ORIGINS AND OUTCOMES: THE PHILIPPINE COMPETITION ACT OF 2015[*]

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ABSTRACT

This paper argues that the historical, foreign, and international origins of the Philippine Competition Act of 2015 are highly relevant to achieving the statute's desired outcomes of market efficiency and consumer benefit. They can serve as a useful guide to Philippine courts, competition authorities, and law enforcement agencies for the correct interpretation and effective enforcement of the law. Thus, it is crucial to identify and appreciate the Philippine legal antecedents, model foreign laws, and international law-related policy objectives of the statute.

I. THE PHILIPPINE COMPETITION ACT OF 2015

Many consider the Philippine Competition Act of 2015 as an innovation in Philippine law, with features unique to the Philippine legal system. Many also see the law as a product of the Philippine government's initiative to promote inclusive economic growth. Yet the statute contains Philippine legal antecedents that date back over 130 years ago. Many of its important provisions were copied from foreign laws, and the policy objectives for its enactment were defined by the country's international commitments.

These historical antecedents, model foreign laws, and international law-related policy objectives need to be identified and appreciated as they will

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heavily influence the manner by which Philippine courts, competition authorities, and law enforcement agencies will interpret the text of the Philippine Competition Act. This paper seeks to contribute to the effort of identifying and appreciating the historical, foreign, and international origins of the new law in order to help achieve the statute's desired outcomes of market efficiency and consumer benefit.

The first Philippine competition bill was filed in the Philippine Congress over two decades ago, with numerous versions of the bill being subsequently filed.[1] The proposals were endlessly debated and languished in the congressional committees when finally, in 2011, the Philippine President placed inclusive growth at the center of his five-year economic agenda and made the enactment of a competition law his legislative priority.[2] With the support of the ruling political party, the Philippine Competition Act was passed by the Philippine Congress in June 2015 and was promptly approved by the Philippine President the next month.

The statute created many firsts in the Philippine legal system, the most notable ones being: (i) the creation of a powerful government agency exercising new legal powers in order to regulate competition in all sectors of the economy; (ii) the mandate to craft a comprehensive national competition policy; and (iii) the prohibition and regulation of business activities that were previously considered, arguably, to be lawful and unregulated, such as mergers and acquisitions, use of market power, certain agreements among competitors, and certain conditions imposed on sales to customers.

II. PHILIPPINE LEGAL ANTECEDENTS

The Philippine Competition Act (PCA) is a landmark statute in the Philippine legal system, yet it is not the first competition law in the country, nor is it the first economy-wide competition statute. Its Philippine legal antecedents stretch back to almost 130 years ago.

A little knowledge of Philippine political history will allow a better appreciation of the historical origins of the PCA. The country is an archipelago of over 7,600 islands located in Southeast Asia. The Spaniards arrived in 1521, subjugated the numerous small Filipino kingdoms, and made the archipelago their colony for over 300 years. During this period, the Spanish colonial Law of the Indies was in force in the Philippines, as it had

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[1] Performance of the Senate, 16th Cong., 3rd Sess. (July 27, 2015-June 6, 2016).

[2] PHILIPPINE DEVELOPMENT PLAN 2011-2016 (2011).

been in Spain's Latin American colonies. In 1896, the Filipinos launched a nationalist revolution—one of the first in Asia—but subsequently signed a truce with the Spaniards. In 1898, Spain ceded the archipelago to the United States (U.S.) after the ten-week Spanish-American War.

The U.S. colonized the islands, thus prompting the Filipino revolutionary forces to fight the Philippine-American War until their defeat in 1902. During the early American colonial period, law-making powers were vested in a Philippine Commission, composed of five Americans appointed by the U.S. President. In 1907, legislative powers were given to a bicameral Philippine Legislature, consisting of the Philippine Commission as the upper chamber, and the Philippine Assembly, composed of elected delegates, as the lower chamber.[3] In 1916, the Philippine Autonomy Act of the U.S. Congress reorganized the Philippine Legislature, with the Senate as the upper house, and the House of Representatives as the lower house.[4] American colonial rule was interrupted by the Japanese occupation of the country during World War II. The Philippines gained its independence in 1946, with law-making powers vested in a Philippine Congress composed of the Senate and House of Representatives.[5]

Why do we need to look at old legal provisions when we already have a new statute? *First*, this is because some of the old laws—specifically, the industry-specific competition laws—are still in force, and can be applied by the Philippine courts, competition authorities, and law enforcement agencies together with the PCA. *Second*, the new statute itself states that it was enacted pursuant to the competition provision of the 1987 Constitution. *Third*, the historical origins of the statute may, in appropriate cases, serve as a guide for Philippine courts and executive agencies in their interpretation of its text. Thus, in a landmark decision issued by the Supreme Court in 2003, the Court interpreted the current statutory provisions on land reclamation in the historical context of the Spanish Law of Waters of 1866, the Spanish Civil Code of 1889, a 1907 American colonial statute on reclaimed and foreshore lands in the Philippines, and the 1919 Philippine law on public lands. In another important judgment decided by the Supreme Court in 2000, the members of the Court examined the provisions of the Indigenous Peoples

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[3] PHIL. ORGANIC ACT (1902), § 7. The Philippine Organic Act of 1902 is known as "An Act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes."

