

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SIXTEENTH CONGRESS
First Regular Session

House Bill No. 2672



Introduced by Representatives
DIOSDADO MACAPAGAL ARROYO and GLORIA MACAPAGAL ARROYO

AN ACT
PENALIZING UNFAIR TRADE AND ANTI-COMPETITIVE PRACTICES
IN RESTRAINT OF TRADE, UNFAIR COMPETITION, ABUSE OF
DOMINANT POWER, STRENGTHENING THE POWERS OF
REGULATORY AUTHORITIES AND APPROPRIATING FUNDS
THEREFOR, AND FOR OTHER PURPOSES

EXPLANATORY NOTE

For far too long, our people have stood at the mercy of huge industries. Due to lack of regulation and safeguards, unscrupulous businessmen have found ingenious ways to artificially control prices and manipulate the free market system. It thus behooves both Houses of Congress to establish a system that can adequately provide protection to our people against price manipulators.

Article XII, Section 19, of the Constitution provides:

"Section 19. 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."

As proof of the importance of this Constitutional mandate, Section 22 of the same article encourages the promulgation of legislation that would impose civil and criminal sanctions against those who circumvent or negate this principle. Hence, Section 22 of the Constitution states:

"Section 22. 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."

Although previous legislations have been passed pursuant to this Constitutional mandate, the pressing demands of our time require us to introduce new legislation that can effectively address these pressing concerns.

We are therefore encouraging our colleagues to support the passage of this bill that aims to provide stricter penalties against combinations or conspiracies in restraint of trade and all forms of artificial machinations that will injure, destroy or prevent free market competition.

For these reasons, the passage of this bill is earnestly recommended.



DIOSDADO MACAPAGAL ARROYO
Second District, Camarines Sur



GLORIA MACAPAGAL ARROYO
Second District, Pampanga

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

ARTICLE I
TITLE AND DECLARATION OF POLICY

SECTION 1. *Title.* – This Act shall be known and cited as the "*Competition Act of 2013.*"

SECTION 2. *Declaration of Policy.* – In line with the constitutional mandate to regulate or prohibit monopolies when the public interest so requires and prevent combinations in restraint of trade or unfair competition, the State endeavors to:

- a. Promote and enhance free and full competition in trade, industry and all commercial economic activities;
- b. Prevent the concentration of economic power in a few persons who threaten to control the production, trade, or industry, stifle

competition, distort, manipulate or constrict the discipline of free markets, or tamper with the free play of the market forces and eventually destroy free and open markets; and

c. Penalize all forms of unfair trade, anti-competitive conduct and combinations in restraint of trade, with the objective of protecting and advancing consumer welfare.

ARTICLE II SCOPE AND APPLICATION, DEFINITION OF TERMS

SECTION 3. *Scope and Application.* – This Act shall be enforceable within the territory of the Republic of the Philippines and shall apply to all areas of trade, industry and commercial economic activity. It shall likewise be applicable to international trade having substantial effects in the Republic of the Philippines including those that result from acts done outside the Republic of the Philippines.

The Act shall apply to: (a) all firms as defined hereunder and all their commercial agreements, actions or transactions involving goods, services or intellectual property; and, (b) all natural persons who, acting in their capacity as owner, manager or employee of a firm, shall authorize, engage or aid in the commission of restrictive practices prohibited under this Act.

