

6. The Philippines

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1. INTRODUCTION

This chapter attempts to examine the factors that have influenced the economic development of the Philippines and the challenges that exist in adopting a pro-competitive reform agenda. Geographical, historical, political and socio-economic issues all require analysis before considering the legal component of a pro-competitive strategy. We attempt to consider each of these considerations before offering our assessment of the future development of competition policy in the Philippines.

2. GEOGRAPHY, GEOLOGY AND CLIMATE

The geography of the Philippines has had a considerable impact on the historical and socio-economic development of the country. Formed from volcanic activity millennia ago, the Philippine archipelago consists of more than 7,000 islands. The country extends over 1,150 miles and the highest mountain ranges rise to an altitude of 2,954 m.¹ The physical geography of the country imposes serious inhibitions on economic development, particularly as regards infrastructure but also in relation to more general issues such as good governance and the rule of law.

Situated on the edge of insular Southeast Asia, the Philippines borders three other jurisdictions, namely Taiwan to the north, and Malaysia and Brunei to the south.² The archipelago is surrounded by the South China Sea, the Philippine Sea, the Sulu Sea, the Celebes Sea and the Luzon Strait.³

¹ Central Intelligence Agency (CIA) (2011), 'Philippines', *The World Factbook*. Retrieved from <https://www.cia.gov/library/publications/the-world-factbook/geos/rp.html> (last accessed 21 November 2011).

² Francia, L. H. (2010), *A History of the Philippines*, New York: The Overlook Press.

³ CIA (n 1).

The climate, defined by geographical position, also plays a significant role in the nation's economic development. Every year, the country is adversely affected by tropical cyclones; on average, the country is hit by 15 typhoons and six cyclonic storms annually,⁴ which often cause major flooding, landslides, property damage and transport disruption and loss of life.⁵ Volcanic activity⁶ is also a frequent cause for concern, the most recent significant event resulting in the evacuation of 33,000 people.⁷

3. HISTORICAL BACKGROUND

The recorded history of the Philippines dates back to the tenth century, 600 years before the arrival of the first Europeans.⁸ Pre-colonial records document the inhabitants' involvement in a trade circle that reached from the Persian Gulf to southern China which, in its heyday – from the seventh to the ninth century – centered on the port of the prehispanic Indianized Kingdom of Butuan, now a regional center in the southern Philippines.⁹ It appears that the incentive for international trade was both an economic one and an effort to expand diplomatic relations.¹⁰

Colonization began in 1510 with the arrival of the first Europeans, specifically Portuguese sailors.¹¹ Within 11 years, Spain conquered and renamed the archipelago during an expedition led by the famed explorer Ferdinand Magellan. The first site to be conquered was Malacca in today's Malaysia,¹² which subsequently developed into an economic hub.

⁴ CIA (n 1).

⁵ Nakasu, T., Sato, T., Inokuchi, T., Shimokawa, S., Watanabe, A. (2011), *2009 Typhoon Ondoy and Pepeng Disasters in the Philippines*, National Research Institute for Earth Science and Disaster Prevention. Tokyo: Tokyo University, Japan.

⁶ The Philippines forms part of the Pacific Ring of Fire, Francia, p. 24 (n 2).

⁷ 'Mayon (elev. 2,462m), the country's most active volcano, erupted in 2009 forcing over 33,000 to be evacuated' CIA (n 1).

⁸ Francia, p. 24 (n 2).

⁹ Situated on the northwestern coast of Mindanao on the banks of the Agusan River, Butuan was a putative city state, Francia, p. 28 (n 2).

¹⁰ According to Francia, these early diplomatic trade missions were more of a face for improving international diplomacy, Francia, p. 28 (n 2).

¹¹ Francia, p. 29 (n 2).

¹² The surrounding region is rich in minerals, spices and worked as a comprador site similar to Hong Kong and Singapore today, Francia, p. 29 (n 2).

Active colonization of the current Philippine islands began as a result of the expedition organized by Miguel López de Legazpi in 1565.¹³

Legazpi and his successors implemented a system of exploitation, rather than development, in order to make the most of their conquest. They devised and refined a plan to maximize control, facilitate exploitation, and enrich those colonists who had been awarded land grants by the Spanish crown.¹⁴ As the colony spread throughout the archipelago, Spanish economic monopolies were centered on the newly established city of Manila.¹⁵ During this period, Manila was used as a depository for Mexican silver, which was transported annually across the Pacific. The purpose of bullion importation was to use the silver to obtain Chinese silk, textiles, porcelain, opium and tea for export to Europe. This system proved to be very profitable. However, in the long run, it only served to inhibit the economic development of the colony. According to Francis, 'the Spanish colonizers paid scant attention to developing either the agricultural potential of the colony or manufacturing industry'.¹⁶

The participation of Chinese immigrants had a significant influence in the early economy of the Philippines. Immigrants from Fujian and surrounding provinces flooded the country leading to their near monopolization of trade. A visitor to the Philippines noted in 1858:

In the islands of the Philippines, they have obtained almost a monopoly of retail trade, and the indolent habits of the natives cannot at all compete with these industrious, frugal and persevering intruders.¹⁷

Chinese immigrants dominated mercantile activities to such an extent that the colonizers felt the need to control their trade activities. They implemented a system of trade regulation known as *Pancada*.

¹³ Legazpi claimed the archipelago for Spain (Guillermo, A. and Win, M. K. (1997). *Historical Dictionary of the Philippines*. Lanham, Md.: Scarecrow Press, p. XX). Legazpi brought a member of the Augustians, Urdaneta from a monastery in Mexico, who, on his return, charted the route from the Philippines to Mexico and inadvertently started the galleon trade between the two countries which was to last for centuries (1593–1815) (id; Guillermo and Win, 1997, p. 96).

¹⁴ The descendants of these families form the Plantocracy still inherent in Filipino society today.

¹⁵ Established just prior to 1571. Guillermo and Win, p. 152 (n 13).

¹⁶ Francia, p. 75 (n 2).

¹⁷ Fabella, R. (2003), 'Wipeout: Sanglely Mercantile Dominance and Persistence in the Spanish Colonial Period in the Philippines', School of Economics, University of the Philippines.

The *Pancada* system was designed to bar the ethnic Chinese from the retail trade altogether, thereby paving the way for local participation. The other more radical policy was *expulsion* from a province or from the country entirely. The latter was often resorted to in 1596, 1597, 1747, 1769.¹⁸

However, the Chinese continued to dominate many markets despite the restrictive measures imposed. In addition to trade, Chinese migrants also flooded the manual labor market. The majority of the early Chinese immigrants were predominantly male, so resulting in an unbalanced sex ratio of males to females of 113:1.¹⁹ Chinese immigrants also formed a large part of the itinerant labor force, so an interesting phenomenon resulted – namely that Chinese immigrants were disproportionately represented in both the most affluent and the poorest social strata.²⁰

For the Spanish, the Philippines was a very profitable colony, despite its early years being fraught with conflicts. Trade conflicts between the competing Dutch East Indies Company in Java and the English East India Company to the south over control of the spice trade resulted in a number of clashes from 1600 to 1640.^{21,22}

In 1762, the British occupied Manila after declaring war on Spain earlier that year.²³ The occupation was easily accomplished as the majority of the colonials retreated to the hills and an official surrender was agreed only ten days after the British landed. The occupation lasted for two years and ended as a result of the Treaty of Paris that concluded the Seven Years War.²⁴

After the British evacuated Manila, the Spanish reoccupied the city and continued their *modus operandi*. It was not until a transformation

¹⁸ Id.

¹⁹ *Philippines Country Study Guide* (2008), Washington: International Business Publication.

²⁰ Id. The Chinese immigrant population has continued to prosper despite all the political upheavals that occurred after the end of the Spanish colonization and that continue today. Much of their success has been attributed to their strong cultural network and absence from government involvement.

²¹ Guillermo and Win, p. 177 (n 13).

²² Dolan, R. E. (1991), *The Early Spanish: Philippines: A Country Study*, Washington: GPO for the Library of Congress.

²³ The occupation was a result of the Seven Years War between Britain and France. Spain and France shared a monarchy, the House of Bourbon, and this resulted in Spain's automatic involvement in the war. Britain seized all France and Spain's colonies and as a result, Manila was a target (Guillermo and Win, p. 51 (n 13)).

²⁴ Guillermo and Win, p. 51 (n 13).

in attitudes that a policy of national investment began. In 1863, Queen Isabella of Spain issued a decree requiring the colonial government to provide free education for all. This ensured that the Spanish language was widely propagated.²⁵ Moreover, the completion of the Suez Canal in 1869, which cut travel time between Europe and the Philippines in half,²⁶ made a metropolitan European education more accessible to those who could afford it. Consequentially, the greater ease of transport increased the trend of the children of the Filipino upper and middle classes to be educated in Europe. This resulted in a significant ideological break from those who did not have the privilege of such international exposure. A new Filipino educated class hence emerged in the late 19th century, known as the 'Ilustrados', Spanish for 'enlightened ones'.

Other significant changes also occurred during this period. For the first time, significant capital investment was ploughed into developing transport infrastructure. Railways and tram lines were built, and the largest suspension bridge in Asia at the time was completed in 1851. With the growth of the economy came the need to have a country-specific currency. The Banco Español-Filipino was given the task of printing the first currency bills.

For the most part, this mini economic boom was fueled by the successful exploitation of the agricultural opportunities in the archipelagos' various islands, with particular regard to cash crops such as tobacco, sugar and coffee.²⁷ Prior to this period, the economy was heavily reliant on the China–Mexico trade previously discussed. In the span of 50 years, the country progressed from a relatively unimportant outpost to a significant economy. Despite the considerable change in fortunes for the country, the socio-economic structure remained the same. Society was divided into a small landed class and the mass of landless peasants. A significantly disproportionate share of the wealth was, and is, still owned by the descendants of the Spanish plantocracy.

The path toward independence was initiated by the execution of three priests – Gomez, Burgos and Zamora²⁸ – who were implicated in a

²⁵ Id, p. 103.

²⁶ Tucker, S. C. (2009), *The Encyclopedia of the Spanish-American and Philippine-American Wars*, Santa Barbara, CA: ABC-CLIO-LLC, p. 490; M. Cuevas-Hewitt, *The Encyclopedia of the Spanish-American and Philippine-American Wars*, Cambridge, MA: South End Press, pp. 490–93.

²⁷ The Maritime Heritage Project, 'Ports of the World: Philippines', Retrieved from <http://www.maritimeheritage.org/ports/philippines.html> (last accessed 13 December 2011).

²⁸ Guillermo and Win, p. 99 (n 13).

mutiny.²⁹ Other catalysts of independence included the activities of Jose Rizal, the Philippine national hero. One of the most prominent members of the Ilustrado class, Rizal strove for a peaceful transition to independence.³⁰ However, his revolutionary efforts – the most famous of which were his two novels attacking Spanish rule – led to his eventual conviction and execution.³¹

Despite the Spanish colonial government's best efforts to maintain control, the first Philippine Republic was established in 1899.³² However, during the same period, the Spanish-American War ended, concluded by a second Treaty of Paris under which the Philippines was not granted independence but rather was sold by Spain to the United States for a mere US\$20 million.

As one might imagine, the beginning of American rule was violent. Within one year of the occupation, a civil war raged throughout the country resulting in the loss of at least 1 million people and at a cost greater than that of the whole Spanish-American war.³³ The war officially ended in 1901.³⁴

By the end of the war, the Americans had reformed the judicial system, set up a constabulary and reorganized the local government.³⁵ They also reformed the education system, making English the lingua franca.³⁶

During American rule, the political scene was dominated by the Nacionalista Party, which openly sought independence, although it maintained a high level of cooperation with the American administration. The party requested independence several times, and in 1935 a ten-year transition to independence was begun. A new constitution was written, based on the American model. However, this plan was interrupted by the outbreak of the Pacific War.³⁷

The day after the bombing of Pearl Harbor on December 8, 1941, the Japanese attacked the Clark Air Base in Pampanga, thus involving the

²⁹ *Id.*, p. 57.

³⁰ *Id.*, p. 209.

³¹ Rizal was convicted of being a revolutionary agitator (n 20).

³² Tucker, p. 498 (n 26).

³³ *Id.* Not all of these people died in combat. Nearly 200,000 died in a cholera epidemic toward the end of the war.

³⁴ *Id.* Although it officially ended in 1901, there were still significant bouts of unrest, particularly in the south until 1913.

³⁵ Taft commission (Guillermo and Win, p. 236 (n 13)).

³⁶ Guillermo and Win, p. 80 (n 13).

³⁷ Ten years of commonwealth, after which total independence would happen: Tydings-McDuffie Act (Guillermo and Win, p. 247 (n 13)).