[4] PHIL. AUTONOMY ACT (1916), § 12. The Philippine Autonomy Act of 1916 is known as "An Act to declare the purpose of the people of the United States as to the future political status of the people of the Philippine Islands, and to provide a more autonomous government for those islands."

[5] CONST. (1935), art. VI, § 1.

Rights Act with reference to the Spanish colonial Law of the Indies, the Royal Cedula of 1754, the Ordenanza of the Intendentes of 1786, the Spanish Mortgage Law of 1893, the Spanish Royal Decree of 1894, and the American colonial public land act of 1903.

A. Spanish Penal Code of 1870

One of the earliest Philippine legal antecedents of the PCA is the Spanish Penal Code of 1870, which was in force in the archipelago from 1886 until 1930. The Spanish imposed criminal sanctions on bid rigging attempts, anti-competitive agreements relating to labor, and price manipulation. The code is in the Spanish language, but the Philippine Supreme Court has translated the relevant competition provisions of the colonial statute as follows:

> Chapter 5, title 13, book 2, of our Penal Code makes it a crime for a person to solicit any gift or promise as a consideration for agreeing to refrain from taking part in any public, auction, or attempting to cause bidders to stay away from such auction by means of threats, gifts, promises or any other artifice, with intent to affect the price of the thing auctioned (Art. 542), or to combine for the purpose of lowering or raising wages to an abusive extent, or to regulate the conditions of labor (Art. 543), or by spreading false rumors, or by making use of any other artifice, succeeds in altering the prices which would naturally be obtained in free competition for merchandise, stocks, public and private securities, or any other thing which may be the object of trade and commerce (Art. 544).[6]

A 1916 Supreme Court judgment highlights the importance of Philippine legal antecedents in decisions by Philippine courts and executive agencies, and the possibility that the courts and agencies may consider laws that are indirectly relevant even though not directly applicable. In a civil case for damages for breach of contract, the Court examined the contract in the light of the competition provisions of the criminal code and concluded that the contract was contrary to public policy as it constituted an "undue or unreasonable restraint on trade."[7]

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[6] Ferrazzini v. Gsell, G.R. No. L-10712, Aug. 10, 1916.
[7] *Id.*

B. Early American Colonial Law

Another early legislative antecedent of the PCA is an American colonial statute enacted in 1901. Act No. 98, entitled "An Act to Regulate Commerce in the Philippine Islands," prohibited anti-competitive agreements and abuse of market dominant position by entities known as "common carriers" that were engaged in the business of transporting passengers and goods. At a time when there were limited options for transportation, common carriers had great market power as they were allowed to operate as oligopolies, or even as duopolies or monopolies in certain geographic areas. Customers had very limited choices or no choice at all.

Act No. 98 prohibited common carriers from abusing their dominant position in the market by discriminating between customers requesting the same service under similar conditions, which included discrimination through charging the favored customer a lower price or giving such favored customer an undue preference. This is similar to the prohibition in the Philippine Competition Act against abuse of a dominant position by discriminating between customers trading on similar conditions.[8] Act No. 98 provided as follows:

> Section 1. No person or corporation engaged as a common carrier of passengers or property shall directly or indirectly by any special rate, rebate, drawback or other device, charge, demand, collect or receive from any person or persons, a greater or less compensation for any service rendered, or to be rendered in the transportation of passengers or property on land or water between any points in the Philippine Islands than such common carrier charges, demands, collects or receives from any other person or persons for doing for him a like or contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, and any such unjust discrimination is hereby prohibited and declared to be unlawful.
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> Section 2. It shall be unlawful for any common carrier engaged in the transportation of passengers or property as above set forth to make or give any unnecessary or unreasonable preference or

[8] Rep. Act No. 10667 (2015). Philippine Competition Act. Section 15 of the Philippine Competition Act prohibits "one or more entities to abuse their dominant position by engaging in conduct that would substantially prevent, restrict or lessen competition: [...] (d) Setting prices or other terms or conditions that discriminate unreasonably between customers or sellers of the same goods or services, where such customers or sellers are contemporaneously trading on similar terms and conditions, where the effect may be to lessen competition substantially."

> advantage to any particular person, company, firm, corporation or locality or any particular kind of traffic in any respect whatsoever, or to subject any particular person, company, firm, corporation or locality or any particular kind of traffic, to any undue or unreasonable prejudice or discrimination whatsoever, and such unjust preference or discrimination is also hereby prohibited and declared to be unlawful.

Act No. 98 also prohibited common carriers from entering into anti-competitive agreements that would allow a person to monopolize the transportation of a particular product. There is a similar provision in the PCA that prohibits an entity entering into anti-competitive agreements with non-competitors.[9] The pertinent provision of Act. No. 98 reads as follows:

> Section 3. No common carrier engaged in the carriage of passengers or property as aforesaid shall, under any pretense whatsoever, fail or refuse to receive for carriage, and as promptly as it is able to do so without discrimination, to carry any person or property offering for carriage, and in the order in which such persons or property are offered for carriage, nor shall any such common carrier enter into any arrangement, contract or agreement with any other person or corporation whereby the latter is given an exclusive or preferential privilege over any other person or persons to control or monopolize the carriage of any class or kind of property to the exclusion or partial exclusion of any other person or persons, and the entering into any such arrangement, contract or agreement, under any form or pretense whatsoever, is hereby prohibited and declared to be unlawful.

