ADDING FUEL TO THE FIRE:
AMBIGUITIES IN THE DOWNSTREAM OIL INDUSTRY DEREGULATION ACT OF 1998

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ABSTRACT

It has been over two decades since the Downstream Oil Industry Deregulation Act of 1998 (Oil Deregulation Act for brevity) was passed and approved. The law took effect on February 10, 1998, hoping to provide the Filipino people with the best fuel products at the lowest and most affordable prices possible. As a result, the Philippine government has abdicated control of the fuel market and allowed private oil companies, both foreign and local, to engage in a competition serving the demand for fuel.

Unfortunately, such a course of action initially thought of as the best solution to maintain fuel prices at a reasonable and affordable level has taken a different turn and arguably for the worse. As of mid-2022, the fuel prices in the retail market range anywhere from 80 to 100 pesos per liter. At some point, Automotive Diesel Oil, a variety of fuel relied on by most consumers, has become more expensive than Motor Gasoline. The rise in prices has also increased prices for other consumer goods. The opinion that the Deregulation Law enacted is ineffective has increasingly grown popular. The oil companies, on the other hand, justify that these increases were not due to profiteering or collusion but a natural consequence of what has transpired in the past few years, such as the increase in demand but limited supply, the conflict between Russia and Ukraine, and excise taxes levied on the fuel products and their components, among others. More importantly, it is argued that the retail fuel market operates under a deregulated system. Therefore, the government does not have the power to control, scrutinize, or influence how oil companies determine their prices as long as taxes due are being paid and environmental and business permits are complied with. The government takes the opposite opinion because the law contains certain provisions for monitoring purposes of the Department of Energy (DOE).

This study seeks to establish that the Department of Energy possesses the power to, at the very least, scrutinize or unbundle retail prices to ensure that the consumers are being priced fairly, there is still fair competition among oil players, and there is no collusion which results in cartelization and oligopoly among the oil players in the country. The study also aims to address the gaps left by the law relative to the mechanism of reporting unreasonable price increases in the retail fuel market by supplying definitions, thresholds, and parameters.

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CHAPTER 1 – INTRODUCTION

Background of the Study

The Downstream Oil Industry Deregulation Act of 1998 or Republic Act 8479 took effect on February 10, 1998, as the culmination of the government's decision to deregulate the retail fuel market. Before deregulation, the market's prices were regulated and heavily monitored by the government, especially in retail pricing, importation, and environmental compliance.[1] Prices across the nation were uniform.[2] There also exists the Oil Price Stabilization Fund (OPSF)[3] at the time, which was a fund established by the Marcos administration back in 1984.[4] This serves as a buffer to cushion sudden increases in the prices of crude oil in the world market or anticipation of crashes in the value of the Philippine Peso to protect domestic consumers from immediately suffering from the price volatility.

The stabilization fund and the overall control of the government go hand-in-hand. The OPSF has two mechanisms:[5] first, when the prices of crude in the world market are low, and the value of the Philippine Peso is high, the oil companies will add to the fund, and second, when the prices of crude in the world market are high, and the value of the Philippine Peso is low, then the oil companies may take from the fund deposit of the OPSF so that they would not have to apply an increase in the retail prices in the domestic market. If the funds run out, the government will contribute to the fund. In this way, the consumers will not immediately experience the increase in prices since these increases can either be delayed or be made in tranches. The government could also do cross-subsidy of oil products where, for example, gasoline

[1] Kenneth Montojo, *The Political Economy of Philippine Oil Deregulation*, NORTHERN ILLINOIS UNIVERSITY CENTER FOR SOUTHEAST ASIAN STUDIES, Crossroads: An Interdisciplinary Journal of Southeast Asian Studies Vol. 13 No. 1 (1999).
[2] Independent Review Committee, *The Report of the Independent Committee Reviewing the Downstream Oil Industry Deregulation Act of 1998*, DOE IRC REPORT, D.C. 2005-02-001 & 2005-05-005 (2005).
[3] Imposing An Ad Valorem Tax On Certain Manufactured Oils And Other Fuels, Bunker Fuel Oil And Diesel Fuel Oil; Revising The Rates Of Specific Tax Thereon; Abolishing The Oil Industry Special Fund; And For Other Purposes, Presidential Decree No. 1956, § 8 (1984).
[4] Adoracion M. Navarro, *On the OPSF and the Downstream Oil Industry Deregulation: Lead Us Not into Reversal Temptation and Deliver Us from Obfuscation*, PIDS, Discussion Paper Series No. 2022-16 (2022).
[5] *Id.*

prices would be domestically increased to lower or subsidize the prices used heavily by Public Utility Vehicles (PUVs).