Philippines in the war.³⁸ The bombing was followed by the arrival of Japanese troops. Confronted with aerial bombardment and the landing of Japanese ground troops, the defending American army retreated and surrendered in April 1942. The Japanese imposed a new governmental system and reputedly imprisoned 80,000 people whom they suspected of anti-Japanese activity.³⁹ Formally, the Japanese declared the country to be an independent republic and placed a Filipino at the head of the occupation government. The Japanese occupation ended with the conclusion of World War II, and a *de facto* and *de jure* independent state emerged in 1946 with the agreement of the United States. Despite this, the country remained highly dependent on American markets and support. In the aftermath of World War II, Manila lay in ruins, and enormous capital expenditure was required to rebuild the country. The Americans provided aid on the condition that the links between the two countries were strengthened with comprehensive trade agreements beneficial to America, and a military alliance was also concluded.⁴⁰

The early years of the new republic saw the defeat of the Huks,⁴¹ a communist terrorist group, and the reintegration of the country into the world economy. In addition to the positive aspect of change, the new government also allocated agricultural land to poor Catholics who were encouraged to migrate to the traditionally Muslim south. The negative effects of this policy are still apparent in a continuing Islamic insurgency in the affected southern provinces.

The relationship between the rest of the world, excluding America, and the Philippines continued to develop. President Diosdado Macapagal (1961–5)⁴² in particular was instrumental in fostering these new relationships.

However, this new era of progress was relatively short-lived. In 1965, Ferdinand Marcos⁴³ was elected as President. The beginning of his rule, which lasted 20 years, appeared positive, and he increased taxes to fund national development. However, he was shamelessly corrupt, establishing

³⁸ Guillermo and Win, p. 118 (n 13).

³⁹ Francia, p. 182 (n 2).

⁴⁰ The Philippine Trade Act 1946.

⁴¹ The Huks were a movement of communist supporters who, after their brave attempt to defeat the Japanese during their occupation of the Philippines during World War II, made considerable demands on the government. Eventually, their terrorist activities lost them support. (Guillermo and Win, p. 105 (n 13)).

⁴² President from 1961–5.

⁴³ Ferdinand E. Marcos (1917–89) sixth President-Prime Minister (Guillermo and Win, p. 155 (n 13)).

a 'crony capitalist' system that was intended to redistribute monopolies from traditional oligarchs of Spanish descent to Filipino businessmen. These 'cronies' (Marcos' family members and close personal friends) pilaged national assets for their own benefit, causing substantial damage to the economy in the process. Discontent increased and law and order broke down, providing an excuse for a declaration of martial law in 1972⁴⁴ which prevailed until 1981⁴⁵ by which time the economy was in significant decline. Marcos' dictatorship and corruption, combined with the economic decline resulting from his mismanagement, led to his eventual exile after the People Power Revolution in 1986.⁴⁶

The new and fifth republic began in turmoil. Economic growth had slowed as a result of both socio-political and natural disasters. Approximately 200,000 people were made homeless by the eruption of Mount Pinatubo in 1991,⁴⁷ and Manila saw six unsuccessful coup attempts. President Ramos saw the need to unify the country and made significant efforts to do so.⁴⁸ He legalized the Communist Party and implemented an amnesty for all rebel groups which aimed at independence for various parts of the country, and he hoped specifically to provide much needed stability to encourage economic development.

Despite these efforts to conciliate the Moro Islamic Liberation Front (MILF), a Muslim militant group in the south, the situation worsened.⁴⁹ Subsequent events resulted in the declaration of an all-out war soon after his successor, Estrada, took over.⁵⁰

The Philippine national narrative is fraught with conflict. The constant abuse of power by nearly all of the country's elite, combined with the challenges of the archipelagological geography, geology and a tropical climate, have made the country difficult to rule. Thus, it has been almost impossible to create the stability or continuity which sustained economic progress requires.

⁴⁴ Id, p. 156.

⁴⁵ Marcos' political opponents were also released, along with the other political prisoners he interned during the period of martial law (id, p. 156).

⁴⁶ In 1986 Marcos fled to Honolulu with his family and 60 of his cronies. He died in 1989, leaving his widow to defend his actions (id, p. 156).

⁴⁷ McCormick, P. L. T., and Trepte, C. (1995), 'Atmospheric Effects of the Mt. Pinatubo Eruption', *Nature* (373), pp. 399–404.

⁴⁸ Eighth President (1992–8), (n 20).

⁴⁹ Id. Moro Islamic Liberation Front.

⁵⁰ Francia, p. 299 (n 2).

4. EXISTING ECONOMIC AND POLITICAL FACTORS

4.1 Economic System

Since the end of World War II, the Philippines has slipped from being one of the richest countries in Asia (second only to Japan) to being one of the poorest. Despite rapid growth after the war, the economy slowed down after years of economic mismanagement and political volatility. The macroeconomic instability during the autocratic Marcos regime (1965–86) contributed to economic stagnation; as a result of these circumstances, the national economy has found it difficult to recover its former prominence.

According to the United States State Department:

A severe recession from 1984 through 1985 saw the economy shrink by more than 10 percent, and political instability during the Corazon Aquino administration further dampened economic activity . . . During the 1990s, the Philippines saw a period of higher growth resulting from . . . a broad range of economic reforms designed to spur business growth and foreign investment, although the Asian financial crisis in 1997 slowed Philippine economic development once again.⁵¹

More recently, in the 2000s, during President Gloria Macapagal-Arroyo's administration (lasting two terms from 2001–10), considerable progress was made in restoring macroeconomic stability with the help of a well-regarded economic team. Nonetheless, long-term economic growth remains threatened by an inadequate infrastructure, a relatively weak education system, and trade and investment barriers. International competitiveness rankings have slipped.⁵²

In 2010, the Philippine economy saw growth in GDP higher than it had been for the previous 30 years. According to the World Bank, 'on the demand side, private consumption, investment, and net exports were the main drivers of growth. On the supply side, industry and services propelled the economy . . . Dollar remittances grew progressively faster throughout 2010 and finished the year with double digit growth.'⁵³

⁵¹ US Bureau of East Asian and Pacific Affairs. 'Background Note: Philippines'. Retrieved from <http://www.state.gov/r/pa/ei/bgn/2794.htm> (last access 16 November 2011).

⁵² Id.

⁵³ Id.

4.1.1 Economic data and inequality

With an estimated gross domestic product (GDP) of US\$351.4 billion, the Philippine economy, as of 2010, was the 34th largest economy in the world and the fourth largest in Southeast Asia after Indonesia, Thailand and Malaysia. This figure grew by 7.3 percent, from 2009, ‘spurred by consumer demand, a rebound in exports and investments, and election-related spending’.⁵⁴

Annual GDP growth has averaged 4.6 percent over the past decade. However, to make significant inroads into the high levels of poverty, a growth rate of 7–8 percent per annum would be required.⁵⁵

Due to its large population of over 100 million as of July 2011,⁵⁶ which is increasing at a rate of over 2 percent per annum,⁵⁷ the Philippines suffers from dire wealth inequality. This is reflected in the country’s GDP per capita of only US\$4,111 (2011 estimate).⁵⁸

According to a study by research and advisory firm Stratbase Research Institute:

The gap between the rich and the poor is more pronounced in the Philippines as compared with neighboring Southeast Asian nations . . . The Philippines registered a Gini coefficient of 44 percent last year, higher than Thailand’s 42.5 percent, Indonesia’s 39.4 percent, Malaysia’s 37.9 percent and Vietnam’s 37.8 percent. The country’s high Gini coefficient was confirmed by similar research findings by the multilateral lenders Asian Development Bank and the World Bank, as well as the United Nations Development Program, National Statistics Office and National Statistical Coordination Board.⁵⁹

According to a study by the Asian Development Bank, 10 percent of Filipino families enjoy more than a third of the country’s total income, hence the large inequalities, not only in income, but in land ownership, welfare and human development indicators.⁶⁰

The country is under pressure to reconcile its available resources with its exponentially increasing population, as ‘the portion of the population

⁵⁴ CIA (n 1).

⁵⁵ Id.

⁵⁶ Id.

⁵⁷ Id.

⁵⁸ Brown, K. (2011), ‘A Fragmented Forum’, *Financial Times*, November 15, p. 11.

⁵⁹ Ho, A. (2011). ‘Philippines Leads in Income Inequality in Asean, Says Study’, *Philippine Daily Inquirer*, July 27. Retrieved from <http://business.inquirer.net/8377/philippines-leads-in-income-inequality-in-asean-says-study> (last accessed 23 November 2011).

⁶⁰ Id.

living below the national poverty line has increased from 24.9 percent to 26.5 percent between 2003 and 2009, equivalent to an additional 3.3 million Filipinos in poverty'.⁶¹

4.1.2 Effects of global recession on the Philippines

The global recession of the late 2000s did not hit the Philippine economy as hard as it did many of its regional peers. The Philippines was comparatively well-equipped to deal with financial crisis, partly due to reduction in fiscal deficits, declining government debt ratios, and good banking sector capital adequacy ratios. Furthermore, exposure to foreign toxic assets was minimal, whilst a relatively low dependence on exports, robust domestic consumption, substantial remittances from 4 to 5 million overseas Filipino workers, and growing business outsourcing all contributed to a surprisingly robust national economic performance. The impact of overseas remittances accounts for almost 10 percent of GDP and so significantly affects both the balance of payments and the reservoir of foreign currency reserves. Consequently, the Philippines' macroeconomic fundamentals are strong from both a regional and a global perspective.

4.1.3 Education

With a functional literacy rate of 86.4 percent,⁶² the Philippines is 'considered to be one of the most highly educated middle-income countries'.⁶³ In 2010, according to the Philippine Commission on Higher Education (CHED), there were 2,770,965 students in pre-baccalaureate, baccalaureate, post-baccalaureate, and master's and doctorate programs in the Philippines.⁶⁴ However, whilst the Philippines has achieved near universal access to primary education, the quality of much of the system is suspect. Filipino parents value education as they believe it opens opportunities

⁶¹ US Bureau of East Asian and Pacific Affairs (n 51).

⁶² Republic of the Philippines Department of Education. 'Fact Sheet: Basic Education Statistics'. Retrieved from <http://www.deped.gov.ph/factsandfigures/default.asp> (last accessed 17 November 2011).

⁶³ The International Comparative Higher Education Finance and Accessibility Project (ICHEFAP). 'Higher Education Finance and Cost-Sharing in the Philippines'. Retrieved from http://gse.buffalo.edu/org/inthigheredfinance/files/Country_Profiles/Asia/Philippines.pdf (last accessed 17 November 2011).

⁶⁴ Republic of the Philippines Commission on Higher Education (CHED). 'Summary of Tertiary Enrollment by Discipline Group and Academic Year'. Retrieved from http://202.57.63.198/chedwww/index.php/eng/content/download/1082/6139/file/Summary%20of%20Tertiary%20Enrollment%20by%20Discipline%20Group%20and%20Academic%20Year_040411.pdf (last accessed 17 November 2011).

that ensure a good future for their children. However, in poorer families, ‘education inevitably tends to be less prioritized over more basic needs such as food and shelter’.⁶⁵ Families in the higher socio-economic groups often rely on private institutions to increase higher education opportunities, rather than rely on state institutions.

Somewhat surprisingly, the Philippines has had a higher proportion of its students in private higher education than any other country. In 2005, private higher education institutions enrolled more than 65 percent of all higher education students in the country, and whilst quantity is important, there remain considerable doubts as to the quality of a substantial part of the higher education system.

Recent surveys have concluded that the Philippines ‘ranks a poor seventh among nine Southeast Asian nations in the area of education and innovation’.⁶⁶ In June 2011, the results of the 2010–2011 Global Competitiveness Report of the World Economic Forum showed ‘that the Philippines only fared better than Cambodia among the eight Southeast Asian countries that were surveyed in the fields of education, science and technology, and innovation’.⁶⁷ As regards primary education, ‘the Philippines ranked 99th out of 138 economies. In all categories, the Philippines [has fallen] behind Singapore, Brunei, Malaysia, Indonesia, Thailand, and Vietnam.’⁶⁸ This finding has significant negative implications for future economic development.

4.1.4 Labor

The Philippines has the 15th largest labor force in the world, with approximately 39 million in the workforce as of 2010. One third of the working population is engaged in the agricultural sector and 15 percent work in industry. The service sector stands as the biggest contributor to the Philippine economy, generating about half the GDP and provides employment for almost half the workforce.⁶⁹ In 2010, much of the growth in the services sector came from retailing, which was bolstered by the inflow of

⁶⁵ Maligalig, D. S., Caoli-Rodriguez, R. B., Martinez, Jr., A., and Cuevas, S. (2010). ‘Education Outcomes in the Philippines’, Asian Development Bank, May. Retrieved from <http://www.adb.org/Documents/Working-Papers/2010/Economics-WP199.pdf> (last accessed 17 November 2011).

⁶⁶ De Leon, M. V. (2011). ‘Philippine Education Ranked “Poor”’, CBN News. Retrieved from <http://www.abs-cbnnews.com/business/06/14/11/philippine-education-ranked-poor> (last accessed 17 November 2011).

⁶⁷ Id.

⁶⁸ Id.

⁶⁹ Id.

overseas workers' remittances. Business process outsourcing, finance, and real estate are other high growth components of the economy.⁷⁰

4.1.5 Remittance economy

As previously mentioned, the most successful export of the Philippines remains its people. According to a World Bank Study, after China, the Philippines is the second largest recipient of overseas workers' remittances in Asia.⁷¹ As of 2009, there were approximately 9 million Overseas Filipino Workers (OFWs) – 10 percent of the country's population worked abroad.

