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Working Paper

Unfair Trade Practices in the Philippines

PIDS Discussion Paper Series, No. 2012-39

Provided in Cooperation with:

Philippine Institute for Development Studies (PIDS), Philippines

Suggested Citation: Yap, Josef T.; Abad, Anthony R.A.; Gonzales, Kathrina G.; Rosellon, Maureen Ane D. (2012) : Unfair Trade Practices in the Philippines, PIDS Discussion Paper Series, No. 2012-39, Philippine Institute for Development Studies (PIDS), Makati City

This Version is available at:

<https://hdl.handle.net/10419/126907>

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Philippine Institute for Development Studies
Surian sa mga Pag-aaral Pangkaunlaran ng Pilipinas

Unfair Trade Practices in the Philippines

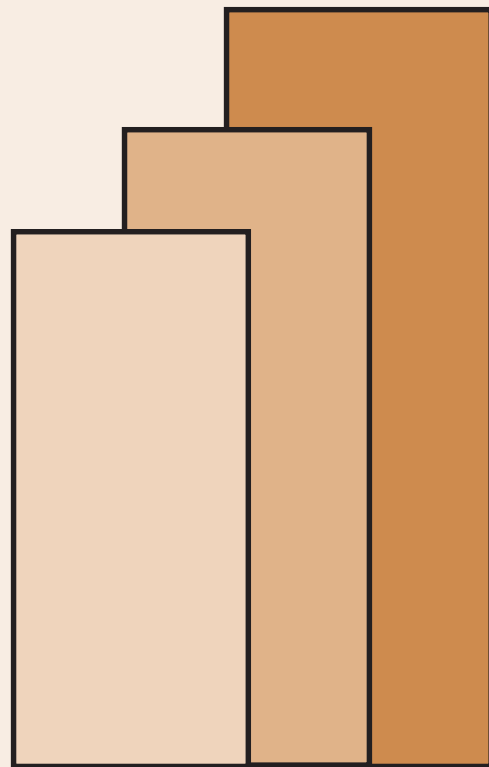
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November 2012

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Unfair Trade Practices in the Philippines

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Abstract

Unfair trade practices (UTPs) demonstrate anti-competitive behavior which can be characterized into two general types: exclusionary abuse—an act of the firm (or a group of firms) to prevent entry of potential firms; or exploitative abuse—referring to actual abuse of market power. However, this study adopts a narrower definition of UTPs which are wrongful or deceptive practices implemented by a business that cause an economic injury to a consumer (B2C) or another business (B2B). A survey was conducted to determine the extent and awareness of UTPs in the Philippines. The main finding from the survey results is that many respondents indicate that UTPs are moderately to highly widespread. Moreover, an overwhelming majority believes that UTPs have adverse impacts on business transactions and consumer welfare. However, not many are aware of the legal remedies against UTPs. Moreover, business firms interviewed are reluctant to participate in legal action against UTPs. The reluctance pursue legal channels against UTPs may imply that there are gaps in the legal infrastructure to address B2B UTPs. The survey results can also be interpreted to mean that while businesses are aware of the adverse impacts of UTPs, they do not seek to “rock the boat”. The latter is consistent with the lack of a ‘culture of competition’ in the Philippines. This can be partly addressed by the establishment of a comprehensive competition law.

Keywords: unfair trade practices, unfair competition, Philippine competition policy and law

Chapter 1

PROFILE OF THE PHILIPPINE ECONOMY

Introduction

The Philippines represents the biggest development puzzle in Southeast Asia. Compared with other economies in East Asia, the Philippines' economic growth record has been disappointing. As a result, the Philippines was not even described as a "high-performing economy" by the World Bank in its 1993 study of the East Asian Miracle while Thailand, Malaysia and Indonesia were included in this select group. At present, per capita GDP is lower than many of its neighbors with a comparable history (Table 1.1).

The Philippines is an archipelagic state with 7,107 islands with a land area of 300,800 square kilometers and an estimated population of 93.6 million in 2010. It lies in the eastern part of Southeast Asia. The Philippines boasts of a coastline which is 18,500 kilometers long and is blessed with rich mineral resources including chrome, copper, nickel, and gold. English is widely understood and many are fluent in the language. The level of education, particularly at the tertiary level, is quite high compared with other Southeast Asian countries. These features only add to the development puzzle.

The Reform Process

Like many other developing countries, the Philippines adopted the "openness model" of development. This reform package began modestly in the early 1970s and was interrupted by the debt crisis in 1983-85. The reform program, however, was accelerated in the late 1980s and has been the government mantra since. The general thrust of the reforms was closer global economic integration underpinned by liberalization, deregulation and privatization. At the same time—similar again to other developing countries—the Philippines adopted measures to strengthen the supply capacity of its economy with a view to building competitive industries which would be the main beneficiaries of increased access to world markets. More attention was given to macroeconomic stability and exchange rate movements; appropriate sequencing of liberalization of the trade, financial and capital-account regimes, supported by prudential regulation and financial sector reform; strengthening domestic institutional capacity; and attracting foreign direct investment (UNCTAD 2004).

In the area of trade liberalization, the following reforms were pursued from the 1980s till the present. The first Tariff Reform Program (TRP I) initiated in 1981 reduced tariff from a range of 70-100 percent to 0-50 percent. This was followed by TRP II in 1991 which reduced tariff further to the 3-30 percent range and converted quantitative restrictions to tariffs. TRP III launched in 1995 introduced further changes towards a 5 percent uniform tariff.

Meanwhile, the Philippines also signed a series of multilateral free trade treaties, e.g. GATT-WTO 1995; bilateral/regional free trade agreements—AFTA-CEPT 1993, China-ASEAN 2004, ASEAN-Korea 2006, ASEAN-Japan 2008, Philippine-Japan Economic Partnership Agreement 2007; and trade facilitation initiatives, e.g. Revised Kyoto Convention 2009, National Single Window 2010. Overall, the trade-weighted average tariff rate in the Philippines was reduced to nearly 0 percent, except for agricultural products which a trade-weighted average tariff rate of 0.1 percent.

In the area of investment, the country has pursued several investment liberalization and facilitation initiatives since the late 1980s. In 1987, the Omnibus Investment Code simplified and consolidated past investment law. In 1991, the Foreign Investment Act permitted foreign equity participation up to 100 percent, except those in the negative list (List A, B, C). List C—restriction in areas where adequate number of establishments already serves the economy's needs—was abolished in 1996, so the remaining restrictions are those in List A (restrictions imposed by the Constitution and specific laws), and List B (restriction for reasons of defense, risk to health and moral, and protection of SMEs). Several other liberalization laws were also passed, including the Foreign Bank Liberalization Act in 1994, the 2000 Retail Trade Liberalization, which allows 100 percent foreign investment in retail business subject to minimum equity of US\$7.5 million, and the 1995 Special Economic Zone Act.

Explaining the Development Puzzle

Despite these reforms, the gap between the Philippines and its neighbors with a comparative level of development has increased. This can be gleaned not only from per capita GDP figures but also in the lack of transformation of the economy. One of the most striking features of the Philippine economy is the stagnation in the share of manufacturing value added (MVA) to GDP over the past three decades (Table 1.2). The MVA-GDP ratio even declined between 1980 and 2009 while it rose significantly in Indonesia, Malaysia, and Thailand.

The Philippines is therefore in a relatively unique position wherein a whole range of policies were implemented without much success. A critical factor is the nature of the private sector in the Philippines which is characterized as an oligarchy (De Dios and Hutchcroft 2003). Hence, even if wide-ranging reforms have been implemented, the response from the private sector has been mixed. This is reflected primarily in an investment-GDP ratio that is lower than that of other countries in the region and has fallen consistently from 2000 to the 2010 (Table 1.3). More recent analysis points to the role of the oligarchy in compromising institutions (De Dios 2008). Weak institutions have also constrained economic growth (De Dios 2008).

An interesting issue would be whether institutional factors can partly explain the low investment rate. This was recently attempted by Bocchi (2008) when he analyzed why investment in the Philippines did not respond to higher economic growth in 2005-2007. One major reason is the dominance of corporate conglomerates in strategic sectors such as agriculture, maritime and air transport, power, cement, and banking. These corporate conglomerates do not have an incentive to invest and expand their operations since their main source of profitability is a captured market. In turn the resulting higher costs in these sectors discourage investment in sectors that have strong backward and forward linkages with them, particularly in manufacturing.

The analysis of Bocchi dovetails with the finding of Felipe and Lanzona (2006) that even at the height of trade liberalization, the degree of monopolization of the economy was increasing. As evidence they point to an increasing trend in the price-markup ratio between 1980 and 2003. These results corroborate what is well known about the Philippines, that is, the country is characterized by a lack of "culture of competition". Monopolies and cartels are accepted as a part of doing business, an attitude that can be readily explained by institutional factors.

Consequently, what evolved in the Philippines was a semi-feudal economy dominated by elite factions. Instead of encouraging competitive behavior, a culture of 'rent-seeking' was

engendered. The political and economic elite used state institutions as instruments of wealth accumulation. It was deemed that more money could be made by redistributing wealth through the political process than by actually creating wealth.

Structure of the Study

This study looks at unfair trade practices in the Philippines. An overview of the study is presented in Chapter 2 along with definition of terms and concepts. Examples in the Philippines are discussed. Crafting policies on how to deal with UTPs depends largely on the legal and institutional framework. Chapter 3 presents a review and analysis of the existing legal institutional framework in the Philippines that deals with UTPs. Chapter 4 reports the survey results which will be the basis for political economy analysis. The last chapter presents recommendations on regulations, laws and institutional reforms that are required to deal with UTPs.

Table 1.1: Per Capita GDP (in constant 2000 USD)

| | 1960 | 1983 | 1984 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 |
|--------------------|-------|--------|--------|--------|--------|--------|--------|--------|--------|
| Hongkong, China | 2,968 | 13,416 | 14,603 | 32,320 | 34,044 | 34,570 | 33,526 | 35,537 | 37,352 |
| Indonesia | 201 | 433 | 454 | 954 | 1,003 | 1,052 | 1,090 | 1,145 | 1,207 |
| Korea, Republic of | 1,154 | 4,049 | 4,323 | 14,446 | 15,113 | 15,350 | 15,326 | 16,219 | 16,684 |
| Malaysia | 813 | 2,130 | 2,235 | 4,707 | 4,926 | 5,078 | 4,915 | 5,185 | 5,365 |
| Philippines | 692 | 1,103 | 994 | 1,225 | 1,283 | 1,314 | 1,307 | 1,383 | 1,411 |
| Singapore | 2,251 | 10,972 | 11,718 | 29,926 | 31,247 | 30,132 | 28,950 | 32,641 | 33,530 |
| Taipei, China | 1,468 | 2,846 | 3,169 | 17,222 | 18,016 | 18,836 | 17,580 | 20,295 | 22,613 |
| Thailand | 321 | 872 | 904 | 2,459 | 2,563 | 2,608 | 2,531 | 2,713 | 2,698 |

Source: World Bank's World Development Indicators, accessed on 15 August 2012; IMF's World Economic Outlook Database April 2012, accessed on 15 August 2012

Table 1.2: Share of Manufacturing in GDP (%)

| | 1980 | 1985 | 1990 | 1995 | 2000 | 2006 | 2007 | 2008 | 2009 | 2010 |
|-------------|------|------|------|------|------|------|------|------|------|------|
| China | 43.9 | 38.0 | 36.5 | 41.2 | 40.4 | 32.9 | 32.9 | 32.7 | 32.3 | 32.4 |
| Indonesia | 13.5 | 18.1 | 23.0 | 26.6 | 27.7 | 27.5 | 27.0 | 27.8 | 26.4 | 24.8 |
| Malaysia | 21.6 | 19.3 | 22.7 | 24.7 | 29.9 | 28.8 | 27.2 | 25.8 | 25.0 | 25.6 |
| Philippines | 27.7 | 27.0 | 26.8 | 24.7 | 24.5 | 23.6 | 22.7 | 22.8 | 21.3 | 21.4 |
| Thailand | 21.5 | 21.9 | 24.9 | 28.6 | 33.6 | 35.0 | 35.6 | 34.8 | 34.2 | 35.6 |
| Viet Nam | 16.1 | 16.4 | 12.3 | 15.0 | 18.6 | 21.2 | 21.3 | 20.3 | 20.1 | 19.7 |

Source: UN Statistics Division. [<http://unstats.un.org/unsd/snaama/dhlList.asp> ; accessed, 28 August 2012]

Table 1.3: Gross Domestic Investment (% of GDP)

| | Indonesia | Korea | Malaysia | Philippines | Thailand |
|------|-----------|-------|----------|-------------|----------|
| 1994 | 31.1 | 37.0 | 41.2 | 24.1 | 40.3 |
| 1995 | 31.9 | 37.7 | 43.6 | 22.5 | 42.1 |
| 1996 | 30.7 | 38.9 | 41.5 | 24.0 | 41.8 |
| 1997 | 31.8 | 36.0 | 43.0 | 24.8 | 33.7 |
| 1998 | 16.8 | 25.0 | 26.7 | 20.3 | 20.4 |
| 1999 | 11.4 | 28.9 | 22.4 | 18.8 | 20.5 |
| 2000 | 22.2 | 30.6 | 26.9 | 21.2 | 22.8 |
| 2001 | 22.5 | 29.2 | 24.4 | 19.0 | 24.1 |
| 2002 | 21.4 | 29.2 | 24.8 | 17.7 | 23.8 |
| 2003 | 25.6 | 29.9 | 22.8 | 16.8 | 25.0 |
| 2004 | 24.1 | 29.9 | 23.0 | 16.8 | 26.8 |
| 2005 | 25.1 | 29.7 | 20.0 | 14.6 | 31.4 |
| 2006 | 25.4 | 29.6 | 20.5 | 14.5 | 28.3 |
| 2007 | 24.9 | 29.4 | 21.6 | 15.4 | 26.4 |
| 2008 | 27.8 | 31.2 | 19.3 | 15.3 | 28.9 |
| 2009 | 31.0 | 25.9 | 14.5 | 14.6 | 21.8 |
| 2010 | 30.7 | 29.4 | 20.0 | 15.0 | 25.5 |

Source: UN Economic and Social Survey of Asia and the Pacific 2011

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Chapter 2

REVIEW OF LITERATURE AND UNFAIR TRADE PRACTICES IN THE PHILIPPINES

Definition of Terms

Unfair trade practices (UTPs) demonstrate anti-competitive behavior which can be characterized into two general types: exclusionary abuse – an act of the firm (or a group of firms) to prevent entry of potential firms; or exploitative abuse – referring to actual abuse of market power (Medalla 2002). Examples of exclusionary abuse are predatory pricing, arrangement to divide the market, unjustly raising rival's cost and unjustified refusal to deal with other firms. Examples of exploitative abuse include cartel agreement to fix prices (such as set price above competitive levels) and limit levels of output.

The UTPs included in the survey reported in Chapter 4 are classified into the two categories (Table 2.1). It should be noted that some of the UTPs can be included in both categories.

Table 2.1: Classification of UTPs that are included in survey

| Exclusionary Abuse | Exploitative Abuse |
|---|--|
| <ul style="list-style-type: none">• Predatory pricing• Refusal to deal• Resale Price Maintenance• Systematic obstruction of competition• Margin squeeze• Abuse of IPR, including harming other businesses reputation | <ul style="list-style-type: none">• Unfair pricing• Misleading advertisement• Tied selling• Coercive dealing• Discriminatory dealing• Unreasonably high price |

Meanwhile, Cornell University's Legal Information Institute (2010) defines the law of unfair competition as torts—deceptive or wrongful practices—implemented by a business that cause an economic injury to consumers or other businesses. Unfair competition can be broken down into two categories. These are "unfair competition" which is sometimes used to refer only to those torts that are meant to confuse consumers as to the source of the product and "unfair trade practices" which includes all other forms of unfair competition. According to the Institute, what comprises an "unfair" act varies with the context of the business, the action being examined, and the facts of the individual case.

The Institute cited two common examples of unfair competition i.e. trademark infringement and misappropriation. The latter includes the unauthorized use of an intangible assets not protected by trademark or copyright laws. Other practices of unfair competition are: false advertising, "bait and switch" selling tactics, unauthorized substitution of one brand of goods for another, use of confidential information by former employee to solicit customers, theft of trade secrets, breach of a restrictive covenant, trade libel, and false representation of products or services.

This study adopted the narrower concept of UTPs, i.e. wrongful conduct or misdemeanors practiced by business firms that cause an economic injury to other business firms or consumers. This is the framework adopted by CUTS Ha Noi. The practices will essentially be those listed in Table 2.1 but applied to business to consumer cases or "B2C" and business to business cases or "B2B".

Unfair Trade Practices and Consumer Welfare

The study of Cseres (2008) revealed that consumers do not often take advantage of effective competition because of information asymmetries, unfair trade practices, unfair standard contract terms, high search and switching costs, and imperfect decision-making processes. Moreover, while consumers were envisaged as the ultimate beneficiaries of the liberalized markets, this premise holds only when consumers are responsive to price and output and are thus able to seek the best price-quality combination on offers. For instance, if demand is inelastic and switching costs are high or unfair trade or abusive practices prevent them acting in their best interest they will not be able to enjoy the advantages of a competitive market. Cseres cited empirical studies in recently liberalized markets which showed high degree of consumer apathy and indicated that many consumers despite the optimal balance between search, switching costs and expected gains are not taking advantage of beneficial switching and, in some cases, are switching to higher-cost suppliers.

