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ASEAN Competition Law: The Philippines

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I. INTRODUCTION

To understand the Philippine competition policy regime, it is best to appreciate the uniqueness of its historical, cultural, and socio-political development. The Philippines is a fascinating mix of cultures that has survived through Spanish, American, and Japanese occupations. These centuries of colonization helped shape and define the development of the Philippine competition policy regime.

When Spain colonized the Philippines in the 16th century, monopolies were officially established by Spain to raise funds for its king who used it to sustain the expenses of its colonial government.² Maintaining the Philippines as a colony had serious implications on Spain's coffers. Hence, to support an administration that satisfied their needs, the colonial government instituted the monopoly tax system or the *encomienda*.³ Monopolies in goods and services were established as well in certain activities such as cockfighting, plow making, and the production and sale of goods such as native liquor, betel nut, and tobacco.⁴ The tobacco monopoly, for instance, lasted from 1782 to 1882 and included government control of the growing, manufacturing, and sale of tobacco and tobacco products.⁵

Thus, the first legal provisions dealing with monopolies and combinations in restraint of trade can be found in the Spanish Penal Code of 1870⁶ which was in force in the Philippines until December 31, 1931⁷ after which it was supplanted by the 1932 Revised Penal Code ("RPC").

During the American period, the Philippine legislature enacted Act No. 3247 or An Act to Prohibit Monopolies and Combinations in Restraint of Trade which supplemented the provisions of the Old Penal Code on monopolies and combinations in restraint of trade. This Act was based on the 1890 Sherman Antitrust Act of the United States. The prevailing relevant provision on monopolies and combinations in restraint of trade is now embodied in Article 186 of the RPC.

Contemporary legal landscape in the Philippines has its own share of competition or antitrust laws. No less than the 1987 Philippine Constitution provides the constitutional bedrock for Philippine competition legal regime with the provision that the "State shall regulate or

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² TRISTAN CATINDIG, THE ASEAN COMPETITION LAW PROJECT: THE PHILIPPINES REPORT (2001).

³ John Larkin, *Philippine History Reconsidered: A Socioeconomic Perspective*, 87(3) AMER. HIS. REV. (1982)

⁴ Catindig, *supra* note 2.

⁵ Cited in Larkin, *supra* note 3. More information can be found in EDILBERTO DE JESUS, THE TOBACCO MONOPOLY IN THE PHILIPPINES: BUREAUCRATIC ENTERPRISE AND SOCIAL CHANGE (1980).

⁶ Catindig, *supra* note 2.

⁷ *People vs. Siton*. G.R. No. 169364, 18 September 2009.

prohibit monopolies when the public interest so requires... No combinations in restraint of trade or unfair competition shall be allowed.”⁸

Philippine jurisprudence in the cases of *Tatad*⁹ and *Lagman, et al vs Torres, et al.*¹⁰ describes the importance of this constitutional provision in the following words:

Section 19, Article XII of our Constitution is anti-trust in history and in spirit. It espouses competition. The desirability of competition is the reason for the prohibition against restraint of trade, the reason for the interdiction of unfair competition, and the reason for regulation of unmitigated monopolies... the objective of anti-trust law is to assure a competitive economy, based upon the belief that through competition, producers will strive to satisfy consumer wants at the lowest price with the sacrifice of the fewest resources. Competition among producers allows consumers to bid for goods and services, and thus matches their desires with society's opportunity costs.

The Supreme Court reiterated in these cases that the fundamental principle espoused by Section 19, Article XII of the Constitution is competition such that “it alone can release the creative forces of the market. But the competition that can unleash these creative forces is competition that is fighting yet is fair.”

Further, in the case of *Gokongwei, Jr.*¹¹ the Supreme Court ruled that antitrust laws or laws against monopolies or combinations in restraint of trade are aimed at raising levels of competition by improving the consumers' effectiveness as the final arbiter in free markets. These laws are designed to preserve free and unfettered competition as the rule of trade. It rests on the premise that the unrestrained interaction of competitive forces will yield the best allocation of economic resources, the lowest prices, and the highest quality.