The *Bangko Sentral ng Pilipinas*, or the Philippine Central Bank, reported that 'in the first 11 months of 2009, remittances from OFWs rose to USD\$15.8 billion',⁷² and are predicted to achieve a double digit growth rate. 'Remittances are the reason for consumption growth of more than 5 percent, easily outstripping the country's annual economic growth of less than 2 percent.'⁷³ About 16 percent of remittance inflows come from the Middle East and around 5 percent from Japan.⁷⁴

Despite the fact that remittances have a positive impact on many economic indicators, economists caution that migration and remittances might ultimately negatively affect the competitiveness of the economy. This effect partly explains the comparatively poor export performance of the Philippines and may, in the long term, limit the diversification of the economy and productivity growth. It is, therefore, understandable that the authorities are looking for ways to mitigate this effect. Standard macroeconomic policy may thus be rather ineffective in dealing with the competitiveness problem. There is a need for structural policies to enhance productivity, including investment in infrastructure and education, reforms to increase competition on domestic markets, and export promotion.⁷⁵

⁷⁰ Asian Development Bank (2011) 'Asian Development Outlook 2011', Retrieved from <http://www.adb.org/documents/books/ado/2011/ado2011-phi.pdf> (last accessed 15 November 2011).

⁷¹ World Bank. 'Migration and Development Brief: Outlook for Remittance Flows 2011–12'. Retrieved from <http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1110315015165/MigrationAndDevelopmentBrief13.pdf> (last accessed 15 November 2011).

⁷² Banyan (2010), 'The Philippines and its Remittance Economy: People, the Philippines' Best Export', *The Economist*, February 2.

⁷³ Id.

⁷⁴ Id.

⁷⁵ Bayangos, V. and Jansen, K. (2011), 'Remittances and Competitiveness: The Case of the Philippines', *World Development*, 39 (10), pp. 1834–46. Retrieved

4.1.6 Business process outsourcing

The Philippines' business process outsourcing (BPO) industry has, over the last few years, been the fastest-growing segment of the domestic Philippine economy. As of 2010, it accounted for about 15 percent of the global outsourcing market. Despite the recent global financial turmoil, it was still able to generate 'more than USD\$6 billion in revenues in 2008 (up 26 percent) and USD\$7.2 billion in 2009. BPO revenues rose [by] 26 percent to nearly USD\$9 billion in 2010. The sector created about 100,000 new jobs in 2010, bringing total BPO employment as of end-2010 to about 525,000.'⁷⁶

By the end of 2010, Philippine call center revenues overtook those of India with an estimated 'USD\$5.7 billion for call center work from the U.S., Europe, and Australia versus India's USD\$5.5 billion'.⁷⁷ Much of this growth is due to the ubiquity of the English language and a cultural affinity with the USA, which enables American businesses to more easily outsource back office functions to the Philippines. However, in terms of overall outsourcing revenues, India still leads with US\$70 billion compared to the Philippines' US\$9 billion.⁷⁸

4.1.7 Unemployment and poverty

Despite strong economic growth in 2010, the Asian Development Bank, in its report on the Philippines, states that unemployment remains a chronic problem in the country.

The unemployment rate fell only slightly to 7.3 percent. Young people aged 15–24 account for about half the unemployed. The underemployment rate also remained high at about 20 percent. Moreover, the lack of jobs drives large numbers of Filipinos to work abroad. Weak employment generation and low productivity equate with slow reductions in poverty. The number of people living in poverty increased by 3.3 million to 23.1 million in the six years up to 2009, when the incidence of poverty rose to 26.5 percent from 24.9 percent.⁷⁹

The Philippine National Statistics Office, in its quarterly report of September 2011, revealed that one in four working-age Filipinos are either

from <http://www.sciencedirect.com/science/article/pii/S0305750X11000891#sec1> (last accessed 15 November 2011).

⁷⁶ US Bureau of East Asian and Pacific Affairs (n 51).

⁷⁷ Srivastava, M. (2010), 'Philippine Call Centers Overtake India'. Retrieved from http://www.businessweek.com/magazine/content/10_50/b4207017538393.htm (last accessed 17 November 2011).

⁷⁸ Id.

⁷⁹ Banyan (n 72).

unemployed or looking for more work.⁸⁰ In spite of the country's growth rate, the World Bank opines that economic growth 'continues to bypass the poor'.⁸¹ However, on a more optimistic note, statistics suggest 'some distributional improvement within the ranks of the poor as the poverty gap began to decline between 2006 and 2009'.⁸²

4.1.8 Corruption

According to the latest Hong Kong-based Political and Economic Risk Consultancy (PERC) Asian Intelligence report, the Philippines continues to struggle with corruption as it was rated 'fourth most corrupt country in Asia' with a score of 8.9 on a scale of one to 10, 10 being the most corrupt. 'Indonesia [was considered] the most corrupt nation, Cambodia second; Vietnam third; and the Philippines fourth'.⁸³

According to the report, the Philippines is supposedly the Asian country most hurt by corruption: 'If one considers the end of World War II as the starting point for modern Asia, the Philippines today should be the richest economy on a per capita basis in Asia and a leader in many fields . . .',⁸⁴ but economic performance since 1946 has been very disappointing overall, especially when compared to other East Asian nations. Corruption in government is endemic, and the same survey concluded that:

Civil servants at the city level were deemed most corrupt (8.89), followed by city and other-local level political leaders (8.51), civil servants at the national level (8.10), and national-level leaders (7.57).⁸⁵

Such high levels of corruption may well be causally related to relative economic underperformance and poor performance in poverty reduction. Despite anti-corruption efforts, the Philippines has yet to find adequate

⁸⁰ Agence France-Presse, 'Philippine Unemployment Remains High – NSO', Retrieved from <http://newsinfo.inquirer.net/59183/philippine-unemployment-remains-high%E2%80%94NSO> (last accessed 16 November 2011).

⁸¹ The World Bank, 'Philippines Quarterly Update – January 2011'. Retrieved from <http://www.worldbank.org.ph/WBSITE/EXTERNAL/COUNTRIES/EA-STASIAPACIFICEXT/PHILIPPINESEXTN/0,,contentMDK:22838467~menuPK:332988~pagePK:2865066~piPK:2865079~theSitePK:332982,00.html> (last accessed 17 November 2011).

⁸² Id.

⁸³ Business World (2011), 'Philippines' Corruption Score Worsens'. Retrieved from <http://www.abs-cbnnews.com/business/03/29/11/philippines-corruption-score-worsens> (last accessed 17 November 2011).

⁸⁴ Id.

⁸⁵ Id.

and consistent ways to remedy this prevalent problem. Strong political will is required to overhaul the existing systems, in which corruption is deeply ingrained.⁸⁶ But, to date, such leadership is sadly lacking. The depth of the malaise can be easily illustrated by the fact that, upon leaving office, the last two presidents – Arroyo and Estrada – were both imprisoned for corrupt activities whilst in office.

According to Transparency International UK, the estimates of alleged embezzlement in the Philippines ranged from US\$5–10 billion during the Marcos regime from 1972–86, and US\$78–80 million during the Estrada administration from 1998–2001.⁸⁷ As of 2007, the United Nations Development Program (UNDP) said that ‘nearly \$2 billion dollars, or roughly 13 percent of the Philippines’ annual budget, is lost to corruption in the country each year’.⁸⁸

Corruption in the Philippines has existed for centuries. However, since the end of Spanish colonization, corruption has changed in form and magnitude as economic strategies and political systems have changed. Its continued existence and magnitude are determined by ‘inadequacies in the nation’s political life, especially those that weaken the bonds of control and monitoring between the principals (society at large) and those who serve them (politicians and bureaucrats)’.⁸⁹

According to the Transparent Accountable Governance project, a fundamental reason for corruption in the Philippines is the people’s continuing negative image of the government.

Especially during the Spanish period, positions were awarded or sold as a matter of course to undeserving and often abusive individuals, leading to a government that was unresponsive to the needs of the inhabitants . . . The institutions of government were agents of abuse and oppression. At its best, government came to mean for the Filipino an institution that was burdensome; at its worst, it was predatory . . . To the Filipino, government became an institution to be avoided, for its interests were contradictory to his. People and government were estranged from each other, and the bonds of community were dissolved.⁹⁰

⁸⁶ CIA (n 1).

⁸⁷ Transparency International UK (2007), ‘Measuring Corruption: OPM Briefing Notes’, January. Retrieved from: <http://www.transparency.org.uk/corruption-data> (last accessed 28 November 2011).

⁸⁸ Conde, C. (2007), ‘Philippines Most Corrupt, Survey Says’, *The New York Times*, March 13.

⁸⁹ De Dios, E. and Ferrer, R., ‘Corruption in the Philippines: Framework and Context’. Retrieved from <http://www.tag.org.ph/pdf/PCPS-Study1.PDF> (last accessed 30 November 2011).

⁹⁰ Id.

Because of the predatory nature of the state and the failure of formal government to become responsive, Filipinos depend on and trust family or extended kinship ties more than the institutions of the government.

According to the same report,⁹¹ corruption ‘must be understood primarily as a political phenomenon . . . bureaucratic corruption pales in comparison with the grand corruption involved in corruption among politician[s]’ and, ultimately, ‘it is often abetted and controlled by politicians’ anyway. Appointments and undue influence on bureaucrats are examples of bureaucratic corruption being manipulated by politicians.

Emmanuel De Dios and Ricardo Ferrer discuss the causes of corruption in the Philippines in their study of the phenomenon’s framework and context:

The disproportionate role corruption plays in the Philippines must be traced to more ultimate factors in the structure of Philippine politics and economy. These include the system of patronage in politics, at both local and national levels; the manipulation of government by powerful outside vested interests (originally based on landownership and relations of dependency); the entrenchment of a stratum of political opportunists, and big money politics. It is these which ultimately explain the failure of the presumptive controls over the presumed relationship between the public and its would-be servants.⁹²

The same paper also argues that another element to consider is the current system of electoral politics – in particular, ‘campaign finance’ and bureaucrats’ dependence on a crooked system:

. . . the organization of government itself influences the incidence and significance of corruption. Among the elements to consider are the current system of electoral politics, particularly campaign finance and the tenured bureaucracy’s low status and lack of autonomy. These factors account for a large part of the adverse-selection problem in government, where an undue number of misfits are attracted.

And as regards corruption cases, the justice system has been chronically undependable. There has been no decisive resolution of prominent political cases; for example, aside from Estrada’s plunder case, those from the previous Ramos presidency remain unresolved.⁹³

Finally, corruption in the Philippines has been viewed as a ‘cultural and

⁹¹ Id.

⁹² Id.

⁹³ Id.

psychological phenomenon in a country marked by incompatible legal and cultural norms'.⁹⁴ This view stresses the conflict between rationality and universal principles as opposed to 'reliance and obligation toward kinship, friendship, and primary groups'. This conflict is illustrated 'in the use of the alibi of a gift-giving culture to justify bribery and extortion, or the Filipino regard for the other (*pakikipagkapwa-tao*) to justify giving benefits to unqualified but personally known recipients'.⁹⁵

As Calit concludes:

Corruption also occur[s] because of cultural values. The Filipino bureaucrat who did not help a friend or relative in need was regarded as lacking a sense of *utang na loob*, or repayment of debts. Many Filipinos recognize this old-fashioned value as being detrimental to economic development. A 1988 congressional study concluded that because of their 'personalistic world view,' Filipinos were 'uncomfortable with bureaucracy, with rules and regulations, and with standard procedures, all of which tend to be impersonal.' When faced with such rules they often 'ignore them or ask for exceptions'.⁹⁶

4.1.9 Oligarchic structures

The Philippines, which claims to be the first democratic government in Asia, is still subject to the extensive influence of elite groups. According to political science professor Benito Lim, 'oligarchs still rule the country, and Filipinos will forever be the victims of their profiteering'.⁹⁷ As in other countries, oligarchs in the Philippines 'are protected and nourished by an imperfect regulatory structure'.⁹⁸

The majority of businesses in the Philippines are controlled by a handful of conglomerates. The origins of these conglomerates are varied; however, the dominant positions are held by the Sangley (mixed race or acculturated) Chinese or Chinoy (mixed race of acculturated Chinese immigrants).⁹⁹ According to a report by Asiasec Equities, seven corporate groups dominate the Philippine economy: San Miguel Corp. (SMC),

⁹⁴ Moratalla, N. (1999), 'Graft and Corruption: The Philippine Experience', 113th International Training Course. Manila: Philippine National Police Academy; Philippine Public Safety Academy.

⁹⁵ Id.

⁹⁶ Calit, H. S. (2003), *The Philippines: Current Issues and Historical Background*. New York: Nova Science Publishers, Inc.

⁹⁷ Legaspi, N. (2011), 'Filipinos to Remain at the Mercy of Oligarchs', Third World Network, July. Retrieved from <http://www.twinside.org.sg/title2/resurgence/2011/251-252/econ1.htm> (last accessed 18 November 2011).

⁹⁸ Id.

⁹⁹ The term 'Sangley' was the local designation for 'ethnic Chinese' in the Philippines in the Spanish colonial period (Fabella, n 18).