C. Later American Colonial Laws

In 1925, the Philippine Legislature enacted Act No. 3247, entitled "An Act to prohibit Monopolies and Combinations in Restraint of Trade." This Philippine colonial statute reproduced, almost verbatim, the key provisions of the U.S. Sherman Act, passed by the U.S. Congress 35 years prior in 1890, and the U.S. Tariff Act Amendment, approved in 1913.

In 1930, the competition provisions of Act No. 3247 were repealed and incorporated in Act No. 3815, otherwise known as the Revised Penal Code (RPC). This 1930 law replaced the Spanish Penal Code of 1870 as the

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[9] Section 14(c) of the Philippine Competition Act prohibits "[a]greements other than those specified in (a) and (b) of this section which have the object or effect of substantially preventing, restricting or lessening competition shall also be prohibited."

criminal code in the Philippines. The two Philippine statutes prohibited anti-competitive agreements as well as monopolies.

The striking similarity between the text of the Philippine statutes and that of their U.S. models is seen in the table below.

US Sherman Act (1890)	**Phil. Act. No. 3247 (1925)**	**Phil. Act. No. 3815 (1930)**
Section 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.	Section 1. Every agreement, contract, conspiracy, or combination in the form of trust or otherwise, in restraint of trade or commerce or intended to prevent or preventing by artificial means free competition in the market, is hereby declared to be illegal.	Article 186. The penalty[…]shall be imposed upon: 1. Any person who shall enter into any contract or agreement or shall take part in 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;
Section 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony[…]	Section 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize by artificial means restraining free competition in the market, any part of trade or commerce, shall be punished by fine[…], or by imprisonment[…]	Article 186. The penalty[…]shall be imposed upon:[…] 2. Any person who shall monopolize any merchandise or object of trade or commerce, or shall combine with any other person or persons to monopolize […] in order to alter the price thereof by spreading false rumors or making use of any other artifice to restrain free competition in the market;

US Tariff Act Amendment (1913)	Phil. Act No. 3247 (1925)	Phil. Act No. 3815 (1930)
SEC. 73. Every combination, conspiracy, trust, agreement, or contract is declared to be contrary to public policy, illegal, and void when the same is made by or between two or more persons or corporations, either of whom, as agent or principal, is engaged in importing any article from any foreign country into the United States, and when such combination, conspiracy, trust, agreement, or contract is intended to operate in restraint of lawful trade, or free competition in lawful trade or commerce, or to increase the market price in any part of the United States of any article or articles imported or intended to be imported into the United States, or of any manufacture into which such imported article enters or is intended to enter. Every person who shall be engaged in the	SEC. 3. Every combination, conspiracy, trust agreement, or contract is hereby declared to be contrary to public policy, illegal, and void when the same is made by or between two or more persons either of whom, as agent or principal, is engaged in importing any article from any foreign country into the Philippine Islands, and when such combination, conspiracy, trust, agreement, or contract is intended to operate in restraint of lawful trade, or free competition in lawful trade or commerce, or to increase the market price in any part of the Philippine Islands of any article or articles imported or intended to be imported into the Philippine Islands, or of any manufacture into which such imported article enters or is intended to enter. Every person who is or shall	ART. 186. The penalty [...]shall be imposed upon: 3. Any person who, being an importer of any merchandise or object of commerce from any foreign country or from the United States, shall combine in any manner with other persons for the purpose of making transactions prejudicial to lawful commerce, or of increasing the market price in any part of the Philippine Islands of any article or articles imported or intended to be imported into said Islands, or of any article in the manufacture of which an imported article is used.

importation of goods or any commodity from any foreign country in violation of this section, or who shall combine or conspire with another to violate the same, is guilty of a misdemeanor, and on conviction thereof in any court of the United States such person shall be fined in a sum not less than $100 and not exceeding $5,000, and shall be further punished by imprisonment, in the discretion of the court, for a term not less than three months nor exceeding twelve months.	hereafter be engaged in the importation of goods or any commodity from any foreign country in violation of this section of this Act, or who shall be combine or conspire with another to violate the same, shall be punished by fine not exceeding one year, or by both such fine and imprisonment, in the discretion of the court.	

TABLE 1. Comparative Table of Competition Provisions Under U.S. and Philippine Statutes.

The U.S. Department of Justice has won numerous landmark cases under the Sherman Act since the early 1900s. In stark contrast, from the time the Philippine competition statutes were enacted in 1925, the Philippine Department of Justice has not prosecuted any violation of these statutes, except for one anti-cartel case filed in 2011 against liquid petroleum gas dealers.[10] For 85 years, Article 186 of the RPC stood as the only economy-wide Philippine competition provision, until its repeal by the PCA in 2015.

D. Civil Code

[10] DEP'T OF JUSTICE, ANNUAL REPORT (2011).

Another legislative antecedent of the PCA is Republic Act No. 386, otherwise known as the Civil Code of the Philippines. Article 28 of the Civil Code provides:

> 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 high-handed method shall give rise to a right of action by the person who thereby suffers damages.