Cseres emphasized that imperfect consumer information may affect competition in the market and may lead to 'micro-competition' problems especially when sellers with market power exploit information asymmetries which leads to abuse (Vickers cited by Cseres). Poorly informed consumers, who are not aware of alternative choices before purchasing, and give in to the seller's pressure by entering into a contract with unfair contract terms, are in fact subject to market power. Thus consumers' information problems can have relevant implications for competition analysis. Imperfect information may make a market that appears competitive behave otherwise and may harm consumers by imposing excessive (unfair) prices or other unfair trading conditions therefore distorting consumers' otherwise welfare maximizing choice. Consequently, sellers exploit consumers' lack of knowledge about their rights or their inability to understand standard contract terms, complex goods, to conduct direct comparison and to monitor service delivery.

In conclusion, Cseres stated that consumer preferences seem to fluctuate depending on the situation in which they have to make their decisions. Individuals lack the ability to build constant and reasoned preferences because they are influenced by these information asymmetries and unfair trade practices. Consumers will only look for and process a certain amount of information. As a consequence individuals fail to maximize their welfare under specific circumstances and they take short cuts when making decisions leading to choices that might be inconsistent with promoting their own welfare.

The Philippine Case: UTPs related to Market Dominance

The Philippines has had a share of issues in unfair trade practices. However, the literature is dominated by cases on monopoly or anti-competitive behavior or market dominance. This section discusses unfair trade practices in the Philippines on an industry/sector level.

Cement industry

The cement industry in the Philippines is one of the industries found to be highly concentrated (3 firms controlling almost 90% of the market (Aldaba 2010) and is also one of those alleged to having collusion among firms. The industry was highly protected in the 1970s and was regulated by government in terms of regulation of entry, control of prices, and allocation of supply. In effect, collusion was allowed by the government. It was during this time when informal arrangements as setting production quota and assigning geographical markets occurred among firms (Aldaba 2000). But this resulted in dominant players in the regional markets and pricing based not on competition but on negotiations between the government and the few producers (Lamberte et al 1992). In the late 1980s, the

industry was liberalized and deregulated, therefore silencing the cartel issue, albeit only temporarily. Starting in 1999, a trend in pricing behavior was observed, thereby reviving the issue on cartel in the cement industry.

Price fixing: One manifestation linking a cartel (explicit or tacit) to the cement industry is the observed pricing behavior. What was observed was an increase in prices despite excess supply and weakened demand due to economic slowdown (1997 and 2008 crises). Cement producers claim that increases in prices are due to high production costs – increase in fuel and power prices and finance charges. But it was observed that there were increases in prices even with a drop in prices in fuel or no substantial changes in power rates (Aldaba 2000, 2010).

Aldaba (2000) also found that the cement firms seemed to have different cost structures but their prices on average had low variation. Looking at monthly changes in average ex-plant prices from January to May 2000, Aldaba found that cement firms registered increases in their prices almost in the same amount, and in somewhat a ‘harmonious fashion’. Aldaba (2000) adds that “as the observed price behaviour is inconsistent with competitive behaviour, the only way to explain it would be in a framework where firms coordinate their actions, i.e. firms collude on prices.”

Market allocation: Cement firms were said to hold meetings that set production quotas and arranged for the geographic division of the markets, where plants located in a particular region should sell only to that area (Lamberte et al 1992).

The government, through the Department of Trade and Industry and House Committee on Trade and Industry, has conducted investigations on the cement cartel. The investigations, however, did not produce substantial results. To begin with, the Philippines has no clear and comprehensive competition law.

Telecommunications sector

Deregulation and liberalization in the telecommunications sector led to the increase in the number of players and improved services. There is however one company, the Philippine Long Distance Company (PLDT), that still dominates the market as it owns the domestic backbone system. It can influence the speed and terms and conditions for interconnection and the terms and conditions for revenue-sharing arrangements, which has perceived to be disadvantageous and problematic for new players as these are important aspects of doing business in telecommunications. PLDT now has the most number of fixed lines and mobile phone subscribers, especially with its merger with Smart Communications which is the largest mobile phone operator (Aldaba 2008, 2011). Globe, is the other top telecommunications company. Both companies offered basically the same prices for their services.

Predatory pricing: In 2003, Smart and Globe filed separate petitions before the National Telecommunications Commission, charging Sun Cellular with predatory pricing when latter offered unlimited call and text messaging. The two incumbent firms called for the National Telecommunications Commission (NTC) to fix call rates at a certain amount and prevent Sun Cellular, the new entrant, from charging much lower rates. NTC ruled in favor of Sun Cellular. By then, competition was intensified as Smart and Globe offered packages to keep their subscribers and not lose potential ones.

Misleading/false advertisement: In 2009, Digitel, owner of Sun Cellular, filed before the NTC a complaint for unfair trade practices against Red Mobile, another telecommunications company. One of Red Mobile’s advertisements gave false information about the coverage of

Sun Cellular's services (cellular sites), and made it appear that Sun Cellular had less sites than it actually has.¹

In 2011, news came out that PLDT will be acquiring Digitel which owns Sun Cellular. With this deal, PLDT will control about 70 percent of total mobile subscribers, leaving Globe with 30 percent. This merger can improve efficiency and benefit from economies of scale and scope. But it may also be a means to enhance market power. It is recommended that government regulations ensure market contestability and regulate anti-competitive business practices so as not to suppress competition (Aldaba 2011).

Energy sector

In 2001, the Electric Power Industry Reform Act was passed to liberalize generation and supply and to regulate transmission and distribution of electricity. This had the intention of privatizing the remaining power facilities and transmission system of the National Power Corporation (NPC, a natural monopoly), and creating the wholesale electricity spot market (WESM) for bulk power. Presently, generation is still under NPC (now a monopsonist) and independent power producers (IPPs), transmission monopolized by Transco, and distribution dominated by Meralco (the main distributor in the National Capital Region).

Vertical agreement, discriminatory dealing affecting price: Meralco has been accused of buying power from IPPs it is affiliated with, even if the NPC is selling at lower prices. This is one example of a firm buying from a favored supplier and discriminating against other sellers that happen to offer the same good at lower prices. This practice is said to result in the consumers subsidizing high cost (presumably inefficient) firms, thereby carrying the burden of paying higher prices (SEPO 2009).

Aldaba (2008) claimed that the industry had suffered from the absence of clear rules and appropriate regulatory framework in the early stages of deregulation. The industry needs to be assessed further, examining "access rules for transmission and distribution (who will be dispatched, in what order, and when) as well as a pricing system (price caps or rate of return minus adjustments for efficiency changes) that would allow consumers to share inefficiency gains".

Agriculture and food products sectors

Cartel behavior such as in rice, corn and sugar trading restrains competition, and was manifested in the pricing strategies in these sectors. Furthermore, in the food sector, complaints have been filed for unfair trade practices that have been linked to abuse of dominant position.

Price fixing: Low farm-gate prices and high retail prices were commonly attributed to cartels in rice and corn. Econometric analysis on these sectors, however, failed to confirm this claim (Reeder 2000, Mendoza and Rosegrant 1995, as cited by Aldaba 2008). Likewise, the high domestic prices of sugar have also been associated with the "integrated sugar mandates" that control milling, refining and marketing. And for other products, low prices and low lease rentals are perceived to be an effect of use of market power by large companies. These claims, however, need thorough and extensive study (Aldaba 2008).

Exclusivity arrangement: Exclusive contract arrangements are said to exist in the banana and pineapple export industries. These industries are dominated by a few firms, each having

¹TeleGeography.com, "Digitel calls foul over PLDT's 'unfair' ad-based service Red Mobile." 11 June 2009.

their own farmers' cooperative or association that supply the produce and brand and support facilities (Digal 2007). With this kind of arrangement, there is concern on possible exercise of market power, as asset specificity on the part of these growers/suppliers that they are obliged to stick to their buyer, thereby limiting access to other potential buyers.

Obstruction of competition: Subsectors in the Philippine food industry are composed of giant dominant firms. They are mostly the subject of complaints as far as unfair competition is concerned. Such as in the case of canned tuna, where a food manufacturing company, CDO-Foodsphere Inc. filed a complaint before the Department of Trade and Industry to investigate the large canned tuna company, Century Pacific Group (CPG), with regard to unfair trade practices toward their new product – the corned tuna.² CDO-Foodsphere accused CPG of blocking entry of their new product in local markets, as well as convincing retailers to enter into 'voluntary loyalty programs' that keep competitors off.

The Philippine Case: B2C and B2B UTPs

Presently, there is a Consumer Complaints Center which is charged with the duty to "receive and evaluate complaints and inquiries from the general public and immediately take action thereon or refer the complaint/inquiry to the government agency concerned for appropriate action," and "recommend measures to make the implementation of consumer protection, price stabilization, fair trade and related laws more effective and meaningful" (Domingo, 2011). The Center provides assistance directly with the affected consumers in line with the Consumer Protection Law.³

The Consumer Complaints Center handles a large number of various complaints (Table 2.2). The most common complaints are under the category "consumer products and service warranties." UTPs involved cases wherein consumers were led to buy alleged better quality products or businesses not honoring their warranties on the said products. This can be considered a case of false or misleading advertisement. Despite the large number of complaints, it should be noted that the total pales in comparison to the number of annual business transactions in the Philippine which should easily be in the millions.

Meanwhile, when unfair trade practices involve a business to business case, there is no specific an agency or department which can manage the case or a clear mechanism where offenders can be held liable. The situation should be addressed since B2B cases are also important as gleaned from the following cases.

*Nestlé versus its distributors*⁴

Predatory pricing is the practice of selling a product or service at a very low price, intending to drive competitors out of the market, or create barriers for entry by potential new competitors. In the Philippines, Nestlé Philippines distributors are the victims of this practice.

In many countries predatory pricing is considered anti-competitive and is illegal under antitrust laws. It is usually difficult to prove that prices dropped because of deliberate predatory pricing rather than legitimate price competition. In any case, competitors may be driven out of the market before the case is ever heard.

² Manila Bulletin Newspaper Online, "DTI probes complaint on alleged unfair trade practices in canned tuna." 13 November 2009.

³ The Consumer Protection Law will be discussed in detail in Chapter 3.

⁴ Culled from Consolidated Amalgamated website.

In the case of Nestlé, it entices investors with large amounts of actual start-up promotions, incentives and assistance (i.e. monetary, equipment or services) with attractive rates of return, and promises of even greater rewards. Nestlé then systematically and deliberately withdraws these initial incentives over time. Distributors cry foul over Nestlé's demand for unattainable sales volumes (quotas). These demands are accompanied with threats to terminate distribution contracts, if their targets are not met. Consequently, distributors have no choice but to give huge discounts to their customers in order to meet their quota. This invariably leads to a situation of deeper debt and greater dependence on Nestlé. It results in a vicious cycle and distributors can hardly raise prices above what the market dictates.

Aggravating the situation for distributors is the fact that the big clients of Nestlé like the huge groceries, supermarket chains, and wholesalers are able to dictate the prices of goods or the trade discounts. The distributors were essentially sucked into "price wars" that they had little chance of winning.

San Miguel Corporation (SMC) versus CFC Robina

Shared information on cost accounting which may lead to **price fixing** was discussed in the study of Catindig (2001). Shared information on production, orders, shipments, capacity and inventories may lead to control of production for the purpose of controlling prices. Catindig cited the SMC and CFC Robina case to illustrate price fixing.

Knowledge by CFC Robina of SMC's costs in various industries and regions in the country enabled the former to practice price discrimination. CFC Robina could segment the entire consuming population by geographical areas or income groups and charge varying prices in order to maximize profits. CFC Robina could determine the most profitable volume at which it could produce for every product line in which it competes with SMC. Access to SMC pricing policy by CFC Robina would in effect destroy free competition and deprive the consuming public of opportunity to buy goods of the highest possible quality at the lowest prices.

Obviously, if a competitor has access to the pricing policy and cost conditions of the products of San Miguel Corporation, the essence of competition for the purpose of providing the lowest priced goods to the consuming public would be undermined. The competitor could manipulate the prices of his products or vary its marketing strategies by region or by brand in order to get the most out of the consumers.

Pfizer versus Philippine pharmaceutical companies

Another major case that received wide media coverage concerns the alleged abuse of market power or dominance by a multinational pharmaceutical company where it limits and restricts or prevents the development of its competition and forces Filipinos to buy its more expensive medicine. This type of anti-competitive behavior is often called **margin squeeze**.

According to Casayuran (2009), a group of stroke victims filed a complaint that a Mercury Drugstore (leading drugstore in the country) branch allegedly refused to sell the cheaper anti-hypertension drug "Avamax" because of threats of legal action from Pfizer which markets the "Lipitor" brand.

The article reported that Pfizer also demanded drugstores nationwide to stop selling "Avamax" even if it is 50 percent cheaper than the popular brand "Lipitor." Pfizer's demand can be seen as a means to prevent the manufacture, marketing and sale of competing or

rival products under the guise of intellectual property protection despite the provision in the law (RA 9502) which disallows extensions of patents for new users.

In another article, it was reported that Pfizer also sued United Laboratories Inc. (Unilab) which manufactures the cheaper "Avamax" brand for allegedly violating the patent on the drug "Atorvastatin calcium."⁵ Pfizer, owns a patent for the anti-cholesterol drug "Atorvastatin Calcium" under Warner Lambert, which is valid and is in force until September 2012 in the Philippines. Pfizer marketed this drug under the brand Lipitor.

According to the article, the largest Philippine drug-maker, Unilab, started selling in 2009 the generic version of the anti-cholesterol drug "Atorvastatin Calcium" under the brand Avamax. Subsequently, Pfizer filed an infringement case against Unilab for selling Avamax and the case is still pending before the Intellectual Property Office of the Philippines. While the patent infringement case is still pending, Pfizer also filed a court injunction to temporarily stop Unilab from selling Avamax.

Senate Press Release (2009) noted that it is very important to look into the unjust trade and marketing techniques of multinational pharmaceutical companies, particularly Pfizer, that have "obstructed the free market from dictating just and reasonable prices of medicines in favor of Filipino consumers.

The Senate Press Release also stated that Pfizer attempted to use its promotional offering: the five million discount cards (Sulit cards) and promotional posters endorsing the discount cards with then President Arroyo and Health Secretary Francisco Duque's photos in the posters. The "Sulit" card discount scheme "raises alarming trade and marketing practices issues, foremost of which are Pfizer's ability to amass a huge marketing database through the 'Sulit' card membership forms distributed by doctors and the conditions in fine print imposed therein that allows Pfizer to send emails, calls or text messages to the 'Sulit' card members and disqualifies an individual using the card from availing of Senior Citizen's discount."

Aside from Unilab, Pfizer threatened another Philippine generic company (San Juan, 2006). Orient Euro Pharma (OEP) Philippines, a subsidiary of OEP Taiwan recently launched a generic version of OlmesartanMedoxomil a product for the treatment of hypertension developed by Sankyo but marketed by Pfizer in the Philippines. There is currently no patent for OlmesartanMedoxomil in the Philippines although Sankyo does have a patent application pending that OEP argues does not cover OlmesartanMedoxomil, but OlmesartanMedoxomil in combination with Hydrochlorothiazide.

However, this has not stopped Pfizer from threatening OEP and the manufacturer of the product (Hizon Laboratories, Inc.) with legal actions to prevent commercialization of the generic products that have considerably lowered the prices of OlmesartanMedoxomil in the Philippines.