Ayala Corp., First Pacific, SM Investments Corp., JG Summit, DM Consunji and Aboitiz. The range and extent of the dominance of these groups is illustrated below:

- SMC has interests in the power generation business, fuel and oil (90 percent of Petron), telecommunications, food, alcohol (99 percent of Ginebra), property (99 percent of San Miguel Properties Inc.), financial institutions (70 percent of Bank of Commerce), mining (coal), and airport management (100 percent of Caticlan airport, gateway to the famous Boracay). SMC also has majority interests in the quasi monopoly beer producer, the Manila rail network, and various toll roads. The company is now expanding into other utilities in the telecommunications and ports industries.
- Ayala Corp. has a 68 percent interest in Integrated Micro-electronics Inc., 54 percent in Ayala Land Inc., 31 percent in Globe Telecom, 34 percent in Bank of the Philippine Islands and 43 percent in Manila Water Co.
- Hong Kong-based First Pacific, represented by PLDT Chairman Manuel V. Pangilinan, has a controlling interest (100 percent) in TV5, a majority interest in Metro Pacific Investments Corp. (55 percent) and a controlling but not majority interest in Philippine Long Distance Telephone Co. (27 percent), Philex Mining Corp. (46 percent) and Manila Electric Co. (41 percent).
- Henry Sy's SM Investments Corp. (SMIC) has a controlling interest in its department store (90 percent) and supermarket (100 percent) business, a majority interest in SM Prime Holdings (51 percent), a controlling but not majority interest in Banco de Oro (41 percent) and SM Development Corp. (44 percent), and a significant minority interest in China Bank (20 percent), Highlands Prime (31 percent) and Belle Corp. (35 percent).
- John Gokongwei's JG Summit has a controlling interest in petrochem (80 percent), a majority interest in Universal Robina Corp. (60 percent), Robinsons Land Corp. (60 percent), Digital Telecoms (50 percent) and Cebu Air (65 percent), and a significant minority interest in UIC (32 percent).
- The Aboitiz group controls Pilmico (100 percent) and Aboitiz Power (76 percent), and has a controlling but not majority stake in Accuria, its transportation business, at 49.5 percent.
- DMCI has a 100 percent stake in DMCI Homes, 56 percent in Semirara Mining Corp. and 33 percent in Maynilad Water Services Inc.

These conglomerates, controlled by family interests, dominate much of the capital-intensive sector of the economy. Given this economic landscape, it is not surprising that the power of these economic actors extends into the political arena as well, where the dynastic nature of business and politics is closely interlinked. The role of dynastic politics and the link with business will be considered further in a later section of this chapter.

4.2 The Political System

4.2.1 Political institutions

Under the Constitution, the Philippine government is divided into three, the executive, legislative, and judicial. The checks and balance theory is the basis of the separation of powers. The country currently operates a presidential form of government based on the 1987 Constitution, under which the president and vice president are elected separately by popular vote. The Philippines has a bicameral legislature, with the Senate and the House of Representatives respectively comprising the upper and lower houses of Congress. Elected presidents are limited to six-year terms and are not eligible for re-election. The president is empowered to control all the executive departments, bureaus, and offices.¹⁰⁰

The Legislature, as established by the Constitution, is made up of a 24-seat Senate and a House of Representatives with 200 elected representatives and up to 50 more appointed by the president. Senators are the 24 highest vote-winners nationwide elected into office. The term of office is six years, and senators cannot serve more than two consecutive terms. House of Representatives members, meanwhile, may not serve more than three consecutive three-year terms.¹⁰¹

The Philippine judicial system has a civil law origin and is heavily influenced by the Spanish model, but subsequently hybridized by the introduction of Anglo-American law. 'Civil code procedures on family and property and the absence of jury trial were attributable to Spanish influence, but most important statutes governing trade and commerce, labor relations, taxation, banking and currency, and governmental operations were of United States derivation, introduced at the beginning of the twentieth century.'¹⁰²

¹⁰⁰ Legaspi (n 97).

¹⁰¹ Id.

¹⁰² Id.

4.2.2 Current politics

Philippine politics has a number of singular characteristics which need to be examined as they have a direct bearing on the efficacy of the political system and also may explain the reluctance of the political class to embrace competition policy, which profoundly compromises traditional oligarchic structures in business and politics.

4.2.3 Corruption

As discussed in section 4.1.8, corruption at all levels of Philippine society is an endemic malaise, but its most blatant examples come from the political scene. Various senior political figures have been brought down by allegations of substantial corruption, including presidents Marcos, Estrada and Arroyo. Yet another example, though in the judicial sphere, was the impeachment by the Senate of the Chief Justice of the Philippines for corruption in 2012.¹⁰³

4.2.4 Celebrity politics

Philippine politics, as described by the Transparent Accountable Governance project, 'lacks the morale and professionalism of bureaucracy', making it vulnerable to 'arbitrary political demands and more sensitive to the general public interest'.¹⁰⁴ The political system is often used as a means of 'wealth accumulation based on manipulation of the electoral process through skilful use of the media'.¹⁰⁵ These conditions have brought about the curious phenomenon of celebrity politics, where the votes of the masses take precedence, regardless of the credibility and political track record or apparent competence of the candidate.

The lack of accurate information about current affairs and political issues amongst the majority of the population, due in many cases to poverty, ignorance and alienation, is one of the major factors contributing to the fusion of show business and politics in the Philippines.

That Filipinos are preoccupied with celebrity and entertainment is nothing new . . . [and] the fact that celebrities capitalize on this phenomenon to embark on political careers while traditional politicians repackage themselves in the language and image of show business . . . is the steady growth in the number of entertainers seeking public office and successfully cornering political power – as well as the apparent new role of Filipinos as a very forgiving audience. What is

¹⁰³ Whaley, Floyd (2012), 'Philippine Chief Justice Removed over Omission in Report of Assets', *The New York Times*, 20 May.

¹⁰⁴ De Dios and Ferrer (n 89).

¹⁰⁵ Id.

happening is more than just the trivialization of our political values, but also the rise of a new power elite in society – what we shall call, for lack of a better term, ‘celebritocracy.’ Unlike the traditional elite and political clans of the country, the celebritocracy’s control of power is based less on ownership and access to land and capital. Their currency is fame and their capital is the means by which to produce and transmit it.¹⁰⁶

One of the most significant of the celebrities-turned-politicians was Joseph Estrada, who became the 13th president of the Second Republic. He was a famous movie star, having played the lead role in over 100 films in an acting career that spanned 33 years. In 2000, he was subjected to an impeachment trial for corruption in the Senate, and was ousted amidst mass protests in 2001.¹⁰⁷ In 2007, Estrada was found guilty of plunder and sentenced to life imprisonment. However, six weeks later, he was pardoned by his successor President Gloria Macapagal-Arroyo.¹⁰⁸ Estrada ran for the presidency once again during the 2010 Philippine Presidential Elections, and despite having been convicted of corruption, nearly won, coming second to the victor, the current President Benigno Aquino III. Alarming, Estrada obtained 26.25 percent of the total votes cast in the election, despite the flagrantly corrupt nature of his administration.

David Celdran for the Philippine Center for Investigative Journalism explains Estrada’s continued popularity among the masses:

... when Estrada performed so dismally at Malacañang (the presidential residence), not a few expected major changes in this script. It now looks like there are many in the audience who see Estrada’s shameful Presidential stint as having little to do with the fact that he had no credentials, training, discipline, principles or any business whatsoever in playing Chief Executive. To these people, Erap’s exit fits the archetypal fall from grace of the hero figure. Or in the realm of show business, it is the story of the star victimized by hubris. Erap is the hero corrupted by the ‘system’. The tragedy of Estrada, therefore, is an indictment of the business itself and not necessarily its heroes. If there is any lesson here, in fact, it is that showbiz stars should stay true to their fans and connected to their humble beginnings to avoid the temptations of fame and its destructive properties.¹⁰⁹

¹⁰⁶ Celdran, D. (2001), ‘The Cult of Celebrity’. Philippine Centre for Investigative Journalism. Retrieved <http://pcij.org/imag/Media/celebrity.html> (last accessed 2 December 2011).

¹⁰⁷ *Britannica Academic Edition* (n.d.), Joseph Estrada. Retrieved from <http://www.britannica.com/EBchecked/topic/193615/Joseph-Estrada> (last accessed 2 December 2011).

¹⁰⁸ BBC News (n.d.), ‘Profile: Joseph Estrada’. Retrieved from <http://news.bbc.co.uk/2/hi/asia-pacific/1063976.stm> (last accessed 2 December 2011).

¹⁰⁹ Celdran (n 106).

The same article also suggests that another explanation for the phenomenon of celebrity politics in the Philippines is the ‘somewhat cynical view that Filipinos have always treated elections as a popularity contest’. The rationale for this view is that politics and politicians do not affect the everyday lives of people significantly; experience shows that government officials do little or nothing to affect people’s standards of living. Therefore, the masses ‘have learned to transform the electoral exercise into a competition’ much like ‘the local beauty pageant or cock-fight’ in which ‘the overriding objective is not so much to determine a winner, but the entertainment value of such a process’.¹¹⁰

Finally, it has been theorized that the emergence of this ‘celebritocracy’ is ‘nothing less than a product of the traditional elite’s own failure to provide effective governance to the public’. The public has lost trust and affection for the families that ‘once lorded over Philippine politics’. Therefore, ‘turned off by generations of corrupt leadership and empty promises . . . candidates with political pedigree and those who fashion themselves after the politicians of the past find themselves rejected by voters’, whilst showbiz and media personalities are perceived as the opposite of such traditional politicians.¹¹¹

Other celebrity-politicians include Actor-Senators Vicente Sotto, Lito Lapid, Ramon Revilla Sr. and Bong Revilla Jr.; Actress-Governor Vilma Santos; Actor-Mayor Joey Marquez; and the celebrity champion boxer turned Elected Representative of Sarangani, Manny Pacquiao.

4.2.5 Traditional elites and family dynasties

A political elite, of great longevity, has long been entrenched in Philippine society. According to Julian Go in an article for the *Journal of Historical Sociology*:

First, the elite constituted the wealthier fraction of the Filipino population, enjoying socioeconomic privileges denied to others. Many were large landowners, while others were merchants and professionals (e.g. lawyers, journalists, and doctors) – all of whom had benefitted from the articulation of the Philippines with the world market in the 19th century. Second, many of the political elite had been educated at home or abroad. The most educated, typically schooled in Europe or in the prestigious universities like Santo Tomas, were known as *Iustrados*, literally meaning ‘enlightened ones’.¹¹²

¹¹⁰ Id.

¹¹¹ Id.

¹¹² Go, J. (1999), ‘Colonial Reception and Cultural Reproduction: Filipino Elites and United States Tutelary Rule’, *Journal of Historical Sociology*, 2 (4), pp. 337–68.

Consequently, the Filipino political elite was not exclusively an economic class that attained their privileged positions through wealth alone. As Go states that:

Philippine society was . . . constituted by personalized exchanges between kin members, merchant and landowner, landlord and tenant, peasant and peasant. Such exchanges most often took the ideal typical form of patron-client relations. Personal debts were incurred and accrued, tokens of return given but full payment was infinitely deferred. In this moral economy, then, one's status and power was determined by one's position within circulations of exchange and indebtedness.

In such a system, those who bestowed the greatest personal favors on others had the highest status and power. Such persons occupied 'nodal positions' within the circulation of social exchange. Many in the elite group had accumulated surpluses through their businesses activities and the ownership of landed estates.

Landlords provided tenants with land, productive tools and funds for familial rituals, while their colleagues or relatives in bureaucratic positions provided interpretations of Castillian codes (or ways to evade them), along with access to state resources. In such ways did the elite incur and cultivate various debts owed to them, hence rising to the top of local hierarchies.¹¹³

When the Americans colonized the Philippines, they tried to set up a tutelage system to provide the Filipino administration with 'self-government in an ever increasing nature'. According to Go, however, the Filipino elites viewed the American authorities' statements differently, attaching a significantly different meaning from that which the Americans had intended.

The elites submitted to tutelage, but only after they had transposed to it their own schemas – only after, that is, they had completely redefined it. Likewise, when the Americans inserted the elites into local governments, the elites saw the new positions of power as a way to create a base from which to direct society in their own interest. The result was a putatively 'corrupt' politics which thwarted tutelary intentions and frustrated American designs.¹¹⁴

Philippine history has long been characterized by the enduring presence and influence of political clans and dynasties. The process of winning an election is to be able to gather as many connections as possible and rally them behind you. 'Philippine politics, along with other aspects of society,

¹¹³ Id.

¹¹⁴ Id.

rely heavily on kinship and other personal relationship[s]', it is necessary to assemble a coalition of families to win a local election. 'To win a provincial election, meanwhile, the important families in each town must be drawn into a wider structure. To win a national election, the most prominent aristocratic clans from each region must temporarily come together.'¹¹⁵

The danger of political dynasties was appreciated on independence and they were prohibited by the law. Section 26, Article II of the Constitution asserts: 'The State shall guarantee equal access to opportunities for public service, and prohibit political dynasties as defined by law'.¹¹⁶ Political dynasties 'refer to clans and families who hold multiple elective and/or appointive positions in government. It is also used primarily to describe politically active clans and families that have bequeathed power from one generation to another'.¹¹⁷ Unfortunately, given that most of those holding positions of power belong to political dynasties, this anti-dynastic provision of the Constitution has singularly failed to achieve its objective.