The pricing of the fuel was contingent on the movements of the world market and the decision of the government to either implement the increase or delay it. At the time, price hikes were met with protests, with the government having no choice but to pursue the increase because the stabilization fund would not suffice the payout of the increase if further delayed in the domestic market. Eventually, the OPSF was abandoned upon the effect of R.A. 8479.[6] The decision to shift to deregulation will be further discussed in the later chapters of this study. Essentially, the shift to deregulation is hinged on encouraging more competition in the fuel market, opening up to foreign investment, and lifting the burden on the government in maintaining and operating the oil market.[7]

With the deregulation taking effect and the OPSF terminated, oil companies can now decide the prices of their fuel products as they deem necessary and appropriate.[8] The government can no longer dictate how much a liter of diesel or gasoline would cost and has mainly concerned itself more with taxation, registration compliance, and environmental regulations. By deregulation, all kinds of control have been retracted, and in turn, all support and subsidies have also stopped. The government no longer issues price subsidies and dole-outs for the oil companies and consumers since the market is operating in a complete laissez-faire arrangement as far as fuel product sales are concerned.

In its current state, the deregulation law may have removed government control. However, it was unable to provide what both the government and the consumers had intended: provide the best fuel quality for the lowest and most reasonable cost possible. The opinion and belief that the deregulation law has failed have increasingly grown in popularity because of the increased retail

[6] An Act Deregulating The Downstream Oil Industry, And For Other Purposes [Downstream Oil Industry Deregulation Act of 1998], Republic Act No. 8479 (1998).
[7] *Id*. § 2.
[8] Ron Ponce Dangcalan, *Fifteen Years since Oil Deregulation: Assessment of the Department of Energy's Role in the Implementation of Republic Act 8479*, PHILIPPINE JOURNAL OF PUBLIC ADMINISTRATION, Vol. LVIII No. 1 (2014).

prices post-deregulation.[9] The Department of Energy (DOE) could not enact successful measures to prevent increases or even determine if the circumstances and the market legitimately sanctioned the increases in retail prices.

The deregulation has liberalized the oil market, enabling oil companies to determine prices on their own without regulation or approval of the government. In practice, the companies change prices weekly on tuesdays and the DOE monitors such movements (note that there is no official law or circular which mandates a weekly Tuesday movement of prices),[10] wherein either an increase, rollback, or no movement would occur. These retail prices have certain components that not even the government could specifically determine except those that may be reasonably ascertained, such as taxes. As far as profits or margins are concerned, the companies solely decide on how much goes into their income and the profit shares of their business partners who run their gasoline refilling stations.

Other pricing components on top of production costs and freight include the additives oil companies incorporate in their products which claim to improve the car's performance and fuel economy, and the varieties of products offered in the domestic market. Securing a big portion of the market share is a natural endeavor for oil companies aside from ensuring lucrative margins. Due to the market's competitive nature, the companies continuously innovate their products to gain market leverage and competitive advantage over their competitors.

Given the power of oil companies to use their discretion in determining retail prices, both the government and the consumers have become wary of the possibility of profiteering and unreasonable charges for fuel products.[11] The secrecy behind the pricing scheme also entertains the possibility of oil companies colluding, nullifying competition. Theoretically, if there is no

[9] Ma. Joy Abrenica, et al., *Market competition in the downstream oil industry: is there evidence of price asymmetry?*, THE PHILIPPINE REVIEW OF ECONOMICS, Vol. LI No. 2 (2014).
[10] Department of Energy, *Understanding Oil Pricing*, CONSUMER WELFARE AND PROMOTION OFFICE, *available at* https://www.doe.gov.ph/sites/default/files/pdf/consumer_connect/understanding_oil_pricing.pdf (last accessed Jul. 1, 2022) [https://perma.cc/T9GE-SKFE].
[11] Karl R. Ocampo, *Fuel price hikes revive calls vs oil deregulation*, PHILIPPINE DAILY INQUIRER, February 18, 2022, *available at* https://newsinfo.inquirer.net/1556336/fuel-price-hikes-revive-calls-vs-oil-deregulation#ixzz7XmyZ1Gqu (last accessed Jul 1, 2022) [https://perma.cc/T683-6J7M].

competition and the sole discretion of determining prices lies with the companies unregulated, an oligopoly of the trade employing price rigidity could also reasonably exist because of the inherent desire of enterprises and businesses to maximize profits and security of market share.[12]

Despite the removal of control initially wielded by the government, the deregulation law still includes certain provisions that empower the DOE and the DOE Secretary to monitor and be involved in the domestic fuel market. These can be seen in the anti-trust provisions, importation laws, tariff treatments, and powers to obtain certain information the DOE deems necessary for a particular purpose. The concept of liberalization of the domestic oil market did not necessarily exclude DOE's participation in the trade. It meant that the oil companies would not be monitored or be left to operate independently, as seen in what the law provides.

The intent to maintain the DOE's power to monitor and enforce certain obligations prescribed by the same law on the oil companies is evident in what the law provides. Section 12 of R.A. 8479, for example, penalizes non-compliance with submitting reportorial requirements to the DOE Secretary.[13] However, about DOE's power to see the breakdown of retail fuel prices, there seems to be a disconnect in the interpretation of whether such power is also conferred to the DOE Secretary.