A unique attribute of the Philippine competition legal regime is its adoption of a sectoral approach. As a matter of fact, the country has more than 30 industry-specific and consumer-related competition laws, including provisions in its criminal, civil, and corporation codes. The other competition-specific laws are enforced by more than 60 sector regulators. These laws include provisions dealing with cartels, hoarding, profiteering, price manipulation, and monopoly of essential goods, articles, and commodities, among others.

Some of the challenges associated with a sectoral approach include efficiency issues in the allocation of resources as well as consistency in regulatory enforcement, hence support has been given for the passage of a consolidated and unified approach to the country's existing competition laws.

⁸ Section 19, Article XII, 1987 Philippine Constitution.

⁹ *Tatad vs Secretary of the Department of Energy and the Secretary of the Department of Finance* (G.R. No. 124360).

¹⁰ *Lagman, et al vs Torres, et al.* (G.R. No. 127867).

¹¹ *Gokongwei, Jr. vs Securities and Exchange Commission, et al* (G.R. No. L-45911).

II. DIVERSITY IN COMPETITION REGIMES: TOWARDS A DYNAMIC COMPETITION LAW

There is no one-size-fits-all model when it comes to competition regimes. Each country takes into consideration its own unique history and culture that is the foundation of its legal system, government structure, political system, market structure, and business culture, among others. True to form, each country's competition authority differ in three basic aspects, namely: institutional and structural design, degree of independence, and composition.

Competition authorities may also come in three structural modes:¹² the (1) bifurcated judicial, (2) bifurcated agency and (3) integrated agency models.

The **bifurcated judicial** type vests investigative powers in the competition authority but brings enforcement actions before the general courts with rights of appeal to the general appellate courts.

The **bifurcated agency** type likewise vests investigative powers in the competition authority but must bring enforcement actions before specialized adjudicative authorities with rights of appeal to specialized appellate bodies or to general appellate courts.

The **integrated agency** model empowers the competition authority with both investigative and adjudicative functions, with rights of appeal to general or specialized appellate bodies. While this last model may be the most administratively efficient enforcement scheme and would likely yield higher levels of expertise in antitrust decisions, it may raise significant due process risks which must be guarded against.¹³

Regardless of the chosen model, institutional design, and structure, competition authorities should have certain invariable attributes, competencies, and powers which make them effective and fair institutions. These include independence and accountability, transparency and respect for confidentiality, effective influence, and adequate financial and human resources. An operational competition law enforcement agency also requires an amalgam of broad skills including legal and economic expertise, public administration skills, regulatory enforcement experience, and specific industry knowledge.

The Philippine legal landscape shows a truly dynamic process of evolution and continuous development of competition laws. Dating as far back as the Spanish colonial period up to the present, various laws have dealt with different aspects of antitrust laws. Suffice it to say, these laws have never been static; they have undergone revisions and amendments in response to perceptions of needs, the demands of globalization, and commitment to regional and international agreements.

Among the notable laws deemed vital for the country's competition legal landscape are:

¹² UNCTAD Intergovernmental Group of Experts on Competition Law and Policy, 11th Session (Geneva, 19–21 July 2011), available at http://unctad.org/en/Docs/ciclpL2_en.pdf.

¹³ *Id.*

The **Foreign Investments Act**,¹⁴ which allowed foreign investment in the Philippines except in those industries reserved by the Constitution and statutory laws to Filipinos.

The **Intellectual Property Code of the Philippines**,¹⁵ which recognized that an effective intellectual and industrial property system is vital to the development of domestic and creative activity as it facilitates technology transfer, attracts foreign investment, and ensures market access for Philippine products.

The **Foreign Banks Liberalization Law**,¹⁶ which liberalized the entry and scope of operations of foreign banks in the country.

The **Consumer Act of the Philippines**,¹⁷ which declared as state policy the protection of the interests of the consumer, the promotion of his general welfare, and the establishment of standards of conduct for business and industry.

The **Retail Trade Liberalization Act**,¹⁸ which liberalized the country's retail trade industry to encourage both Filipino and foreign investors to forge an efficient and competitive retail trade sector in the interest of empowering Filipino consumers through lower prices, higher quality goods, better services, and wider choices.