4.2.6 Politics of violence

Philippine elections have gained a notorious reputation for violence before, during and after the polls.¹¹⁸ In 2009, 90 people were killed in politically motivated killings across the country, even before the start of the 120-day election period.¹¹⁹ Every three years, the average death toll during the four-month election period in the country is approximately 100, according to government records.¹²⁰

Electoral violence in the country takes many forms: murder, abduction, terrorism, physical attacks on rallies, the homes, offices and vehicles of candidates and their supporters, and the damage or destruction of property. Other acts of political violence include intimidation, coercion and other non-physical types of harassment, which Philippine election laws

¹¹⁵ Id.

¹¹⁶ Teehankee, J. (2002), 'Electoral Politics in the Philippines', in A. Croissant, *Electoral Politics in Southeast & East Asia*. Bonn: Friedrich-Ebert-Stiftung, pp. 149–202.

¹¹⁷ Id.

¹¹⁸ McGeown, K. (2010), 'Personality and Patronage at the Heart of Philippine Polls', BBC News, May 7. Retrieved from <http://news.bbc.co.uk/2/hi/8665428.stm> (last accessed 2 December 2011).

¹¹⁹ Mogato, R. (2010), 'Rising Violence Threatens 2010 Elections', ABS CBN News, January 27. Retrieved from <http://www.abs-cbnnews.com/nation/01/27/10/rising-violence-threatens-2010-elections> (last accessed 2 December 2011).

¹²⁰ Id.

include as election offences since they curtail the electorate's ability to make a free choice amongst the candidates.¹²¹

Before campaigning begins, current office holders and potential rival candidates are the principal targets of violence, in order to deter opposition or to disrupt preparations.¹²²

Vote buying and the intimidation of wavering voters is common and candidates often hire serving police or army officers or ordinary criminals to carry out such activities.¹²³

The most severe and anxiety-filled period, the '*ora de peligro*' (literally, 'hour of danger') is when last-minute interventions take place. 'This begins two days before the actual Election Day. Here parties and candidates are concerned with defending their voter base whilst trying to break the voter base and machinery of their opponents.'¹²⁴

Vote buying and coercion intensify during the *ora de peligro*. Voters may be threatened to vote for a candidate or not to vote at all. Bailiwicks are assaulted and homes of ward leaders strafed or burned, and candidates or their campaign managers may be ambushed while doing the last rounds of negotiations. As counter-measures, the COMELEC [Commission on Elections] bans liquor drinking and gambling, and strictly enforces the gun ban during this period . . . Election day is . . . characterized by a high incidence of death and violence, usually triggered by real or suspected fraud. On this day, many violent incidents are triggered by real or suspected fraud. There have also been cases where physical entry to polling stations is prevented to stop voters from casting their ballot.¹²⁵

The southern region of the Philippines has the highest incidence of political violence in the country. Human Rights Watch conducted a study from December 2009 to August 2010, 'investigating 52 incidences of targeted killings, enforced disappearances, abductions, torture, and sexual assault in . . . the southern Philippine island of Mindanao'.¹²⁶ Much of the report studied the worst massacre in recent Philippine history, which took place on November 23, 2009.

¹²¹ Patino, P. and Velasco, D. (2004), 'Election Violence in the Philippines', Bibliothek der Friedrich-Ebert-Stiftung. Retrieved from <http://library.fes.de/pdf-files/bueros/philippinen/50071.pdf> (last accessed 2 December 2011).

¹²² Id.

¹²³ Id.

¹²⁴ Id.

¹²⁵ Id.

¹²⁶ Human Rights Watch (HRW) (2010), "'They Own the People": The Ampatuans, State-backed Militias, and Killings in the Southern Philippines'. Retrieved from <http://www.hrw.org/sites/default/files/reports/philippines1110.pdf> (last accessed 2 December 2011).

As detailed by Human Rights Watch, '[on that day] around 200 armed men stopped a convoy carrying family members and supporters of a local vice mayor in the southern Philippines island of Mindanao as they went to register his candidacy in upcoming gubernatorial elections. The gunmen forced the group of 58 people – which included some 30 media workers and six passersby, off the highway near the town of Ampatuan, ordered them from their vehicles, and executed them all'.¹²⁷

This carnage has since been attributed to the activities of the Ampatuan clan, 'which has controlled life and death in Maguindanao province for more than two decades through a "private army" of 2,000 to 5,000 armed men comprised of government-supported militia, local police, and military personnel'.¹²⁸

Whilst electoral violence is nothing new, especially in this region of the Philippines, the scale and brutality of the slaughter focused international attention on the seriousness of the Philippine situation as the country that year was named one of the world's most dangerous locations for journalists.¹²⁹ However, the Human Rights Watch report asserts that a deeper problem underlies such violence:

Less scrutinized than the violence itself, however, but ultimately of greater significance, is the support that the national government provides such families throughout the country, and the near total impunity that their abusive militias enjoy. Successive national governments have not dismantled and disarmed these militia forces, as stipulated in the 1987 Philippine Constitution, nor have they investigated and prosecuted the unlawful activities of those who control, arm, and use them for private ends. Indeed, rather than trying to prevent militias from carrying out criminal acts, the military and police often provide them with manpower, weapons, and protection from prosecution.¹³⁰

4.2.7 Influence of the Catholic Church on the political system

The Roman Catholic church is an entrenched institution in the Philippines. With 83 percent of the population being adherents,¹³¹ leaders of the church have always had the privilege of being respected and heeded by the people. The church's influence commenced during the Spanish colonial period, when 'friars were extensively involved in colonial administration.

¹²⁷ Id.

¹²⁸ Id.

¹²⁹ Evans, T. (2009). 'Philippines Most Dangerous Country for Journalists', CNN, November 6. Retrieved from <http://edition.cnn.com/2009/WORLD/asiapcf/11/25/philippines.danger> (last accessed 2 December 2011).

¹³⁰ HRW (n 126).

¹³¹ CIA (n 1).

During that period, religious intervention in political matters was justified under the principle of the union of church and state, which in turn became the rationale of the Spanish *conquistadores* assigned by the Pope's fiat to civilize and Christianize pagan lands.¹³²

The Constitution, however, now stipulates separation of the church and state. Although this has been the law for decades, the principle has not been strictly followed in practice as seen in the still ambiguous relationship between the state and the Catholic Church. There is a palpable concern and wariness nowadays as regards the clergy's use of mass popular pressure – often, it is alleged, in collusion with political elites.¹³³ 'Although the church could continue to frame its political activism in the language of the "moral conscience" of the state, an interventionist church could become a destabilizing agent instead of a moral force for political order, stability, and social justice.'¹³⁴

4.2.8 Conservatism in social policy

Whilst the church and state were officially separated in the 1990s, the Church's influence on the government is 'quite evident in the lack of resources devoted to family planning and the prohibition of divorce'. During the 1980s, Catholic bishops 'secured the removal of the population-planning clause from the draft of the Constitution and attempted to end government population programs'.¹³⁵ This was only the beginning of a decades-long – and still ongoing – antagonistic struggle between the church and the government's efforts to curb the exponential and uncontrollable population growth in the country.

A World Bank report has concluded, and many economists associated with the Philippines concurred, that the country's high population growth rate has been a major cause of the widespread poverty. Implementation of a government-sponsored family-planning program has been thwarted by stiff opposition from the hierarchy of the Roman Catholic Church.¹³⁶

4.2.9 Conclusions

The particular political and economic features of the Philippines discussed in this section create the environment in which a competition law would

¹³² Severino, R., and Salazar, L. (eds.). (2007), *Whither the Philippines in the 21st Century?* Singapore: Konrad-Adenauer-Stiftung and Institute of Southeast Asian Studies.

¹³³ Id.

¹³⁴ Id.

¹³⁵ Id.

¹³⁶ Id.

have to be implemented. The domination by the elite groups of the economic and political system may well be the reason why it has taken so long for the Philippines to adopt a competition law which might threaten their dominance. Chronic mismanagement of the country's ruling classes over decades has brought about a high degree of concentrated ownership of major businesses, underdeveloped infrastructure and enduring high barriers of entry into domestic markets. Low productivity levels, due in part to the limited competition in many sectors, has hindered the international competitiveness of the Philippines economy. These issues provide a potentially unfavorable environment for the adoption of a comprehensive pro-competition law and policy and also present formidable hurdles to the effective enforcement of such a law.

5. COMPETITION LAW

The need to regulate the marketplace to boost economic growth is not entirely novel in the Philippines, and the statute book is replete with laws pertaining to almost every sector of the Philippine economy, with the object of creating or enhancing a competitive economy.

The case for active competitive policy backed by laws is made succinctly by Ariff:

... competition policy has served generally well. First, it is good for efficiency by promoting competitiveness. Second, it is good for economic growth through productivity gains and greater innovation. Third, it is good for price stability, as competition tends to keep prices low. Fourth, it is good for trade and investment, as it tends to make liberalization more effective and meaningful. Last but not least, consumers are the biggest beneficiaries, as it not only protects consumers against monopolistic and restrictive practices but also enables them to enjoy the fruits of competition in the form of lower prices and/or better products.¹³⁷

An examination of existing legal provisions will now be made followed by a discussion of the new proposals for a comprehensive competition law.

5.1 The 1987 Philippine Constitution

The 1987 Philippine Constitution underscores the goals of the national economy which are stated to be a more equitable distribution of

¹³⁷ Ariff, M. (n.d.), 'Competition Policy for ASEAN'. Retrieved from <http://www.eria.org/research/images/pdf/PDF%20No.1-2/No.1-2-part2-8.pdf> (last accessed 15 November 2011).

opportunities, income and wealth; a sustained increase in the quantity of goods and services produced by the nation for the benefit of the people; and to enhance productivity in order to raise the quality of life for all, especially the underprivileged.

In this connection, the Constitution lays down basic government policies on competition. Section 19, Article XII of the Constitution provides that the state shall regulate or prohibit monopolies when the public interest so requires. Furthermore, no combinations in restraint of trade or unfair competition shall be allowed. It should be noted that the intent of the framers of the Constitution was not to prohibit monopolies per se. Rather, the prohibition is qualified by a 'public interest' requirement in contrast to combinations in restraint of trade or unfair competition, which are absolutely prohibited.

The Supreme Court in the landmark case of *Francisco S. Tatad v. the Secretary of the Department of Energy and the Secretary of the Department of Finance*,¹³⁸ described the import of Section 19 as pro-competitive. The desirability of competition is the reason for the prohibition of restraints of trade, unfair competition and the regulation of monopolies.

5.2 General Penal and Civil Sanctions for Violating Competition Laws

To complement the provisions of the Constitution, Act No. 3815 or the Revised Penal Code (RPC) imposes criminal sanctions on persons or entities engaged in anti-competitive practices. Thus, Article 186 of the RPC, as amended by Republic Act No. 1956 (1957), specifically enumerates certain acts which may be considered as illegal monopolies or combinations in restraint of trade as follows:

- any contract or agreement or any conspiracy or combination in the form of a trust or otherwise, in restraint of trade or commerce or to prevent by artificial means free competition in the market;
- any monopoliz[ation] of any merchandise or object of trade or commerce, or any combination of persons to monopolize in order to alter the price thereof by spreading false rumors or making use of any other article to restrain free competition in the market;
- the manufacturer, producer, or processor of any merchandise or object of commerce who shall combine, conspire or agree in any manner with any person likewise engaged for the purpose of making transactions prejudicial to lawful commerce, or of increasing the market price in any part of the Philippines.

¹³⁸ Philippine Laws and Jurisprudence Databank (1997), G.R. No. 124360, November 5. Retrieved from http://www.lawphil.net/judjuris/juri1997/nov1997/gr_124360_1997.htm (last accessed 15 December 2011).

Aside from penal sanctions, the Civil Code of the Philippines (1950) allows a person or an entity to recover damages in case of unfair competition:

Art. 28. Unfair competition in agricultural, commercial or industrial enterprises or in labor through the use of force, intimidation, deceit, machination or any other unjust, oppressive or highhanded method[s] shall give rise to a right of action by the person who thereby suffers damage.

5.3 Specific Competition Laws

The preceding provisions are general laws. The Philippines also has special laws that are industry-specific or deal directly with a targeted sector for purposes of regulation, all of which have pro-competition elements.

A few examples follow:

- Corporation Code of the Philippines (1980);
- Foreign Investments Act 1991, as amended by Republic Act No. 8179, approved on March 28, 1996;
- Consumer Act of the Philippines (1992);
- Price Act (1992);
- New Central Bank Act (1993);
- An Act Liberalizing the Entry and Scope of Operations of Foreign Banks in the Philippines (1994);
- Public Telecommunications Policy Act of the Philippines (1995);
- Intellectual Property Code of the Philippines (1997);
- Downstream Oil Industry Deregulation Act (1998);
- Retail Trade Liberalization Act (2000);
- General Banking Law (2000);
- Securities Regulation Code (2000);
- Electric Power Industry Reform Act (2001);
- Domestic Shipping Development Act (2004);
- Universally Accessible Cheaper and Quality Medicines Act (2008);
- Tariff and Customs Code of the Philippines, as amended, which provides for the rules on imposition of anti-dumping and countervailing duties to protect domestic industries from unfair trade competition, among others.