In the continuous pursuit of the DOE to ensure competition in the retail fuel market, it has issued a memorandum circular compelling oil companies to show the actual breakdown or the specific expenses in coming up with the prices offered to the public.[14] The oil companies, in turn, did not agree with this directive of the DOE, claiming that it infringed on several rights and vested interests. Before various courts, oil companies filed injunction cases to stop the implementation of the unbundling circular. The courts ruled in favor of the oil companies' claims that the prices should not be unbundled since it would force them to reveal trade secrets. More importantly, the DOE does not have the power to pry into the oil market and competition because of the

[12] Kurt Rothschild, *Price Theory and Oligopoly*, THE ECONOMIC JOURNAL AND OXFORD UNIVERSITY PRESS, Vol. 57 No. 227 (1947).
[13] Downstream Oil Industry Deregulation Act of 1998, § 12.
[14] Department of Energy, Revised Guidelines For The Monitoring Of Prices In The Sale Of Petroleum Products By The Downstream Oil Industry In The Philippines, Department Circular No. DC2019-05-0008, Series of 2019 [DOE Dept. Circ. No. DC2019-05-0008, s. 2019], (May 28, 2019).

deregulation. As it stands, the question of the law aspect of the issue has yet to be resolved, but the DOE honored the injunction.[15] The rejection of the claim that DOE is empowered to unbundle prices also affects the mechanism provided by the deregulation law to determine if there is an unreasonable price increase. Section 14 (d) of the same law allows any person or entity to report any unreasonable rise in prices to the DOE, which the DOE-DOJ joint task force will investigate.[16]

Statement of the Problem

As mentioned previously, deregulation encourages more foreign and domestic competitors to enter the domestic retail fuel market.[17] Under this premise, it is believed that the proliferation of competition and available products in the market would result in the best quality of the products for the lowest reasonable prices consumers can afford.[18] It may have provided anti-trust provisions,[19] but the law seems to lack clarity in manifesting the DOE's and its officials' powers on how they will be able to exercise such power. A cursory view of the provisions of the same law would leave readers with questions relative to the extent and specificity of certain terms.

Sections 15 (a) and (b) of the Deregulation Law provide:

> SECTION 15. Additional Powers of the DOE Secretary. — In connection with the enforcement of this Act, the DOE Secretary shall have the following powers:
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> a) To gather and compile appropriate information concerning, and to investigate from time to time the

[15] Press Release by The Department of Energy, DOE Statement On The Court Of Appeals' Ruling Upholding The Taguig RTC's Issuance of a Writ of Preliminary Injunction On The Implementation Of The Oil Unbundling Circular (Oct. 8, 2020) (on file with the DOE's Website).
[16] Republic Act No. 8479, § 14 (d).
[17] *Id*. § 2.
[18] *Id*.
[19] *Id.* § 11.

> organization, business, conduct, practices, and management of any person or entity in the Industry;
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> b) To require, by general or special orders, persons and entities engaged in a particular activity of the Industry: (i) to file an annual or special report, or both in such form as the Secretary may prescribe; or (ii) to answer specific questions in writing, furnishing to the Secretary such information as he may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective persons or entities filing such reports or answer. Such reports and/or answer shall be filed with the Secretary under oath and within such reasonable time as the Secretary may prescribe;[20]

As seen in the provisions above, the Secretary, as part of his/her additional powers, has the power to gather and compile appropriate information. Information in this context would range from data to records kept by entities in the domestic fuel trade industry relative to their organization, business, and practices. It means that the DOE can inquire about the business practice of an oil company. Business practice includes business plans, financial information, products, services, processes, and other inclusions pertinent to the operations of the enterprise. This is where the first ambiguity lies because of the conflicting interpretation and perception of the DOE and the oil companies. Ambiguity was defined by the Supreme Court in the case of De Ocampo v. Secretary of Justice as "*a condition of admitting two or more meanings, of being understood in more than one way, or of referring to two or more things at the same time. A statute is ambiguous if it is susceptible to more than one interpretation*".[21] While the ambiguity is more latent than patent in terms of a plain reading of the provision, the actual application of the law still resulted in multiple interpretations protecting different interests because the law, as a form of police power, already pierces into contractual obligations of oil companies. It is not clear whether such a provision really

[20] *Id.* § 15 (a) & (b).
[21] De Ocampo v. Secretary of Justice, G.R. No.147932, 515 PHIL 702-716 (2006).

does support unbundling based on plain reading and would need a deeper analysis.

Related to the first point above is another provision that failed to qualify certain parameters and thresholds.

Sections 14 (d) of the same law provides:

> d) Any report from any person of an unreasonable rise in the prices of petroleum products shall be immediately acted upon. For this purpose, the creation of DOE-DOJ Task Force is hereby mandated to determine within thirty (30) days the merits of the report and initiate the necessary actions warranted under the circumstance: Provided, That nothing herein shall prevent the said task force from investigating and/or filing the necessary complaint with the proper court or agency motu proprio.[22]

The above provision enables any concerned person to report to the DOE upon observation of an unreasonable rise in prices. After which, the DOE-DOJ task force, as established by the same law, will have 30 days to investigate the complaint's merits. Nevertheless, the law did not supply a definition of what unreasonable is and what kind of price increases are included. There was also no specific system or framework provided on reporting, the procedure over which the task force would operate, and the extent of the task force's investigatory powers and capabilities.