⁵ Mirandah Connecting Asia. "Battle Between Pfizer And Unilab Continues." March 17, 2010. <http://mirandah.com/en/categories/item/64-battle-between-pfizer-and-unilab-continues.html>

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Table 2.2: Number of nature of consumer complaints nationwide, 2010 – March 2012

| Nature of Complaints | 2010 | 2011 | 2012 | Total |
|---|-------------|-------------|------------|-------------|
| 1. CONSUMER ACT (RA 7394) | | | | |
| 1.1 consumer product & service warranties | 1076 | 1132 | 191 | 2399 |
| 1.2 product quality & safety | 367 | 814 | 56 | 1237 |
| 1.3 deceptive, unfair & unconscionable acts | 387 | 685 | 287 | 1359 |
| 1.4 liability for product & service | 407 | 944 | 165 | 1516 |
| 1.5 advertising & sales promo | 99 | 78 | 24 | 201 |
| 1.6 service & repair shops | 141 | 54 | 8 | 203 |
| 1.7 labeling & packaging | 39 | 13 | 6 | 58 |
| 1.8 price tag | 48 | 38 | 9 | 95 |
| 1.9 consumer credit transactions | 0 | 9 | 0 | 9 |
| 2. PRICE ACT (RA 7581) | | | | |
| 2.1 hoarding & profiteering | 3 | 8 | 0 | 11 |
| 2.2 weight & measures | 7 | 7 | 1 | 15 |
| 3. PIRACY & COUNTERFEITING | 21 | 7 | 0 | 28 |
| 4. OTHERS | | | | |
| * business name registration | 9 | 18 | 2 | 29 |
| * bar codes | 0 | 2 | 0 | 2 |
| * poor customer service | 91 | 257 | 0 | 348 |
| * profiteering | 4 | 4 | 0 | 8 |
| * no return no exchange | 225 | 83 | 21 | 329 |
| * expired items | 32 | 23 | 0 | 55 |
| * defective products | 179 | 197 | 0 | 376 |
| * change of preference of customers | 75 | 18 | 0 | 93 |
| * text scams | 16 | 19 | 0 | 35 |
| * sr. citizen/PWD discount | 23 | 12 | 5 | 40 |
| * OTHERS (not covered by RA7394) | 0 | 298 | 0 | 298 |
| Total | 3249 | 4720 | 775 | 8744 |

Source: Bureau of Trade Regulation and Consumer Protection (BTRCP), Department of Trade and Industry

Chapter 3

THE CURRENT LEGAL AND INSTITUTIONAL FRAMEWORK ON UNFAIR TRADE PRACTICES IN THE PHILIPPINES

Introduction

Various economic reforms were introduced in the Philippines through substantial trade and investment liberalization, deregulation and privatization during the administration of President Fidel V. Ramos (1992-1998). This was part of the adherence to the "openness model" described in Chapter 1. Many of the reforms were competition-enhancing measures. This brought about the awareness of the need for a new and comprehensive framework for anti-trust policy and regulation. As a result, there have been a number of draft bills for a proposed anti-trust or competition law filed in Congress, reflecting a growing appreciation by Philippine political leaders of its importance. These bills—the latest version of which will be briefly described in a subsequent section—are seen as forming the nucleus of a truly comprehensive framework for anti-trust policy and regulation.

Despite greater awareness of competition policy, a very important aspect of competition has been given little attention if not totally overlooked by the proposed bills. While competition creates incentives for businesses to earn customer loyalty by offering quality goods at reasonable prices, undeniably, measures to increase competitiveness can also inflict harm particularly to the consumers. Freer trade may place the latter at a disadvantage when businesses, in their aim to entice customers away from their competitors, commit untoward acts and unfair trade practices to the prejudice of the consumers.

It should be noted that all these reform efforts to establish a well-articulated and comprehensive competition policy framework may actually be reversed and go to waste unless the aspect of combating the proliferation of unfair trade practices which could have been brought about by fostering competition are rationalized and incorporated in the analysis. Such efforts must involve not only the removal of the barriers to entry but also the enforcement of existing laws and the introduction of new and stronger measures to protect consumers against unfair trade practices which is a basic component of a fair competition in the Philippine economy.

Rationale and Scope

The emphasis of this chapter is on the legal and regulatory aspects of policies on unfair trade practices, as broadly defined, particularly the framework for effective enforcement of practices to deter and sanction unfair trade practices in all sectors of the Philippine economy. This is important because of its bearing on the actual implementation of policies on unfair trade practices in the country.

The scope of work and objectives of this Study are:

- to review existing regulations on unfair trade practices
- to examine the effectiveness and adequacy of these laws and regulations
- to examine how well these laws conform with international rules
- to survey the pending draft omnibus anti-trust legislation and the proposal to create a superbody to address unfair trade practices

Survey of Existing Laws and Regulations on Unfair Trade Practices in the Philippines

Anti-trust laws and regulations are not new to the Philippines. Apparently, old anti-trust provisions of U.S. laws found their way into the Philippine Constitution, the Revised Penal Code and Civil Code. However, little attention is given to unfair trade practices which adversely impact the consumers and businesses and are less emphasized in existing laws.

The Constitution

Under the Constitution, the State is mandated to regulate or prohibit monopolies, combinations in restraint of trade and other unfair competition practices, for the sake of public interest. These provisions were based on the U.S. Sherman Act.

However, since the Constitution does not define what would constitute unlawful monopolies, or combinations in restraint of trade or unfair competition practices, separate legislation and/or case laws have become the bases for such definitions.

In the domain of consumer rights, it was explicitly provided in Art XVI Sec. 9 of the 1987 Constitution that “the State shall protect the consumers from trade malpractices and from substandard or hazardous products.” In sec. 11(2), it was further stated “the advertising industry is impressed with public interest, and shall be regulated by law for the protection of consumers and the promotion of general welfare.” It was clearly within this ambit that several consumer protection laws were legislated by Congress.

Criminal Law

Act No. 3815 (1930) as amended, otherwise known as the Revised Penal Code, punishes anti-competitive behavior that is criminal in nature. Article 186 defines and penalizes monopolies and combinations in restraint of trade while Article 187 provides penalties.

“Combinations in restraint of trade” is defined as:

- Any agreement, whether in the form of a contract or conspiracy or combination in the form of trust or otherwise, resulting in the restraint of trade or commerce
- Preventing by artificial means free competition in the market
- Any manner of combination, conspiracy, or agreement between or among manufacturers, producers, processors, or importers of any merchandise or object of commerce, or with any other persons, for the purpose of making transactions prejudicial to lawful commerce, or increasing the market price of such merchandise or object of commerce or of any other article in the manufacture, production, or processing, or importation of which such merchandise or object of commerce is used.

Illegal monopolies are defined as:

- Monopolizing any merchandise or object of trade or commerce
- Combining with any other person or persons to monopolize any merchandise or object of trade or commerce, in order to alter the price thereof by spreading false rumors or making use of any other artifice to restrain free competition in the market.

The definition of “illegal monopolies” includes acts (e.g. spreading false rumors) which tend to alter the price of goods to the detriment of other players in the market. This establishes a cause of action for small businesses that are prejudiced by such actions.

Civil Law

Republic Act (Republic Act) No. 386 (1949) as amended, otherwise known as the Civil Code of the Philippines, took effect in August 1950. It allows the collection of damages arising from unfair competition in agricultural, commercial, or industrial enterprises or in labor. The Civil Code also allows the collection of damages arising from abuse in the exercise of rights and in the performance of duties, e.g., abuse of a dominant market position by a monopolist.

Peculiarly enough, the Civil Code does not define unfair competition and merely lists the means by which unfair competition can be committed: force, intimidation, deceit, machination, or any other unjust, oppressive or highhanded method.

The Consumer Act of the Philippines or Republic Act 7394 (1992)

This Act serves as the legal basis for consumer protection in the country. The law embodies the state policy on the protection of consumers and establishes standards of conduct for business and industry in the country.

The Act aims to protect the “interest of the consumer, promote his general welfare and establish standards of conduct for business and industry” by adopting the following measures:

- protection against hazards to health and safety;
- protection against deceptive, unfair and unconscionable acts and practices;
- provision of information and education to facilitate sound choice and the proper exercise of rights by the consumer;
- provision of adequate rights and means of redress; and
- involvement of consumer representatives in the formulation of social and economic policies.

The Consumer Act of the Philippines provides for consumer product quality and safety standards, defining what constitutes adulterated foods, drugs and devices, and cosmetic products. A deceptive sales act or practice is defined as an act on the part of the seller that induces a consumer to enter into a sales or lease transaction of any consumer product or service through concealment, false representation or fraudulent manipulation. The law cites several examples of such acts, namely:

1. A consumer product or service has the sponsorship, approval, performance, characteristics, ingredients, accessories, uses, or benefits it does not have;
2. A consumer product or service is of a particular standard, quality, grade, style, or model when in fact it is not;
3. A consumer product is new, original or unused, when in fact, it is in a deteriorated, altered, reconditioned, reclaimed or second-hand state;
4. A consumer product or service is available to the consumer for a reason that is different from the fact;
5. A consumer product or service has been supplied in accordance with the previous representation when in fact it is not;
6. A consumer product or service can be supplied in a quantity greater than the supplier intends;

7. A service, or repair of a consumer product is needed when in fact it is not;
8. A specific price advantage of a consumer product exists when in fact it does not;
9. The sales act or practice involves or does not involve a warranty, a disclaimer of warranties, particular warranty terms or other rights, remedies or obligations if the indication is false; and
10. The seller or supplier has a sponsorship, approval, or affiliation he does not have.

An unfair or unconscionable sales act or practice, on the other hand, is one done by a seller or supplier in connection with a consumer transaction, whether it occurs before, during or after the consumer transaction. An act or practice shall be deemed unfair or unconscionable whenever the producer, manufacturer, distributor, supplier or seller, by taking advantage of the consumer's physical or mental infirmity, ignorance, illiteracy, lack of time or the general conditions of the environment or surroundings, induces the consumer to enter into a sales or lease transaction grossly inimical to the interests of the consumer or grossly one-sided in favor of the producer, manufacturer, distributor, supplier or seller.

The following acts are considered unfair or unconscionable sales acts or practices:

1. That the producer, manufacturer, distributor, supplier or seller took advantage of the inability of the consumer to reasonably protect his interest because of his inability to understand the language of an agreement, or similar factors;
2. That when the consumer transaction was entered into, the price grossly exceeded the price at which similar products or services were readily obtainable in similar transaction by like consumers;
3. That when the consumer transaction was entered into, the consumer was unable to receive a substantial benefit from the subject of the transaction;
4. That when the consumer was entered into, the seller or supplier was aware that there was no reasonable probability or payment of the obligation in full by the consumer; and
5. That the transaction that the seller or supplier induced the consumer to enter into was excessively one-sided in favor of the seller or supplier.

The law also prohibits the use of chain distribution plans or pyramid sales schemes for consumer products. Home solicitation sales are also regulated by the department through mandatory application for permits.

Labeling and Fair Packaging, on the other hand, is intended to protect the consumers' right to information, which protects them against fraudulent/dishonest or misleading advertising/labeling /promotion and the right to be given the facts and information needed to make an informative choice. It provides for compulsory guidelines and standards on how to properly pack and label the goods so as not to mislead the consumers and so that they may be well-informed on whatever it is they are about to purchase. A price tag should also be provided to inform the consumers of the goods price and enable them to exercise their freedom of choice after considering the product price comparison. Also, it looks after the health and physical welfare of the consumers since as regards foods, drugs and cosmetics, proper caution should be exercised as these are the very things that would materially affect their physical well-being. In the same way, extraordinary diligence by the manufacturers

should be exercised by sufficiently informing the consumers on how to handle and use such hazardous substances, which can be harmful otherwise.

The Act likewise addresses defective products and services wherein the consumers are provided with an adequate remedies for such complaints. The manufacturers should be held liable and accountable so as to ensure the quality and quantity of the product or service. Furthermore, it gives the manufacturers room for improvement and gives them an idea on where and how to continuously develop and advance their product and services made available to consumers.

Anent advertisements, the Act also protects consumers from being misled by advertisements and fraudulent sales promotion practices. It upholds the consumers' right to information for they are entitled to the facts and information that would affect their product preference or choice. Dishonest or misleading advertising and promotion are prohibited. As to promotion, permits are required so that it may be subject to regulation and not be utilized to perpetuate fraud. A complaint may be filed by the concerned department or by any person who may suffer loss, damage or injury due to a false, misleading or deceptive advertisement as recourse to violations committed against the provisions of this chapter.

These acts can be considered as a direct reference to unfair trade practices as defined by Philippine law. However, a clear definition of "unfair trade practices" has yet to be developed in the context of Philippine jurisdiction.

According to the Consumer Issue Plan of Action or CIPA (2000) the top six consumer issues in the Philippines are: (i) the improvement of public utilities; (ii) the creation of healthy competition to lower the cost of goods and services; (iii) the enhancement of public health and safety through identification of product hazards; (iv) the vigilant and strict enforcement of the deceptive, unfair and neglectful sales act; (v) the improvement of an inadequate system of information dissemination and communication; and (vi) the development of a complaints and redress mechanism for addressing consumer concerns. Some of these issues were also pointed out in the survey results that will be discussed later.

The CIPA also provided strategies to deal with these issues. These are:

- utilities - government regulation of all transportation, improvement of utility services and phasing out of impaired utilities;
- pricing - distribution of product information and knowledge among consumers, education of trade liberalization and the reduction of tariffs and duties;
- product hazards - creation of a national consumers bulletin, strengthening of the power of government agencies and the development of a consumers trust fund from fines imposed by the government;
- deceptive sales - dissemination of consumer protections under the law and strict enforcement of the law;
- information and communication - authorization of consumer organizations and involvement of the media in the information campaign and adaptation of communications for different audiences (e.g. children, the elderly and the disabled); and
- complaints/redress mechanism - establishment of a consumer hotline, creation of a legal assistance program with appropriate government agencies, simplification and affordability of the means of redress and encouragement of business enterprises to set up effective in-house means of redress and tri-sectoral networking.

All these strategies are designed to improve the overall quality and efficiency of consumer protection act. A case study is presented in the appendix to demonstrate how the Consumer Act has been implemented.

The Price Act or Republic Act No. 7851 (1992)

Another significant law dealing with unfair trade practices is Republic Act No. 7851 or the Price Act enacted on 27 May 1992. The said Act defines and identifies illegal acts of price manipulation such as, hoarding, profiteering and cartels. Through price controls and mandated ceiling mechanisms, the Price Act also seeks to stabilize the prices of basic commodities and prescribes measures against abusive price increases during emergencies and other critical situations.

Any person who is habitually engaged in the production, manufacture, importation, storage, transport, distribution, sale or other methods of disposition of goods is said to be engaged in the illegal acts of price manipulation of the price of any basic necessity or prime commodity as follows:

- (1) Hoarding, which is the undue accumulation by a person or combination of persons of any basic commodity beyond his or their normal inventory levels or the unreasonable limitation or refusal to dispose of, sell or distribute the stocks of any basic necessity or prime commodity to the general public or the unjustified taking out of any basic necessity or prime commodity from the channels of reproduction, trade, commerce and industry. There shall be prima facie evidence of hoarding when a person has stocks of any basic necessity or prime commodity fifty percent (50%) higher than his usual inventory and unreasonably limits, refuses or fails to sell the same to the general public at the time of discovery of the excess. The determination of a person's usual inventory shall be reckoned from the third month immediately preceding before the discovery of the stocks in case the person has been engaged in the business for at least three (3) months; otherwise, it shall be reckoned from the time he started his business.
- (2) Profiteering, which is the sale or offering for sale of any basic necessity or prime commodity at a price grossly in excess of its true worth. There shall be prima facie evidence of profiteering whenever a basic necessity or prime commodity being sold: (a) has no price tag; (b) is misrepresented as to its weight or measurement; (c) is adulterated or diluted; or (d) whenever person raises the price of any basic necessity or prime commodity he sells or offers for sale to the general public by more than ten percent (10%) of its price in the immediately preceding month: Provided, That, in the case of agricultural crops, fresh fish, fresh marine products, and other seasonal products covered by this Act and as determined by the implementing agency, the prima facie provisions shall not apply; and
- (3) Cartel, which is any combination of or agreement between two (2) or more persons engaged in the production, manufacture, processing, storage, supply, distribution, marketing, sale or disposition of any basic necessity or prime commodity designed to artificially and unreasonably increase or manipulate its price. There shall be prima facie evidence of engaging in a cartel whenever two (2) or more persons or business enterprises competing for the same market and dealing in the same basic necessity or prime commodity, perform uniform or complementary acts among themselves which tend to bring about artificial and unreasonable increase in the price of any basic necessity or prime commodity or when they simultaneously and unreasonably

increase prices on their competing products thereby lessening competition among themselves.

However, it must be noted that while the law allows the imposition of price ceilings on food staples under certain circumstances, the law is so vaguely written that it becomes virtually impossible to determine exactly when price ceilings should be imposed. Similarly, while the law punishes what it calls “illegal acts of price manipulation,” such as “hoarding,” “profiteering,” and “cartels,” the law does not clearly define these “illegal acts,” rendering it almost impossible to enforce.

Description of Proposed New Legislation for Anti-Trust Enforcement and Unfair Trade Regulation in the Philippines

Realizing the deficiencies of the existing legal and regulatory systems for enforcing competition, the Philippine government, through the legislature, has been attempting to pass new anti-trust or competition legislation since the early 1980s. The numerous draft bills have been quite varied, having been adopted from various existing anti-trust and competition laws around the world. A lack of appreciation and political will have kept these proposed laws out of the priority list of previous administrations. Consequently, a number of draft anti-trust or competition laws have accumulated over the years, but none of these have actually been acted upon.

Present laws for promoting competition in the Philippines have been proven ineffective to stave off the ill effects of anti-competitive structures and behavior in the market. One reason is lack of enforcement. These laws have also been hardly used or implemented as may be seen in the lack of cases litigated in court. The same laws have even worked to discourage competition.

A comprehensive framework is yet to be formulated. In response, the Committee on Trade and Industry and the Committee on Economic Affairs of the present 15th Congress submitted a draft bill integrating all previous bills. This bill is described as “An Act Penalizing Anti-Competitive Agreements, Abuse of Dominant Position, and Anti-Competitive Mergers, Establishing the Philippine Fair Competition Commission and Appropriating Funds Thereof, and For Other Purposes.”