The **Securities Regulation Code**,¹⁹ which provided that the State shall establish a socially conscious and free market that regulates itself, encourages the widest participation of ownership in enterprises, enhances the democratization of wealth, promotes the development of the capital market, protects investors, ensures full and fair disclosure about securities, and minimizes/eliminates insider trading and other fraudulent or manipulative devices and practices that create distortions in the free market.

Sector-specific competition laws, which directly deal with unfair competition, monopolies, and combinations in restraint of trade pertaining to the commodities, telecommunications, and energy sectors.

The **Price Act**,²⁰ which declared it as a matter of State policy to ensure the availability of basic necessities and price commodities at reasonable prices without denying legitimate business a fair return on investment. It further provides for an effective and sufficient protection to consumers against hoarding, profiteering, and cartels with respect to the supply, distribution, marketing and pricing of said goods, especially during periods of calamity, emergency, and widespread illegal price manipulation.

The **Public Telecommunications Policy Act**,²¹ which mandated the establishment of rates and tariffs that are fair and reasonable and which provides for the economic viability of

¹⁴ Republic Act 7042 approved on 13 June 1991 as amended by Republic Act 8179 approved on 28 March 1996.

¹⁵ Republic Act 8293 approved on 6 June 1997.

¹⁶ Republic Act 7721 approved on 18 May 1994.

¹⁷ Republic Act 7394 approved on 13 April 1992.

¹⁸ Republic Act 8762 approved on 7 March 2000.

¹⁹ Republic Act 8799 approved on 19 July 2000.

²⁰ Republic Act 7581 approved on 27 May 1992 as amended by RA 10623.

²¹ Republic Act 7925 approved on 1 March 1995.

telecommunications entities and a fair return on their investments. It further vests on the National Telecommunications Commission the residual powers to regulate rates or tariffs when ruinous competition results or when a monopoly, cartel, or combination in restraint of free competition exists and the rates or tariffs are distorted or are unable to function freely, thus adversely affecting the public.

The **Downstream Oil Deregulation Act**,²² which emphasized the policy of the State to liberalize and deregulate the downstream oil industry in order to ensure a truly competitive market under a regime of fair prices and an adequate and continuous supply of environmentally clean and high-quality petroleum products. It consists of antitrust safeguards to ensure fair competition and prevent cartels and monopolies in the industry by prohibiting cartelization and predatory pricing.

III. INSTITUTIONAL ARRANGEMENTS

In 2011, Philippine President Benigno S. Aquino III designated the Philippine Department of Justice (“DOJ”) as the country’s competition authority and consequently established the Office for Competition (“OFC”) to carry out the DOJ’s mandate. Specifically, the OFC is tasked to do the following:²³

- enforce competition policies and laws from deceitful business practices;
- investigate cases involving competition law violations;
- prosecute violators to prevent, restrain, and punish monopolization, cartels, and combinations in restraint of trade;
- supervise competition in markets;
- monitor and implement measures to promote transparency and accountability in markets;
- prepare and disseminate studies and reports on competition to inform and guide the industry and consumers; and
- promote international cooperation and strengthen Philippine trade relations.

The designation of the DOJ as the country’s Competition Authority is based on its mandate in accordance with Republic Act 4152. This law, which was approved on June 20, 1964, vests in the Secretary of Justice and Legal staff the duty to:

- study all laws relating to trusts, monopolies, and combinations;
- draft such legislation as may be necessary to update or revise existing laws to enable the Philippine government to deal more effectively with monopolistic practices and all forms of trusts and combination in restraint of trade or free competition and/or tending to bring about non-competitive prices of articles of prime necessity;
- investigate all cases involving violations of such laws; and
- initiate and take such preventive or remedial measures, including appropriate judicial proceedings, to prevent or restrain monopolization and allied practices or activities of trusts, monopolies, and combinations.

²² Republic Act 8479 approved on 10 February 1998.

²³ Executive Order No.45, series of 2011 (Designating the Department of Justice as the Competition Authority).

Since its creation, the OFC has primarily focused on its two-fold mission of enforcement and advocacy, which are geared towards promoting a healthy culture of competition in the country. Among its initiatives include the development of various advisory opinions and enforcement issuances to clarify prevailing competition provisions and the processes involved in competition laws. In particular, the OFC's enforcement efforts focus on the following key priority sectors: energy, telecommunications, transportation, and commodities.