5.4 Enforcement of Competition Laws

Notwithstanding the number of statutory provisions that seek to enhance competition, anti-competitive practices in the local market have not been effectively addressed. The inefficiency of existing competition policies has

been well known for many years. The Philippine Tariff Commission points out that ‘despite the number of laws and their diverse nature, competition has neither been fully established in all sectors of the economy nor has existing competition been enhanced in other sectors. Since each law is meant to address specific situations, there runs the risk of one law negating the positive effects of another.’¹³⁹ Hence, there has been a growing public demand for the enactment of a general competition law and the cessation of the ‘sector specific’ approach, which has been widely viewed as insufficient and ineffective.

Revisiting and reforming existing government policies and regulations in light of modern economic thought is also necessary. Although government efforts in the past decade have led to significant reforms, especially in terms of liberalization and deregulation, a sustained effort is needed to maintain competition ‘to open the gateway to provide substantial benefits for the consumers and industry players’:

. . . a host of government regulations interfere in how the market functions and how they could limit competition. There is a clear need to reevaluate these policies and review whether such policies and regulations could pass a ‘competition’ test or, if not, whether they could be justified on grounds of public welfare or of the objectives they are supposed to achieve.¹⁴⁰

Currently, a number of serious problems pose a threat to the contestability of different Philippine economic sectors and need to be addressed urgently. Various authors¹⁴¹ are of the opinion that the following are the root causes of the ineffective nature of Philippine competition law and policy:

Regulatory conflicts Enforcement of competition laws is done by several individual agencies independently, which sometimes produces conflicting policies. Moreover, responsibility is too diffused and accountability for implementation of the laws is difficult to fix. There is also a lack of expertise in the appreciation and implementation of competition law.¹⁴² This is

¹³⁹ Philippine Tariff Commission (2007), ‘Competition Law and Policy’. Retrieved from <http://www.tariffcommission.gov.ph/competit.html> (last accessed 15 December 2011).

¹⁴⁰ Medalla, E. M. (2002), ‘Government Policies and Regulations: Interface with Competition Policy.’ Toward a National Competition Policy for the Philippines. Makati City: Philippine Institute for Development Studies.

¹⁴¹ *Id.*, pp. 21–2.

¹⁴² *Id.*

the result of lack of a comprehensive and coherent competition policy to bring order to the current chaos.

Regulatory capture With a specific agency regulating a single industry, the danger of regulatory capture is inevitable. In time and with familiarity, it is the industry that ultimately regulates the regulator.¹⁴³ The regulator becomes beholden to the incumbent firm and protects the ‘competitor’ rather than the competitive process. A review of the regulation should determine if and to what extent there is regulatory capture.¹⁴⁴

Lack of a coherent enforcement mechanism and comprehensive competition law The lack of systematic and rational enforcement of existing competition laws ensures that aggrieved parties who make complaints are discouraged and inhibits witnesses from providing evidence. Moreover, most of the existing laws are penal in nature, requiring ‘proof beyond reasonable doubt’, which is often impossible to attain. Additionally, the fine and penalty provisions are insufficient to punish or effectively deter offenses.¹⁴⁵

Lack of jurisprudence on competition There are only a handful of decided cases on monopolies, combinations in restraint of trade, and other anti-competitive practices. This only emphasizes that existing laws are unenforced.

5.5 Modernizing Competition Policy and Law

Recently, the Philippine government has exhibited a growing interest in overhauling its competition laws and policies. Perhaps the growing realization of the ultimate benefits that can be derived from competition – ranging from better quality goods and services, increased accessibility of commodities to ultimate consumers, reduction or elimination of oligarchic power, to a well-developed and self-sustaining economic atmosphere in

¹⁴³ Abad, A. (2005), ‘Recommendations for Philippine Anti-Trust Policy and Regulation’, paper presented at a conference entitled ‘Policies to Strengthen Productivity in the Philippines’, sponsored by the Asia-Europe Meeting (ASEM) Trust Fund, Asian Institute of Management Policy Center, Foreign Investment Advisory Service, Philippines Institute of Development Studies and the World Bank, June 27–8, 2005.

¹⁴⁴ Medalla (n 140).

¹⁴⁵ Id.

the country – has resulted in a collective effort to improve Philippine economic standing through a sound competition policy.

Moreover, the Philippines is a member of many multilateral economic organizations, including the World Trade Organization (WTO), the ASEAN Free Trade Area (AFTA), and the Asia Pacific Economic Cooperation (APEC). All these bodies ‘seek to liberalize trade and investment, and so provide the Philippines with much-needed external pressure to introduce internal reforms’.¹⁴⁶

President Benigno Aquino III has manifested the government’s intent to fulfill its commitments to consumers, different industry players and other stakeholders in the domestic sphere, as well as to international stakeholders such as ASEAN-AFTA, APEC, and the WTO, to enact a modern competition law. In 2007, the Philippines entered into an international agreement with ASEAN to adopt all necessary measures to incorporate the Asian Free Trade Agreement (AFTA) by January 2015, which includes the enactment of a general competition law. This obligation may well play an important role in finally bringing to fruition the adoption of a modern pro-competition policy and law. In fact, President Aquino promised in his State of the Nation Address that the enactment of a comprehensive antitrust law is on the list of priority legislation for his administration.

For its part, the legislature has passed several bills during recent decades to answer the call for ‘quality over quantity’ – that is, for a more effective, credible, and comprehensive antitrust law. The present 15th Congress of the Philippines has revived attempts at comprehensive reform that will promote a more competitive environment and improve the welfare of the population.

This collective enthusiasm from different branches of the government and sectors of society indicates progress in building an effective competition policy consensus.

5.5.1 Proposed comprehensive competition law

On June 8, 2011, the House of Representatives passed House Bill (H.B.) No. 4835 or the ‘Philippine Fair Competition Commission Act of 2011’, which consolidated 12 bills sponsored by 76 congressmen. H.B. No. 4835 seeks to penalize execution of anti-competitive agreements, abuse of dominant position, anti-competitive mergers and establishes the Philippine Fair Competition Commission as a centralized body.

¹⁴⁶ Abad, A. (2002), *Recommendations for Antitrust Policy and Regulation: Toward a National Competition Policy for the Philippines*. Makati City: Philippine Institute for Development Studies.

On January 17, 2012, the Senate passed its own consolidated version. Senate Bill (S.B.) No. 3098 or the 'Competition Act of 2011' substituted S.B. No. 1 or the 'Competition Act of 2010', S.B. No. 123 or the 'Fair Trade Act of 2010', S.B. No. 175 seeking to amend the 'Price Act', and S.B. No. 1838 fortifying the provisions of the 'Revised Penal Code' on monopolies and combinations in restraint of trade.

S.B. No. 3098 proposed the creation of an Office for Competition¹⁴⁷ under the Department of Justice (DOJ) which has the power to investigate any violation of this *motu proprio*, or upon the filing of a verified complaint by an interested party, or upon referral by the concerned regulatory agency. It would have the power to issue subpoena duces tecum to require the production of books, records or other documents or data which relate to any matter relevant to the investigation, and summon witnesses. The bill also provides immunity from suit in favor of any person or firm which cooperates or furnishes any information, document or data that constitutes material evidence.

The bill enumerates and defines prohibited acts. The bill declares it unlawful for firms to engage in 'anti-competitive conduct' that unreasonably prevents, restricts or substantially lessens competition. 'Abuse of dominance' exists when firms abuse their market position by selling goods or services below cost, imposing barriers to entry, setting prices or other terms or conditions that discriminate between their customers or sellers, among others. It also punishes 'anti-competitive mergers' when a firm acquires, directly or indirectly, the whole or part of the stock, share capital, assets or voting rights of another firm with the effect of preventing, restricting or lessening substantially competition.

The bill also seeks to impose criminal sanctions on persons who fix, maintain, increase or control the price for the supply of goods or services; allocate sales, territories, customers or markets for the production or supply of goods or services; or fix, maintain, control, prevent, lessen or eliminate the production or supply of goods or services.

Under the bill, violators will face stiff fines and penalties ranging from 10 million pesos (US\$234,000) to 50 million pesos (US\$1.2 million), if a natural person, or 250 million pesos (US\$5.8 million) to 750 million pesos (US\$17.5 million), if the violator is an enterprise and/or by imprisonment not exceeding ten years. This notwithstanding, the bill encourages voluntary compliance by making available to concerned parties non-adversarial

¹⁴⁷ On June 9, 2011, President Benigno Aquino III issued Executive Order (E.O.) No. 45, creating the 'Office for Competition' under the Department of Justice as the competition authority (*infra*).

and non-adjudicatory administrative remedies such as request for binding ruling and proposal for consent judgment.

The implementation of its provisions shall be without prejudice to the rights, liabilities and remedies under Republic Act No. 8293, otherwise known as the Intellectual Property Code of the Philippines, provided that the exercise of intellectual property rights shall not in any way be used to justify any form of violation.

The House version, H.B. No. 4835, establishes the Philippine Fair Competition Commission as an independent agency, giving it substantial powers and functions to enforce competition rules. The bill also enumerates prohibited acts such as entering into anti-competitive agreements, abuse of dominant position, and anti-competitive mergers. A preliminary inquiry would be initiated by the Commission to verify a complaint by an interested party, or upon referral by a concerned regulatory agency. The Commission is empowered to terminate a preliminary inquiry by issuing a resolution ordering its closure, in case of non-violation, or imposing penalties and other applicable sanctions.

The bill also proposes that any firm under inquiry may submit to a *nolo contendere* resolution at any time before the termination of the preliminary inquiry by: (a) the payment of an amount within the range of penalties provided for; (b) entering into an undertaking to effectively stop and rectify the acts complained against, make restitution to the affected parties, whether or not the parties are plaintiffs or witnesses; and (c) submitting regular compliance reports as may be directed. As with its Senate counterpart, H.B. No. 4835 provides for non-adversarial administrative remedies which the parties may adopt before the institution of administrative, civil, or criminal action to encourage voluntary compliance.

5.5.2 The newly created Office for Competition

On June 9, 2011, President Benigno Aquino III issued Executive Order (E.O.) No. 45 designating the Department of Justice as the Competition Authority. This order was based on Republic Act No. 4152, approved on 20 June 1964, which vests in the Secretary of Justice the duty to study all laws relating to trusts, monopolies and combinations, to draft such legislation as may be necessary to update or revise existing laws to enable the 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, to investigate all cases involving violations of such laws, and to initiate and take such preventive or remedial measures, including appropriate judicial proceedings to prevent or restrain monopolization and allied practices or activities of trust, monopolies and combinations.

Apparently, the Office for Competition was created to carry out these duties and responsibilities. This office will operate as an adjunct to the Office of the Secretary of Justice.

However, critics of the present administration are of the opinion that the move is unnecessary as it encroaches upon the regulatory jurisdiction of other government agencies without a clear-cut resolution of the overlap of competence. Some critics suggested that the president should have left this matter to the legislative branch since a new antitrust law has been certified as a priority bill and is currently progressing through the legislative process.

The Joint Foreign Chambers of the Philippines (JFC), however, responded in a positive manner. In an official statement on October 14, 2011, it noted that the executive and both Houses of Congress are determined to create effective competition legislation and implement competition policy. It opined ‘that a well-drafted and sensibly implemented competition law would contribute considerably to President Aquino’s promise of a level playing field for investors in the Philippines’.¹⁴⁸ As to the creation of a Competition Office under the Department of Justice, the JFC see this decision of the Aquino Administration as ‘a move to “hit the ground running”, address competition issues immediately, and create the level playing field that consumers deserve.’¹⁴⁹ At present, it is impossible to predict how this apparent conflict between the actions of the president and the pending legislation will be resolved.

5.5.3 Roadblocks to success

Institutional capacity Implementation of sound macroeconomic policies requires strong institutional capacity. On the other hand, a lack of capacity development – one of the major issues continually confronting the Philippine system of government – will only be an obstacle to economic development especially in terms of enhancing the state of competition in the different sectors of the economy. Efforts to restructure the regulatory sector were made as early as 1980s, ahead of many developing countries, but results have been mixed.¹⁵⁰ This was justified to protect the public interest and to create and facilitate the conditions for effective markets.

¹⁴⁸ Chamberlain, A. J. C., Payne, J., d’Aboville, H., Ichiki, N. E. C. et al. (2011), Joint Foreign Chambers’ Statement on Competition Legislation, October 14.

¹⁴⁹ Id.

¹⁵⁰ Carino, L. (2005), ‘Regulatory Governance in the Philippines: Lessons for Policy and Institutional Reform’. International Workshop of the Centre for Regulation and Competition. Manchester: University of Manchester, UK, June 22–4.

According to a report by the World Trade Organization (WTO) Secretariat, although ‘the Philippines is committed to transparency in the formulation of trade and investment policies and in the enforcement of laws and regulations . . . in practice, however, these broad principles of good governance are not always met, and this undermines the economic reform process’.¹⁵¹

This was confirmed by the United States Agency for International Development (USAID), which stated that governance-related issues in the Philippines, among others, hindered economic development in the international as well as domestic perspective:

Global competitiveness rankings and other investment climate diagnostics confirm that the major constraints to growth continue to be inadequate infrastructure, cumbersome business procedures, poor tax and customs administration, barriers to market entry, weak property rights, high energy costs, and lack of equitable and effective regulation and enforcement. These conditions persist despite repeated efforts at reform. The key economic growth development challenge remains addressing competitiveness and governance-related issues.¹⁵²

Worse, the plethora of overlapping existing government rules and procedures have been a threat to the government’s own stated objectives. For instance, environmental regulations have created entry barriers, such as Environmental Impact Analysis (EIA), Environmental Clearance Certificate (ECC) and other permits and licenses that deter prospective players from entering some industries. Complicated and cumbersome business registration requirements, in general, negate pro-competitive effects. Thus, a ‘regular review to update and streamline the procedures would go a long way to increasing the efficiency of the regulatory process and of the industry itself’.