SECTION 4. *Definition of Terms.* – As used in this Act, the following terms shall be construed to mean as follows:

a. **Cartel** shall mean a combination of firms, providing goods in relevant markets, acting or joined together to obtain a shared monopoly to control production, sale and price, or to obtain control in any particular industry or commodity, or a group of firms that agree to restrict trade to their mutual benefit, which may or may not be of an international scale. It shall also refer to firms or section of firms having common interest designed to prevent extreme or unfair competition and allocate markets, and to promote the exchange of knowledge resulting from scientific and technical research, exchange of patent rights and standardization of products;

b. **Competition** shall mean the process by which economic agents, acting independently in a market, limit each other's ability to control the prevailing conditions in the market;

c. **Control** refers to at least twenty percent (20%) ownership, directly or indirectly, of a firm or a group of firms by another firm;

d. **Firm** shall include any person, partnership, combination or association in any form, engaged directly or indirectly in any economic activity: *Provided that*, two firms, one of which is controlled by the other, shall be treated as one firm: *Provided, further*, That two or more firms that are controlled by a single firm shall be treated as one firm;

e. **Goods** shall include all types of goods and services;

f. **Market** shall refer to a place or venue for commercial activity, which may extend beyond the borders of the Republic of the Philippines, where articles are bought or sold. It shall also refer to the geographical or economic extent of commercial demand;

g. **Monopoly** shall mean a privilege or undue advantage of one or more firms, consisting in the exclusive right to carry on a particular business or trade, and/or manufacture a particular product, article or object of trade, commerce or industry. It is a form of market structure in which one or only a few firms dominate the total sales of a product, commodity or service;

h. **Monopoly Power** shall refer to a situation where a firm, either by itself or acting in collusion with other firms, is in a position to control a relevant market for the sale of a particular good or service by fixing its prices, excluding competitor firm, or controlling the market in a specific geographical area; and,

i. **Relevant Market** shall refer to the line of commerce in which competition has been restrained. It shall also refer to the geographic area involved, including all reasonably substitutable goods, and all nearby competitors, to which consumers could turn if the restraint or abuse results in the significant increase in prices.

ARTICLE III PROHIBITED ACTS

SECTION 5. *Cartels* – It shall be unlawful for firms providing goods in relevant markets to join together to monopolize, or to control production in a particular industry or commodity, the sale and price of such good, and to agree to restrict trade for their mutual benefit, which may or may not be on an international scale. This shall also include an association by agreement of firms or sections of firms having common interests designed to promote the interchange of knowledge resulting from scientific and technical researches, exchange of patent rights and standardization of products.

Restrictive agreements resulting from cartel-like behavior of firms, in any form, are hereby *per se* deemed illegal. These shall include, but not limited to, the following:

- a. Agreements to fix selling price of goods or other terms of sale;
- b. Agreements to limit supply or output;
- c. Agreements to divide the market, whether by volume of sales or purchase or by territory, by type of goods sold, by customers or sellers, or by any other means;
- d. Agreements to exclude or limit dealings with particular suppliers or sellers from supplying or selling goods, or customers from acquiring or buying goods; and
- e. Agreements to fix setting price at auctions or in any other form of bidding.

There shall be a *prima facie* case for the existence of a cartel if and when the Department of Trade and Industry (DTI) or concerned regulatory agency finds that two or more persons or firms competing for the same relevant market perform uniform or complementary acts among themselves which tend to bring about artificial and unreasonable increase in the price of any goods or when they simultaneously and unreasonably increase the prices of their competing goods thereby lessening competition among themselves.

SECTION 6. *Monopolies.* – It shall be unlawful for any firm to willfully monopolize, or knowingly attempt to monopolize, the trade of goods or any part of the trade or commerce within the Republic of the Philippines or with any foreign country or territory. As prohibited in this Act, the essential elements of the crime of monopolization are the possession of monopoly power and its willful acquisition, maintenance or abuse to exclude competitors from any part of trade, commerce or industry as distinguished from the natural growth or development of a firm as a consequence of a superior product, business acumen or historic accident: *Provided that*, a firm that has at least fifty percent (50%) of the relevant market as found and certified by the Department of Trade and Industry or the concerned regulatory agency shall be deemed *prima facie* a monopoly or in dominant position.