These mentioned considerations also involve several questions to be addressed. Aside from substantive law, the procedure is equally an important consideration because these are also part of the ambiguities that the law was unable to provide or clarify. Another matter is the prescription of filing a report or complaint relative to the rise in prices. Further, what other consequences do oil companies face if and when found guilty of unreasonable price increases? The law did not provide the type of administrative liability an

[22] *Id.* § 14 (d).

entity would face on certain instances. For example, when found guilty, would an unreasonable rise in prices automatically merit the recommendation of suspension or termination of the business permit as stated in Section 15 (e) or only be subjected to fines? If so, by how much and up to how many instances will merit prescribed equivalent penalties? What would also happen to the earnings that the companies gain when the unreasonable increase is implemented, and to whom will such be returned or paid back?

Another consideration that poses a problem is the rise of prices connected to the old stock of fuel already purchased by the oil companies in bulk. In every price movement, it is reasonable to consider that the oil companies' old stock purchased before the price movement is still being sold, whether an increase, rollback, or no movement takes place.[23] It would be prejudicial to the consumers if there is an increase in the old stock being sold to them because they will be paying much higher than what they would have, and equally prejudicial to oil companies selling such at a lower price on rollbacks.

Because of these unanswered questions due to the lack of definitions, parameters, and thresholds, uncertainty on implementing the law and conflicting interpretations have arisen. This is the same uncertainty that renders the law ineffective as it stands, as opined by transport groups and consumers who feel that the government is not doing enough or cannot do anything about the fuel price crisis.[24] It is imperative to resolve these ambiguities and provide clear guidelines and legal parameters to lay down uniform and intelligible interpretation and implementation. Given the points raised, this study seeks to discuss the following questions:

1. **What kind of information and to what extent is covered by Sections 15 (a) and (b) of R.A. 8479?**

[23] Edu Punay, *Lawmakers seek amendments to Oil Deregulation Law*, PHILIPPINE STAR, January 17, 2021, *available at* https://www.philstar.com/business/2021/01/17/2070911/lawmakers-seek-amendments-oil-deregulation-law (last accessed Jul. 1, 2022) [https://perma.cc/UL73-XSX8].
[24] Arjay L. Balinbin, *Transport group to seek another jeepney fare hike*, BUSINESSWORLD, June 30, 2022, *available at* https://www.bworldonline.com/the-nation/2022/06/30/458502/transport-group-to-seek-another-jeepney-fare-hike/ (last accessed Jul. 1, 2022) [https://perma.cc/C98Y-6AP5].

a. What qualifies as appropriate information?

b. What kind of information is included relative to the organization, business, conduct, practices, and management of any person or entity in the industry?

c. Should the concept of unbundling retail fuel prices be considered a form of control and regulation of prices?

2. What qualifies as an unreasonable rise in prices?

a. What is unreasonable in this context and how is it shown?

b. What are the types of rise in prices included in the statement "*unreasonable rise in prices*"?

c. By how much is considered unreasonable as opposed to the regular movements sanctioned by price movements in the world market?

Significance of the Study

Fuel is essential to the daily lives of the Filipino people.[25] Automotive Diesel Oil, for example, is highly used in public transportation and freight. Part of an ordinary Filipino jeepney driver's struggle is the volatility of fuel prices. It must be noted that the Philippines imports most of its fuel supply since it is not an oil producer.[26] Even a peso added to the price per liter would affect their boundary requirement and the net pay they take home as their daily earnings. The movement of fuel prices is now given due attention not only by operators and drivers of Public Utility Vehicles (PUVs) but also the commuters and those who own and drive private vehicles. Fuel is not an ordinary consumer good because an increase in prices on fuel products may

[25] Ben de Vera, *PH policymakers brace for economic oil shock*, PHILIPPINE DAILY INQUIRER, June 20, 2022, *available at* https://business.inquirer.net/350735/ph-policymakers-brace-for-economic-oil-shock (last accessed Jul. 1, 2022) [https://perma.cc/GY35-2NSL].
[26] Independent Review Committee, *The Report of the Independent Committee Reviewing the Downstream Oil Industry Deregulation Act of 1998*, DOE IRC REPORT, D.C. 2005-02-001 & 2005-05-005 (2005).

indicate a possible increase in the cost of goods.[27] The prices of retail consumer goods ranging from food to other consumable products necessarily include freight costs which consider fuel consumption, among other things. Farmers in the province also rely heavily on diesel and gasoline to operate their tractors and water pumps, especially during the dry season. In addition to these, diesel is also used for producing certain materials because of the equipment that requires it. Overall, in the modern age, diesel powers the transportation of nearly all consumer goods. This is why the price of fuel is of high public interest.

Injunctions by the lower courts have been issued against the DOE, preventing it from unbundling retail fuel prices.[28] Unfortunately, as it stands, the government is not able to determine with certainty if the prices offered by the oil companies are sanctioned by the natural movements in the world market and the actual cost of its components including shipment, or whether companies have been engaged in profiteering and collusion which virtually leads into an oligopoly. This makes it hard for the government to ensure Filipinos are fairly charged for the fuel they purchase. The secrecy has left the government and the Filipino consumers in the dark about an essential good they pay for daily. Fuel prices are an important issue that consumers and the government should be able to determine and be informed of what they are paying for. After all, hidden charges and surcharges affect the decision to purchase consumer goods. Therefore, this study has become more relevant than ever because of what happened in recent decades and, more importantly, in recent times.

