Perceptions and laws on unfair trade practices in the Philippines

Kathrina G. Gonzales and Josef T. Yap

Defining unfair trade practices
Unfair trade practices (UTPs) are practices of businesses or firms that are deceitful, misleading, and uncompetitive, and therefore prohibited by law. They adversely affect consumer welfare and reduce the profitability of businesses. UTPs cover a wide spectrum of activities.

UTPs are normally associated with anticompetitive behavior which can be categorized into two general types: exclusionary abuse which is an act of a firm, or a group of firms, to prevent entry of potential rivals; and exploitative abuse which refers to actual abuse of market power (Medalla 2002). Examples of exclusionary abuse are predatory pricing, arrangement to divide the market, unfairly raising rival’s cost, and unjustified refusal to deal with other firms. Examples of exploitative abuse include cartel agreements to fix prices at levels above those that result with competitive markets, and limitations on levels of output.

In a World Bank and OECD (1998) classification of barriers to competition or barriers to entry, UTPs relate to behavioral barriers, which represent abuse of dominant position where relatively large firms engage in anticompetitive conduct or restrictive business practices by preventing entry or forcing exit of competitors through various kinds of monopolistic conduct, including predatory pricing. Under behavioral barriers is a classification called horizontal constraints that

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include cartels or collusion—which are manifested in price-fixing arrangements, market-sharing territorial arrangements, and bid rigging—and price discrimination. On the other hand, vertical restraints, which occur in contractual agreements between supplier and purchasers/retailers in upstream and downstream markets, include resale price maintenance, exclusive dealing, and tied selling.

To investigate the prevailing situation of UTPs in the Philippines, PIDS conducted the Unfair Trade Practices study, which formed part of the Unfair Trade Practices in Selected ASEAN Countries project conducted under the auspices of the Consumer Unity and Trust Society (CUTS) Hanoi Resource Center. The PIDS study reviewed the existing and pending competition/antitrust related laws to examine their effectiveness and adequacy in addressing UTPs; conducted a perception survey with assistance from the National Statistics Office to analyze respondents’ understanding and awareness of issues pertaining to institutions and rules or laws; and held a focus group discussion with various stakeholders. This Policy Notes presents some of its key findings.

Current legal and institutional framework on UTPs
While a general competition law has not been passed in the Philippines, several laws and regulations related to antitrust issues, UTPs, and uncompetitive behavior have been in place for a long time. Antitrust enforcement is also implicitly vested in various regulatory agencies and bodies. However, the implementation of these laws and regulations has remained to be largely ineffective resulting in high prevalence of UTPs.

The following are some of the existing laws and regulations in the Philippines that fall under the area of competition/antitrust.\(^1\)

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

  The Revised Penal Code also penalizes other frauds in commerce and industry such as falsely marking gold and silver articles and altering trademarks (Republic Act No. 166, 1947).

- **Republic Act (RA) No. 386 (1949)** as amended, otherwise known as the *Civil Code of the Philippines*, took effect in August 1950. It allows the collection of damages arising from unfair competition in agricultural, commercial, or industrial enterprises or in labor (Article 28). The Civil Code also allows the collection of damages arising from abuse in the exercise of rights and in the performance of duties (Article 19), e.g., abuse of a dominant market position by a monopolist.

\(^1\) For other laws and regulations that either directly or indirectly affect competition, please refer to Abad et al. (2012) Appendix 3.1.
Peculiarly enough, the Civil Code does not define unfair competition and merely lists the means by which unfair competition can be committed: force, intimidation, deceit, machination, or any other unjust, oppressive, or highhanded method.

- RA 7581 (1991), otherwise known as the Price Act, and RA 7394 (1932), otherwise known as the Consumer Act of the Philippines.

The Price Act defines and identifies illegal acts of price manipulation such as hoarding, profiteering, and cartels. Through price controls and mandated ceiling mechanisms, the Price Act also seeks to stabilize the prices of basic commodities and prescribes measures against abusive price increases during emergencies and other critical situations.