SECTION 7. *Monopoly Power or Abuse of Market Power by One in Dominant Position.* – It shall be unlawful for one or more firms with market power within relevant markets to abuse their monopoly power or dominant position by engaging in unfair methods of competition or engaging in unfair or deceptive trade practices, or entering into agreements, combinations in the form of trust or otherwise, or conspiracy, with the purpose and effect to prevent, restrict, or distort competition. Abusive agreements such

as, but not limited to, any of the following, shall be deemed to fall under the crime of abuse of monopoly power or market power by one in dominant position:

a. **Price Fixing** – Any agreement to fix the selling price of goods or other terms of sale, with the purpose and effect of creating a monopoly or cartel, or lessening competition;

b. **Bid Rigging** – Any agreement to fix price at auctions or in any other form of bidding, with the purpose and effect of creating a monopoly or cartel, or lessening competition, *Provided that*, nothing herein shall bar another prosecution against the erring party for violation of applicable laws on procurement and public biddings;

In determining whether there is price fixing or bid rigging, the following circumstances may be considered:

i. generally, any considered evidence that two sellers of similar goods have agreed to set the price of their goods, to sell only a certain amount of their goods, or to sell only to a limited number of buyers or consumers;

ii. a drastic change in prices of goods and services involving more than one seller of similar goods of different brands, particularly if the changes in prices take place in equal amount and about the same time;

iii. a seller refusing to sell based on an agreement with a competitor;

iv. the same firm has repeatedly been the low bidder who has been awarded contracts for a certain service or a particular bidder seems to win bids on a fixed-rotation;

v. there is an unusual and unexplainable difference between the winning bid and all other bids; and

vi. the same bidder bids substantially higher on some bids than on others, and there is no logical cost reason to explain the difference.

c. **Limitation and Control of Markets** – Any agreement to limit or control production, markets, technical development, or investment with the purpose and effect of creating a monopoly or cartel, or lessening competition;

d. **Market Allocation** – Any agreement to divide the market, whether by volume of sales or purchase or by territory, by type of goods

sold, by customers or sellers or by any other means, with the purpose and effect of creating a monopoly or cartel, or lessening competition;

e. **Arrangements to Share Markets or Sources of Supply** –

Any agreement to share markets or sources of supply of raw materials, with the purpose and effect of creating a monopoly or cartel, or lessening competition;

f. **Price Discrimination** – Any agreement prescribing or charging, directly or indirectly, discriminatory pricing terms or conditions in the supply or purchase of goods of like grade and quality with the purpose and effect of creating a monopoly or cartel, or substantially lessening competition: *Provided that*, nothing contained herein shall be construed to prohibit permissible price differentials unless the same shall have the effect of preventing, restricting or distorting competition: *Provided, further*, That for the purpose of this section, the following shall be considered permissible price differentials:

i. **Socialized Pricing** – Socialized pricing for the less fortunate sector of the economy;

ii. **Volume Discounts** – Price differentials which reflect an allowance for differences in the cost of manufacture, sale, or delivery resulting from differing methods or quantities in which the goods are sold or delivered to the purchasers;

iii. **Competitive Pricing** – A price differential or other terms of sale in response to the competitive price of payments, services or facilities furnished by a competitor;

iv. **Bona fide Selection of Customers** – The selection of customers on *bona fide* transaction; and,

v. **Price Differentials Due to Changing Market Conditions or Marketability of Goods** – Price changes from time to time in response to changing conditions affecting the market or the marketability of the goods concerned such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sale on good faith in discontinuance of business.

g. **Exclusivity Arrangement** – Any agreement imposing restrictions on the lease or contract for sale or trade of goods concerning where, to whom, or in what forms goods may be sold or traded, such as, but not limited to fixing prices, or giving preferential discounts, or rebate upon such price, or imposing conditions not to deal with competing firms,

where the purpose of such agreement is to lessen competition: *Provided that*, nothing contained herein shall prohibit or render unlawful permissible franchising, licensing or exclusive distributorship agreements.