In 2014, the Supreme Court awarded damages for violation of Article 28 of the Civil Code.[11] This appears to be the only instance when the high court decided a case concerning Article 28. In the said case, the Court gave the following explanation about the purpose of Article 28, as well as the characteristics of unfair competition under that provision:

> [I]t is clear that what is being sought to be prevented is not competition per se but the use of unjust, oppressive or high-handed methods which may deprive others of a fair chance to engage in business or to earn a living. Plainly, what the law prohibits is unfair competition and not competition where the means used are fair and legitimate.
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> In order to qualify the competition as "unfair," it must have two characteristics: (1) it must involve an injury to a competitor or trade rival, and (2) it must involve acts which are characterized as "contrary to good conscience," or "shocking to judicial sensibilities," or otherwise unlawful; in the language of our law, these include force, intimidation, deceit, machination or any other unjust, oppressive or high-handed method. The public injury or interest is a minor factor; the essence of the matter appears to be a private wrong perpetrated by unconscionable means.

E. Constitutions

The Constitution is likewise an important legal antecedent of the PCA. *First*, the constitution is the fundamental law of the country. Statutes must conform to the constitution, and are considered void if inconsistent with any constitutional provision.[12] *Second*, the PCA itself states that its policy

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[11] Willaware Products Corp. v. Jesichris Manufacturing Corp., G.R. No. 195549, Sept. 3, 2014.

[12] CIVIL CODE, art. 7.

objectives are pursuant to the competition provision of the constitution.[13] Thus, the text of the constitutional provision, as well as the Supreme Court's interpretation of this provision, will serve as a guide for the courts and executive agencies when enforcing the PCA.

The 1973 Constitution, adopted through a controversial process during the martial law period, prohibited combinations in restraint of trade and unfair competition. It also mandated the regulation or prohibition of monopolies when required by public interest. In 1986, the Filipino people overthrew the Marcos regime and subsequently adopted the 1987 Constitution that is now in force in the country. As shown below, except for the word "private," the current constitution is a verbatim reproduction of the competition provisions of the previous constitution. Additionally, the 1987 Constitution mandates that Filipino enterprises shall be protected against unfair foreign competition and trade practices.[14]

1973 Constitution	**1987 Constitution**
Article XIV, Section 2. The State shall regulate or prohibit *private* monopolies when the public interest so requires. No combinations in restraint of trade or unfair competition shall be allowed.	Article XII, Section 19. The State shall regulate or prohibit monopolies when the public interest so requires. No combinations in restraint of trade or unfair competition shall be allowed.

TABLE 2. Comparative Table of Competition Provisions Under the 1973 and 1987 Constitution.

The Supreme Court expounded on the competition provisions of the constitution as follows:

> Section 19, Article XII of our Constitution is anti-trust in history and in spirit. It espouses competition. The desirability of competition is the reason for the prohibition against restraint of trade, the reason for the interdiction of unfair competition, and the reason for regulation of unmitigated monopolies. Competition is

[13] Section 2 of the Philippine Competition Act provides that the policy objectives are "[p]ursuant to the constitutional mandate that the State shall regulate or prohibit monopolies when the public interest so requires and that no combinations in restraint of trade or unfair competition shall be allowed."

[14] CONST. art. XII, § 1.

> thus the underlying principle of Section 19, Article XII of our Constitution which cannot be violated by [a statute].[15]

Additionally, the Supreme Court explained the importance of statutes in enforcing the competition provisions of the constitution:

> Article 186 of the Revised Penal Code and Article 28 of the New Civil Code breathe life to this constitutional policy. Article 186 of the Revised Penal Code penalizes monopolization and creation of combinations in restraint of trade, while Article 28 of the New Civil Code makes any person who shall engage in unfair competition liable for damages.[16]

F. Industry-specific Laws

The Philippines has competition laws that apply only to specific industries. These industry-specific statutes are important legislative antecedents of the PCA for two reasons. *First*, these statutes are still effective and will be enforced together with the PCA.[17] *Second*, if the text of these statutes is identical or similar to the provisions of the PCA, then the courts and executive agencies may consider previous decisions interpreting the text of these statutes in settling controversies before them.

For the downstream oil industry, Congress enacted Republic Act No. 8180, otherwise known as the Downstream Oil Industry Deregulation Act of 1996, with the policy objective of creating a "truly competitive market." In a 1997 case, the Supreme Court observed that the industry is "operated and controlled by an oligopoly, a foreign oligopoly at that."[18] Like the PCA, the 1996 law prohibited anti-competitive agreements and abuse of market power:

> Section 9. Prohibited Acts. - To ensure fair competition and prevent cartels and monopolies in the downstream oil industry, the following acts are hereby prohibited.
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> a) Cartelization which means any agreement, combination or concerted action by refiners and/or importers or their representatives to fix prices, restrict outputs or divide markets,

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[15] Tatad v. Sec'y of the Dep't of Energy [hereinafter "Tatad"], G.R. No. 124360, Nov. 5, 1997.

[16] *Id.*

[17] Section 12(a) of the Philippine Competition Act authorizes the Philippine Competition Commission to investigate "cases involving any violation of [the Philippine Competition] Act and other existing competition laws."