Its chief contribution to the field of competition law is the creation of the Philippine Fair Competition Commission, the superbody tasked to implement the national anti-competition policy and attain the objectives and purposes of the Act. This superbody will be composed of a Chairperson holding the rank equivalent to that of a Department Secretary or Presiding Justice of the Court of Appeals, and four Associate Commissioners, each holding the rank equivalent to that of a Department Undersecretary or Associate Justice of the Court of Appeals, whichever is higher.

The Commission is a quasi-judicial body, with original and exclusive jurisdiction to enforce and implement the administrative provisions of the Act and all other competition laws. The Regional Trial Court shall continue to have jurisdiction over cases arising from violations of the provisions of the Act that are not administrative in nature.

Another welcome inclusion in the Act is definition of terms, such as “agreements,” “cartel,” “competition,” “dominant position,” “goods” and “services,” “market” and “relevant market,” “mergers” and “monopoly,” to name a few.

However, it is the statement of the Commission's implementing policy of Non-Adversarial Administrative Remedies that appears to be the Act's boldest initiative. The bill states that "As an implementing and enforcement policy, the Commission shall, under such rules and regulations it may prescribe, encourage voluntary compliance with this Act and other competition laws by making available to the parties concerned the following and other analogous non-adversarial and non-adjudicatory administrative remedies, before the institution of administrative, civil or criminal action."

The Commission is also tasked to gather, compile and investigate a given industry in how it conducts business, set prices, and deal with other businesses. The Commission may also exercise its power to require a business organization to submit its annual or special reports. The Act is however clear that in no way shall the Commission the disclosure or production of trade secrets such as a secret formula, pattern, device or compilation of information, including names of customers, which is used in one's business and which gives one an opportunity to obtain advantage over competitors who do not know or use it.

Additionally, the Commission shall share with the public such portions of the information obtained by it under the Act, except trade secrets and names of customers, as it shall deem expedient in the public interest. The Commission shall also submit annual and special reports to Congress, through the Congressional Oversight Committee On Fair Competition created under this Act, including proposed legislation for the regulation of trade, commerce, or industry, and provide for the publication of its reports and resolutions in such form and manner as may be best adopted for public information and transparency.

Lastly, the Commission shall study trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the Philippines, and report its findings and recommendations to Congress.

Meanwhile, Senator Juan Ponce Enrile introduced Senate Bill No. 1, entitled "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 Therefore, and for other Purposes," or the "Competition Act of 2010."

This Senate Bill essentially defines the acts constituting unfair trade and anti-competition. Its substantive difference from the aforementioned House Bill is that it assigns enforcement of its provisions to the Department of Justice, in coordination with the Department of Trade and Industry, other regulatory and/or appropriate government agency. These agencies, with the Department of Justice in the lead, shall act as an investigating body and if a firm or person is found in violation of the Act, shall institute a civil action by class suit in the name of the Republic of the Philippines, as *parens patriae*, to secure treble damages for any injury caused by reason of any violation of the Act.

In 2011, with the signing of Executive Order No. 45, the Department of Justice (DOJ) was designated as the Competition Authority. The Order provides for the creation of the Office for Competition under the DOJ, which "shall be manned by legal and technical experts, consultants and resource persons to effectively and efficiently pursue its mandate". The Office for Competition or OFC is mandated to carry out the following duties and responsibilities: (1) Investigate and prosecute all violations of competition laws; (2) Enforce competition policies and laws to protect consumers; (3) Supervise competition in markets and ensure competition laws are adhered to; (4) Monitor and implement measures to promote transparency and accountability in markets; (5) Prepare, publish and disseminate

studies and reports in competition; (6) Promote international cooperation and strengthen Philippines trade relations.⁶

Conclusion

The above survey and description of laws and regulations on unfair trade practices, along with the anti-trust regulation and competition promotion in the Philippines, appears to yield mixed results. Competition is undoubtedly an integral component of a functioning market economy. Indeed, for a society to reap the benefits of wealth creation, wealth distribution and the other major objectives of competition, the state must ensure that market forces are constantly at play within an economy.

During the administration of President Ramos, the Philippine government made pronouncements about its adherence to a modern capitalist market system. The Philippine Constitution clearly declares that it is state policy to protect and promote competition. However, Philippine political and economic histories paint a totally different picture. Even before the creation of the modern Philippine state, the rule has actually been to prevent and destroy competition in order to protect the dominant political and economic elite of the country. In key industries and services, monopolies and cartels have been the standard vehicles for wealth creation. Hence, laws and regulations were structured in such a way that competition could never flourish. On paper, there is an existing legal and regulatory system for promoting competition in this country. Unfortunately, it has proven to be completely ineffective in meeting its stated objectives.

Moreover, even if the Philippine government succeed in fostering and introducing fair competition in Philippine economy, such effort would only be futile unless measures will be taken first in preventing and curbing unfair trade practices that are prejudicial to the consumers and ultimately hamper fair competition. The current government agencies and institutions regulating and enforcing unfair trade laws and practices must be strengthened and given expanded powers to enable it to perform their respective mandate and functions. These agencies, however, must also be more responsive to the plight of consumers.

The case study shown in the Appendix 3.2 underlines the balance that must be attained. It took 273 complaints filed between 2001 and 2007 before the Department of Trade and Industry filed a case against AOWA electronics. This delayed action may stem from two possible reasons. One, the DTI does not have enough resources to respond to all the UTP cases in a timely manner. However, it was pointed out in Chapter 2 that the number of UTP cases that are filed are not that many. Hence, another possible reason is that the DTI does not consider UTPs to be a priority.

Lastly, with the passing of the “Philippine Fair Competition Act of 2011,” it is hoped that it will become the enforceable model to finally improve the state of competition law and prevent the proliferation of unfair trade practices in the Philippines.

⁶ DOJ Office for Competition booklet and Executive Order No. 45 (series of 2011).

Appendix 3.1: List of Philippine Laws with Competition Policy and Law Component

1. 1987 Constitution
2. Act to Prohibit Monopolies and Combinations in Restraint of Trade (1925)
3. Revised Penal Code, as amended (1930)
4. Public Service Act, as amended (1936)
5. New Civil Code (1949)
6. Civil Aeronautics Act, as amended (1952)
7. Amending the Law Prescribing the Duties and Qualifications of Legal Staff in the Office of the Secretary of Justice (1964)
8. Insurance Code (1974)
9. Corporation Code (1980)
10. National Food Authority Act (1981)
11. Revised Securities Act (1982)
12. Consumer Act (1992)
13. Price Act (1992)
14. New Central Bank Act (1993)
15. Public Telecommunications Policy Act (1995)
16. Intellectual Property Code (1997)
17. Downstream Oil Industry Deregulation Act (1998)
18. Anti-Dumping At (1999)
19. Retail Trade Liberalization Act (2000)
20. Deposit Insurance Law (2000)
21. Securities Regulation Code (2000)
22. Electric Power Industry Reform Act (2001)
23. Government Procurement Reform Act (2003)
24. Domestic Shipping Development Act (2004)
25. Universally Accessible Cheaper and Quality Medicines Act (2008)
26. Philippine Cooperative Code (2009)
27. Real Estate Service Act (2009)
28. Rent Control Act (2009)
29. Food and Drug Administration Act (2009)
30. Pre-Need Code (2009)

Source: Department of Justice – Office for Competition booklet

Appendix 3.2: Case Study on Misleading Advertisement

This is a case involving AOWA Electronics Philippines, Inc. and the Department of Trade and Industry (DTI). The facts of the case are as follows:

DTI-National Capital Region's records show that numerous administrative complaints have been filed against Aowa Electronic Philippines, Inc. by different consumers, or a total of at least two hundred and seventy-three (273) from the year 2001 until 2007. The facts narrated in the said complaints consistently contain a common thread, as follows:

- A target customer is approached by Aowa's representatives, usually in a mall and informs the former that he/she has won a gift or is to receive some giveaways. In certain cases, when the target customer expresses interest in the said "gift" or giveaway, Aowa's representatives then verbally reveal that the same can only be claimed or received upon purchase of an additional product or products, which are represented to be of high quality. However, consumer complainants allege that such products are substantially priced.
- An initial gift is offered to the target customer, and upon acceptance, the customer is invited to [Aowa's] store/outlet. It is at that point that the customer is informed that he/she has qualified for a raffle draw or contest, entitling them to claim an additional "gift." In the same manner, such additional gift can be received only upon the purchase of additional products, also represented to be of high quality, and sometimes similarly alleged to be substantially charged.
- [In] the course of enticing the target customer to purchase the additional product, they are physically surrounded by Aowa's representatives, otherwise known to many as "ganging up" o[n] customers.
- Although the customer is required to purchase an additional product to claim the offered "gift/s," this is not disclosed during the initial stages of the sales pitch. The revelation is only done when the target customer is being surrounded by Aowa's representatives within its showroom/store/outlet.
- In some cases, when customers state that they are short of cash, [Aowa's] representatives urge said customers to use their credit card or to withdraw from an Automated Teller Machine (ATM). There are even instances where [Aowa's] representatives accompany a customer to his/her residence, where the latter can produce their (sic) means of payment.

In view thereof, DTI-NCR filed a Formal Charge against AOWA for violation of Articles 50 and 52 of the Consumer Act of the Philippines, praying that a Cease and Desist Order be issued, and [an] administrative fine be imposed, and other reliefs or remedies be granted as may be just and equitable under the circumstances.

Further details of the case are as follows:

When asked to Answer, AOWA denied having violated the provisions of the Consumer Act. A notice of preliminary conference was thereafter issued, giving the parties to find (sic) ways and means to expedite the proceedings, but the scheduled preliminary conference had to be terminated, as the proposal to enter into a plea bargain agreement did not ensue. As a consequence thereof, both parties were required to submit their respective position papers.

Meanwhile, a Preventive Measure Order (PMO) was issued by the DTI in order to prohibit AOWA from continuing with the act complained of until such time that a sale promotion permit is secured or obtained from the DTI.

In their position paper, AOWA vehemently denied committing any violation of the provisions of the Consumer Act as it does not employ the marketing scheme described in the formal charge. AOWA argued that the mere filing of the consumer complaint does not prove outright that an offense has been committed by it, meaning that it is not a conclusive proof that it is violating the law it is charged of. It stressed that all of the consumer complaints against it have not prospered, as the cases have been amicably settled. In addition, majority of the consumer complaints which served as basis for the filing of the formal charge are already deemed barred by prescription. As far as it is concerned therefore, AOWA claims that the complaint[s are] based on mere assumption and not on established facts.[6]

On April 10, 2008, after considering the arguments of petitioner Aowa Electronic Philippines, Inc. (Aowa) and respondent DTI-National Capital Region (NCR), the Adjudication Officer found that the complaints against Aowa continued to increase despite its claims of amicable settlement. He also found that Aowa submitted no proof of such amicable settlement. Based on the numerous complaints against Aowa, the Adjudication Officer held that the DTI had sufficiently established prima facie evidence against Aowa for violation of the applicable provisions of Republic Act (R.A.) No. 7394, or the Consumer Act of the Philippines (the Consumer Act), and its Implementing Rules and Regulations (IRR). Furthermore, the Adjudication Officer highlighted that Aowa failed to secure any Sales Promotion Permit from the DTI for Aowa's alleged promotional sales. Thus, he ruled:

"WHEREFORE, foregoing premises considered, and by virtue of the power and mandate vested in this Department, to promote and encourage fair, honest and equitable relations among parties in consumer transactions and protect the consumer against deceptive, unfair and unconscionable sales act or practices, [Aowa] is hereby declared liable under the Consumer Act of the Philippines and the Rules and Regulations Implementing the same.

As a consequence thereof, it is hereby ordered, that –

- a) [Aowa] must permanently cease and desist from operating its business in all its stores/outlets nationwide;
- b) [Aowa's] Certificates of Business Name Registration for all its stores/outlets applying the sales scheme in question be cancelled;
- c) [Aowa's] application for the registration of the same or another business name be withheld by DTI if the nature thereof is the same as that mentioned in this case;
- d) [Aowa] must pay and/or refund to those who filed administrative complaint[s] with any DTI Office, the amount of money paid in consideration for the purchase of products sold in [Aowa's] stores/outlets as a precondition to the claim of the gift/reward promised to be given to said complainants; and
- e) [Aowa] must pay a one-time Administrative Fine of Three Hundred Thousand Pesos (P300,000.00), Philippine currency, either in cash or in the form of Company or Manager's check, at the DTI Cashier's Office, 4th Floor, Trade and Industry Building, 361 Sen. Gil Puyat Ave., Makati City."

The case was submitted to the DTI Appeals Committee and subsequently to the Court of the Appeals for reconsideration. The DTI Appeals Committee upheld the decision of the DTI Adjudication Officer on August 26, 2008 as did the CA on June 23, 2009. The case was then brought to the Supreme Court which denied the petition of Aowa Electronic Philippines. The Supreme Court rendered a stinging rebuke:

“In these trying times when fly-by-night establishments and syndicates proliferate all over the country, lurking and waiting to prey on innocent consumers, and ganging up on them like a pack of wolves with their sugar-coated sales talk and false representations disguised as “overzealous marketing strategies,” it is the mandated duty of the Government, through its various agencies like the DTI, to be wary and ready to protect each and every consumer. To allow or even tolerate the marketing schemes such as these, under the pretext of promotional sales in contravention of the law and its existing rules and regulations, would result in consumers being robbed in broad daylight of their hard earned money. This Court shall not countenance these pernicious acts at the expense of consumers.”

Relevant Portions of Republic Act 7394 or Consumer Act of the Philippines

ARTICLE 50. Prohibition Against Deceptive Sales Acts or Practices - A deceptive act or practice by a seller or supplier in connection with a consumer transaction violates this Act whether it occurs before, during or after the transaction. An act or practice shall be deemed deceptive whenever the producer, manufacturer, supplier or seller, through concealment, false representation or fraudulent manipulation, induces a consumer to enter into a sales or lease transaction of any consumer product or service.

Without limiting the scope of the above paragraph, the act or practice of a seller or supplier is deceptive when it represents that:

- a) a consumer product or service has the sponsorship, approval, performance, characteristics, ingredients, accessories, uses, or benefits it does not have;
- b) a consumer product or service is of a particular standard, quality, grade, style, or model when in fact it is not;
- c) a consumer product is new, original or unused, when in fact, it is in a deteriorated, altered, reconditioned, reclaimed or second-hand state;
- d) a consumer product or service is available to the consumer for a reason that is different from the fact;
- e) a consumer product or service has been supplied in accordance with the previous representation when in fact it is not;
- f) a consumer product or service can be supplied in a quantity greater than the supplier intends;
- g) a service, or repair of a consumer product is needed when in fact it is not;
- h) a specific price advantage of a consumer product exists when in fact it is not;

i) the sales act or practice involves or does not involve a warranty, a disclaimer of warranties, particular warranty terms or other rights, remedies or obligations if the indication is false; and

j) the seller or supplier has a sponsorship, approval, or affiliation he does not have.

ARTICLE 51. Deceptive Sales Acts or Practices By Regulation - The Department shall, after due notice and hearing, promulgate regulations declaring as deceptive any sales act, practice or technique which is a misrepresentation of facts other than those enumerated in Article 50.

ARTICLE 52. Unfair or Unconscionable Sales Act or Practice - An unfair or unconscionable sales act or practice by a seller or supplier in connection with a consumer transaction violates this Chapter whether it occurs before, during or after the consumer transaction. An act or practice shall be deemed unfair or unconscionable whenever the producer, manufacturer, distributor, supplier or seller, by taking advantage of the consumer's physical or mental infirmity, ignorance, illiteracy, lack of time or the general conditions of the environment or surroundings, induces the consumer to enter into a sales or lease transaction Grossly inimical to the interests of the consumer or gross one-sided in favor of the producer, manufacturer, distributor, supplier or seller.

In determining whether an act or practice is unfair and unconscionable, the following circumstances shall be considered:

a) that the producer, manufacturer, distributor, supplier or seller took advantage of the inability of the consumer to reasonable protect his interest because of his inability to understand the language of an agreement, or similar factors;

b) that when the consumer transaction was entered into, the price grossly exceeded the price at which similar products or services were readily obtainable in similar transaction by like consumers;

c) that when the consumer transaction was entered into, the consumer was unable to receive a substantial benefit from the subject of the transaction;

d) that when the consumer transaction was entered into, the seller or supplier was aware that there was no reasonable probability or payment of the obligation in full by the consumer.

e) that the transaction that the seller or supplier induced the consumer to enter into was excessively one-sided in favor of the seller or supplier.

Chapter 4

SURVEY RESULTS

There were 3 sets of questionnaires prepared, one for each targeted group of respondents: business, business and consumer associations, and government. The purpose of the questionnaires is to determine the respondents' perception towards unfair trade practices and to analyze their understanding and awareness with issues pertaining to institutions and rules or laws. The survey was conducted with the assistance of the National Statistics Office (NSO) of the Philippines.

There were a total of 40 respondents successfully interviewed. Table 4.1 shows the distribution of respondents by sector. Twenty-five or 62% of the respondents came from the business sector, seven or 18% came from business associations, four or 10% came from consumer sector and the last four or 10% came from the government sector. Full survey results can be found in Appendix 4-1.