Scope and Limitations

This study will mostly use Philippine Law and jurisprudence since the deregulation is unique to the country based on the circumstances. Should there be a lack of information or definition, the proponent will be using other

[27] Dhani Setyawan, *The Impacts of the Domestic Fuel Increases on Prices of the Indonesian Economic Sectors*, CENTRE FOR CLIMATE CHANGE FINANCING AND MULTILATERAL POLICY, MINISTRY OF FINANCE OF INDONESIA, Energy Procedia 47 47-55 (2014).
[28] Lenie Lectura, *Court issues injunction against fuel unbundling*, BUSINESSMIRROR, August 6, 2019, *available at* https://businessmirror.com.ph/2019/08/06/court-issues-injunction-against-fuel-unbundling/ (last accessed Jul. 1, 2022) [https://perma.cc/85RX-FVLJ].

materials such as foreign journals, academic papers, and other useful materials to reinforce the arguments or premises.

Jurisprudence on cases that tackled the deregulation law will also be considered. However, no case has discussed the power of the DOE Secretary specifically on unbundling the prices. Previous case law relative to R.A. 8479 focused more on the concept of monopoly and the actual control of fuel pricing. The concept of the government being able to control and dictate prices and the government being able to see and check if there is fair pricing are two separate issues but possibly dependent on each other.

This study will focus mainly on the ambiguities and questions that ought to be answered due to their proximity to the ambiguities discussed. The old stock relative to price movements, for example, will not be tackled in detail because this is another issue altogether. The proponent believes that such issue on increase and rollbacks relative to old stock belongs to the wisdom of the law. As much as price increases can be advantageous to oil companies, rollbacks are equally prejudicial. This is also in consideration that oil companies have the capacity to correctly predict price trends and also abuse gains from price increases and temper losses from rollbacks.

Lastly, only fuel products used for vehicle engines are contemplated in this study and will not include Liquefied Petroleum Gas (LPG), Kerosene, and Aviation Gasoline (AVGAS which includes kerosene-based JP-8 and Jet A-1).

CHAPTER 2 - 1st AMBIGUITY: THE POWER OF THE DOE SECRETARY TO OBTAIN INFORMATION FROM ENTITIES WITHIN THE DOWNSTREAM OIL MARKET

Prelude

This chapter will start the discussion on the twin ambiguities found in R.A. 8479. This first ambiguity, which pertains to the power of the DOE Secretary to obtain information from entities in the domestic fuel market, is currently the hotly contested provision in this law. As an alternative to the proposal of shifting back to regulation, some government officials[29], transportation groups, and their representatives[30] have called to unbundle retail fuel prices by simply amending the law. To reiterate, Sections 15 (a) and (b) of R.A. 8479 provide:

> SECTION 15. Additional Powers of the DOE Secretary. — In connection with the enforcement of this Act, the DOE Secretary shall have the following powers:
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> a) To gather and compile appropriate information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any person or entity in the Industry;
>
> b) To require, by general or special orders, persons and entities engaged in a particular activity of the Industry: (i) to file an annual or special report, or both in such form as the Secretary may prescribe; or (ii) to answer specific questions in writing, furnishing to the Secretary such information as he may require as to the organization, business,

[29] Filane Mikee Cervantes, *House leader backs oil price unbundling*, PHILIPPINE NEWS AGENCY, March 9, 2022, *available at* https://www.pna.gov.ph/articles/1169420 (last accessed Jul. 2, 2022) [https://perma.cc/C355-6EN4].

[30] Ramon Royandoyan, *Gov't to spend P1-B in cash aid for PUV drivers amid high oil prices*, THE PHILIPPINE STAR, October 25, 2021, *available at* https://www.philstar.com/business/2021/10/25/2136590/govt-spend-p1-b-cash-aid-puv-drivers-amid-high-oil-prices (last accessed Jul. 2, 2022) [https://perma.cc/HC9M-JNZZ].

> conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective persons or entities filing such reports or answer. Such reports and/or answer shall be filed with the Secretary under oath and within such reasonable time as the Secretary may prescribe;[31]

First Analysis: Claim of Non-intervention, Avoiding Price War, and No Concrete Proof of Cartelization

Since the Ramos administration, the state has been continuously opening its market to foreign competition to stimulate the economy and compel local companies to develop their business models, strategy, and products. With deregulation, the promise of a laissez-faire arrangement has become appealing to capitalists who want more control over how the market conducts itself. From the name of the law itself, the oil companies expect that whatever happens in the supply, demand, and pricing of the retail fuel market, they will be free to act without fear of government intervention.

These oil companies believe that fear of government intervention is not limited to the actual control of prices. They also believe that intervention covers heavy monitoring of business operations including pricing. The intent to see the unbundled retail prices is questionable for the companies because they will be subjected to public scrutiny if they reveal the breakdown and the government and consumers are not satisfied with how the cost distribution is done especially relative to profits and margins. They suspect that such an unbundling is a constructive exercise of control to pressure oil companies to decrease prices, not from the legitimate cost of freight, production, refining, and distribution. The main concern is perhaps the public seeing how much the companies earn per liter sold.