[18] *Tatad*, G.R. No. 124360.

either by products or by areas, or allocating markets, either by products or by areas, in restraint of trade or free competition; and

b) Predatory pricing which means selling or offering to sell any product at a price unreasonably below the industry average cost so as to attract customers to the detriment of competitors.

The 1996 law was declared unconstitutional by the Supreme Court for violation of the competition provisions of the 1987 Constitution. The court held that the assailed provisions "inhibit fair competition, encourage monopolistic power and interfere with the free interaction of market forces."[19] In response, Congress enacted Republic Act No. 8479, otherwise known as the Downstream Oil Industry Deregulation Act of 1998.

For the electric power industry, the Congress enacted Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001, with the policy objective of ensuring "transparent and reasonable prices of electricity in a regime of free and fair competition." Like the PCA, the 2001 electric power industry law prohibits anti-competitive agreements and abuse of market power:

> Section 45. Cross Ownership, Market Power Abuse and Anti-Competitive Behavior. – No participant in the electricity industry may engage in any anti-competitive behavior including, but not limited to, cross-subsidization, price or market manipulation, or other unfair trade practices detrimental to the encouragement and protection of contestable markets.

Additionally, the 2001 law prohibits certain acquisitions by market players in the electric power industry:

> Section 45. Cross Ownership, Market Power Abuse and Anti-Competitive Behavior. – [...] No generation company or distribution utility, or its respective subsidiary or affiliate or stockholder or official of a generation company or distribution utility, or other entity engaged in generating and supplying electricity specified by ERC shall be allowed to hold any interest, direct or indirect, in TRANSCO or its concessionaire. Likewise, the TRANSCO, or its concessionaire or any of its stockholders or officials or any of their relatives within the fourth civil degree of consanguinity or affinity, shall not hold any interest, whether direct or indirect, in any generation company or distribution utility.

[19] *Id.*

> Except for government-appointed representatives, no person who is an officer or director of TRANSCO or its concessionaire shall be an officer or director of any generation company, distribution utility or supplier.

As stated above, these industry-specific statutes are still effective and will be enforced together with the PCA. Thus, Philippine courts, competition authorities, and law enforcement agencies will find these statutes directly applicable when deciding competition cases in the downstream oil and electric power industries.

III. MODEL FOREIGN LAWS

The strong influence of European and American law in shaping the Philippine legal system is rooted in the country's legal history. On the one hand, Spanish colonial laws were in force in the archipelago for over 300 years and continue to serve as the foundation of many Philippine civil and criminal laws. On the other hand, American colonial laws were applied in the country for almost half a century, and these colonial laws or their modern counterparts were the basis for numerous Philippine political, labor, commercial, taxation, and remedial laws.

On Philippine political law, the Chief Justice of the Supreme Court rendered a judicial opinion that the decisions of "the courts of the United States of America [...] have a persuasive effect in this jurisdiction, [as] our constitutional system in the 1935 Constitution [was] patterned after that of the United States."[20] On Philippine tax laws, the high court noted that "US cases have persuasive effect in our jurisdiction because Philippine income tax law is patterned after its US counterpart";[21] and that "our estate tax laws are of American origin, [thus] the interpretation adopted by American Courts has some persuasive effect on the interpretation of our own estate tax laws."[22] On Philippine remedial law, the tribunal stated that "our rules on evidence having been drawn mainly from American sources, decisions of American courts have persuasive effect."[23]

It is important to identify and understand the foreign laws that were used as models for the PCA. The text of these foreign laws, as well as their

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[20] Javellana v. Exec. Sec'y, G.R. No. L-36142, Mar. 31, 1973 (Concepcion, *C.J.*).
[21] Comm'r of Internal Revenue v. Solidbank Corp., G.R. No. 148191, Nov. 25, 2003.
[22] *Id.*
[23] People v. Pagpaguitan, G.R. No. 116599, Sept. 27, 1999.

legislative history and their interpretation by the national courts and competition authorities of the origin countries, will serve as a guide for judicial and executive agencies when enforcing the PCA. The Supreme Court explained that "the general rule is that where a local rule is patterned or copied from that of another country, then the decisions of the courts in such country construing the rule are entitled to great weight in interpreting the local rule."[24] The tribunal added that:

> [F]or the proper construction and application of the terms and provisions of legislative enactments which have been borrowed from [other countries, it is at] times essential to review the legislative history of such enactments and to find an authoritative guide for their interpretation and application in the decision of American and English courts of last resort construing and applying similar legislation in those countries.[25]

The reliance of Philippine courts on foreign law models is highlighted in two Supreme Court decisions interpreting the competition provisions of the Constitution. In 1979, the Court interpreted the terms in the constitution using definitions taken from U.S. judicial decisions, even though the 1973 constitutional provision was not copied from U.S. law:

> The terms "monopoly," "combination in restraint of trade" and "unfair competition" appear to have a [well-defined] meaning in other jurisdictions. A "monopoly" embraces any combination the tendency of which is to prevent competition in the broad and general sense, or to control prices to the detriment of the public. In short, it is the concentration of business in the hands of a few. The material consideration in determining its existence is not that prices are raised and competition actually excluded, but that power exists to raise prices or exclude competition when desired. Further, it must be considered that the Idea of monopoly is now understood to include a condition produced by the mere act of individuals. Its dominant thought is the notion of exclusiveness or unity, or the suppression of competition by the qualification of interest or management, or it may be thru agreement and concert of action. It is, in brief, unified tactics with regard to prices.[26]

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[24] *Id.*

[25] U.S. v. De Guzman, G.R. No. L-9144, Mar. 27, 1915.