Along with the Philippine corporate regulator, the Securities and Exchange Commission ("SEC"), the OFC signed an agreement which sought to define the roles of both parties whenever applications for merger or consolidation are submitted to the SEC. Broadly, the agreement provides for the notification of applications on merger or consolidation, the timeline and procedure to assess such applications, and preparation of the assessment reports.

In order to nurture and sustain the culture of competition in the country, the OFC has strengthened its advocacy efforts by publishing policy papers, participating in competition-related trade negotiations, and hosting several national and international conferences. These include hosting the first National Competition Conference, the Fourth ASEAN Competition Conference, and the joint OFC-OECD/KPC International Workshop on Bid-Rigging. The author, in his capacity as OFC Head, also served as Chair of the 2014 ASEAN Experts Group on Competition and currently serves as the 2015 APEC Competition Policy and Law Group Convenor.

IV. THE PHILIPPINE COMPETITION ACT²⁴

After more than 20 years since a competition-related bill was first filed, and four years after the OFC endorsed an updated and consolidated version for legislative ratification, President Benigno S. Aquino III signed the Philippine Competition Act ("PCA") on July 21, 2015. Deemed an economic priority measure by the reformist leadership, the Act further strengthens the competition reforms which the OFC has consistently supported and advocated.

During the ceremonial signing of the law, President Aquino emphasized:

If we allow the old system to persist where there is no competition, we will be allowing our countrymen to suffer from paltry benefits. It will also be allowing ourselves to be content with a system where only a few will thrive.

The law is considered to be an economic game changer that further enhances the current Administration's pursuit of sustainable and inclusive growth.

Under the PCA, the Philippine Competition Commission, an independent quasi-judicial body attached to the Office of the President, will be established to implement national competition policy. It shall be composed of a Chairperson and four Commissioners whose term of office shall be seven years without reappointment.

The Commission shall have original and primary jurisdiction over the enforcement and implementation of the Act. Its powers and functions include: (i) conducting inquiries, investigating, hearing, and deciding over cases involving violations of the Act and other existing

²⁴ Republic Act 10667. Full text of the law is available at <http://www.gov.ph/2015/07/21/republic-act-no-10667/>.

competition laws; (ii) conducting administrative proceedings and imposing sanctions for breach of the Act; (iii) issuing advisory opinions, guidelines, adjustment, or divestiture orders; (iv) monitoring and analyzing the practice of competition in markets; and (v) advocating pro-competitive policies. The Commission also has the power to issue subpoenas for producing evidence and summoning witnesses and to deputize enforcement agencies in the implementation of its powers and functions.

The OFC is legislatively chartered with a focused mandate of conducting preliminary investigations and prosecution of all criminal offences arising under the Act and other competition-related laws. The functions of the OFC continues to be anchored on the DOJ mandate of being the government's principal law agency committed to advocate for reforms towards the effective, efficient, and equitable administration of justice.

Moving forward, the OFC will continue to pave the way in bringing the issue of competition law to the forefront of national economic agenda as an aspect of legal and regulatory reforms.

V. INDEPENDENCE AND INTERDEPENDENCE: OFC AND SECTOR REGULATORS' INTERFACE

Recognized in the various literatures on competition policy are three distinct aspects of regulation in terms of regulatory roles: technical regulation, economic regulation, and competition enforcement.

Technical regulation generally deals with structural issues such as setting and enforcing product standards and allocating publicly-owned resources.²⁵

Economic regulation aims to create a system of incentives and penalties that replicate the outcomes of competition in terms of consumer prices, quality, and investment to protect the interests of consumers.²⁶

Competition enforcement entails the control of abuse of dominance, anticompetitive agreements, and anticompetitive mergers based on competition law provisions. Competition enforcement can be best handled by the competition authority since its implementation should be consistent across all sectors. Meanwhile, both economic and technical regulations are best left to the expertise and sector-specific knowledge of the sector regulators.

As previously discussed, the Philippines adopted a sectoral system of regulation when it came to competition law enforcement. It may even be said that there are as many sector regulators ("SRs") as there are Philippine competition laws. These SRs are not only mandated to regulate their industries but also to promote competition alongside the attainment of social objectives.