Since the power to unbundle is currently stalled, the government and the consumers have no choice but to compare product prices based on what the retail stations display on their price boards. The companies, on the other hand, justify that regardless of whether the prices appear uniform or not, they claim that these are a reflection of the market's supply and demand

[31] Republic Act No. 8479, § 15 (a) & (b).

circumstances and other factors that affect the price, such as local price wars and, as of late, the conflict between Russia and Ukraine.[32] The companies also limit price movements to the weekly world market changes as much as possible. The uniformity of the prices is maintained because oil companies are trying to avoid a price war. A price war is when a competitor lowers its prices, and the other reacts by continuously matching the lowered price. This cuts the companies' revenue but also works favorably for the consumers because the cost of goods is lower.

The irony of oil companies trying their best to avoid a price war is that their view on the concept is conflicting. On the one hand, deregulation aims to stimulate competition and that the competitors are continuously innovating their products and brand and offer the lowest possible price for the products. Therefore, offering the lowest price possible should entail engaging in a price war among competitors. On the other hand, the companies favor a deregulated market but do not want a price war simultaneously. This results in the prices being uniform and stagnant because of the refusal of the companies to lower prices. However, the companies are not completely unreasonable for refusing price wars. According to Rao et al., price wars can create economically devastating situations that negatively affect the entities engaged in the trade. In a price war, there will be a continuous lowering of retail prices, and this equates to lower profits on the part of the competitors.[33] If the industry profits decline, so does the economy because the companies will have to cut losses by closing shops and branches, resort to retrenchment, or worse, file for bankruptcy or dissolve the corporation. The government is also affected because a lower revenue for these companies means lower taxable income that it can obtain from them. In short, lower taxes means lower income for the state.

Rothschild, in his work, acknowledged that a price war taken to an extreme level might be detrimental, but it does not mean the process is detrimental.[34] For him, the goal of a price war is to annihilate other competition, which would result in a monopoly. This is a rather extreme result of a price war coming down to the wire. However, this is merely the ideal

[32] Faisal Islam, *Ukraine conflict: Petrol at fresh record as oil and gas prices soar*, BRITISH BROADCASTING COMPANY, March 7, 2022, *available at* https://www.bbc.com/news/business-60642786 (last accessed Jul. 3, 2022) [https://perma.cc/2WTX-M7YE].
[33] Akshay Rao et al., *How to Fight a Price War*, HARV. BUS. REV., Magazine March – April 2000 (2000).
[34] Rothschild *supra* note 12, at 19.

outcome of a price war, and so far, this may prove to be impossible or too costly for firms to do at that level.[35] It would be reasonable to opine that the Philippine fuel market is experiencing is the other end of the price war spectrum when little to no price war takes place at all.

Abrenica et al. wrote that the Department of Energy had initiated three independent review committees that tried to investigate and verify anti-competitive behaviors observed by the public.[36] The reviews were done back in 2005, 2008, and 2012. In the 2005 review, the study focused on whether the increase in oil prices in the domestic market was because of the deregulation law passed in 1998. The 2008 review focused on the reasonableness of the prices offered by Petron and Shell in the retail market. The 2012 review focused on whether these oil companies were engaged in profiteering and unfair pricing. The three findings of the review all had a common theme. Returning to regulation was unwarranted, and the increase in prices in the retail market was not mainly because of deregulation but the rising world oil prices. The committees found no cartelization or uncompetitive practices.[37] However, the committees did find those price adjustments were asymmetrical to the price movements in the world market.[38]

The issue of price asymmetry further fueled the public perception that there is collusion among the oil players. The price movement is much faster and more reactive when an increase in the domestic market takes place because of the increase in the world market. However, when the price decreases in the world market, the oil companies slowly decrease much less than the price decline in the world market. The questions of why asymmetry takes place only added to the clamor of unbundling the fuel prices. Even with the findings of the three independent review committees, the public did not seem to find them convincing because nothing was done actually to decrease the prices.

[35] *Id*.
[36] Abrenica, *supra* note 9, at 5.
[37] *Id*. at 6.
[38] *Id*.

Second Analysis: On the Claim of Trade Secrets

Out of all the reasons why the oil companies repeatedly refuse the unbundling is the issue of trade secrets. The case of *Air Phil Corp. v. Pennswell* defines "*trade secret*" as a plan or process, tool, mechanism, or compound known only to its owner and those of his employees to whom it is necessary to confide it.[39] Under Philippine jurisdiction, they have yet to be defined relative to specific rules of evidence. This means that legislation through law or the Supreme Court through its Rules of Court has yet to specifically list what information is covered by trade secrets. The case of *Pennswell* focused more on the extent of secrecy of the information rather than listing certain information as privileged. The Court noted that just because a piece of information is confidential information does not necessarily mean it is privileged. If it were confidential, it is not exempted from the power of the courts to order its disclosure as opposed to privileged information as listed in the Rules of Court like marital privilege, attorney-client privilege, and all other entries in Rule 130 Section 24.[40]