The Consumer Act of the Philippines provides for consumer product quality and safety standards. It also covers deceptive, unfair, and unconscionable sales acts and practices (including weight and measures, product and service warranties), consumer credit transactions, and penalties for violations of the statute.

- Executive Order (EO) No. 45, designating the Department of Justice (DOJ) as the Competition Authority. This EO has effectively given the DOJ full jurisdiction over matters pertaining to competition and fair trade practices among corporations operating in the country.

The highlight of EO 45 is the creation of the Office for Competition (OC) under the DOJ, the mandate of which is to investigate and prosecute all antitrust violations. In addition, the OC is charged to implement competition policies and laws to protect consumers, to supervise competition in the markets by ensuring that prohibitions and requirements of competition laws are adhered to, to monitor and implement measures to promote transparency and accountability in markets, and to prepare, publish, and disseminate studies and reports on competition to inform and guide the industry and consumers.

**Key findings**

**Survey**

The survey was intended to determine respondents’ perception of UTPs and laws related to UTPs and their implementation. Three sets of questionnaires were prepared, one for each targeted group of respondents namely, business firms, business and consumer associations, and government. Forty respondents were interviewed. Twenty-five of them (62%) came from the business sector, seven (18%) from business associations, four (10%) from the consumer sector, and four (10%) from the government sector. Table 1 defines the UTP terms that were included in the survey.

**Perception on UTPs**

The majority of respondents (87%) considered misleading advertisement as the most prevalent UTP. Over 70 percent also perceived unfair

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2 The complete results of the survey are available in Abad et al. (2012).
pricing, unreasonably high price, discriminatory dealings, and abuse of intellectual property rights (IPRs) as forms of UTP. Systematic obstruction of competition was also prominently identified by the respondent firms and business associations. Practices considered as major UTPs by each sector were:

- Business firms: misleading advertisement
- Business and consumer associations: misleading advertisement
- Government sector: misleading advertisement, unfair pricing, tied selling, and abuse of IPRs

Table 1. Definition of terms: unfair trade practices

<table>
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<tr>
<th>Unfair Trade Practices</th>
<th>Definition</th>
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<tr>
<td>Predatory pricing</td>
<td>Pricing of the product below the cost of production with the intention to drive out competitors from the market. Predatory pricing is something difficult to prove against any firm.</td>
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<td>Tied selling</td>
<td>Forcing customers to buy other products along with the desired product. Here the supplier sells a product (tying product), which is dependent on the purchase of some other product, usually a slowing product (tied product). This tie-in arrangement is such that even if the customer does not want to buy the tied product, he has to buy it to get the desired product. However, such behavior should not be considered abusive if the firm does not have market power in the tying goods.</td>
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<td>Coercive/exclusive dealing</td>
<td>A practice whereby a manufacturer or supplier of goods restrains his distributors from dealing in competing products and requires them to deal exclusively in the products manufactured and supplied by him. This dealing arrangement can act as a barrier for new entrants and hence affects competition adversely.</td>
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<td>Misleading advertisement</td>
<td>Refers to any false or unfounded representation related to products made to the public by a company. The representation may be about the nature, character, or performance of a product, such as size, type of contents, or weight. It also includes warranties, statements, or guarantees that are not based on adequate and proper tests.</td>
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<td>Refusal to deal</td>
<td>A situation whereby a seller refuses to deal with a purchaser, usually when the purchaser has limited options of alternative supply. The competitive effects of refusal to deal have to be weighed on a case-to-case basis.</td>
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<td>Resale price maintenance</td>
<td>A practice whereby a manufacturer and its distributors agree that the latter will sell products of the former at certain prices (resale price maintenance), at or above a price floor (minimum resale price maintenance), or at or below a price ceiling (maximum resale price maintenance).</td>
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<td>Discriminatory dealing: price discrimination</td>
<td>When a manufacturer or a supplier of goods charge, for the same or similar product, a higher price from one dealer and a lower price from another, it is referred to as price discrimination. The discrimination in price can be made either through fixing or charging different prices from different buyers or classes of buyers or by granting discount, commission, allowance, or rebate at different rate to different buyers or class of buyers. Price discrimination can only be effectively exerted by businesses only when they are in dominant positions or have considerable market power in the relevant product or geographical markets; thus it is considered a type of abuse of dominance.</td>
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<td>Discriminatory dealing: selective distribution</td>
<td>A distribution system whereby a supplier enters into (vertical) agreements with a limited number of selected dealers in the same geographic area. Selective distribution agreements, on the one hand, restrict the number of authorized distributors. On the other hand, they prohibit sales to nonauthorized distributors: this leaves authorized dealers only other appointed dealers and final customers as possible buyers. Selective distribution is almost always used to distribute branded final products. The possible competition risks are a reduction in intrabrand competition, the facilitation of collusion between suppliers or buyers and the foreclosure of certain type(s) of distributors, especially in the case of cumulative effects of parallel networks of selective distribution in a market.</td>
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<tr>
<td>Unreasonably high price</td>
<td>Also called excessive pricing. Please refer to unfair pricing. A price is often considered excessive if it has no reasonable relation to the economic value of the goods or service supplied.</td>
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<tr>
<td>Systematic obstruction of competition</td>
<td>This is a term used in the new German Act against Unfair Competition. Section 4(10) of this act renders it unfair to systematically obstruct a competitor’s freedom to act within the market (obstruction of an individual competitor).</td>
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A little over 50 percent of the total number of respondents identified unfair pricing as their most encountered UTP. It also obtained the highest number of responses from both the business firms and government agencies. This was not unexpected as price changes can easily be felt compared to other UTPs.