²⁵ Cornelius Dube, *Competition Authorities and Sector Regulators: What is the best operational framework?*, CUTS Center for Competition, Investment and Economic Regulation, India (2008).

²⁶ Principles for Economic Regulation, Department for Business, Innovation and Skills, (2011), available at <http://www.bis.gov.uk/>.

Although both competition authorities and sector regulators share the common goal of protecting consumer interest and play complementary roles in enhancing fair markets, protecting the competitive process, and safeguarding consumer welfare, they generally have different mandates and employ different approaches on competition policy issues.

Competition authorities are seen as enforcing a set of economy-wide prohibitions designed to prevent firms from restricting or lessening competition while sector-specific laws are generally adopted where direct government intervention is deemed required due to inherently imperfect markets or when markets are unable to equitably distribute benefits. Regulation, which involves stipulating a complete set of processes and commitments regarding supply and quality of service, is seen as a substitute for market forces in these cases.²⁷

The application of regulations is based on the assumption that market forces cannot be relied on to produce satisfactory results, hence governmental intervention in the form of rules and regulations. The establishment and implementation of an effective regulatory system is a difficult and complex process, particularly when there is lack of regulatory tradition and effective use of public regulation. Some of the challenges often encountered in this respect include politicization of the regulatory process and information asymmetry that may lead to regulatory capture which diminishes credibility and overall societal economic welfare.²⁸

The OFC and the SRs have converging objectives of effecting economic efficiency and growth based on their respective legal mandates. However given the divergence in their respective powers, functions, core competencies, perspectives, and approaches, the imperative for clarity, transparency, and predictability in the discharge of each SR's powers is well recognized. The relationship of the OFC with the regulatory bodies is therefore one that is characterized by the principles of cooperation, consultation, allocation of responsibility, and best practice sharing.

The maintenance of good relationships, coordination, and liaising with SRs is a top priority for the OFC as evidenced by its various initiatives intended to lay the groundwork for meaningful and sustainable working relationships.

In 2012 and cognizant of the need for collaboration, the OFC established the Sector Regulators Council ("SRC") to recognize the crucial role of SRs in developing and ensuring consistency of competition policy framework in the Philippines. The SRC aims to facilitate case investigations and avoid overlap in the enforcement of competition laws, including industry-specific ones. It is chaired by the OFC and co-chaired by cluster leads selected by the SRs themselves.

The SRC is responsible for facilitating the sharing of best practices and exchanges of information in relation to case investigation and recommending courses of action to improve case investigation and implementation of CPL across all sectors. To facilitate cooperation in areas of investigation and information-sharing, the SRC is divided into five clusters: 1) utilities, 2) commodities and services, 3) logistics and transport, 4) international trade, and 5) finance.

²⁷ Geronimo Sy & Rafaelita Aldaba, *Cooperation for Competition: The Role and Functions of a Competition Authority and Sectoral Regulatory Agencies*. OFC Policy Paper No.1. (July 2013).

²⁸ *Id.*

The OFC also initiated the creation of five working groups with identified sector regulators serving as co-chairs. These units have specific tasks in accordance with the mandate of the OFC, namely: enforcement and legal, advocacy and partnerships, business and economics, consumer protection and welfare, and policy and planning. Each group complements and supplements each other's duties and responsibilities.

Despite the challenges inherent in the relationship between the OFC and SRs, there remains mutual recognition on the need for synergy and convergence of respective mandates in the realization of economic efficiency and growth.

Given the current state of policy and institutional development in the Philippines, the OFC adopts the following approach with respect to its relationship with SRs: The SRs will take the lead role in tackling economic and technical issues while the OFC will lead in competition issues. Both will coordinate and consult with each other to ensure that policies and remedial measures undertaken by one will not be contrary to the mandate of the other.

In this setup, one of the tasks of OFC is to ensure that it takes a proactive approach in promoting the development of regulatory policies that are consistent with healthy competition.²⁹

VI. TOWARDS A CULTURE OF COMPETITION: THE ROLE OF ADVOCACY

Competition advocacy refers to those activities conducted by the competition authority related to the promotion of a competitive environment for economic activities by means of non-enforcement mechanisms, mainly through its relationships with other entities and by increasing public awareness of the benefits of competition.³⁰ A widespread understanding and appreciation of the benefits of competition by the public, and a broad-based support for a strong and effective competition policy, serve as building blocks in nurturing and sustaining a healthy competition culture.