In this case, Air Philippines Corporation (the petitioner) bought lubricants from Pennswell (the respondent). However, the former found that the chemicals used in producing the lubricants it bought under a new line were the same as the previous products it purchased under the old line. The petitioner claimed that Pennswell had defrauded them by misrepresenting the product as new. During the pendency of the trial, the petitioner motioned to compel the respondent to disclose the detailed list of ingredients of the lubricants under the new line. The trial court and the Court of Appeals held in favor of Pennswell, upholding that the list of ingredients falls under trade secrets and is therefore not subject to compulsory disclosure. The Supreme Court upheld the lower courts' decision and affirmed that no grave abuse of discretion is denying the motioned mode of discovery. The Court justified that the composition, formulation, and ingredients of the special lubricant are part of trade secrets, and compelling the disclosure would be prejudicial to the respondent's business and place it under undue disadvantage compared to its competitors in the market. According to the Court, trade secrets are proprietary rights. It may consist of a formula, pattern, device, or compilation

[39] Air Phil Corp. v. Pennswell, G.R. No. 172835, 564 PHIL 774-799 (2007).
[40] 2019 AMENDMENTS TO THE 1989 REVISED RULES ON EVIDENCE, rule 130 § 24 (a)-(e).

of information used in one's business and gives an advantage over competitors who do not possess the same.

Admittedly, the case of *Pennswell* is a good case under our jurisdiction, which aims to clarify what trade secrets are. However, the facts of the case do not fall squarely with what the unbundling of retail fuel prices tries to do. In *Pennswell*, the petitioner motioned for the disclosure of the product's ingredients. Understandably, the components of a product should be kept secret because it gives the brand an advantage over its competitors. A famous example of this would be Coca-Cola's secret recipe[41] or Kentucky Fried Chicken's (KFC) 11 Herbs and Spices.[42] In the case of KFC, it opted to protect its products under the sphere of trade secrets rather than obtaining a patent since trade secrets last in perpetuity as opposed to a patent which only lasts 20 years at least in Philippine Jurisdiction.[43]

The DOE's order of price unbundling does not prompt the disclosure of the actual ingredients of fuel products. It attempts to review the cost and rates in detail of fuel for every liter sold as shown in Section 8 of unbundling circular.[44] After all, the oil companies claim that the prices reflected in their price boards are sanctioned by legitimate movements in the world market and other circumstances like the Ukraine-Russia crisis.[45] This means, in the retail fuel trade, price does not precisely drive the comparative advantage of the product but rather the ingredients of the fuel, which enhance fuel economy and engine performance of vehicles. Therefore, unbundling the retail prices should not be an issue in the first place because the decision of oil companies to maintain a uniform price negates the idea of price war and using low pricing as a tool of advantage in getting sales and increasing market share. Going deeper into the analysis, the companies argue that disclosing prices will naturally entail disclosing what the companies are spending on. However, the goods being used by these companies are not shielded from discovery since

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[41] Tait Graves & Alexander Macgillivray, *Combination Trade Secrets and the Logic of Intellectual Property*, SANTA CLARA HIGH TECHNOLOGY LAW JOURNAL, Vol. 20 Issue 2 (2004).
[42] Bill Hollander, *It pays to understand law on trade secrets*, LOUISVILLE BUSINESS FIRST, February 26, 2001, *available at* https://www.bizjournals.com/louisville/stories/2001/02/26/editorial2.html (last accessed Jul. 3, 2022) [https://perma.cc/6YFE-CL9D].
[43] An Act Prescribing The Intellectual Property Code And Establishing The Intellectual Property Office, Providing For Its Powers And Functions, And For Other Purposes [Intellectual Property Code of the Philippines], Republic Act No. 8293, § 54 (1997).
[44] DOE Dept. Circ. No. DC2019-05-0008, s. 2019 § 8.
[45] Islam, *supra* note 32.

the importation of the goods used for fuel production are purchases that may be subject to taxation or import duties. At the very least, the Bureau of Internal Revenue will be able to determine the prices of the company's purchases makes upon assessment. This leads back to the point that the trade secret would only cover the formula or prescribed combination of ingredients used in making the final product for sale, not the ingredients prices. By logic, determining the ingredients of a particular product does not necessarily mean the recreation will be easily done. Most products require a precise ratio of the combination of their ingredients before the desired output is created.

Further, American jurisdiction in the case of *Religious Technology Center v. Netcom On-Line Com*., has discussed a persuasive doctrine that trade secrets must render actual or potential commercial advantage measurable in currency.[46] The oil companies have yet to prove that the pricing structure of the retail prices gives them a comparative advantage versus their competitors in the market. The concept of secrecy in retail fuel prices pertains more to oil companies not being willing to disclose profit margins as opposed to what makes their products better than the others. As mentioned, the uniformity that the companies employ in prices argues against the idea that their pricing is a comparative advantage that should be kept a secret.

Unless Congress passes a law that includes explicitly pricing detail of products as part of trade secrets, then the breakdown of retail prices should not be considered covered by Trade Secrets. Even then, companies must be able to argue and prove that disclosing detailed pricing will be detrimental to their comparative advantage against competitors.