h. **Tie-In Arrangements** – Any agreement making the supply of particular goods dependent upon the purchase or lease of other goods from the supplier or his consignee, where the purpose and effect of such sale or lease or such condition is to substantially lessen competition or to create a monopoly or cartel.

i. **Boycott** – Any concerted refusal to sell or conspiracy not to sell or to stop doing business on the part of the suppliers of any goods, unless for a legitimate purpose, such as but not limited to:

i. **Defaulting Borrowers** – refusal by one or more credit institutions to extend loans to defaulting debtors;

ii. **Defaulting Buyers** – refusal by one or more manufacturers or sellers to sell on credit to defaulting customers; and,

iii. **Violators of Intellectual Property Rights** – refusal by manufacturers or sellers to have any commercial dealings with one or more firms who violate the intellectual property rights of the owners of patents, copyrights, trademarks and other intellectual property.

ARTICLE IV PENALTIES

SECTION 8. *Penalties.* – Without prejudice to the violation of other laws, any firm that shall be found to have violated Sections 5, 6 and 7 of this Act, or any combination thereof, shall, for each and every violation, be punished by a fine of not less One Million Pesos (Php1,000,000.00) and not exceeding Ten Million Pesos (Php10,000,000.00) if a natural person; by a fine of not less than Ten Million Pesos (Php10,000,000.00) but not exceeding One Hundred Million Pesos (Php100,000,000.00) if a firm, and by imprisonment not exceeding ten (10) years, or both, at the discretion of the court.

ARTICLE V ENFORCEMENT

SECTION 9. *Preliminary Inquiry.* – The Department of Justice (DOJ), in coordination with the Department of Trade and Industry (DTI), other regulatory and/or appropriate government agency, shall *motu proprio*, upon the filing of a verified

complaint by an interested party or upon referral by the concerned regulatory agency, initiate a preliminary inquiry for the enforcement of this Act based on reasonable grounds.

SECTION 10. *Powers of Concerned Regulatory Agencies.* – Notwithstanding the provisions of the preceding section, the exercise of regulatory powers by different government agencies over an industry or a sub-sector of an industry shall be cumulative and shall not be construed in any way as derogating from the power and authority of the concerned agency. The government agencies shall cooperate and coordinate with one another in the exercise of their powers in order to prevent overlap, to share confidential information, or for other effective measures.

SECTION 11. *Power to Investigate.* – The DOJ may, through its duly authorized inquiring officer, by written notice, require a firm or natural person to produce a specified document, or to provide specified information which the DOJ considers as relevant its investigation. The inquiring officer, upon the authority granted by the Secretary of Justice, may engage the services of consultants or experts to aid in the inquiry. He may also make use of any available or analogous means under existing laws and procedures to determine if any provision of this Act has been violated. For this purpose, he shall have the power to punish for contempt any firm which does not comply with the notice or order for document, information or such other relevant matters and to impose a fine not exceeding One Hundred Thousand Pesos (Php100,000.00) for non-compliance with each notice or order.

SECTION 12. *Self-incrimination and Privileged Communication Exclusion.* – Pursuant to the preceding section, a person subject of any investigation by the DOJ shall produce the specified document or information when so required by written notice: *Provided that*, no person shall be excused from disclosing any document or information to the inquiring officer on the ground that the disclosure of the information or document may be incrimination: *Provided, however*, That such document or information produced by the person subject of investigation shall not be admissible as evidence against him in criminal proceedings: *Provided, finally*, That such document or information shall be admissible in evidence in civil proceedings including those arising from or in connection to the implementation of this Act.

Nothing in this section shall compel the disclosure of privileged communication or trade secrets: *Provided*, That the person who refuses to disclose the information or produce the document or other material required by the inquiring officer in relation to the preliminary inquiry being conducted shall nevertheless be obliged to give the name and address of the firm to whom, or by whom, or on whose behalf, such privileged communication was made.