Perception on Unfair Trade Practices (UTPs)

88% of the total respondents consider **misleading advertisement** as the most prevalent UTP (Table 4.2). Apart from misleading advertisement, over 70% of all respondents perceive *unfair pricing, unreasonably high price, discriminatory dealings, and abuse of intellectual property rights (IPRs)* to be a UTP. Systematic obstruction of competition figured prominently among the respondent firms and the business associations.

The top UTPs of each sector (Table 4.2) do not differ much from each other. The top UTP of the respondents from the business sector is *misleading advertisement* (85%) which is same for both business and consumer associations respondents (100%). Meanwhile, all four of the consumer sector respondents consider many other practices, e.g. unreasonably high price and abuse of IPR, as the top UTPs. For 3 out of the 4 government sector respondents, the top UTPs are unfair pricing, tied selling, misleading advertisement and abuse of IPR .

Generally, resale price maintenance (33%) and fidelity rebates (30%) are not considered UTPs among all the respondents.

When asked which of the listed UTPs they have already encountered, 53% of the total respondents answered with **unfair pricing** (Table 4.3). This was the response with greatest frequency for both the business firms and government offices. This is not unexpected because changes in pricing can easily be felt as compared to other UTPs. Particular examples given on this type of UTP were unfair pricing when purchasing flour, oil, sugar, cement, steel and in using internet services. On the part of consumer and business associations only 5 out of the 11 respondents experienced unfair pricing citing mainly telecom, gas and electric companies that charge unfair prices. The top UTPs encountered by these groups are misleading advertisement and unreasonably high prices (8 out of 11). Examples of misleading advertisement given by consumers are when attractive deals on certain products are advertised but with either limited stocks only or no stocks at all, and misrepresentation of products advertised.

Resale price maintenance and margin squeeze with 13% each are not commonly experienced by the survey respondents.

Fourteen out of the 25 or 56 percent of the business sector respondents see UTPs in their normal business as moderately widespread while another nine consider them to be highly widespread (Figure 4.1). In the case of business associations, 2 of the 7 actually indicated “extremely widespread” as their response while 58% observe that UTPs are highly widespread. These responses give rise to the following observations: i) there is “strength in unity” meaning that business groups tend to give bolder answers than individual firms; and ii) the private sector considers UTPs as a problem.

Meanwhile, one consumer group considers UTPs as insignificantly widespread while two of the four believe that UTPs are moderately widespread. One out of the four respondents from the government sector either does not know or cannot say how widespread UTPs are in the Philippines and one had no answer. This indicates that the government does not consider UTPs as a priority.

32 out of 40 or 80 percent of all the respondents believe that UTPs negatively affect businesses, consumer’s interest and business environment in the Philippines (Figure 4.2 and Appendix 4.1). 20 out of the 25 business firms and 5 out of the 7 business associations also responded “yes.” Only one of the 32 respondents in these two groups answered an outright “no.” This strengthens the observation that the private sector considers UTPs to be a problem. In addition, when asked to what extent they believe the country is affected by such practices, 4 out of the 7 business associations (58%) and 8 out of the 25 firms indicated “significantly” (Figure 4.3). The modal response of the business sector, i.e. 13 firms, was “moderately.” Two of the four government sector (50%) respondents said that the consumer’s interest and the overall business environment in our country are ‘significantly’ affected.

Table 4.4 shows the list of sectors which according to the respondents are affected by UTPs. Energy and food sectors are all common among the three groups. This is not surprising because outputs of these sectors are heavily consumed by all respondents. Only the business and consumer associations respondents believe that agriculture and infrastructure are affected by UTPs. Meanwhile, telecommunications is common among firms and business and consumer associations.

Misleading advertisement and unfair pricing garnered the most respondents with 20 each when asked what UTPs are happening frequently or daily in their relevant sector (Table 4.5). This is somewhat consistent with the results in Table 4.2. Coercive dealing is not seen happening as frequently with only 3 respondents. Meanwhile, two out of the four from the government sector respondents also consider occurrence of abuse of IPRs as happening frequently or daily in their relevant sector.

48 percent of the total respondents are aware of misleading advertisement and unfair pricing among the UTPs that occur in some other sectors, followed by tied selling with 45% (Table 4.6). Three out of the 4 respondents from the consumer group view unreasonably high prices and tied selling as UTPs in other sectors. In contrast, only 10% of the total respondents knew fidelity rebates occurring in other sectors.

Unfair pricing and misleading advertisement are seen occurring mostly at the national level by 23 and 22 of the total respondents, respectively, while 17 of them answered unreasonably high price and systematic obstruction of competition (Table 4.7). Again, this is consistent with Table 4.2. For the consumer and government sector respondents, they believe unfair pricing and tied selling also occur at national level among other UTPs, at 100% and 75%, respectively.

Figure 4.4 shows that slightly over 50% of the respondents have the notion that UTPs started possibly from outside the country. However, only 12 out of 25 from business sector respondents stated that such practices do originate outside the country. Moreover, 13 out of the 40 respondents answered that they do not know. Hence there is not that much concern about unfair practices from external trade transactions.

A great majority of respondents — 72.5% — believes that UTPs are still prevailing or have not yet been resolved (Figure 4.5). What should be a source of concern is that two of the four government agencies who participated in the survey answered that they believe the UTPs have been resolved.

Laws related to UTPs and Their Implementation

Table 4.8 enumerates the possible causes of UTPs. From the list, the existence of monopoly is considered the primary source of UTPs with 17 of the 40 respondents alluding to this item. 15 of the respondents believe all the reasons listed cause UTPs. Interestingly, business and consumer groups also cite the absence of relevant laws and institutions as a primary cause of UTPs.

Only 4 out of the 25 respondents from the business firms cited the absence of relevant laws and institutions as a cause. One reason is that 21 of the 25 are not aware of rules, regulations or laws related to UTPs or simply answered “do not know” (Table 4.9). As would be expected, business and consumer associations are generally aware of the laws since 100% and 75% of them, respectively, said “yes”.

The respondents provided the laws or rules that they are aware of and these are listed in Table 4.10. It is clear from the responses that respondents from the business firms are not aware of the important laws that are related to UTPs. Meanwhile, business and consumer associations cited many of the relevant laws.

Only 15 out of the 40 total respondents believe that all or some of these rules, regulations and laws are seriously implemented (Table 4.11). 6 of the respondents from the business group responded in this manner which is consistent with Table 4.9. However, the modal response for all respondents was “no answer” (45%). Even in the government sector, only two of the four respondents believe that the rules and laws are seriously implemented, casting doubt on the effectiveness of these laws.

11 out of the 25 business sector respondents think that the existing rules, regulations or laws are doing sufficient job to check all UTPs (Figure 4.6) which is somewhat inconsistent with Table 4.9 and Table 4.11. Some respondents commented that monitoring of these rules should be established and stricter implementation should be followed. On the business and consumer associations side, 100% of the respondents recommend having laws or regulations enacted specifically to check UTPs and to protect them more effectively (Figure 4.7). This is consistent with their response to the preceding query, where over 75% responded in the negative (Figure 4.6).

About 75% from both business and government sectors agree to have an arrangement at the regional level to deal with UTPs. The respondents believe that having arrangements at regional level can be a useful tool to address regional challenges focusing on UTPs (Table 4.12).

Finally, when asked if they will be willing to sign investigation reports as a third party which deals with UTPs in court, there seems to be a lot of hedging on the part of business firms

since only one respondent gave an outright “yes” (Table 4.13). Nine of the 25 indicated “no” although 11 answered that it depended on the circumstances. The reluctance of the private sector to cooperate in investigations against UTPs is also clear in Table 4.14. While three of the seven business associations indicated outright willingness, three also stated that it depended on the circumstances. Twelve of the 25 business firms even declined to participate.

Concluding Comments

The main finding from the survey results is that many respondents indicate that UTPs are moderately to highly widespread. Moreover, an overwhelming majority believes that UTPs have adverse impacts on business transactions and consumer welfare. Misleading advertisement and unfair pricing are the UTPs that are most prevalent in the consciousness of economic agents. However, it seems unfair pricing is the one that is practiced more.

It is rather unfortunate that only 4 out of the 25 respondents from the business sector said that they are aware of “any rules, regulations or laws currently in effect in our country to check these unfair trade practices.” Moreover, only one respondent actually reported a case to the Department of Trade and Industry (please refer to the Appendix 4.1). The respondents from the business group also expressed reluctance to participate in legal action. This implies that their support is lacking when advocating for implementation of existing laws or demanding action against UTPs.

This type of behavior has prompted some to question whether the private sector in the Philippines is its own worst enemy (Rosellon and Yap, 2012). This related to the absence of a culture of competition as described in Chapter 1. The survey results can be interpreted to mean that while businesses are aware of the adverse impacts of UTPs, they do not seek to “rock the boat”. It is likely that the adverse impacts of UTPs are passed on as higher prices to consumers. This is one reason why business and consumer associations seem to be more active in countering UTPs.

The reluctance to take legal channels may also imply that there are gaps in the legal infrastructure to address UTPs. However, this has not prevented business and consumer associations from taking action. Moreover, firms who are victims of UTPs are in a good position to identify gaps in the legal infrastructure.

Meanwhile, government should be more vigilant in enforcing the rules and laws and make sure that they are properly implemented. In order to ensure effective and efficient policies, government should initiate, conduct, and determine the existing UTPs to protect local producers on these practices and to assist vulnerable sectors to UTPs. In response to the survey, government should raise the importance of UTPs in their list of priorities.

The next chapter looks at policy recommendations to reduce UTPs or minimize their adverse impact.

Reference

Rosellon, M. and J. Yap. (2012). The Role of Private Sector in Regional Economic Integration: A View from the Philippines. In: Basu Das, S *Achieving the ASEAN Economic Community 2015 Challenges for Member Countries and Businesses*. Singapore: ISEAS Publishing. p 249-274.

Table 4.1: Distribution of respondents by sector

| Sector | No. of Respondents | Percent |
|-----------------------|--------------------|---------|
| Business | 25 | 62.5 |
| Business associations | 7 | 17.5 |
| Consumer | 4 | 10.0 |
| Government | 4 | 10.0 |
| TOTAL | 40 | 100 |

Table 4.2: Which practices do you think are unfair trade practices?

| Unfair trade practices | Business | | Business associations | | Consumer | | Government | | Total | |
|---|-----------|---------|-----------------------|---------|-----------|---------|------------|---------|-----------|---------|
| | Frequency | Percent | Frequency | Percent | Frequency | Percent | Frequency | Percent | Frequency | Percent |
| Unfair pricing | 19 | 76.0 | 6 | 85.7 | 4 | 100 | 3 | 75.0 | 32 | 80.0 |
| Predatory pricing | 12 | 48.0 | 6 | 85.7 | 4 | 100 | 2 | 50.0 | 24 | 60.0 |
| Tied selling | 15 | 60.0 | 4 | 57.1 | 4 | 100 | 3 | 75.0 | 26 | 65.0 |
| Coercive dealing | 14 | 56.0 | 4 | 57.1 | 4 | 100 | 2 | 50.0 | 24 | 60.0 |
| Misleading advertisement | 21 | 84.0 | 7 | 100 | 4 | 100 | 3 | 75.0 | 35 | 87.5 |
| Refusal to deal | 13 | 52.0 | 3 | 42.9 | 4 | 100 | 1 | 25.0 | 21 | 52.5 |
| Resale price maintenance | 7 | 28.0 | 3 | 42.9 | 3 | 75.0 | 0 | 0 | 13 | 32.5 |
| Discriminatory dealing | 15 | 60.0 | 6 | 85.7 | 4 | 100 | 3 | 75.0 | 28 | 70.0 |
| Unreasonably high price | 16 | 64.0 | 7 | 100 | 4 | 100 | 2 | 50.0 | 29 | 72.5 |
| Systematic obstruction of competition | 16 | 64.0 | 5 | 71.4 | 4 | 100 | 2 | 50.0 | 27 | 67.5 |
| Fidelity rebates | 6 | 24.0 | 2 | 28.6 | 3 | 75.0 | 1 | 25.0 | 12 | 30.0 |
| Margin squeeze | 9 | 36.0 | 5 | 71.4 | 3 | 75.0 | 2 | 50.0 | 19 | 47.5 |
| Abuse of IPR, including harming other businesses reputation | 15 | 60.0 | 6 | 85.7 | 4 | 100 | 3 | 75.0 | 28 | 70.0 |

Table 4.3: Which of these practices have you ever come across in the course of doing business/in the markets where you shop and/or as regards the products/services you buy/in your country?

| Unfair trade practices | Business | | Business associations | | Consumer | | Government | | Total | |
|---|-----------|---------|-----------------------|---------|-----------|---------|------------|---------|-----------|---------|
| | Frequency | Percent | Frequency | Percent | Frequency | Percent | Frequency | Percent | Frequency | Percent |
| Unfair pricing | 12 | 48.0 | 3 | 42.9 | 2 | 50.0 | 4 | 100 | 21 | 52.6 |
| Predatory pricing | 2 | 8.0 | 4 | 57.1 | 2 | 50.0 | 2 | 50.0 | 10 | 25.0 |
| Tied selling | 5 | 20.0 | 5 | 71.4 | 1 | 25.0 | 3 | 75.0 | 14 | 35.0 |
| Coercive dealing | 5 | 20.0 | 1 | 14.3 | 1 | 25.0 | 2 | 50.0 | 9 | 22.5 |
| Misleading advertisement | 8 | 32.0 | 5 | 71.4 | 3 | 75.0 | 3 | 75.0 | 19 | 47.5 |
| Refusal to deal | 2 | 8.0 | 2 | 28.6 | 3 | 75.0 | 1 | 25.0 | 8 | 20.0 |
| Resale price maintenance | 2 | 8.0 | 2 | 28.6 | 1 | 25.0 | 0 | 0 | 5 | 12.5 |
| Discriminatory dealing | 5 | 20.0 | 2 | 28.6 | 1 | 25.0 | 2 | 50.0 | 10 | 25.0 |
| Unreasonably high price | 5 | 20.0 | 5 | 71.4 | 3 | 75.0 | 3 | 75.0 | 16 | 40.0 |
| Systematic obstruction of competition | 6 | 24.0 | 2 | 28.6 | 1 | 25.0 | 0 | 0 | 9 | 22.5 |
| Fidelity rebates | 3 | 12.0 | 2 | 28.6 | 2 | 50.0 | 0 | 0 | 7 | 17.5 |
| Margin squeeze | 3 | 12.0 | 2 | 28.6 | 0 | 0 | 0 | 0 | 5 | 12.5 |
| Abuse of IPR, including harming other businesses reputation | 6 | 24.0 | 2 | 28.6 | 1 | 25.0 | 3 | 75.0 | 12 | 30.0 |

Figure 4.1: How widespread are these UTPs in the normal business/in the markets where you shop and/or as regards the products/services you buy/use in our country? (in percent)

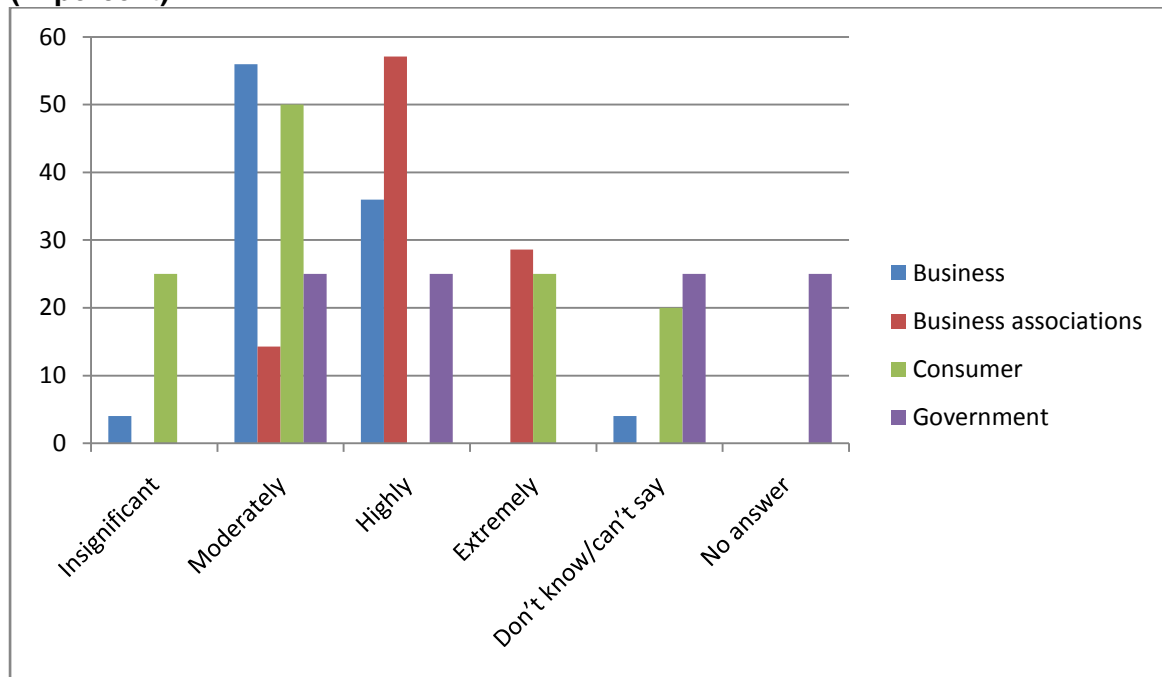


Figure 4.2: Do you think these UTPs are negatively affecting the business, especially small and medium-sized enterprises (SMEs)/ the consumer interests/ business environment in our country in any way? (in percent)