[26] Gokongwei v. Securities and Exchange Comm'n, G.R. No. L-45911, Apr. 11, 1979, *citing* Love v. Kozy Theater Co., 236 SW 243, 245, 26 ALR 364; Aldea-Rochelle, Inc. v. American Society of Composers, Authors and Publishers, D.D. N.Y., 80 F. Suppl. 888, 893; and National Cotton Oil Co. v. State of Texas, 25 S.T. 379, 383, 49 L. Ed. 689.

In 1997, the Court used U.S. judicial decisions and legal materials in interpreting the competition provision of the 1987 Constitution, despite the fact that such provision was not reproduced from U.S. law:

> A monopoly is a privilege or peculiar advantage vested in one or more persons or companies, consisting in the exclusive right or power to carry on a particular business or trade, manufacture a particular article, or control the sale or the whole supply of a particular commodity. It is a form of market structure in which one or only a few firms dominate the total sales of a product or service. On the other hand, a combination in restraint of trade is an agreement or understanding between two or more persons, in the form of a contract, trust, pool, holding company, or other form of association, for the purpose of unduly restricting competition, monopolizing trade and commerce in a certain commodity, controlling its, production, distribution and price, or otherwise interfering with freedom of trade without statutory authority. Combination in restraint of trade refers to the means while monopoly refers to the end.[27]

Based on a preliminary review, the important provisions of the PCA are modeled after the text of U.S. and European Union (EU) competition laws and regulations, as summarized in the table below.

Philippine Competition Act	**Model foreign law**	
	US	EU
Anti-competitive agreements		
§14a. Among competitors		
(1) Price fixing		√
(2) Bid rigging		
§14b. Among competitors		
(1) Limiting production		√
(2) Market sharing		√
§14c. Other agreements	√	√
Abuse of dominant position		√
§15a. Predatory pricing		

[27] *Tatad*, G.R. No. 124360, *citing* BLACK'S LAW DICTIONARY (6th ed. 1990); and 54 Am. Jur. 2d § 669.

§15b. Barrier to entry		
§15c. Tying		√
§15d. Discriminatory pricing	√	
Exceptions		
(1) Socialized pricing		
(2) Cost difference	√	
(3) Response to competition	√	
(4) Response to market conditions	√	
§15e. Exclusive dealing	√	
§15f. Tying		
§15g. Exploitative pricing		
§15h. Exploitative pricing		√
§15i. Limiting production		√
Exceptions		
§3. Labor and collective bargaining	√	
§15. Improving production		√
§21. Improving acquisition	√	

TABLE 3. Philippine Competition Act (PCA) Provisions.

The provisions of the PCA on anti-competitive agreements are very close to the text of Article 101 of the EU competition law, as illustrated in the table below.

Model foreign law: EU	**Philippine Competition Act**
Article 101, Treaty on the Functioning of the EU	**§14. Anti-Competitive Agreements**
1. The following shall be prohibited as incompatible with the internal market: all *agreements* between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States	(c) *Agreements* other than those specified in (a) and (b) of this section *which have the object or effect of substantially preventing, restricting or lessening competition* shall also be prohibited.

and *which have as their object or effect the prevention, restriction or distortion of competition* within the internal market, and in particular those which:	
(a) directly or indirectly fix purchase or selling *prices or any other trading conditions*;	(a) The following agreements, between or among competitors, are *per se* prohibited: (1) Restricting competition as to *price*, or components thereof, *or other terms of trade*;
(b) *limit or control production, markets, technical development, or investment*;	(b) The following agreements, between or among competitors which have the object or effect of substantially preventing, restricting or lessening competition shall be prohibited: (1) Setting, *limiting, or controlling production, markets, technical development, or investment*;
(c) *share markets* or sources of supply;	(2) Dividing or *sharing the market*, whether by volume of sales or purchases, territory, type of goods or services, buyers or sellers or any other means;
3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of: [any agreement, decision, or concerted practice] which *contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit.*	*Provided*, Those [agreements] which *contribute to improving the production or distribution of goods and services or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefits*, may not necessarily be deemed a violation of this Act.

TABLE 4. Anti-Competitive Agreements Under EU Competition Law and the PCA.

Table 5 below shows the striking similarity between the provisions of the PCA on abuse of dominant position and Article 102 of the EU competition law.