SECTION 13. *Immunity from Suit.* – Any person or firm which cooperates or furnishes any information, document or data to the DOJ before or during the conduct of the preliminary inquiry that constitutes material evidence as determined by the DOJ under this Act shall be immune from any suit or charge including from affected parties

and third parties: *Provided, further*, That any person or firm which cooperates or furnishes information, document or data to the DOJ in connection to an investigation being conducted shall not be subjected to any form of reprisal or discrimination: *Provided, furthermore*, That such reprisal or discrimination shall be considered a violation of this Act and subjected to the penalties provided for under Section 8: *Provided, finally*, That, notwithstanding the provisions of Section 17 hereof, the firm which cooperates with the DOJ in its investigation shall be entitled to a reward equivalent to twenty percent (20%) of any monies paid by the firm subject of the inquiry, or the monetary relief recovered from court action.

SECTION 14. *Termination of Preliminary Inquiry.* – The DOJ, after considering the statements made, or documents or articles produced, in the course of an inquiry conducted by it, shall terminate the preliminary inquiry by issuing a resolution ordering its closure if no violation or infringement of this Act is found; or by issuing a *nolo contendere* resolution; or to, singly or cumulatively: (a) endorse the findings to the regulatory agency for the imposition of administrative fines; (b) institute a civil case for damages; or (c) file a criminal case for violation of this Act or other relevant laws: *Provided that*, for purposes of this Act, the preliminary inquiry referred to in Section 9 of this Act shall fulfill the requirements of a preliminary investigation: *Provided, further*, That no appeal can be taken from the said resolution unless issued with grave abuse of discretion.

SECTION 15. *Nolo Contendere Resolution.* – Any firm under inquiry under the provisions of this Act may submit to a *nolo contendere* resolution at any time before the termination of the preliminary inquiry by: a) the payment of an amount within the range of penalties provided for under Section 8; b) by entering into an undertaking to effectively stop and rectify the acts complained against, make restitution to the affected parties, whether or not the parties are complainants or witnesses; and, c) by submitting regular compliance reports as may be directed: *Provided that*, five percent (5%) of the amounts paid under this section shall equitably accrue to the government agencies involved in the inquiry: *Provided, further*, That a *nolo contendere* resolution shall not bar any inquiry for the same or similar acts if continued or repeated.

SECTION 16. *Court Action.* – In addition to any criminal action, the DOJ, when instituting the civil action, shall bring it in the name of the Republic of the Philippines, as *parens patriae*, on behalf of persons residing in the Philippines, to secure treble damages for any monetary injury sustained by such natural persons by reason of any violation of this Act plus the cost of suit and a reasonable attorney's fee.

SECTION 17. *Effect of Final Judgment.* – The final judgment in an action brought under the preceding section shall be *res judicata* as to any claim by any person on whose behalf such action was brought: *Provided that*, such person notifies the court having jurisdiction of the case within the period given by the court: *Provided, further*, That such period shall not be less than ninety (90) days.

SECTION 18. *Distribution of Monetary Relief Recovered.* – The monetary relief recovered in a civil action under Section 15 of this Act shall be distributed in the

following manner: (1) as determined and to be authorized by the Regional Trial Court having jurisdiction of the case; (2) ten percent (10%) of the total amount of monetary relief shall accrue to the DOJ to be used in the enforcement of this Act; and, (3) the remainder of which total amount of monetary relief shall be deemed a civil penalty by the Regional Trial Court and shall be deposited to the National Treasury as part of the general fund of the government: *Provided that*, any distribution procedure adapted by the Regional Trial Court shall afford each person having an interest in the monetary relief a reasonable opportunity to secure his appropriate portion of the net monetary relief obtained.

SECTION 19. *Evidential Effect of a Final Judgment.* – Any final judgment rendered in any civil or criminal action brought by the DOJ on behalf of the People of the Philippines under this Act to the effect that a defendant has violated any or all of the provisions of this Act shall be *prima facie* evidence against such defendant in any civil action brought by any other party against such defendant under this Act as to all matters respecting which said judgment would be an estoppel as between the parties concerned.

