

# COMPETITION POLICY

## Republic of the Philippines

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### EXISTING COMPETITION LAWS

Philippine Constitution (1987)- The Philippine Constitution of 1987 prohibits anti-competitive practices. Monopolies are not prohibited "per se", but only when public interest so requires. It also prohibits combinations in restraint of trade or unfair competition. However, the 1987 Constitution provides no imposable sanctions for violations of these provisions. Article 186 of the Revised Penal Code R.A. 3815 (1930)- Similar to Section 2 of the Sherman Act (1890) which was the major legislation that ushered competition law into the limelight in the U.S. It describes the acts punishable, such as monopolies and combinations in restraints of trade, and the penalties imposable on such. Republic Act 3247 (An Act to Prohibit Monopolies and Combinations in Restraint of Trade) (1961) provides for recovery of treble damages for civil liability arising from anti-competitive behavior. Republic Act 165 (1947) (Patent Law) and Republic Act 166 (1971) (Trademark Law) describes the appropriate civil action which can be resorted to, and the penalties imposable. Presidential Decree 49 (1972) (Copyright Law) penalizes copyright infringement. Republic Act 8293 (1997) An Act prescribing the Intellectual Property Code and establishing the Intellectual Property Office Republic Act 386 (1949) (Civil Code of the Philippines) stipulates the collection of damages arising from unfair competition. Republic Act 7581 (1991) (The Price Act) protects the consumers by stipulating price manipulation (hoarding, profiteering and cartels) as illegal acts. Republic Act 7394 (1932) (The Consumer Act of the Philippines) imposes penalties for such behavior as deceptive, unfair and unconscionable sales practices in both goods and credit transactions. The Philippine Corporation Code Batas Pambansa Blg. 68 (1980) provides for rules and procedures to approve all combinations, mergers and consolidations. Revised Securities Act, Batas Pambansa Blg. 178 (1982) Republic Act No. 337 regulates Banks and Banking Institutions and for other purposes (General Banking Act) (1948)

In recent years, there were already a number of laws passed by Congress and various Executive Orders signed by the President to strengthen the Competition policy framework. 1. Trade and Investment Liberalization To liberalize trade and in compliance with international commitments, tariffs on numerous industrial and agricultural products have been reduced and/or modified through various executive orders. These are the following: Republic Act No. 8178 (1996) - An Act Replacing Quantitative Import Restrictions on Agricultural Products, Except Rice, with Tariffs, Creating the Agricultural Competitiveness Enhancement Fund, and for other Purpose. Republic Act 7650 (1993) - An Act Repealing Section 1404 and amending Sections 1401 and 1403 of the Tariff and Customs Code of the Philippines, as amended, relative to the Physical Examination of Imported Articles. Republic Act 8181 (1996) to shift the basis for the computation of duties from home consumption value to transaction value to address some of the leakages in collections. Republic Act 7843 (1994) also known as the Anti-Dumping Act of 1994, was enacted to rationalize and strengthen the provisions on anti-dumping in the Tariff and Customs Code. Executive Order No. 264: (1995) Modifying the Nomenclature and the Rates of Import Duty on Certain Imported Articles under Section 104 of the Tariff and Customs Code of 1978 (Presidential Decree No. 1464) as amended. Executive Order No. 287: (1995) Modifying the Rates of Duty on Certain Imported Articles as Provided for under the Tariff and Customs Code of 1978, as amended, in Order to Implement the 1996 Philippine Schedule of Tariff Reduction under the New Time Frame of the Accelerated Common Effective Preferential Tariff (CEPT) Scheme for the ASEAN Free Trade Area (AFTA). Executive Order No. 288: (1995) Modifying the Nomenclature and the Rates of Import Duty on Certain Imported Articles under Section 104 of the Tariff and Customs Code of 1978 (Presidential Decree No. 1464), as amended. Executive Order No. 313: (1996) Modifying the Nomenclature and the Rates of Import Duty on Certain Imported Articles under Section 104 of the Tariff and Customs Code of 1978 (Presidential Decree No. 1464), as amended Executive Order No. 328: (1996) Modifying the Nomenclature and the Rates of Import Duty on Certain Imported Articles under Section 104 of the Tariff and Customs Code of 1978 (Presidential Decree No. 1464), as amended. Executive Order No. 365: (1996) Modifying the Nomenclature and the Rates of Import Duties on Certain Imported Articles under Republic Act Nos. 8180 and 8184. Executive Order No. 388: (1996) Modifying the Nomenclature and the Rates of Import Duties on Certain Imported Articles under Section 104 of the Tariff and Customs Code, as amended. Executive Order No. 390: Modifying the Nomenclature and the Rates of Import Duties on Certain Imported Articles under Section 104 of the TCC of 1978 (P.D. No. 1464) as amended. Public Utilities