Fourteen of the 25 respondents from the business sector considered UTPs in their normal operations as moderately widespread; nine considered them to be highly widespread. In the case of business associations, two of the seven indicated UTPs to be extremely widespread while 58 percent observed them to be highly widespread. These responses clearly show business groups to be bolder than individual firms and they consider UTPs as a major issue.

Meanwhile, one consumer group considered UTPs as insignificantly widespread while two of the four believed UTPs are moderately widespread. One out of the four respondents from the government sector either was not aware of or could not comment on how
widespread UTPs are in the Philippines; one had no answer. This indicates that the government does not consider UTPs as a priority.

A large majority of respondents (72.5%) believed UTPs are still prevailing or have not been resolved yet. Interestingly, two of the four government agencies which participated in the survey considered UTPs as an issue that has been resolved.

**Laws related to UTPs and their implementation**

Seventeen of the 40 respondents identified the existence of monopoly as the primary source of UTP. Fifteen respondents also believed that discrepancy in the bargaining power of relevant parties, information asymmetry, and absence of relevant laws and institutions cause UTPs.

Interestingly, business and consumer groups also cited the absence of relevant laws and institutions as a primary cause of UTPs.

Only four out of the 25 respondents from the business sector cited the absence of relevant laws and institutions as a cause. One reason is that 21 of the 25 were not aware of rules, regulations, or laws related to UTPs or simply answered “do not know”. As would be expected, business and consumer associations were generally aware of the laws with 100 percent and 75 percent of them, respectively, answering “yes”.

The respondents provided the laws or rules that they are aware of and these are listed in Table 2. It is clear from the responses that respondents from the business firms were not aware of the important laws related to UTPs. Meanwhile, business and consumer associations cited many of the relevant laws.

In addition, 11 out of the 25 business sector respondents expressed that existing rules, regulations, or laws are sufficient to check all UTPs. Some respondents commented that monitoring of these rules should be established and stricter implementation should be followed. On the side of business and consumer associations, all 11 respondents recommended having laws or regulations enacted specifically to check UTPs and to protect them more effectively.

