be without prejudice to any liability for violation of any provision of the Revised Penal Code, Republic Act No. 9514, otherwise known as the "Revised Fire Code of the Philippines of 2008," Republic Act No. 8293, otherwise known as the "Intellectual Property Code of the Philippines," and other applicable laws. The fines provided in this Chapter shall be without prejudice to any legal claims or damages which any injured party suffers as a result of the refusal to participate or to make available the LPG withdrawn under the LPG Accommodation and Distribution System to refilling plants as stated under Section 12 under this Chapter.

CHAPTER VI FINAL PROVISIONS

SEC. 15. Implementing Rules and Regulations. – Unless otherwise provided in this Act, the DOE, in consultation with the DTI, other appropriate agencies, the LPG industry participants and consumer groups, shall be the lead agency with the responsibility to formulate, issue and promulgate the necessary implementing rules and regulations within thirty (30) days from the effectivity of this Act.

SEC. 16. Transition Phase. - In order to provide a smooth implementation of the monitoring and supervisory mechanisms provided herein, the industry participants shall be given a grace period of one hundred thirty (30) days from the effectivity of this Act, within which to comply with the provision hereof: Provided, That during the transition period, the industry participants shall continue to be bound and made liable under the provisions of existing laws, rules and regulations not otherwise repealed by this Act.

SEC. 17. Joint Congressional Oversight Committee. – There is hereby created a joint congressional oversight committee to monitor the implementation of this Act. The committee shall be composed of five (5) senators and five (5) representatives to be appointed by the Senate President and the Speaker of the House of Representatives, respectively. The oversight committee shall be chaired by a senator and a representative designated by the Senate President and the Speaker of the House of Representatives, respectively.

The mandate given to the joint congressional oversight committee under this Act shall be without prejudice to the performance of the duties and functions by the

respective existing oversight committees of the Senate and the House of Representatives.

SEC. 18. Lifetime. – This Act shall take effect for a period not exceeding ten (10) years, until or unless expressly rescinded by law.

SEC. 19. Legal Assistance to Public Officials. – Public officials or other authorized persons acting under the direction of the Secretaries of the DOE, the DTI, the DILG and other concerned government agencies shall be provided with free legal assistance, liability insurance and other forms of protection and indemnification for all costs and expenses reasonably incurred by such persons, in connection with any civil and/or criminal action, suit or proceeding to which they may be or have been made a party by reason of the performance of their functions or duties, unless they are finally adjudged in such action or proceeding to be liable for gross negligence or misconduct or grave abuse of discretion.

Sec. 20. Separability Clause. – If for any reason, any chapter, section or provision of this Act shall be declared unconstitutional, illegal, or invalid, such parts not affected thereby shall remain in full force and effect.

SEC. 21. Repealing Clause. – All laws, decrees, executive orders, proclamations and administrative regulations, or parts thereof inconsistent herewith are hereby repealed or modified accordingly.

SEC. 22. Effectivity Clause. – This Act shall take effect after fifteen (15) days after its publication in the Official Gazette or in at least two (2) newspapers of general circulation.

Approved.