As Medalla says:

Conceivably, almost anything (and everything) the government does, could affect competition. There may not be any conscious, coherent, or concerted policy on competition, but government policy interventions will always alter, in varying degrees, for good or bad, the state of competition. It is ironic that for a developing country with usually less perfect markets, there is a greater need for an effective competition policy to encourage better use of scarce resources. However, there is less recognition of this need.

¹⁵¹ WTO (2005), ‘Trade Policy Review: The Philippines’. Report by the Secretariat.

¹⁵² USAID (2009), ‘Country Assistance Strategy – Philippines: 2009–2013’. Washington: US Mission to the Philippines.

Not that the government has done nothing to foster competition. The reforms starting in the mid-1980s have done much to move the economy toward a more market-friendly policy environment. Since the mid-1980s, trade reforms, banking reforms, foreign investment policy reforms, deregulation, privatization, and the policy thrusts in general have explicitly and implicitly recognized the benefits of competition.

But government has done so much more that may need to be reexamined in the light of competition policy. It is not that competition policy objectives are superior. Rather, it is because there are efficiency gains and improved consumer welfare usually expected from competition. And if some government policy conflicts with competition policy, there is enough reason to question whether or not this policy serves national welfare and its stated objective.¹⁵³

However, the need for governmental intervention in establishing a competitive atmosphere is still important. Hence, a balancing of interests comes into play. Fortifying institutional capacity is a challenge alongside establishing competition policies and laws suitable for the country. Thus, as Patalinghug says: 'the absence of government intervention does not necessarily guarantee a more competitive market environment because anti-competitive and unfair business practices may well provide effective barriers to entry. Competition policy therefore aims at ensuring that as government barriers come down, business barriers do not go up.'¹⁵⁴

With the apparent preference of the legislature for creating a new central competition authority, new challenges will have to be faced. A lack of expertise and a need for capacity building is one of the most obvious. Medalla is correct in saying:

A full-blown national competition policy would require, at the very least, a lot of technical expertise. The competition authority should have very competent and knowledgeable manpower to define markets, identify anticompetitive actions, and judiciously construct and administer competition tests on issues of concentration, agreements, mergers, and acquisitions. As such, a very legitimate question is how ready we are to implement the necessary reforms. Being new in the area of implementing competition policy, the nation requires expertise as well as institution and capability building.¹⁵⁵

Training, engagement of the right talent, providing sufficiently attractive salaries are all essential. Promoting effective coordination across

¹⁵³ Medalla, E. M. (2002), 'Government Policies and Regulations: Interface with Competition Policy.' Toward a National Competition Policy for the Philippines. Makati City: Philippine Institute for Development Studies.

¹⁵⁴ Patalinghug, E. (2000), 'Competition Policy, Technology Policy, and Philippine Industrial Competitiveness'. *Social Science Diliman*, 1 (1), pp. 31–59.

¹⁵⁵ Medalla (n 153).

relevant national regulatory agencies through medium-term (2–3 year) exchange programs between domestic and international agencies will also be necessary.¹⁵⁶ Thus, the enactment of a comprehensive competition law is only a first step toward embracing an effective competition policy.

Weak judicial system Reformation of the country's competition laws and policies is not the only obstacle to success. The Philippine judicial system has been criticized for its inefficiency, incompetence and lack of credibility. USAID has stressed the importance of the effective administration of justice and the possible effects of a weak rule of law, namely: erosion of stability and of the social fabric, negative economic repercussions, including deterring potential investors due to lack of predictability in enforcing contracts, and interminable delays in adjudication; all vital factors in the encouragement of new entrants to markets. In describing the Philippine judiciary, the USAID observed that,

The docket congestion of the courts at all levels has decreased but the backlog still exceeds 600,000 cases. A court case still takes years to be decided and about one-fifth of available judgeship positions remain unoccupied. There continues to be widespread perception of corruption in the judiciary, especially the lower courts, eroding public confidence in the justice system.¹⁵⁷

According to the United Nations Conference on Trade and Development (UNCTAD), among the challenges and issues confronting the Philippines in terms of formulation and administration of competition policy is having a diffuse legal system and a lack of knowledgeable and skillful judges:

The critical issue which remains is that of the current lack of experience and knowledge in competition policy matters in the Philippines, particularly in the judiciary. If this is not addressed, then the new law will remain unenforced (as existing legislation is) or worse, enforcement will be inappropriate, creating potential economic inefficiencies.

The issue in respect to insufficient knowledge and experience is clear. It is one thing to know that a firm in a position to control the relevant market for a particular good or service is not permitted to limit production for the purpose

¹⁵⁶ Asian Development Bank Institute (2012), Regional Workshop on Challenges in the Implementation of Competition Law. Retrieved from <http://www.adbi.org/event/3351.implementation.competition.law> (last accessed 7 February 2012).

¹⁵⁷ Ciment, S. (n.d.). 'Judicial Reform Activities in the Philippines Project', USAID: From the American People. Retrieved from <http://philippines.usaid.gov/programs/democracy-governance/judicial-reform-activities-philippines-project> (last accessed 5 March 2012).

of raising prices, but quite another to prove that the firm in question firstly, has control of a market and secondly, reduced production to raise prices, and another still to adjudicate in a case where such accusations are made.¹⁵⁸

Arthur M. Mitchell, former General Counsel of the Asian Development Bank, emphasized the significance of investing in the legal and judicial sector. He stated that ‘strengthening legal and judicial institutions makes good economic sense. Studies have found that strong institutions are important to economic growth and social development. Where citizens perceive no predictability in the judiciary’s enforcement of laws, there has been less economic growth’.¹⁵⁹

The former Philippine Chief Justice Hilario Davide, Jr.¹⁶⁰ instituted reforms in pursuit of creating an efficient and credible judiciary worthy of the trust of its citizens, while recognizing its ‘vulnerabilities’ and realizing that ‘achieving an independent and efficient judicial system is a long and tedious process’.¹⁶¹ His successors, former Chief Justices Artemio V. Panganiban¹⁶² and Reynato S. Puno,¹⁶³ experienced the same difficulties.

Among the corrective actions taken by the judiciary were the strengthening of the modes of alternative dispute resolution, allowing the parties to settle matters without resorting to the longer process of court adjudication, and the implementation of service-enhancement projects such as the computerization of the courts and simplification of the rules of procedure and evidence which would shorten the process of litigation.¹⁶⁴ Chief Justice Puno also acknowledged that ‘without a reformed Judiciary, our hope to “secure to ourselves and our posterity the blessings of independence and democracy under the rule of law” will be an impossible dream’.

Unfortunately, the weaknesses in the judiciary were recently

¹⁵⁸ UNCTAD (2001), ‘National Competition Policy for the Philippines’. Retrieved from <http://r0.unctad.org/en/subsites/cpolicy/gvaJuly/docs/en9.doc> (last accessed 5 December 2011).

¹⁵⁹ Strengthening the Judiciaries of the 21st Century (2005), International Conference & Showcase on Judicial Reforms, Manila.

¹⁶⁰ *Id.*

¹⁶¹ Emerlinda, D. (2004), ‘Academe Meets the Government on Judicial Reforms’, *Philippine Journal of Third World Studies*, 20 (1), pp. 95–135.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ Martinez, A. K. M. (2009), ‘Chief Justice Puno Speaks on Philippine Judicial Reform’, November. Benchmark online, Supreme Court of the Philippines, <http://sc.judiciary.gov.ph/publications/benchmark/2009/11/110903.php> (last accessed 2 February 2012).

re-emphasized by the impeachment of the Chief Justice of the Philippines, Renato C. Corona, in May 2012 by the Philippine Senate. The magistrate was accused of accumulating over US\$2 million in undeclared deposits in overseas bank accounts. He was convicted by the Senate and removed from office, though no other criminal and civil charges have, as yet, been filed.¹⁶⁵ The judge was also a close associate of the former President Gloria Arroyo, who is also facing trial on corruption charges. It has been suggested that his removal was politically motivated as his continued occupancy of his post might have impeded the trial of the former president.

This case, sadly, illustrates only too well the corrupt cronyism that infuses so many aspects of all branches of government in the Philippines and provides a graphic example of the extent and depth of the malaise that has impeded the economic progress of the country.

Endemic corruption Corruption has already been extensively discussed above in section 3.1.8, but it is necessary to make a number of additional comments. Corruption in the Philippines is deeply embedded in its system of government, being a 'historical and ongoing phenomenon'.¹⁶⁶ As such, it resulted in 'direct and indirect economic costs'.¹⁶⁷ Excessive government spending decreased state revenues and increased foreign debts are among its by-products. Notorious corruption levels have discouraged foreign and local investors, who are deterred by the unwarranted additional cost of doing business. Because of endemic corruption, firms are forced to bribe public officials. Worse, this became an opportunity for these firms to monopolize, form cartels, and resort to other anti-competitive practices to gain advantage.

Surprisingly, corruption is often related to the salary structure of the government. In fact, scholars from Singapore and Hong Kong have suggested that the salary structure in government may be a key factor in countering corruption in government.¹⁶⁸ Low compensation packages 'render government officials and employees highly vulnerable to corruption and undue influence by vested interests'.¹⁶⁹ At the same time,

¹⁶⁵ Whaley, Floyd (n 103).

¹⁶⁶ Batalla, E. et al. (2001), 'Governance and Corruption in the Philippines', Yellow Paper II Beyond EDSA: The Post-Erap Reform Agenda. Retrieved from <http://www.aer.ph/images/stories/projects/yp2/corrupt.pdf> (last accessed 15 November 2011).

¹⁶⁷ Id; see also: Kaufmann, D. and Gray, C. (1998), *Corruption and Development: Finance and Development*. Washington, DC: World Bank.

¹⁶⁸ Id.

¹⁶⁹ Medalla (n 140).

. . . low salary scales have a detrimental effect on morale in the bureaucracy. It explains why the agencies are unable to attract and maintain the best graduates from the best schools. It also explains the relatively poor performance of agencies vis-à-vis their private sector counterparts.¹⁷⁰

The present government has vowed to fight corruption while recognizing the role of private enterprises in achieving the goal of increased prosperity. In a speech during the Citibank Economic Conference held on September 22, 2010 in New York City, President Aquino stated that he 'was elected to office on the promise to fight corruption and do better for the poor . . . [and] in order to do that the engines of commerce must be running at full throttle. Robust economic growth, fueled by the private sector, combined with thoughtful government spending on social services is the solution over the long term. Let me be crystal clear: to achieve our social goals, it is imperative that we in the Philippines create a climate for private enterprise to profit and thrive. And this is what we have begun to undertake.'¹⁷¹

Prevailing monopolistic/oligarchic culture National economic development through a more open and competitive marketplace is affected by the great divide between the rich and the poor and the influence of the landed and economic elites. Due to a high concentration ratio, the Philippine economy is largely captive to a small group of economic interests who have succeeded in maintaining market dominance by successfully excluding other firms from entering, participating and competing in many domestic markets.

The Philippine economy is characterized by a high concentration of wealth and resources in a few groups comprising the nation's elite class. The top 5.5 percent of all land-holding families own 44 percent of all tillable land and the richest 15 percent of all families account for 52.5 percent of all the national income (Almonte 1993). Moreover, only 10 corporations in 1991 accounted for 26 percent of all revenues, 40 percent of all net income, and 34 percent of total assets of the top 1,000 corporations (SEC 1991).

Studies confirm a high concentration ratio in ownership and production, i.e., the measure of the market share of the top three or four firms to total market size in certain key industries: petroleum, iron and steel manufacturing, fertilizer

¹⁷⁰ Id.

¹⁷¹ Aquino, B. (2010), Speech at the Citibank Economic Conference, New York City, September 22, *Official Gazette*. Retrieved from: <http://www.gov.ph/2010/09/23/speech-of-president-aquino-at-the-citibank-economic-conference-new-york-city> (last accessed 17 November 2011).

production, pulp and paper manufacturing, home appliance manufacturing, tobacco and cigarette production, and tire manufacturing.

This high concentration ratio is a direct result of the failed economic policies of the past, particularly from a surfeit of regulation and a dearth of competition.¹⁷²

Consequently, the Philippines can be characterized as ‘a weak state’¹⁷³ because it is dominated by monopolistic and/or oligarchic culture which has contributed to the ineffectiveness of existing laws intended to curtail abusive behavior that restricts competition.

The Philippine state continues to fail to insulate itself from the parochial interests of traditional families, clans and groups that have dominated and benefited from Philippine politics . . . As a result of the weakness of the Philippine state, ‘preferential access to state resources and state-conferred economic opportunities have traditionally been given to political elite, friends and relatives of the regime in control of the state power.’ A weak Philippine state results in the ‘politics of privilege,’ a rent-seeking activity causing corruption and mismanagement of the Philippine political economy. One scholar describes this as ‘booty’ or ‘crony’ capitalism in which private interests are pursued using public resources and in which economic and political oligarchs abuse the apparatus of the state.¹⁷⁴

This oligopolistic economic structure will be a major issue for a competition agency to tackle. However, opening up large sectors of the economy may require dramatic structural reordering by the courts or the agency. Whether or not the new competition authorities or the courts will be able to tackle substantial monopolies is doubtful. However, the Philippines may, in the long run, only enjoy the benefits of a more competitive economy if the cross-sectorial dominance of the conglomerates is effectively tackled.