Table 2. Rules, regulations, or laws respondents know

<table>
<thead>
<tr>
<th>Business</th>
<th>Business and Consumer Associations</th>
<th>Government</th>
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<tr>
<td>no return no exchange</td>
<td>COA rules</td>
<td>Republic Act 7394 - Consumer Act of the Philippines</td>
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<tr>
<td>price ceiling</td>
<td>anticartel/antimonopoly</td>
<td>IPO code</td>
</tr>
<tr>
<td>everyone should follow same standard or set price</td>
<td>Consumer Welfare Act</td>
<td>price tag law</td>
</tr>
<tr>
<td>price tag law</td>
<td>oil deregulation law</td>
<td>Civil Code of the Philippines</td>
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<tr>
<td>intellectual property law</td>
<td>cheaper medicine law</td>
<td>general banking law</td>
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<td></td>
<td>IPO code</td>
<td>revised penal code</td>
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<td></td>
<td>DOU/DTI rules</td>
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<td></td>
<td>revised penal code</td>
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</table>

When asked if they will be willing to sign investigation reports as a third party which deals with UTPs in court, there appeared to be a lot of hedging among business firms as only one respondent from this group gave an outright “yes”. Nine of the 25 answered “no” although 11 responded that it depended on the circumstances.
The results also revealed the reluctance of the private sector to cooperate in investigations against UTPs. Half of the 25 business firms signified their refusal to cooperate. While three of the seven business associations indicated outright willingness, three also stated that it depended on the circumstances.

**Focus group discussion**

This activity was intended to gather various stakeholders’ reactions to the framework of the study and survey results. The discussion adopted the narrower concept of UTPs, i.e., misdemeanors practiced by business firms that cause an economic injury to other business firms or consumers. The representative from the Department of Trade and Industry (DTI) explained that existing laws such as the Consumer Act of the Philippines and Price Act adequately protect consumers by stabilizing the prices of basic necessities and prime commodities and prescribing measures against undue price increases during emergency situations and like occasions.

Presently, there is a Consumer Complaints Center which provides direct assistance to affected consumers in line with the Consumer Protection Law. However, there is no agency or department that handles UTPs of the business-to-business type (B2B). This may be the major reason why the survey shows that only one out of the 25 business firms ever reported a UTP. The legal mechanisms to address B2B type are clearly not yet firmly established. A second-best solution is for businesses that are adversely affected to complain as ‘consumers.’ However, this has limited application especially if the transactions do not involve purchase of the product of the offender (e.g., coercive/exclusive dealing).

**Summary and implications**

In the mind of many respondents, UTPs are moderately to highly widespread. UTPs are believed to have adverse impacts on business transactions and consumer welfare. The most prevalent forms of UTPs in the consciousness of economic agents are misleading advertisement and unfair pricing. Between the two, it seems unfair pricing is the one that is practiced more.

Only four of the 25 respondents from the business sector were aware of “any rules, regulations, or laws currently in effect in our country to check these unfair trade practices”. Moreover, only one respondent actually reported a case to the DTI. The respondents from the business group also expressed reluctance to participate in legal action. This may imply that support from the business group is low in terms of advocacy in implementing existing laws or in demanding action against UTPs.

This type of behavior raises some questions as to whether the private sector in the Philippines is its own worst enemy when it comes to promoting fair competition (Rosellon and Yap 2010). This also relates to the absence of a culture of competition in the country, as described in Chapter 1 of the full survey results (Abad et al. 2012).
indifference of the business sector could mean they are aware of the adverse impacts of UTPs yet they refuse to “rock the boat”. Hence, the adverse impacts of UTPs are normally passed on to consumers as higher prices. This is one reason why business and consumer associations seem to be more active in countering UTPs as they are directly affected by these unfair practices.

The reluctance to take legal channels may also imply that there are gaps in the legal infrastructure to address UTPs. Firms who are victims of UTPs are in a good position to identify gaps in the legal infrastructure.

**Some policy recommendations**

It is imperative for government to determine what kinds of UTPs are occurring in order to protect local producers from these practices and to assist vulnerable sectors. The government should include UTPs in its list of priorities to address. Capacity building of the DTI to handle UTP cases will help to enhance consumer welfare. Additionally, as the study has shown, a number of laws and regulations that directly or indirectly affect the competition in the country already exist. What is needed is a thorough study of these laws and regulations to investigate if they are being enforced effectively. The results could form the basis for a comprehensive competition law. Broader information dissemination of these existing laws is also necessary. The effectiveness of policies could also be enhanced by establishing structures that would facilitate closer coordination among business organizations, consumer groups, and government entities.

**References**