ARTICLE VI OTHER PROVISIONS

SECTION 20. *Statute of limitations.* – Any civil or criminal action to enforce any cause of action arising from a violation of any provision of this Act shall be forever barred unless commenced within ten years (10) years after the cause of action accrues. The running of the statute of limitation shall be suspended during the pendency of any proceeding.

SECTION 21. *Imposition of Fines by Regulatory Agency.* – Notwithstanding any provisions of law, regulatory agencies shall, in the conduct of their functions or duties, have the power to impose fines in the amount not less than One Hundred Thousand Pesos (Php100,000.00) and not exceeding Five Million Pesos (Php5,000,000.00), if a natural person; and not less than Five Million Pesos (Php5,000,000.00) and not exceeding Fifty Million Pesos (Php50,000,000.00) if a firm for each violation of or non-compliance with an order or notice of the regulatory agency. Ten percent (10%) of such fines shall accrue to the budget of the regulatory agency for the exclusive use in the enforcement of this Act.

SECTION 22. *Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Injunctions and Preliminary Mandatory Injunctions.* – Except for the Supreme Court, no other court shall issue any temporary restraining order, preliminary injunction or preliminary mandatory injunction against the regulatory agency in the exercise of its duties or functions: *Provided that*, this prohibition shall apply in all cases, disputes or controversies instituted by a private party, including, but not limited to, cases filed by regulated firms or those claiming to have rights through such firms: *Provided*,

however, That, this prohibition shall not apply when the matter is of extreme urgency involving a constitutional issue, such that the non-issuance of a temporary restraining order will result in grave injustice and irreparable injury to the public: *Provided, further,* That, the applicant shall file a bond, in an amount to be fixed by the court, but in no case shall it be less than half of the imposable fines provided for under Section 21 of this Act: *Provided, finally,* That in the event that the court finally decides that the applicant was not entitled to the relief applied for, the bond shall accrue in favor of the regulatory agency.

Any temporary restraining order, preliminary injunction or preliminary mandatory injunction issued in violation of this section is void and of no force and effect. Any judge who violates this section shall be penalized by suspension of at least one (1) year without pay in addition to other criminal, civil or administrative penalties.

The Supreme Court may designate regional trial courts to act as commissioners with the sole function of receiving facts of the case involving the acts of the regulatory agency. The designated Regional Trial Court shall, within thirty (30) days from the date of receipt of the referral, forward its findings of facts to the Supreme Court for appropriate action.

SECTION 23. *Intellectual Property Rights.* – The implementation of the provisions of this Act shall be without prejudice to the rights, liabilities and remedies under Republic Act No. 8293, otherwise known as the Intellectual Property Code of the Philippines: *Provided that,* the exercise of intellectual property rights shall not in any way be used to justify violations of this Act.

SECTION 24. *Guidelines.* – The DOJ, in consultation with the DTI, shall prepare the necessary guidelines for the implementation of this Act: *Provided that,* where the guidelines would apply to an industry or a sub-sector of industry that is subject to the jurisdiction of a regulatory agency, the DOJ shall, in preparing the guidelines, consult with the concerned regulatory agency: *Provided, further,* That the DOJ may revise such guidelines it deems necessary: *Provided, however,* That such revised guidelines shall only take effect following its publication in two newspapers of general circulation.

SECTION 25. *Separability Clause.* – If any clause, sentence, section or part of this Act shall be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this Act, but shall be confined in its operation to the clause, sentence paragraph, section, or part thereof directly involved in the controversy.

SECTION 26. *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 27. *Effectivity Clause.* – This Act shall take effect fifteen (15) days following its publication in the Official Gazette or in at least two (2) national newspapers of general circulation.

Approved,