Competition law enforcement is important, but it is not sufficient to create a culture of competition. An effective competition regime can only be achieved if effective enforcement of the competition rules is complemented and supplemented by the active engagement of all stakeholders to ensure that the benefits of competition are clearly understood. However, this does not mean that advocacy and enforcement are mutually exclusive, because they are in fact interdependent. A rigorous and vigorous enforcement of competition laws complement, supplement, and reinforce competition advocacy efforts.

Competition advocacy can be an extremely relevant and important function for competition authorities, particularly in developing countries where promulgation of laws and regulations are not properly assessed regarding their impact on market competition.³¹ Advocacy plays a crucial role in addressing restraints to competition among governments, business communities, and the public in general.

Beyond the implementation and enforcement of competition law, the OFC actively participates and proactively disseminates the benefits of competition to the general public

²⁹ *Id.*

³⁰ Advocacy and Competition Policy, ICN Advocacy Working Group Report (2002).

³¹ UNCTAD Voluntary Peer Review of Competition Policy Law and Policy: Philippines (2014).

through its various advocacy efforts. The OFC embarks on competition advocacy with the following objectives:

- to facilitate and enhance awareness of the general public on the economy-wide benefits of national competition policy and the importance of the OFC's work;
- to engender support for the objectives of competition policy and align these with the mandates and interests of stakeholders in other government agencies, the judiciary, private sector, the academe, and civil society organizations, among others;
- to create a culture of compliance and deterrence and thereby help relevant regulatory bodies to determine prioritization of cases and manage enforcement costs;
- to inform and advise the national government and public authorities on national needs and policies related to competition matters; and
- to forge strategic engagements with key foreign counterparts in order to foster closer cooperation in competition policy and law.

These objectives revolve around the key themes of the OFC's competition advocacy agenda: (i) advancing economic justice and consumer welfare; (ii) promoting a culture of competition and level playing field; (iii) respecting market dynamics; (iv) ensuring fair, accountable, transparent, consultative, and participative engagement with stakeholders; and (v) promoting international cooperation to facilitate the efficient functioning of markets.

The OFC continuously improves on its advocacy work—either on its own or with the support of its development partners. It conducts roundtable discussions and consultations with various stakeholders such as business groups, consumer associations, and the media as well as conducts trainings, seminar workshops, and conferences with the judiciary, academe, members of the legislature, sector regulators, and other stakeholders.

It has also published several reports, pertinent guidelines, advisories, and policy papers and regularly observes an annual National Competition Day every 5th of December, which was institutionalized through Proclamation No. 384, series of 2012. This is in keeping with global solidarity centered on the implementation of competition law around the world as the OFC joins its colleagues in the global competition network in the observance of World Competition Day every 5th of December.

In 2014, the Philippines became the second country among ASEAN-member states, and the third in Asia to undergo the UNCTAD Voluntary Peer Review. This took place during the 14th Session of the Intergovernmental Group of Experts on Competition Law and Policy in Geneva, Switzerland. The Peer Review is an exercise by which a country voluntarily allows other countries to evaluate its competition legal framework and institutional set-up.

Also in 2014, the OFC successfully conducted its first National Competition Conference (“NCC”) which is envisioned to be an annual event that will serve as a platform for a discussion of the most pertinent competition issues facing the region and the world. The past year's theme, *Advancing Economic Justice through Competition Policy*, sets the tone upon which all succeeding conferences will be anchored—that in the final analysis, advancing economic justice through inclusive and participatory economy that promotes and protects consumer welfare is the bedrock

of any issue pertinent to competition policy and law. A prospective theme for this year's NCC is the role of competition policy and law in empowering SMEs and achieving inclusive growth.

VII. BEYOND BORDERS: COMPETITION LAW AND REGIONAL INTEGRATION

This year, the Association of Southeast Asian Nations ("ASEAN") faces the establishment of a regional community via the ASEAN Economic Community ("AEC"). The AEC constitutes one of the three pillars of the envisioned ASEAN Community, with the other two pillars being the Political-Security Community and the Socio-Cultural Community. The AEC Blueprint signed in 2007 reaffirms the goal of regional economic integration declared at the Bali Summit in 2003. During the 12th ASEAN Summit held in January 2007 in Cebu, Philippines, the ASEAN Leaders decided to fast-track regional integration by 2015.