Protectionism in the guise of nationalism During the 1950s, the Philippines adopted a protectionist policy to shield local industries from foreign competition. The most controversial application of this policy was seen in the retail trade industry. In 1954, the Philippine government enacted Republic Act No. 1180, entitled ‘An Act to Regulate the Retail Business’, which prohibited non-citizens from directly or indirectly engaging in retail

¹⁷² Medalla (n 140).

¹⁷³ Banlaoi, R. (2004), ‘Globalization and Nation-Building in the Philippines: State Predicaments in Managing Society in the Midst of Diversity’, in Y. Sato (ed.), *Growth and Governance in Asia*. Honolulu, HI: Asia-Pacific Center for Security Studies.

¹⁷⁴ Id.

businesses. However, the Philippines has suffered from the effects of this policy in terms of inefficient 'domestic industries, competitiveness issues, and shallow growth':

From the 1950s to the 1970s, the Philippines pursued restrictive and protectionist policies as part of its then inward-looking, import-substituting industrialization strategy. This period was characterized by protective tariffs, foreign exchange control measures, and capital market interventions, which shielded domestic industries from foreign competition. After an initial spurt, the inward-looking strategy soon reached its limits due to a relatively small domestic market. The protectionist regime resulted in inefficient domestic industries, competitiveness issues, and shallow growth, prompting the government to rethink and restructure its industrial policy.¹⁷⁵

This protectionist mindset was justified by nationalism. In 1960, former President Carlos P. Garcia implemented the 'Filipino First Policy' that greatly favored Filipino businessmen over foreign investors, and this was justified in nationalistic, anti-colonialist terms.¹⁷⁶

Subsequently, some sectors were partially liberalized. The Retail Trade Liberalization Act 2000 was enacted to open up retail trade, specifically, to promote consumer welfare by attracting productive investment to increase choice and reduce prices for consumers and to enable domestic goods and services to become globally competitive. At present, the law is being reviewed, since it has been subject to significant criticism. The JFC released an official statement stating:

In summary, the Joint Foreign Chambers of Commerce do not believe that Act has achieved its objective of liberalizing foreign ownership in the retail trade sector due to various restrictions it imposes requiring 100 percent local ownership for most retail businesses with capitalization below USD 2.5 million and other conditions which deter many investors. We have found very few similar restrictions elsewhere in Asia, a situation that results in the Philippines being at a serious competitive disadvantage in seeking foreign investment for medium-sized businesses which should be the backbone of the Philippine economy and employment generation. To rectify this situation we recommend that the current legislation be amended to reduce the threshold at which foreign investment is allowed to the level of the Foreign Investments Act (Republic Act 7042,

¹⁷⁵ Wignaraja, G., Lazaro, D., DeGuzman, G. (2010), 'FTAs and Philippine Business'. ADBI Working Paper Series. Tokyo: Asian Development Bank Institute.

¹⁷⁶ McGurn, W. (n.d.), 'A Tale of Two Countries – Economic Impact of Philippine Protectionist Policies and Lack of Protectionism in Hong Kong'. Retrieved from http://findarticles.com/p/articles/mi_ml568/is_n2_v26/ai_15473461/pg_3 (last accessed 17 December 2011).

as amended by RA 8179) and otherwise to remove conditions not found in RA 7042, as amended.¹⁷⁷

The Philippines must consider a ‘paradigm shift’ in light of the current trends toward globalization and the deleterious effects of protectionism since such policies ‘encourage the rent-seeking, import-substituting, capital-intensive, and oligopolistic behavior of Philippine domestic enterprises’¹⁷⁸ to the detriment of consumers.

Macroeconomic issues According to the 2012 Index of Economic Freedom¹⁷⁹ compiled by the US think tank, The Heritage Foundation, together with the *Wall Street Journal*, the Philippines’ economic freedom score is 57.1, making its economy the 107th freest among 179 countries and ranking 19th out of 41 countries in the Asia–Pacific region.¹⁸⁰ In 2011, the Philippines scored 0.2 points lower than its ranking in 2010 and its overall score is slightly below the world and regional averages. In 2012, it scored 0.9 points higher, with a significant improvement in business freedom.¹⁸¹

The Philippines scored 54.3 on the business freedom component as ‘business regulatory environment has improved considerably . . . [and] the overall process has become less costly’.¹⁸² As to fiscal freedom, the Philippines earned a score of 79.1.¹⁸³

On the basis of trade freedom, the Philippines scored 75.5; its ‘trade weighted average tariff rate is 4.8 percent, and layers of non-tariff barriers further inhibit more dynamic gains in trade’.¹⁸⁴ In terms of investment

¹⁷⁷ Chamberlain, A. J. C., Payne, J., d’Aboville, H., Ichiki, N. E. C. et al. (2011), Statement of the Joint Foreign Chambers in the Philippines. The Senate Trade Committee on Senate Resolution 476 Review of the Retail Trade Act (RA 8762), October 4. Pasay City: Joint Foreign Chambers of the Philippines.

¹⁷⁸ Medalla (n 140).

¹⁷⁹ It is measured by factoring in ten components of economic freedom and assigning a grade to each using a scale from 0 to 100, where 100 represents maximum freedom. The ten component scores are then averaged to give an overall economic freedom score for each country. The ten components of economic freedom are: business freedom, trade freedom, fiscal freedom, government spending, monetary freedom, investment freedom, financial freedom, property rights, freedom from corruption and labor freedom. 2012 Index of Economic Freedom (n.d.). Retrieved from <http://www.heritage.org/index> (last accessed 6 March 2012).

¹⁸⁰ 2011 Index of Economic Freedom: The Philippines (2012). Retrieved from <http://www.heritage.org/Index/Country/Philippines> (last access 6 March 2012).

¹⁸¹ Id.

¹⁸² Id.

¹⁸³ Id.

¹⁸⁴ Id.

freedom, ‘despite a strong desire to attract longer-term foreign investment, systemic inefficiency exacerbated by heavy bureaucracy discourages dynamic growth in investment’. The financial sector, which is gradually modernizing, remains relatively stable and sound.¹⁸⁵

As a response to these deficiencies, the Philippines has prepared a Five-Year Development Plan (2011–16),¹⁸⁶ outlining economic reforms for sustainable growth. To achieve its national economic goals, the Philippine government accepts the need for a stable macroeconomic environment. Fiscal policy needs to ‘expand the narrow fiscal space and to get on a sustainable revenue-and-spending path’ and ‘low and stable inflation conducive to balanced and sustainable growth and reduced external vulnerabilities’ must be achieved.

The development plan also proposes tax administration reforms to create an inclusive tax registry for all taxpayers, using comprehensive third-party data to determine the potential tax base, and maintaining a transparent and productive tax audit program. To complement this effort priority policy reforms will be instituted to rationalize the fiscal incentives system, leading to the enactment of a fiscal responsibility law. The government appears to comprehend the need for reforms to create an environment that encourages innovation and competition in the market, but it is uncertain as to whether the government will be able to enact and implement such an ambitious reform agenda.

Regional issues The Philippines is striving to keep up with its Southeast Asian neighbors to become globally competitive. Whilst the Philippine economy has been fairly resilient to external shocks, it has been ‘unable to grow as fast as its Asian neighbors’:

The decline in the Philippines’ global position from the first part of the 20th century is particularly striking when viewed against the backdrop of rapid income gains in countries of East and Southeast Asia, countries the Philippines used to surpass in terms of physical and human capital. While there have been a number of attempts to explain the puzzle – difficult geography, macroeconomic policy failures, and corruption – none are completely convincing either because there are counterexamples or the factors cited are endogenous and derivative.¹⁸⁷

¹⁸⁵ Id.

¹⁸⁶ Philippine Development Plan 2011–2016 (n.d.). Retrieved from <http://www.neda.gov.ph/PDP/2011-2016/default.asp> (last accessed 15 November 2011).

¹⁸⁷ Nelson, R. (2007), ‘The Philippine Economic Mystery’, The University of the Philippines School of Economics, July. Retrieved from: <http://www.econ.upd.edu.ph/respub/dp/pdf/DP2007-09.pdf> (last accessed 17 December 2011).

This sober assessment of the Philippines' prospects for greater economic success may be tempered by the successful implementation of the ASEAN plan to more closely integrate ASEAN economies and reduce regional trade barriers. Under the ASEAN Economic Community Blueprint (AEC Blueprint), a single market and production base is to be established by the ten economies of the ASEAN by 2015. The vision is to 'create a highly competitive single market that promotes equitable economic development for Member States, as well as facilitating their integration with the global community'.¹⁸⁸

To track its progress, a scorecard mechanism has been developed to monitor the implementation of measures listed in the AEC Blueprint. The Philippines actively participated in the first AEC Scorecard, covering January 2008 to December 2009. Accepting the common goal of reducing tariff barriers to allow free flow of goods, the Philippines joined its ASEAN counterparts in eliminating tariffs for products in the Common Effective Preferential Tariff (CEPT) Inclusion Lists for intra-ASEAN trade.¹⁸⁹ As to non-tariff barriers, ASEAN is working toward establishing an ASEAN Single Window (ASW) to speed up the clearance of shipments and release of goods by customs authorities in the region to reduce transaction costs. The Philippines now operates a National Single Window (NSW) as a first step. It has also ratified the ASEAN Trade in Goods Agreement (ATIGA), which seeks 'to consolidate and synergize various provisions on trade in goods into a single reference document' and ASEAN Comprehensive Agreement on Investment (ACIA), whereby 'both ASEAN investors and ASEAN-based foreign investors stand to gain from greater liberalization in investment and increased investment protection'.¹⁹⁰

Serious efforts have been made by the Philippine government to contribute to a better and stronger regional economy. 'Sustained future growth in the Philippines will require continued domestic policy reforms, including further trade and investment liberalization and other structural reforms to improve productivity, particularly to compete with low-cost neighboring economies, according to a WTO Secretariat report on the trade policies and practices of the Philippines'.¹⁹¹

¹⁸⁸ ASEAN Economic Community Scorecard (2008–09), Jakarta: ASEAN Economic Community.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ World Trade Organization (WTO) (2005), 'Growth Prospects are Linked to Continued Trade Liberalization Reforms', July 7. Retrieved from http://www.wto.org/english/tratop_e/tpr_e/tp249_e.htm (last accessed 2 March 2012).

However, the Philippines will have to take advantage of the full benefits of trade liberalization and economic integration by boosting the productivity of the various sectors of the economy and by being able to withstand the greater competitive challenges brought about by a more open and legislated ASEAN Economic Space.

As Tongzon says,

Although the Philippine Government seems determined to pursue the path of trade liberalization and economic integration within the multilateral and regional contexts, there are, however, real obstacles and challenges that could hinder the process of implementation and thus determine its future prospects. One major challenge is how to gain the maximum benefits of trade liberalization and economic integration. The economic benefits that the Philippines has derived so far from its participation in the global production network and trade have so far been minimal due to its role merely as a place for assembly operations with no significant linkages with the domestic sector and being at the low-valued and labour-intensive segments of the production chain. It is therefore crucial for the country to move up the production chain by investing more in high-valued production and in the production of the upstream products (intermediate inputs) to result in greater domestic linkages and higher value-added for the country. The trade policy issue for the country is how best to extract the economic benefits of trade liberalization and globalization in a way that promotes best national economic growth and development.¹⁹²

5.5.4 Prospects of success

The enactment of a comprehensive competition law and creation of a viable enforcement agency, suitable for the Philippines, will serve as a catalyst to encourage a more competitive environment. However, sustained political leadership is needed to fortify competition policy and to ensure effective implementation.

A shift from industry-specific regulation to a comprehensive competition policy framework is needed, encompassing clear objectives and a competent and well-resourced enforcement authority.

As Patalinghug opines:

The establishment and fostering of an effective competition policy is an important agenda for the future. But it requires effective legislation that provides substantive authority to assess pre-merger notification, regulate natural monopolies, determine misuse of market power by large firms, and monitor restrictive and anti-competitive practices. A shift from industry specific regulation to a comprehensive competition policy framework is needed. In addition, an effective competition law regime requires clear objectives: efficiency or

¹⁹² Tongzon, J. L. (2005), 'Trade Policy in the Philippines: Treading a Cautious Path', *ASEAN Economic Bulletin*, 22 (1), pp. 35–48.

equity. As we have seen in the privatization experience, long-term efficiency was being sacrificed to achieve short-term revenue gains. And finally, an effective competition policy in the Philippine setting requires a widely respected institution to be accepted as impartial adjudicators. Institutional credibility must go along with adequate resources in terms of funds, skills, training, and technology for these agencies. In setting the agenda for future competition policy, the Philippines must aim at satisfying these requirements for an effective competition law regime.¹⁹³

Whether the Philippines can rise to these challenges and overcome the formidable obstacles analyzed in this chapter to effectively implement a pro-competition policy remains to be seen.

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¹⁹³ Patalinghug (n 154).

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