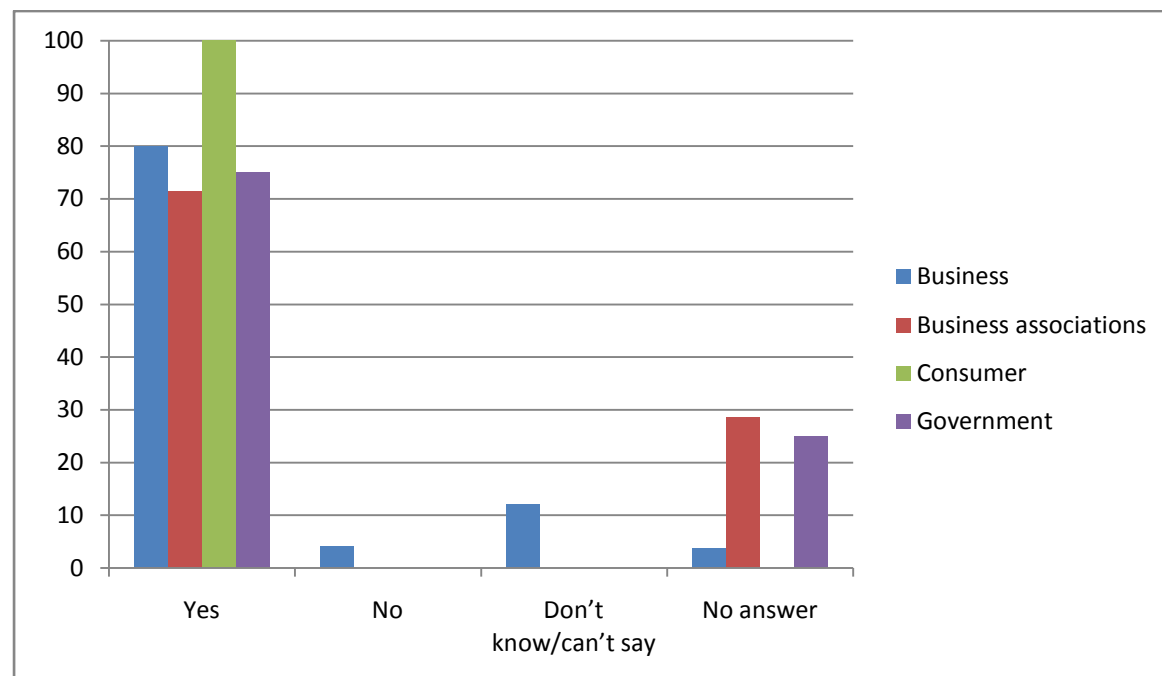


Figure 4.3: To what extent do you think that the business/ consumer/overall business environment in our country is affected by the existence of such practices? (in percent)

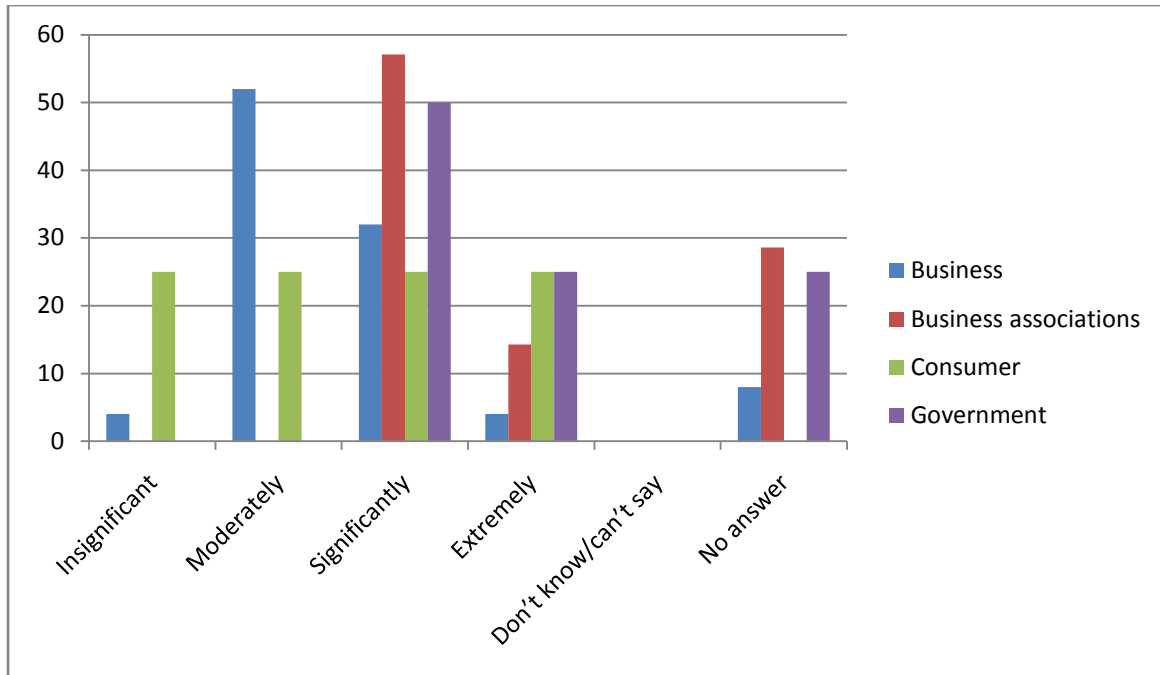


Table 4.4: What are the most affected sectors by such practices in your country?

| Business | Business and Consumer associations | Government |
|--|---|--|
| Retailers Manufacturing Energy Consumer Telecommunications Services Food | Agriculture Consumers Telecommunications Infrastructure Energy Construction Manufacturing Services Food | Consumer Energy Food Services Government |

Table 4.5: What are the UTPs that occur – frequently or daily – at your relevant sector?

| Unfair trade practices | Business | | Business associations | | Consumer | | Government | | Total | |
|---|-----------|---------|-----------------------|---------|-----------|---------|------------|---------|-----------|---------|
| | Frequency | Percent | Frequency | Percent | Frequency | Percent | Frequency | Percent | Frequency | Percent |
| Unfair pricing | 13 | 52.0 | 3 | 42.86 | 3 | 75.0 | 1 | 25.0 | 20 | 50.0 |
| Predatory pricing | 3 | 12.0 | 3 | 42.86 | 1 | 25.0 | 0 | 0 | 7 | 17.5 |
| Tied selling | 5 | 20.0 | 2 | 28.57 | 0 | 0 | 1 | 25.0 | 8 | 20.0 |
| Coercive dealing | 2 | 8.0 | 1 | 14.29 | 0 | 0 | 0 | 0 | 3 | 7.5 |
| Misleading advertisement | 11 | 44.0 | 4 | 57.14 | 3 | 75.0 | 2 | 50.0 | 20 | 50.0 |
| Refusal to deal | 3 | 12.0 | 1 | 14.29 | 0 | 0 | 0 | 0 | 4 | 10.0 |
| Resale price maintenance | 3 | 12.0 | 1 | 14.29 | 0 | 0 | 0 | 0 | 4 | 10.0 |
| Discriminatory dealing | 5 | 20.0 | 1 | 14.29 | 1 | 25.0 | 0 | 0 | 7 | 17.5 |
| Unreasonably high price | 7 | 28.0 | 4 | 57.14 | 3 | 75.0 | 0 | 0 | 14 | 35.0 |
| Systematic obstruction of competition | 8 | 32.0 | 2 | 28.57 | 0 | 0 | 0 | 0 | 10 | 25.0 |
| Fidelity rebates | 2 | 8.0 | 1 | 14.29 | 1 | 25.0 | 0 | 0 | 4 | 10.0 |
| Margin squeeze | 4 | 16.0 | 1 | 14.29 | 0 | 0 | 0 | 0 | 5 | 12.5 |
| Abuse of IPR, including harming other businesses reputation | 5 | 20.0 | 1 | 14.29 | 3 | 75.0 | 2 | 50.0 | 11 | 27.5 |

Table 4.6: What are the unfair trade practices that occur in some other sectors that you are aware of?

| Unfair trade practices | Business | | Business associations | | Consumer | | Government | | Total | |
|---|-----------|---------|-----------------------|---------|-----------|---------|------------|---------|-----------|---------|
| | Frequency | Percent | Frequency | Percent | Frequency | Percent | Frequency | Percent | Frequency | Percent |
| Unfair pricing | 12 | 48.0 | 3 | 42.9 | 2 | 50.0 | 2 | 50.0 | 19 | 47.5 |
| Predatory pricing | 7 | 28.0 | 3 | 42.9 | 2 | 50.0 | 2 | 50.0 | 14 | 35.0 |
| Tied selling | 10 | 40.0 | 3 | 42.9 | 3 | 75.0 | 2 | 50.0 | 18 | 45.0 |
| Coercive dealing | 6 | 24.0 | 2 | 28.6 | 1 | 25.0 | 1 | 25.0 | 10 | 25.0 |
| Misleading advertisement | 11 | 44.0 | 4 | 57.1 | 2 | 50.0 | 2 | 50.0 | 19 | 47.5 |
| Refusal to deal | 6 | 24.0 | 2 | 28.6 | 1 | 25.0 | 1 | 25.0 | 10 | 25.0 |
| Resale price maintenance | 5 | 20.0 | 2 | 28.6 | 1 | 25.0 | 0 | 0 | 8 | 20.0 |
| Discriminatory dealing | 7 | 28.0 | 3 | 42.9 | 0 | 0 | 1 | 25.0 | 11 | 27.5 |
| Unreasonably high price | 6 | 24.0 | 4 | 57.1 | 3 | 75.0 | 1 | 25.0 | 14 | 35.0 |
| Systematic obstruction of competition | 8 | 32.0 | 3 | 42.9 | 0 | 0 | 1 | 25.0 | 12 | 30.0 |
| Fidelity rebates | 2 | 8.0 | 2 | 28.6 | 0 | 0 | 0 | 0 | 4 | 10.0 |
| Margin squeeze | 2 | 8.0 | 2 | 28.6 | 2 | 50.0 | 0 | 0 | 6 | 15.0 |
| Abuse of IPR, including harming other businesses reputation | 7 | 28.0 | 2 | 28.6 | 2 | 50.0 | 2 | 50.0 | 13 | 32.5 |

Table 4.7: What are the unfair trade practices that occur at the national level?

| Unfair trade practices | Business | | Business associations | | Consumer | | Government | | Total | |
|---|-----------|---------|-----------------------|---------|-----------|---------|------------|---------|-----------|---------|
| | Frequency | Percent | Frequency | Percent | Frequency | Percent | Frequency | Percent | Frequency | Percent |
| Unfair pricing | 13 | 52.0 | 4 | 57.1 | 4 | 100 | 2 | 50.0 | 23 | 57.5 |
| Predatory pricing | 6 | 24.0 | 3 | 42.9 | 2 | 50.0 | 2 | 50.0 | 13 | 32.5 |
| Tied selling | 9 | 36.0 | 3 | 42.9 | 1 | 25.0 | 3 | 75.0 | 16 | 40.0 |
| Coercive dealing | 4 | 16.0 | 3 | 42.9 | 2 | 50.0 | 1 | 25.0 | 10 | 25.0 |
| Misleading advertisement | 13 | 52.0 | 3 | 42.9 | 3 | 75.0 | 3 | 75.0 | 22 | 55.0 |
| Refusal to deal | 3 | 12.0 | 1 | 14.3 | 1 | 25.0 | 1 | 25.0 | 6 | 15.0 |
| Resale price maintenance | 5 | 20.0 | 1 | 14.3 | 1 | 25.0 | 1 | 25.0 | 8 | 20.0 |
| Discriminatory dealing | 8 | 32.0 | 3 | 42.9 | 1 | 25.0 | 2 | 50.0 | 14 | 35.0 |
| Unreasonably high price | 9 | 36.0 | 4 | 57.1 | 3 | 75.0 | 1 | 25.0 | 17 | 42.5 |
| Systematic obstruction of competition | 10 | 40.0 | 4 | 57.1 | 2 | 50.0 | 1 | 25.0 | 17 | 42.5 |
| Fidelity rebates | 2 | 8.0 | 2 | 28.6 | 1 | 25.0 | 0 | 0 | 5 | 12.5 |
| Margin squeeze | 1 | 4.0 | 1 | 14.3 | 1 | 25.0 | 0 | 0 | 3 | 7.5 |
| Abuse of IPR, including harming other businesses reputation | 9 | 36.0 | 2 | 28.6 | 2 | 50.0 | 2 | 50.0 | 15 | 37.5 |

Figure 4.4: Are you aware that such practices maybe originated from outside our country? (in percent)

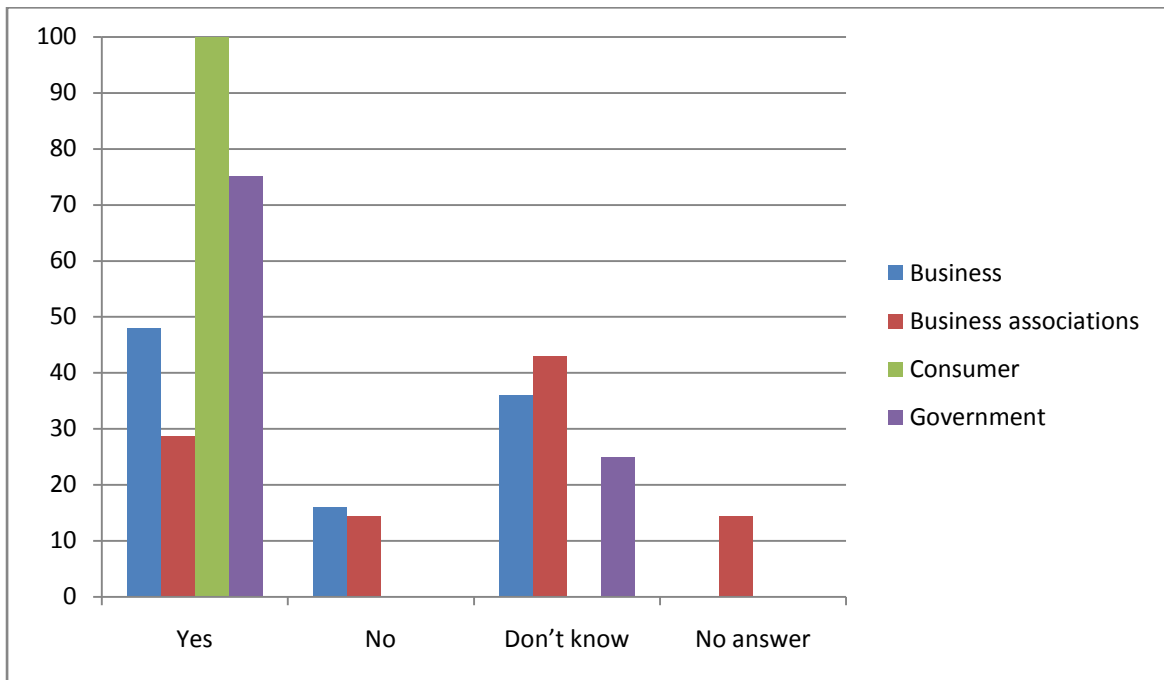


Figure 4.5: Do such practices still prevail or they have been resolved? (in percent)

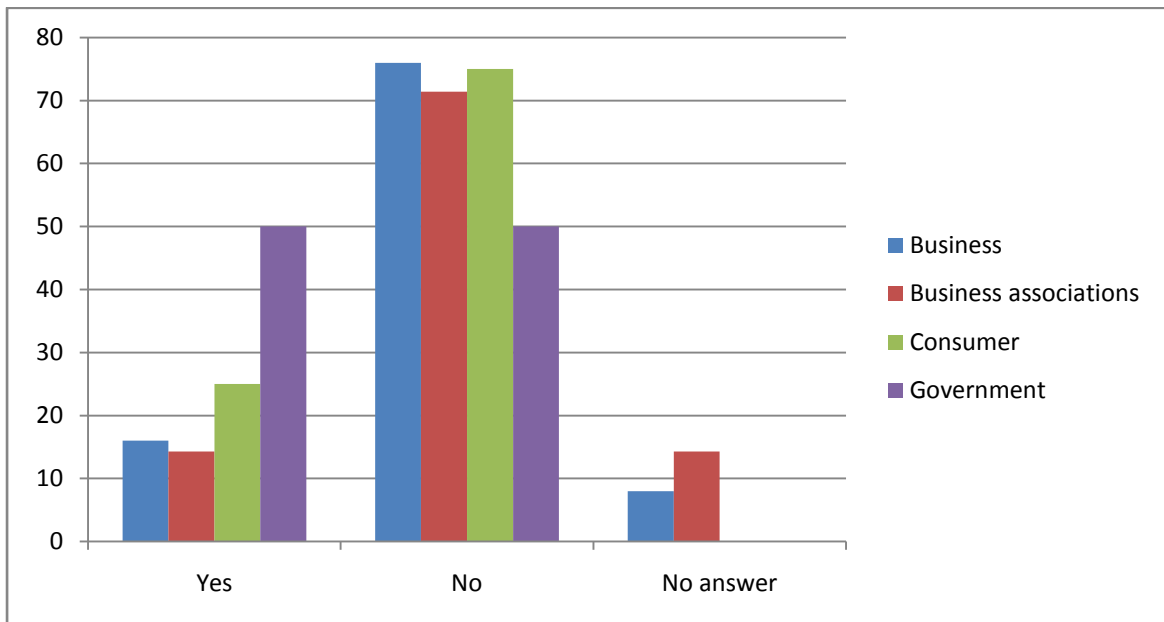


Table 4.8: What do you think is the cause of such unfair trade practices?