The establishment of the AEC aims to accelerate regional integration and connectivity by facilitating the movements of skilled persons, capital, and goods; lowering barriers to trade; and strengthening the institutional mechanisms of ASEAN. It aims to make ASEAN more dynamic, equitable, and competitive by creating a single market and production base that is fully integrated into the global economy.

Competition policy and law is an important pillar in a well-functioning regional market. It enhances regional competitiveness and improves the business environment. It ensures a level playing field between businesses and strategically incubates a culture of fair business competition that will promote regional economic growth.

However, the path leading to reaping the benefits of integration is not without concomitant challenges. ASEAN member states ("AMSs") vary considerably in terms of legal and political systems, economic development, cultural underpinnings, market structure, business culture, and ownership concentrations, among other divergences. These differences feed into the varying views of AMSs as regards industrial and economic policies that best suit their particular contexts and circumstances.

The divergent rationales on the adoption and implementation of competition laws among AMSs potentially raise significant hurdles in reaching consensus on what makes up an ASEAN competition policy, if one is contemplated. For ASEAN to become a fully integrated region, it must at least harmonize its national competition laws.

Yet, harmonization must fully take into account existing diversities that make ASEAN what it is as a regional political grouping. Harmonization thus entails respect for the deeply held ASEAN values of consensus-based decision-making and non-interference in each other's affairs. As of date, eight AMSs have existing competition laws, namely: Brunei Darussalam, Indonesia, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam. Meanwhile, Cambodia and Lao PDR are in the process of finalizing their laws.

Competition policy and law will indeed play a vital role in regional economic integration. But the various challenges affecting ASEAN as a dynamic political organization and diverse geographic grouping may affect the value of competition policy as a mechanism to enhance economic integration. Nonetheless, considering that the ultimate goals of competition laws are similar among the AMSs—regardless of their varying local specificities, contexts and structures—

there will be identifiable commonalities for compatible national competition laws among the AMSs.

Existing challenges may be turned into promising opportunities for greater regional cooperation and the charting of custom-made mechanisms given the region's diversity. Prospects towards addressing these challenges include the establishment of intra-ASEAN memoranda of understandings on enforcement cooperation; strengthening competition culture through advocacy and institution-building; using a multi-sectoral approach in improving regional core competencies in competition policy; maximizing cooperative ventures with dialogue partners; increased collaboration among AMSs; and strengthening formal/informal networks for exchanges among policymakers, the academe, and civil society organizations.

VIII. CONCLUSION

Now is the time for competition policy to flourish among ASEAN member states. Globalization and multilateralism have enhanced dynamic and interdependent markets regionally and globally. No economy can claim absolute advantage over another and the necessity for cooperation and synergy is stronger than ever.

Regional economic integration via the ASEAN Economic Community will define the evolution and development of competition policy in the region as ASEAN endeavors to compete internationally and be fully integrated into the global economy. There will be benefits and costs for regional integration of competition policy and law, hence the need to ensure that benefits outweigh the costs.

Competition policy and law have long been part of the Philippine legal system. But the seemingly unremarkable level of jurisprudential depth on competition policy cases suggests a weak competition culture. This can be further explained by its unique historical and cultural contexts underpinned by its experiences under colonialism. The country's history of colonization entrenched an anticompetitive culture that traditionally put a premium on relationships rather than rules.

This scenario has gradually changed over the years as the Philippines has embraced a competitive drive to perform better as a nation. With the creation of the Office for Competition under the auspices of the Department of Justice, the passage of the Philippine Competition Act, and consequent institutionalization of the Philippine Competition Commission, the competition policy agenda will be further ingrained in the country's political, economic, and legal systems.

Through various collaborative platforms, a synergy and convergence of efforts will hopefully be achieved by these two institutions as they guard and ensure a level playing field that encourages initiative, innovation, and constant drive for higher productivity—guided by the principles of fairness, transparency, and accountability.