# Monopoly And Illegal Combinations Under The Philippine Law

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SIGNIFICANT in contemporary history is the phenomenal rise of two great dictatorships, the dictatorship in government and the dictatorship in industry. A study of one often leads to the study of the other because both are twin brothers who had descended, as it were, from a common ancestor whose only inheritance was the love of power. On the relationship between Government and Industry, Daniel Webster expressed the opinion that the form of government is determined by the nature and distribution of property.

The trend towards larger business units which ensued after the Industrial Revolution has been brought about by the following causes: (1) the desire to eliminate destructive competition, (2) the desire to extend large-scale production methods to the greatest possible limits, (3) the hope of securing monopoly profits, and (4) sheer love of power. (Bye and Hewett, Applied Economics, 2nd. Edition, p. 87). The formation of trusts and combinations may be justified by the elimination of the appalling waste of competition and by the benefits of the economy of large-scale production. Trust power is, however, exceedingly dangerous. Its swift current carried many industries along to the point of monopoly. Chief among the abuses of trusts and combinations are the maintenance of abnormally high prices, the use of unfair methods of competition, and the corruption of public authorities. (Bye and Hewett, *Supra*, p. 88; See also, M. W. Watkins, Industrial Combinations and Public Policy, 1927). They have been criticized as a menace to independent merchants who are deprived of the right to make reasonable agreements among themselves upon policies, practices, and methods that would be mutually helpful. (Gerstenberg, Financial Organization and Management, p. 726). Therefore, while on one hand the formation of combinations should be encouraged on account of their distinct advantages, on the other hand, they should never be left unregulated by reason of their decided disadvantages.

In the United States, several laws intended to check the gradually increasing abuses of trust power had been enacted by Congress. Notable among such laws are: (1) the Sherman Anti-Trust Act, approved on July 2, 1890, and intended to protect trade and commerce against unlawful restraints and monopolies; (2) the Clayton Act, passed in 1914, which prohibits unfair discrimination, stockholding the purpose of which is to "substantially lessen competition", interlocking directorates or communities of interests between railroads and large supply companies: and (3) the Federal Trade Commission Act, enacted in 1914, which provided for the organization of a commission empowered to investigate illegal acts in competition and to issue orders compelling unscrupulous

competitors to desist from using unfair methods of competition. (Gerstenberg, Materials of Corporation Finance, pp. 595-619).

In this jurisdiction, the abuses of trusts and the evils of monopoly may be curbed under the provisions of Section 13 par. (5) of the Corporation Law; Section 20 of Act No. 3518; Act No. 3247; and Art. 186 of the Revised Penal Code. Section 13 par. (5) of the Corporation Law makes it unlawful "for: (1) any corporation organized for the purpose of engaging in agriculture or in mining to be in anywise interested in any other corporation organized for the purpose of engaging in agriculture or in mining; (2) auy person owning stock in more than one corporation organized for the purpose of engaging in agriculture or in mining to own more than fifteen per centum of the capital stock then outstanding and entitled to vote of each of such corporations; (3) any corporation to owe in excess of fifteen per centum of the capital stock then outstanding and entitled to vote of any corporation organized for the purpose of engaging in agriculture or in mining." Evidently, the purpose of this section is to prevent monopoly in the utilization of the natural resources. Under this section the illegality is implied from the mere acquisition or combination of prohibited interest in two or more corporations. Section 20 of Act No. 3518, provides: "No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporations whose stock is so acquired, and the corporations making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce. No corporation shall acquire directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporation, or any of them, whose stock or other share capital is so acquired, as to restrain such commerce in any section or community, to tend to create a monopoly of any line of commerce." What is prohibited by this section is not the acquisition of interests in two or more corporations, nor the combination of two or more corporations, but the monopoly or the restraint of commerce consequent upon such acquisition or combination. The illegality, therefore, of combinations under this section, is determined by the effect of such combinations upon the free flow of commerce. Act No. 3247 is very brief and contains six sections only. After defining in section one what constitute monopoly and combinations in restraint of trade, it provides in section four that, "it shall be the duty of the solicitor general, the fiscal of the City of Manila, and the provincial fiscal or whoever may act in their stead, to institute proceedings to prevent and restrain the violations of this Act". Section six provides that, "any person who shall be injured in his business or property by any other person by reason of anything forbidden or declared to be unlawful by this Act, shall recover threefold the damages by him sustained" Chief

Justice Taft expressed the Common Law rule on monopolies thus: "That contracts in restraint of trade, in so far as they restrained a party to the contract, were void, unless they were reasonable in the sense that they were merely ancillary to a main contract which was lawful in its purpose, and were reasonably adopted and limited to that purpose, and that all contracts of combinations in which the contracting parties agreed to restrain the trade of a third party or affect it injuriously were void at common law, without exception, and there were no reasonable contracts or combinations in restraint of trade of that kind". (W. H. Taft, The Anti-Trust Act and the Supreme Court, pp. 20-21). Article 186 of the Revised Penal Code furnishes the penal sanction against monopoly and illegal combinations. It makes such acts, which under Act No. 3247 would have been only void, positively and affirmatively actionable and indictable.

Although in a majority of cases, corporations combine to effect monopoly, yet, as a rule, monopoly cannot be implied from the mere existence of corporate combinations. Decisions of the Supreme Court of the United States show that "size in business, though brought about by the amalgation of many units, will not determine the legal status of the organization." (U. S. v. U. S. Steel Corporation, 251 U. S. 417). In U. S. v. International Harvester Company, (274 U. S. 698), the Supreme Court held that the "law does not make the mere size of a corporation, however impressive, or the existence of unexerted power on its part, an offense, when unaccompanied by unlawful conduct in the exercise of its power. "It is believed that these rulings, though based on the provisions of the Federal Anti-Trust laws are applicable in this jurisdiction. An accepted observation on the subject of illegal combinations is that one made by Chief Justice Taft in his work, "The Anti-Trust Act and the Supreme Court", in which he said; "It is possible for the owners of a business of manufacturing and selling useful articles of merchandise so to conduct their business as not to violate the inhibitions of the Anti-Trust Law and yet to secure to themselves the benefit of the economies of management and of production due to the concentration under one control of large capital and many plants. If they use no other inducement than the constant low price of their product and its good quality to attract custom, and their business is a profitable one, they violate no law. But if they attempt, by a use of their preponderating capital and by the sale of their goods temporarily at unduly low prices, to drive out of business their competitors, or if they attempt, by price controlling contracts with patrons and threats of non-dealing except upon such contracts, or by other methods of a similar character, to use the largeness of their resources and the extent of their output compared with the country's total output as a means of compelling custom and frightening off competition, then they disclose a purpose to restrain trade and to establish a monopoly and violate the act."