| Causes of Unfair trade practices | Business | | Business associations | | Consumer | | Government | | Total | |
|---|-----------|---------|-----------------------|---------|-----------|---------|------------|---------|-----------|---------|
| | Frequency | Percent | Frequency | Percent | Frequency | Percent | Frequency | Percent | Frequency | Percent |
| Discrepancy in the bargaining power of relevant parties | 8 | 32.0 | 3 | 42.9 | 2 | 50.0 | 0 | 0 | 13 | 32.5 |
| Information asymmetry | 3 | 12.0 | 2 | 28.6 | 2 | 50.0 | 0 | 0 | 7 | 17.5 |
| The existence of monopoly | 10 | 40.0 | 5 | 71.4 | 2 | 50.0 | 0 | 0 | 17 | 42.5 |
| Absence of the relevant laws and institutions | 4 | 16.0 | 4 | 57.1 | 3 | 75.0 | 1 | 25.00 | 12 | 30.0 |
| All of the above | 11 | 44.0 | 1 | 14.3 | 2 | 50.0 | 1 | 25.00 | 15 | 37.5 |
| Others, specify | 2* | 8.0 | 1** | 14.3 | 0 | 0 | 2*** | 50.00 | 5 | 12.5 |
| Don't know | 1 | 4.0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 2.5 |

*Implementation of so many laws, absence of will power/resources to implement laws

**Connivance with government& other parties

***Weak enforcement of the existing consumer protection laws due to lack of resources i.e. manpower, budget, etc;

Table 4.9: Are you aware of any rules, regulations or laws currently in effect in our country to check these unfair trade practices?

| Response | Business | | Business associations | | Consumer | | Government | | Total | |
|----------------------|-----------|---------|-----------------------|---------|-----------|---------|------------|---------|-----------|---------|
| | Frequency | Percent | Frequency | Percent | Frequency | Percent | Frequency | Percent | Frequency | Percent |
| Yes | 4 | 16.0 | 7 | 100 | 3 | 75.0 | 3 | 75.0 | 17 | 42.5 |
| No | 12 | 48.0 | 0 | 0 | 1 | 25.0 | 1 | 25.0 | 14 | 35.0 |
| Can't say/Don't know | 9 | 36.0 | 0 | 0 | 0 | 0 | 0 | 0 | 9 | 22.5 |
| Total | 25 | 100 | 7 | 100 | 4 | 100 | 4 | 100 | 40 | 100 |

Table 4.10: Please name any such rules, regulations, or laws you know.

| Business | Business and Consumer associations | Government |
|---|---|--|
| <ul style="list-style-type: none"> • no return no exchange • price ceiling • everyone should follow same standard or set price • price tag law • intellectual property law | <ul style="list-style-type: none"> • COA rules • anti-cartel/anti-monopoly • Consumer Welfare Act • oil deregulation law • cheaper medicine law • IPO code • DOJ/DTI rules • revised penal code | <ul style="list-style-type: none"> • Republic Act 7394 - Consumer Act of the Philippines • IPO code • price tag law • civil code of the Philippines • general banking law • revised penal code |

Table 4.11: Are these rules, regulations, or laws seriously implemented?

| Response | Business | | Business associations | | Consumer | | Government | | Total | |
|----------------------|-----------|---------|-----------------------|---------|-----------|---------|------------|---------|-----------|---------|
| | Frequency | Percent | Frequency | Percent | Frequency | Percent | Frequency | Percent | Frequency | Percent |
| Yes | 2 | 8.0 | 0 | 0 | 1 | 25.0 | 1 | 25.0 | 4 | 10.0 |
| Yes, some of them | 4 | 16.0 | 4 | 57.1 | 1 | 25.0 | 2 | 50.0 | 11 | 27.5 |
| No | 1 | 4.0 | 2 | 28.6 | 1 | 25.0 | 0 | 0 | 4 | 10.0 |
| Can't say/Don't know | 2 | 8.0 | 0 | 0 | 1 | 25.0 | 0 | 0 | 3 | 7.5 |
| No answer | 16 | 64.0 | 1 | 14.3 | 0 | 0 | 1 | 25.0 | 18 | 45.0 |
| Total | 25 | 100 | 7 | 100 | 4 | 100 | 4 | 100 | 40 | 100 |

Figure 4.6: Do you think that the existing rules, regulations or laws do a sufficient job to check all unfair trade practices and protect the legitimate rights and interests of the business in general and those of SME's in particular/protect consumer welfare and competitive process in our country? (in percent)

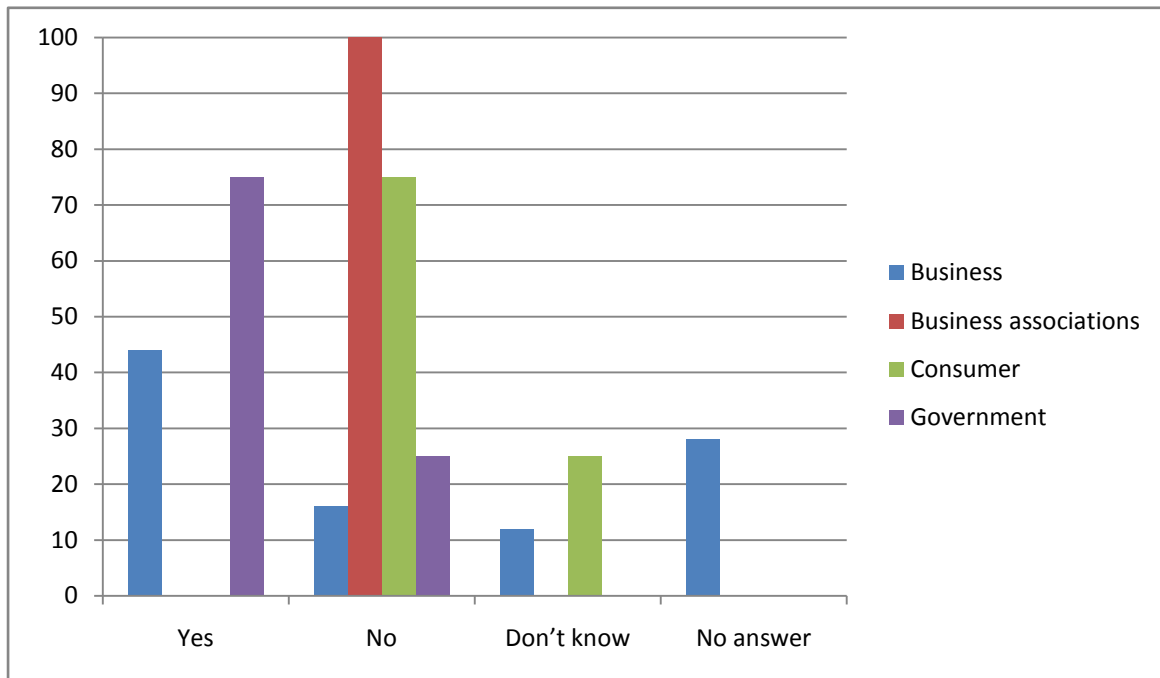


Figure 4.7: Do you recommend that a law or regulation should be enacted specifically to check these practices and protect the consumer more effectively? (in percent)

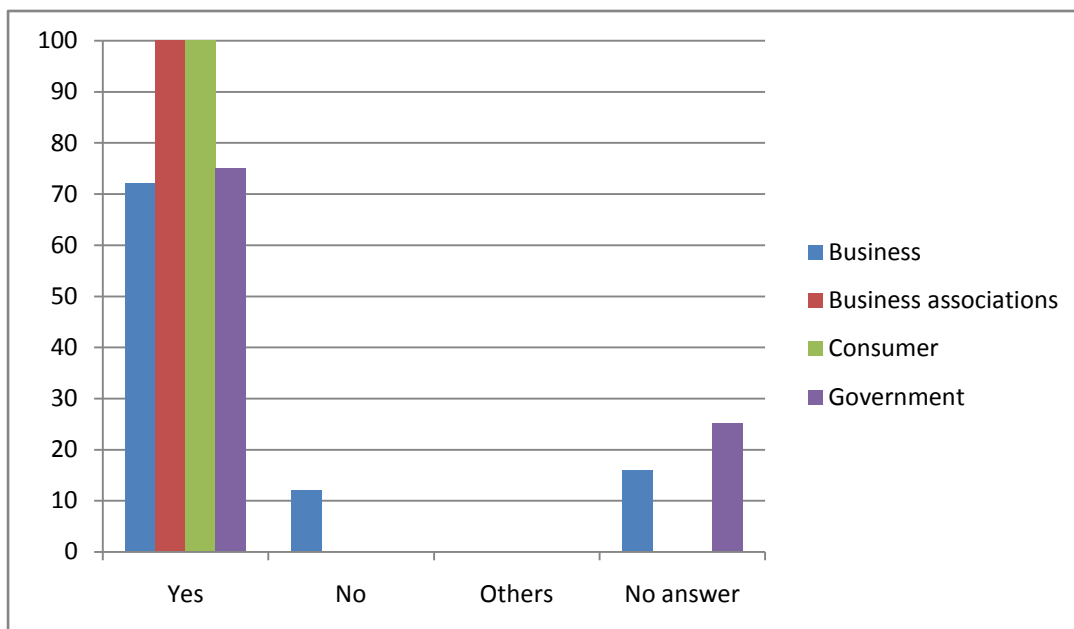


Table 4.12: Should there be any arrangement at the regional level (ASEAN) to deal with unfair trade practices that have multi-jurisdictional intra-regional dimension?

| Response | Business | | Government | |
|-----------|-----------|---------|------------|---------|
| | Frequency | Percent | Frequency | Percent |
| Yes | 19 | 76.0 | 3 | 75.0 |
| No | 3 | 12.0 | 1 | 25.0 |
| No answer | 3 | 12.0 | 0 | 0 |
| Total | 25 | 100 | 4 | 100 |

Table 4.13: Will you be willing to sign investigation reports as third parties or testify for the Department of Trade and Industry (DTI)/the court if necessary or requested by them?

| Response | Business | | Government | |
|--------------------------|-----------|---------|------------|---------|
| | Frequency | Percent | Frequency | Percent |
| Yes | 1 | 4.0 | 2 | 50.0 |
| No | 9 | 36.0 | 1 | 25.0 |
| Depends on circumstances | 11 | 44.0 | 0 | 0 |
| No answer | 4 | 16.0 | 1 | 25.0 |
| Total | 25 | 100 | 4 | 100 |

Table 4.14: Will you be ready to cooperate with investigator(s) of the DTI during the investigation process or with the court during hearings?

| Response | Business | | Business association | | Consumer | | Government | |
|--------------------------|-----------|---------|----------------------|---------|-----------|---------|------------|---------|
| | Frequency | Percent | Frequency | Percent | Frequency | Percent | Frequency | Percent |
| Yes | 2 | 8.0 | 3 | 42.9 | 3 | 75.0 | 2 | 50.0 |
| No | 12 | 48.0 | 0 | 0 | 0 | 0 | 1 | 25.0 |
| Depends on circumstances | 11 | 44.0 | 3 | 42.9 | 1 | 25.0 | 0 | 0 |
| Don't understand | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| No answer | 0 | 0 | 1 | 14.3 | 0 | 0 | 1 | 25.0 |
| Total | 25 | 100 | 7 | 100 | 4 | 100 | 4 | 100 |

Appendix 4.1

FULL SURVEY RESULTS

Provide example of UTP

| Unfair trade practices | Business | Business and Consumer associations | Government |
|---------------------------------|---|--|---|
| Unfair pricing | Unfair pricing on flour, oil and sugar Price of cement and steel Non-compliance to SRP Other competitors lower their prices especially prices of prime commodities | Telecom Companies Unfair fare structures of tricycles, they should be properly fixed load and contracted Gas , Oil, Fuel and Electricity | Internet Charges |
| Predatory pricing | | Telecom | Gasoline |
| Tied selling | | This was practiced by AOWA-an appliance company from Japan | Desired products are offered with discounts if you buy the other product.(i.e. Privilege discount card) Allowed to get the free items if you buy the product they offered at a high price which includes the free items. Application for credit cards |
| Coercive dealing | Supplies prices given varies from the other supermarket In a marketing activity a customer can't refuse to patronize | | |
| Misleading advertisement | Their product is misrepresented as advertised Media advertisements of certain products but availability from manufacturer/supplier are limited or no stock at all. | At one time, a company advertised a product on sale but denied by their clerks, supervisors & manager Pharmaceutical, retail | Food Products/Food Chains |

| | | | |
|--|---|---|---|
| Refusal to deal | You know that the supplier has the items you need and is delivering to others but refuses to deal with you. | | |
| Resale price maintenance | | | |
| Discriminatory dealing | Different prices were given but when ask the suppliers lowers the price Some practices in other outlets are so much lower than what you can offer the consumer | | Banks as to Muslims |
| Unreasonably high price | Unreasonably high price on flour, oil and sugar Price of cement and steel | Power, oil, fuel | Allegedly was force to get the product due to persistent offering in group by the agents and later found out that the price is exorbitant compared to other store selling the same items. |
| Systematic obstruction of competition | Prohibited to import basic ingredients for our products | Telecom | |
| Fidelity rebates | Gasoline stations obtain more customers by offering rebates per liter to gain their loyalty. | | |
| Margin squeeze | | This is now minimized with the widespread application of ISO standards for products. | |
| Abuse of IPR, including harming other businesses reputation | Prohibited to import basic ingredients for our products | As shown by raids conducted by authorities on CDs, bags, pants, shoes which are fake. | Pharmaceutical Products |

How widespread are these UTPs in the normal business/in the markets where you shop and/or as regards the products/services you buy/use in our country?

| Response | Business | | Business associations | | Consumer | | Government | | Total | |
|----------------------|-----------|---------|-----------------------|---------|-----------|---------|------------|---------|-----------|---------|
| | Frequency | Percent | Frequency | Percent | Frequency | Percent | Frequency | Percent | Frequency | Percent |
| Insignificantly | 1 | 4.0 | 0 | 0 | 1 | 25.0 | 0 | 0 | 2 | 5.0 |
| Moderately | 14 | 56.0 | 1 | 14.3 | 2 | 50.0 | 1 | 25.0 | 19 | 47.5 |
| Highly | 9 | 36.0 | 4 | 57.1 | 0 | 0 | 1 | 25.0 | 14 | 35.0 |
| Extremely | 0 | 0.0 | 2 | 28.6 | 1 | 25.0 | 0 | 0 | 1 | 2.5 |
| Don't know/can't say | 1 | 4.0 | 0 | 0 | 0 | 20.0 | 1 | 25.0 | 4 | 10.0 |
| No answer | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 25.0 | 1 | 2.5 |

Do you think these UTPs are negatively affecting the business, especially small and medium-sized enterprises (SMEs)/ the consumer interests/ business environment in our country in any way?

| Response | Business | | Business associations | | Consumer | | Government | | Total | |
|----------------------|-----------|---------|-----------------------|---------|-----------|---------|------------|---------|-----------|---------|
| | Frequency | Percent | Frequency | Percent | Frequency | Percent | Frequency | Percent | Frequency | Percent |
| Yes | 20 | 80.0 | 5 | 71.4 | 4 | 100 | 3 | 75.0 | 32 | 80.0 |
| No | 1 | 4.0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 2.5 |
| Don't know/can't say | 3 | 12.0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | 7.5 |
| No answer | 1 | 3.8 | 2 | 28.6 | 0 | 0 | 1 | 25.0 | 4 | 10.0 |

To what extent do you think that the business/ consumer/ overall business environment in our country is affected by the existence of such practices?

| Response | Business | | Business associations | | Consumer | | Government | | Total | |
|----------------------|-----------|---------|-----------------------|---------|-----------|---------|------------|---------|-----------|---------|
| | Frequency | Percent | Frequency | Percent | Frequency | Percent | Frequency | Percent | Frequency | Percent |
| Insignificantly | 1 | 4.0 | 0 | 0 | 1 | 25.0 | 0 | 0 | 2 | 5.0 |
| Moderately | 13 | 52.0 | 0 | 0 | 1 | 25.0 | 0 | 0 | 14 | 35.0 |
| Highly | 8 | 32.0 | 4 | 57.1 | 1 | 25.0 | 2 | 50.0 | 15 | 37.5 |
| Extremely | 1 | 4.0 | 1 | 14.3 | 1 | 25.0 | 1 | 25.0 | 4 | 10.0 |
| Don't know/can't say | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| No answer | 2 | 8.0 | 2 | 28.6 | 0 | 0 | 1 | 25.0 | 5 | 12.5 |