Model foreign law: EU Article 102, Treaty on the Functioning of the EU	Philippine Competition Act §15. Abuse of Dominant Position
Any *abuse by one or more undertakings of a dominant position* within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.	It shall be prohibited for *one or more entities to abuse their dominant position* by engaging in conduct that would substantially prevent, restrict or lessen competition.
(a) *directly or indirectly imposing unfair purchase or selling prices* or other unfair trading conditions;	(h) *Directly or indirectly imposing unfair purchase or selling price* on their competitors, customers, suppliers or consumers
(b) *limiting production, markets or technical development to the prejudice of consumers*;	(i) *Limiting production, markets or technical development to the prejudice of consumers*
(d) making the conclusion of contracts *subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection* with the subject of such contracts.	(c) Making a transaction *subject to acceptance by the other parties of other obligations which, by their nature or according to commercial usage, have no connection* with the transaction;

TABLE 5. Abuse of Dominant Position Under EU Competition Law and the PCA.

Certain provisions of the PCA Act on abuse of dominant position and mergers and acquisitions are similar to the text of U.S. competition law, as shown in Table 6 below.

Model foreign law: US	**Philippine Competition Act**
15 U.S. Code §13 (Robinson-Patman Act 1936)	**§15. Abuse of Dominant Position**
It shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to *discriminate in price between different purchasers of commodities of like grade and quality, … where the effect of such discrimination may be substantially to lessen competition* or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them:	(d) Setting prices or other terms or conditions that *discriminate unreasonably between customers or sellers of the same goods or services, where such customers or sellers are contemporaneously trading on similar terms and conditions, where the effect may be to lessen competition substantially*:
Provided, That nothing herein contained shall prevent differentials which make only due allowance for *differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered*;	*Provided*, That the following shall be considered permissible price differentials: (2) Price differential which reasonably or approximately reflect *differences in the cost of manufacture, sale, or delivery resulting from differing methods, technical conditions, or quantities in which the goods or services are sold or delivered* to the buyers or sellers;
And provided further, That nothing herein contained shall prevent *price changes from time to time where in response to changing conditions affecting the market for or the marketability of the goods* concerned, such as but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales	(4) *Price changes in response to changing market conditions, marketability of goods* or services, or volume;

under court process, or sales in good faith in discontinuance of business in the goods concerned.	
15 U.S. Code §18 (Celler-Kefauver Act 1950)	**§21. Exemptions from Prohibited. Mergers and Acquisitions**
This section shall not apply to persons *purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about*, the substantial *lessening of competition.*	*Provided, further*, That the *acquisition of the stock* or other share capital of one or more corporations *solely for investment and not used for voting* or exercising control and not to otherwise *bring about, or attempt to bring about* the prevention, restriction, or *lessening of competition* in the relevant market shall not be prohibited.

TABLE 6. Abuse of Dominant Position, Mergers and Acquisitions Under US Competition Law and the PCA.

As shown in Table 7, certain provisions of the Philippine Competition Act are based on the U.S. Clayton Act of 1914, though the texts of the statutes are not similar. The 1914 statute was amended by the U.S. Robinson-Patman Act (1936), and the U.S. Celler-Kefauver Act (1950).

Model foreign law: US	**Philippine Competition Act**
15 U.S. Code §13 (Clayton Act 1914, pre-amendment)	**§15. Abuse of dominant position**
Provided, That nothing herein contained shall prevent […] *discrimination in price* in the same or different communities made in good faith to *meet competition*	(3) *Price differential* or terms of sale offered in *response to the competitive price* of payments, services or changes in the facilities *furnished by a competitor*,

15 U.S. Code §17 (Clayton Act 1914)	**§3. Scope and Application**
Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws	This Act shall not apply to the combinations or activities of workers or employees nor to agreements or arrangements with their employers when such combinations, activities, agreements, or arrangements are designed solely to facilitate collective bargaining in respect of conditions of employment.
15 U.S. Code §18 (Clayton Act 1914)	**§15. Abuse of Dominant Position**
It shall be unlawful for any person [...]to *lease* or make a sale or *contract for sale of goods,* wares, merchandise, machinery, supplies, or other commodities,[...]or *fix a price charged therefor, or discount from, or rebate upon, such price, on the condition,* agreement, or understanding that the lessee or purchaser thereof shall *not use or deal* in the goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or *competitors of the lessor or seller, where the effect of* such lease, sale, or contract for sale or *such condition*, agreement, or understanding may be *to substantially lessen competition* or tend to create a monopoly in any line of commerce	(e) Imposing restrictions on *the lease or contract for sale* or trade *of goods* or services concerning where, to whom, or in what forms goods or services may be sold or traded, such as *fixing prices, giving preferential discounts or rebate upon such price, or imposing conditions not to deal with competing entities, where the object or effect of the restrictions is to prevent, restrict or lessen competition substantially*

TABLE 7. Comparison of the US Clayton Act and the PCA.

IV. POLICY REASONS BASED ON INTERNATIONAL COMMITMENTS

At first blush, it would appear that the long-awaited enactment of the PCA was the product of purely domestic motivations. *First*, the passage of a competition law was a legislative priority under the President's five-year economic plan for 2011-2016.[28] *Second*, the statute itself states that its policy objectives are pursuant to the competition provision of the 1987 Constitution.[29] However, the truth is that the Philippines had made an international commitment to adopt a national competition law by 2015.