- a. **Maritime Industry** Executive Order No. 185 (1994) was adopted to foster competition through more liberalized rules on the entry of new operators for existing routes, the deregulation of the entry of newly-acquired vessels into routes already served by franchised operators, and vessel rerouting or amendment of authorized route and change in sailing schedules and frequency. Executive Order No. 213 (1994) provides for the deregulation of domestic shipping rates in the following areas: a) first and second class passage rate for passenger-carrying domestic vessels, b) passage rates for vessels catering to tourism as certified by the Department of Tourism or those serving DOT-certified tourist priority links/areas, c) freight rates for all commodities classified as Class "A" and "B" and "C", except for non-containerized basic commodities, and where the route/link is still being serviced by only one operator.
  - b. **Civil Aviation Executive** Order No. 219 (1995), international civil aviation was sought to be liberalized through the designation of at least two official carriers for the Philippines, and the possibility of designating other carriers as official carriers when the total frequency requirements of the Philippines under its various Air Services Agreement cannot be fully serviced by the first two designated official carriers.
  - c. **Port Services** Executive Order No. 212 (1994) - In order to accelerate the demonopolization and privatization program for government ports. Competition is encouraged in the provision of cargo handling and other port services. Under the government's demonopolization program, ship owners, operators, charterers or other users have the option to contract or engage the services of the Philippine Port Authority (PPA) authorized handler or port service contractor of their choice.
  - d. **Telecommunications** The most successful efforts expended in breaking up monopolies and cartels were undertaken in the telecommunications industry. Executive Order No. 59 (1993) required mandatory interconnection for other telecommunications firms with the Philippine Long Distance Telephone Company (PLDT) backbone. Executive Order No. 109 (1993) laid down the government's policy to improve the Local Exchange Carrier Service. Authorized international gateway operators were required to provide local exchange service in served and unserved areas, including Metro Manila, within three years from the grant of authority from the National Telecommunication Commission. Republic Act NO. 7925 (1995), entitled "An Act to Promote and Govern the Development of Philippine Telecommunications and the Delivery of Public Telecommunications Services" was enacted to provide a comprehensive guideline regulating the public telecommunications industry in the Philippines.
  - e. **Energy** Executive Order No. 215 (1987) was issued to promote private sector participation in the business of generating electricity. Republic Act No. 8180 (1996), which provides for the deregulation of the oil industry, was also recently enacted. Executive Order No. 377, Providing the Institutional Framework for the Administration of the Deregulated Local Downstream Oil Industry, Series of 1996
  - f. **Water** Executive Order No. 311 (1996) was issued to encourage private sector participation in the operation and facilities of the MWSS.
  - g. **Privatization of State Enterprises** Executive Order No. 298 (1996) - issued by the President to provide for alternative and/or intermediate modes of privatization through joint ventures, B-O-T schemes, management contracts, lease purchase arrangements and securitization.
  - h. **Taxation, Monetary and Fiscal Reforms** Republic Act No. 7660 - rationalization of the documentary tax system. Republic Act No. 7717 - the imposition of taxes for sale of shares of stock through the stock exchange or through initial public offerings. Republic Act No. 7716 - Expanded Value-Added Tax. Republic Act No. 7642 was also enacted to increase the penalties for tax evasion and violation of the provisions of the National Internal Revenue Code. Still pending deliberations in Congress is the Comprehensive Tax Reform Package endorsed by the Ramos Administration. Under Central Bank Circular No. 1389 (Consolidated Foreign Exchange Rules and Regulations), as amended, foreign exchange restrictions were lifted thereby allowing the market to freely trade in foreign currencies. Republic Act No. 8183 was passed expressly repealing the Uniform Currency Law (Republic Act No. 529) which restricted parties to a contract to deal only in Philippine Peso in order to settle monetary obligations.
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