Are you aware that such practices maybe originated from outside our country?

| Response | Business | | Business associations | | Consumer | | Government | | Total | |
|----------------------|-----------|---------|-----------------------|---------|-----------|---------|------------|---------|-----------|---------|
| | Frequency | Percent | Frequency | Percent | Frequency | Percent | Frequency | Percent | Frequency | Percent |
| Yes | 12 | 48.0 | 2 | 28.6 | 4 | 100 | 3 | 75.0 | 21 | 52.5 |
| No | 4 | 16.0 | 1 | 14.3 | 0 | 0 | 0 | 0 | 5 | 12.5 |
| Don't know/can't say | 9 | 36.0 | 3 | 42.9 | 0 | 0 | 1 | 25.0 | 13 | 32.5 |
| No answer | 0 | 0 | 1 | 14.3 | 0 | 0 | 0 | 0 | 0 | 0 |

Do such practices still prevail or they have been resolved?

| Response | Business | | Business associations | | Consumer | | Government | | Total | |
|-----------|-----------|---------|-----------------------|---------|-----------|---------|------------|---------|-----------|---------|
| | Frequency | Percent | Frequency | Percent | Frequency | Percent | Frequency | Percent | Frequency | Percent |
| Yes | 4 | 16.0 | 1 | 14.3 | 1 | 25.0 | 2 | 50.0 | 8 | 20 |
| No | 19 | 76.0 | 5 | 71.4 | 3 | 75.0 | 2 | 50.0 | 29 | 72.5 |
| No answer | 2 | 8.0 | 1 | 14.3 | 0 | 0 | 0 | 0 | 3 | 7.5 |

Have you ever made any contact with the DTI regarding such practices?

| Response | Business | | Business associations | | Consumer | |
|--------------|-----------|---------|-----------------------|---------|-----------|---------|
| | Frequency | Percent | Frequency | Percent | Frequency | Percent |
| Yes, specify | 1* | 4.0 | 3 | 42.9 | 3** | 75.0 |
| No | 24 | 96.0 | 3 | 42.9 | 1 | 25.0 |
| No answer | 0 | 0 | 1 | 14.3 | 0 | 0 |
| Total | 25 | 100 | 7 | 100 | 4 | 100 |

*through our attorney

**With DTI, DOJ, DOF, etc., in constant dialogue but nothing happened; we constantly communicated with DTI whenever there are consumer complaints regarding unfair practices of distributors which are members of DSAP; through telephone, visits, inquiry on false misleading ad

Do you think that the existing rules, regulations or laws do a sufficient job to check all unfair trade practices and protect the legitimate rights and interests of the business in general and those of SME's in particular/protect consumer welfare and competitive process in our country?

| Response | Business | | Business associations | | Consumer | | Government | | Total | |
|------------|-----------|---------|-----------------------|---------|-----------|---------|------------|---------|-----------|---------|
| | Frequency | Percent | Frequency | Percent | Frequency | Percent | Frequency | Percent | Frequency | Percent |
| Yes | 11 | 44.0 | 0 | 0 | 0 | 0 | 3 | 75.0 | 14 | 35.0 |
| No | 4 | 16.0 | 7 | 100 | 3 | 75.0 | 1 | 25.0 | 15 | 37.5 |
| Don't know | 3 | 12.0 | 0 | 0 | 1 | 25.0 | 0 | 0 | 4 | 10.0 |
| No answer | 7 | 28.0 | 0 | 0 | 0 | 0 | 0 | 0 | 6 | 15.0 |

Do you know someone who has tried to make contact with the DTI regarding such practices?

| Response | Business | | Business associations | | Consumer | |
|--------------|-----------|---------|-----------------------|---------|-----------|---------|
| | Frequency | Percent | Frequency | Percent | Frequency | Percent |
| Yes, specify | 2* | 8.0 | 4** | 57.1 | 2 | 50.0 |
| No | 20 | 80.0 | 2 | 28.6 | 1 | 25.0 |
| No answer | 3 | 12.0 | 1 | 14.3 | 1 | 25.0 |
| Total | 25 | 100 | 7 | 100 | 4 | 100 |

*PHILBAKING industry headed by the Pres. Umali

**Foreign Chambers, on the sale of defective computer ink cartridge

Do you recommend that a law or regulation should be enacted specifically to check these practices and protect the consumer more effectively?

| Response | Business | | Business associations | | Consumer | | Government | | Total | |
|-----------|-----------|---------|-----------------------|---------|-----------|---------|------------|---------|-----------|---------|
| | Frequency | Percent | Frequency | Percent | Frequency | Percent | Frequency | Percent | Frequency | Percent |
| Yes | 18 | 72.0 | 7 | 100 | 4 | 100 | 3 | 75.0 | 32 | 80.0 |
| No | 3 | 12.0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | 7.5 |
| Others | 0 | 0.0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| No answer | 4 | 16.0 | 0 | 0 | 0 | 0 | 1 | 25.0 | 5 | 12.5 |

Have you personally or people you know ever encountered any difficulty in gaining access to the DTI/court when wishing to lodge a complaint in respect of these unfair trade practices?

| Response | Business | | Business associations | | Consumer | |
|--------------------------|-----------|---------|-----------------------|---------|-----------|---------|
| | Frequency | Percent | Frequency | Percent | Frequency | Percent |
| Very frequently | 0 | 0.0 | 1 | 14.3 | 1 | 25.0 |
| Sometimes | 1 | 4.0 | 2 | 28.6 | 1 | 25.0 |
| Rarely | 0 | 0.0 | 0 | 0 | 1 | 25.0 |
| Don't know/ can't say | 5 | 20.0 | 1 | 14.3 | 1 | 25.0 |
| No answer | 19 | 76.0 | 3 | 42.9 | 0 | 0 |
| Total | 25 | 100 | 7 | 100 | 4 | 100 |

Government Respondents. What are the objectives of such rules, regulations or laws that you would like to see enacted and implemented by the legislators in your country?

1. To increase the penalty/charges
2. Guide to all stakeholders
3. Strict enforcement of the existing laws
4. Level the playing field
5. Holistic enforcement of IP laws
6. Allocation of enough budget for additional programs/projects on consumerism & infomercial campaigns
7. More consumer protection laws

What are the practices that should be regulated under such legislations? Could you please name some?

1. Deceptive Sales Acts & Practices
2. Unfair pricing
3. Intellectual property
4. Product Quality and Safety
5. Misleading advertisement
6. Consumer Product & Service Warranty
7. Predatory pricing
8. Liability Product & Services
9. Abuse of IPR

How would you describe the response of the authority to your/your contact's complaints?

| Response | Business | | Business associations | | Consumer | |
|--------------------------|-----------|---------|-----------------------|---------|-----------|---------|
| | Frequency | Percent | Frequency | Percent | Frequency | Percent |
| Prompt | 2 | 8.0 | 0 | 0 | 0 | 0 |
| Reasonably fast | 10 | 40.0 | 1 | 14.3 | 1 | 25.0 |
| Slow | 9 | 36.0 | 3 | 42.9 | 2 | 50.0 |
| Careless | 0 | 0.0 | 0 | 0 | 0 | 0 |
| Not paying due attention | 0 | 0.0 | 0 | 0 | 1 | 10.0 |
| Any other, specify | 0 | 0.0 | 0 | 0 | 0 | 0 |
| No answer | 4 | 16.0 | 3 | 42.9 | 2 | 25.0 |
| Total | 25 | 100 | 7 | 100 | 4 | 100 |

Government Respondents. Should there be a specialized agency to deal with all unfair trade practices?

| Response | Frequency | Percent |
|-----------------|-----------|---------|
| Yes | 2 | 50.0 |
| No | 1 | 25.0 |
| Don't know | 0 | 0 |
| Others, specify | 0 | 0 |
| No answer | 1 | 25.0 |
| Total | 4 | 100 |

Government Respondents. In your opinion, should there be an exemption on the ground of economic efficiency. For example, for some practices which otherwise will constitute violations of the legislation(s) on unfair trade practices.

| Response | Frequency | Percent |
|------------------|-----------|---------|
| Yes | 0 | 0 |
| No | 3 | 75.0 |
| Don't know | 0 | 0 |
| Don't understand | 0 | 0 |
| No answer | 1 | 25.0 |
| Total | 4 | 100 |

Business Respondents. Shall SMEs be exempted from the scrutiny of such legislation(s) on unfair trade practices?

| Response | Frequency | Percent |
|-----------------|-----------|---------|
| Yes, specify | 17 | 68.0 |
| No, specify | 4 | 16.0 |
| Others, specify | 0 | 0.0 |
| No answer | 4 | 16.0 |
| Total | 25 | 100 |

Chapter 5

POLICY RECOMMENDATIONS

Policy recommendations related to UTPs in the Philippines will cover two general areas: i) those that are related to the lack of a “culture of competition” in the private sector which has made monopoly power and “exploitative abuse” prevalent in several key economic sectors; and ii) those that address more specific UTPs like misleading advertising and which are more directly related to consumer welfare and “exclusionary abuse”.

Competition policy and a robust competition law is a necessary but not sufficient ingredient to foster a more competitive environment. As explained in Chapter 2, what is lacking in the Philippines is a clear regulatory framework where aspects such as price fixing and monopoly power can be identified. Proposals related to a competition law have already been made (Chapter 3). Unfortunately the legislative branch of government has not mustered enough political will to enact the law.

Meanwhile, the government should coordinate more closely with consumer organizations in implementing existing laws against UTPs. The government should also prioritize UTPs more highly. Both the government and consumer organizations should make an effort to reach out to business firms and engage the latter in efforts to counter UTPs. However, private firms have to develop a deeper sense of a “culture of competition.”

Explaining the lack of a culture of competition

Historical factors can explain the lack of the culture of competition. The post-war development of the Philippine economy had an underlying theme: the socio-political structure constrained the reform process and whatever reforms were implemented had limited benefits for the lower income classes. This contributed to the dismal poverty situation in the country. This section briefly describes the emergence of the present-day socio-political structure.

The Philippines, Thailand, and Indonesia went through a phase of agricultural commercialization, mainly in the 19th century. The Philippine experience, however, differed from the other two countries in one important aspect. Agricultural commercialization strengthened the bureaucratic-aristocratic elites in Indonesia and Thailand. However, the same process gave rise to a new class of landowners in the Philippines the economic base of which was firmly outside the state (De Dios and Hutchcroft, 2003).

This group of relatively autonomous land owners would form the primary social base of the first Philippine republic and eventually evolve into the present-day oligarchs. Their power base was strengthened during the American occupation as part of the usual “divide and conquer” policy of colonizers. Over the years the oligarchs and the US developed a symbiotic relationship, described as follows:⁷

“In part because the grantor of independence was a rising superpower—not a declining European power, as elsewhere in Southeast Asia—it was especially difficult for the Philippines to emerge as a truly sovereign nation. Throughout the postwar years, oligarchs have needed external support to sustain an

⁷ De Dios and Hutchcroft (2003), page 47.

unjust, inefficient, and graft-ridden political and economic structure; Washington, in turn, received unrestricted access to two of its most important overseas military installations. The status of the Philippines, first as colony and then as post-colonial client of the United States, effectively insulated it both from the need to guard against external threat and (because of a steady flow of external resources) from the need to develop a self-sustaining economy.”

Consequently, what evolved in the Philippines was a semi-feudal economy dominated by elite factions. Instead of encouraging competitive behavior, a culture of ‘rent-seeking’ was engendered. This is the context in which the absence of a “culture of competition” can be explained. It was deemed that more money could be made by redistributing wealth through the political process than by actually creating wealth. What has dominated is an oligarchy in both the political and economic spheres.

Weak institutions and an oligarchic private sector are two sides of the same coin. A gridlock has evolved wherein stronger institutions are required to loosen the grip of the oligarchs but at the same time the influence of oligarchs has to be reduced in order to strengthen institutions. Admittedly previous reforms have yielded favorable outcomes in terms of less monopolistic power, more diversified economic activities, and a healthier policy debate. However, unless there are major political and social reforms, economic transformation will not be possible.

Reforming institutions and the oligarchic system

Many studies overlook the fact that recommendations to strengthen and improve institutions do not readily flow from standard economic analysis. A political economy framework must be adopted along with a variant of the new institutional economics. For example, De Dios (2008) emphasizes the need to nurture and reinforce existing groups and constituents that adhere strongly to democratic principles. Meanwhile, Nye (2011) outlines a framework for incorporating institutions in the reform process. For example, the oligarchy will support reforms only if a critical subset of the coalitions that form the oligarchy will see that the changes are in their best interests. “Ideally reforms are started where resistance is weakest and where changes become self-sustaining and hard to resist once under way.”⁸

The 2008-2009 Philippine Human Development Report focuses on institutions in the Philippines.⁹ The discussion deals mainly with reforms that will allow the government to deliver better-quality public goods. The proposals contained in the PHDR aim to change institutions by i) updating or improving the scope and content of formal rules; and ii) realigning norms and beliefs so that compliance with formal rules is better effected.

Future analysis of economic development constraints should consider a multi-disciplinary approach which can put more emphasis on the “deep parameters” affecting economic performance. For example, related to the institutional dimension, culture and values can partly explain the lack of social cohesion, spotty entrepreneurship, and general inability to establish a credible and selfless political leadership in the Philippines. A Weberian framework would certainly cite the inconsistency between religion and capitalist development in the Philippines. Meanwhile, values such as *ningas cogon*¹⁰ have definitely adversely

⁸ Nye (2011), page 18.

⁹ Human Development Network (2009).

¹⁰ “Ningas Cogon” is an old Filipino expression, which literally means “grass flash-fire”. It refers to cogon dry grass which blazes furiously when set alight, but only for a few minutes before turning to

affected entrepreneurship economic growth. However, even if this analysis was accurate, effective policy prescriptions would still be elusive.¹¹ At best, the analysis would yield guidelines that will make policymakers aware of the limitations of economic reforms and enable them to contextualize these reforms.

Nevertheless, it would still be useful for the government to pursue laws that can weaken the grip of oligarchs. For example, to effectively protect the Filipino consumers in the overall competition process, the first step is to legislate and enforce a good competition law. The latter will keep markets competitive by disciplining abusive exercises of market power.

Addressing B2C and B2B UTPs

The legal and institutional framework for addressing B2C UTPs seems to be adequate in the Philippines. However, as stated in Chapter 3, a clear definition of “unfair trade practices” has yet to be developed in Philippine jurisdiction. Massive information dissemination on various consumer laws and regulations must likewise be conducted in order to apprise the public of their rights under the law and to avail of the remedies provided thereunder. As shown in Table 2.2 consumer complaints are only in the thousands but business transactions are in the millions.

It is rather unfortunate that only 4 out of the 25 respondents from the business sector said that they are aware of “any rules, regulations or laws currently in effect in our country to check these unfair trade practices.” Moreover, only one respondent actually reported a case to the Department of Trade and Industry. The respondents from the business group also expressed reluctance to participate in legal action. This implies that their support is lacking when advocating for implementation of existing laws or demanding action against UTPs.

The reluctance to pursue legal channels may imply that there are gaps in the legal infrastructure to address B2B UTPs. Current efforts to establish a competition law focus on curbing market dominance. A second best solution is for the businesses that are adversely affected to complain as ‘consumers’. However, this has limited application especially if the transactions do not involved purchase of the product of the offender (e.g. coercive/exclusive dealing).

However, the inadequacies in the legal framework have not prevented business and consumer associations from taking action. Moreover, firms who are victims of UTPs are in a good position to identify gaps in the legal infrastructure. This type of inconsistent behavior has prompted some to question whether the private sector in the Philippines is its own worst enemy (Rosellon and Yap, 2012). This is related to the absence of a culture of competition as described in the earlier sections of this chapter.

The survey results can also be interpreted to mean that while businesses are aware of the adverse impacts of UTPs, they do not seek to “rock the boat”. It is likely that the adverse impacts of UTPs are passed on as higher prices to consumers. This is one reason why business and consumer associations seem to be more active in countering UTPs. There is also a heterogeneous pattern in the response of business associations. For example, only

cold ashes. When applied to society, it refers to people who are enthusiastic about something but then lose interest quickly. It applies particularly to personal effort and business ventures. Some sociologists have cited this as a general weakness of Philippine society which is inconsistent with successful entrepreneurship.

¹¹ For example, a policy of “changing religions” is not feasible and is actually foolhardy.

three out of the 7 business associations indicated outright willingness to cooperate with the DTI in UTP cases.

Meanwhile, government should be more vigilant in enforcing the rules and laws and make sure that they are properly implemented. In order to ensure effective and efficient policies, government should initiate, conduct, and determine the existing UTPs to protect local producers on these practices and to assist vulnerable sectors to UTPs. In response to the survey, government should raise the importance of UTPs in their list of priorities.

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