The Philippines is a member of the Association of Southeast Asian Nations (ASEAN), an international organization composed of 10 countries in Southeast Asia. In 2007, the member states signed the ASEAN Charter, where they committed to "take all necessary measures, including the enactment of appropriate domestic legislation, to effectively implement the provisions of [the ASEAN] Charter and to comply with the obligations of membership."[30] Also in 2007, the Philippines and other ASEAN members: (1) resolved to establish the ASEAN Economic Community (AEC) by 2015; (2) adopted the AEC Blueprint; and (3) committed "to introduce competition policy in all ASEAN Member Countries by 2015."[31] Five ASEAN members had competition laws in 2007, and subsequently, two more member states passed their competition statutes. As the December 2015 deadline approached, only three states, including Philippines, had not complied with their commitment to their fellow ASEAN members to adopt a national competition law.

One of the main policy reasons for the speedy adoption of the PCA is the country's international commitment to ASEAN, and thus the ASEAN Regional Guidelines on Competition Policy of 2010 are relevant to the proper understanding of the new statute. The guidelines and the corresponding provisions of the PCA are set out in Table 8 below.

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[28] PHILIPPINE DEVELOPMENT PLAN 2011-2016 (2011).

[29] Section 2 of the Philippine Competition Act provides that the policy objectives are "[p]ursuant to the constitutional mandate that the State shall regulate or prohibit monopolies when the public interest so requires and that no combinations in restraint of trade or unfair competition shall be allowed."

[30] ASEAN CHARTER, art. 20.2.

[31] ASEAN ECONOMIC COMMUNITY BLUEPRINT, action item (i), ¶ 41.

International commitment: ASEAN	**Philippine Competition Act**
§3.1. Application	**§2. Declaration of Policy**
3.1.1. The coverage of national competition policy may include: 3.1.1.1 The prohibition of anti-competitive (horizontal and vertical) agreements; abuse of dominant position (market power); anticompetitive mergers; and	(c) Penalize all forms of anti-competitive agreements, abuse of dominant position and anti-competitive mergers and acquisitions, with the objective of protecting consumer welfare and advancing domestic and international trade and economic development.
§3.2. Prohibition of Anti-competitive Agreements	**§14. Anti-Competitive Agreements**
3.2.2. […] AMSs may consider identifying specific "hardcore restrictions," which will always be considered as having an appreciable adverse effect on competition (e.g., price fixing, bid-rigging, market sharing, limiting or controlling production or investment), which need to be treated as *per se* illegal.	(a) The following agreements, between or among competitors, are *per se* prohibited: (1) Restricting competition as to price, or components thereof, or other terms of trade; (2) Fixing price at an auction or in any form of bidding including cover bidding, bid suppression, bid rotation and market allocation and other analogous practices of bid manipulation;
3.2.3. With the exclusion of the hardcore restrictions which are treated as *per se* illegal, AMSs may decide to [analyze] the agreements by "rule of reason" (*e.g.*, via market share thresholds and efficiency considerations) and safe [harbors] provisions (*e.g.*, appreciability test).	(b) The following agreements, between or among competitors which have the object or effect of substantially preventing, restricting or lessening competition shall be prohibited: (1) Setting, limiting, or controlling production, markets, technical development, or investment; (2) Dividing or sharing the market, whether by volume of

	sales or purchases, territory, type of goods or services, buyers or sellers or any other means[.]
§3.3. Prohibition of Abuse of a Dominant Position	**§15. Abuse of Dominant Position**
3.3.2.1 Exploitative [behavior] towards consumers, customers and/or competitors (*e.g.*, excessive or unfair purchase or sales prices or other unfair trading conditions, tying).	(h) Directly or indirectly imposing unfair purchase or selling price on their competitors, customers, suppliers or consumers,
3.3.2.2 Exclusionary [behavior] toward competitors (*e.g.*, predatory pricing by an undertaking which deliberately incurs losses in the short run by setting prices so low that it forces one or more undertakings out of the market, so as to be able to charge higher prices in the longer run; margin squeeze).	(a) Selling goods or services below cost with the object of driving competition out of the relevant market:
3.3.2.3 Discriminatory [behavior] (*e.g.*, applying dissimilar pricing or conditions to equivalent transactions and vice-versa).	(d) Setting prices or other terms or conditions that discriminate unreasonably between customers or sellers of the same goods or services, where such customers or sellers are contemporaneously trading on similar terms and conditions, where the effect may be to lessen competition substantially:
3.3.2.4 Limiting production, markets or technical development to the prejudice of consumers (*e.g.*, restricting output or illegitimate refusal to supply, restricting access to /use of/ development of a new technology).	(i) Limiting production, markets or technical development to the prejudice of consumers[.]

TABLE 8. Provisions based on the ASEAN Competition Guidelines.

V. CONCLUSION

The historical, foreign, and international origins of the Philippine Competition Act are highly relevant to achieving the statute's desired outcomes on market efficiency and consumer benefit. They can serve as a useful guide to Philippine courts, competition authorities, and law enforcement agencies for the correct interpretation and effective enforcement of the law. Thus, it is crucial to identify and appreciate the Philippine legal antecedents, model foreign laws, and international law-related policy objectives of the statute.

This paper seeks to contribute to the effort of identifying and appreciating the historical, foreign, and international origins of the new law. More research needs to be undertaken to properly appreciate the relevance of these origins to the specific provisions of the statute.

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