Third Analysis: The government's duty to protect the welfare of consumers and the tension between Police Power and Contract Law

The government's duty to protect the consumers is at the forefront of all arguments favoring the unbundling of retail fuel prices. The Department of Energy is an executive agency primarily tasked with overseeing the energy and power sector. The creation of the DOE is based on the government's police power to ensure regulation of the trades in the energy sector and the

[46] Religious Technology Center v. Netcom On-Line Com., 923 F. Supp. 1231 (N.D. Cal. 1995) (U.S.).

interest in consumer protection,[47] along with the executive branch's duty to faithfully execute the provisions of the law and the constitution.[48] Police power is defined in the case of *Venus Commercial Co. v. The Department of Health* as "*the state's authority to enact legislation that may interfere with personal liberty or property to promote general welfare*".[49] Protection ranges from health, safety, property, security, and fair trade, among others. The Consumer Act,[50] relative to its implementation by the relevant government agencies, demonstrates the government's interest in ensuring that the products offered to patrons are within proper health standards,[51] The Price Act, on the other hand, is another law passed by Congress that shows the intent and interest of the government to protect consumers from unreasonable prices of essential consumer goods.[52]

Admittedly, there is no direct and actual prohibition of monopolies in the Philippine market. The constitution provides:

> 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.[53]

The provision above qualifies that it is only when public interest requires that the state regulates or prohibits monopolies. This is why entities such as the Manila Electric Company (MERALCO) can operate and enjoy a sole market share position. Other competitors are welcome to try and divide the market share, but so far, no company has attempted, and this does not compel the government to sanction MERALCO for a monopoly of the supply in Metro Manila. However, just because the constitution or statutes do not explicitly prohibit monopolies does not mean it excuses profiteering,

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[47] PHIL. CONST. art. XVI, § 9.
[48] PHIL. CONST. art. VII, § 17.
[49] Venus Commercial Co. v. The Department of Health, G.R. No. 240764 (2021).
[50] The Consumer Act Of The Philippines [Consumer Act of the Philippines], Republic Act No. 7394 (1992).
[51] PPC Asia Corp. v. Department of Trade and Industry, G.R. No. 246439 (2020).
[52] Republic Act No. 7581.
[53] PHIL. CONST. art. XII, § 19.

cartelization, and other forms of anti-competitive acts of companies in the market.

The oil deregulation law defines cartelization as:

> Any agreement, combination or concerted action by refiners, importers and/or dealers, or their representatives, to fix prices, restrict outputs or divide markets, either by products or by areas, or allocate markets, either by products or by areas, in restraint of trade or free competition, including any contractual stipulation which prescribes pricing levels and profit margins.[54]

The provision above is also punishable according to the same law. The DOE has the power to investigate and penalize oil companies guilty of cartelization. It is reasonable to opine that even if unbundling is not expressly written as information that can be obtained by the DOE Secretary, a reading Section 11 (a) supports the idea that price unbundling is covered by Section 15 (a) and (b) because of the phrase "*to fix prices*". The best way for the government to determine whether there is price fixing beyond its prima facie uniform rates in oil companies' price boards is to check the price structuring. The government and the consumers will be able to see if oil companies have agreed to stop at a specific price point or if they can go lower than what they offer on their respective price boards. But if the power to unbundle is on hold, how can the government do a proper investigation and check for an unreasonable rise in prices?

Other provisions that support unbundling are Section 12 (a) and (c). Section 12 provides:

> SECTION 12. Other Prohibited Acts. — To ensure compliance with the provisions of this Act, the refusal to comply with any of the following shall likewise be prohibited:

[54] Republic Act 8479 § 11 (a).

> (a) submission of any reportorial requirements;
>
> (b) use of clean and safe (environment and worker-benign) technologies;
>
> (c) any order or instruction of the DOE Secretary issued in the exercise of his enforcement powers under Section 15 of this Act; and
>
> (d) registration of any fuel additive with the DOE prior to its use as an additive.
>
> Any person, including but not limited to the chief operating officer or chief executive officer of the partnership, corporation or any entity involved, who is found guilty of any of the said prohibited acts shall suffer the penalty of imprisonment for two (2) years and fine ranging from Two hundred fifty thousand pesos (P250,000.00) to Five hundred thousand pesos (P500,000.00).[55]

The study posits that the power to unbundle retail prices should have been allowed in the first place because of the intent of the Oil Deregulation Law and the inclusions in its provisions. The only lapse of Congress was not being able to expressly write what kind of information is included in the power to obtain information. Still, the provision leans towards a more general coverage rather than restrictive. It did not exclude a specific list or class of information. As long as it is information deemed necessary by the DOE Secretary for assessment, monitoring, or investigative purposes, then it should be disclosed. Further, no law prohibits explicitly unbundling of prices. In fact, more provisions of the law and jurisprudence support it.

Lastly, it is unimaginable how the government cannot do anything about the retail fuel prices, especially when it escalates to levels prejudicial to the public. As established in the previous chapters of the study, fuel prices have reached 90 to almost 100 pesos per liter. At this point, however, it is apt

[55] *Id*. at § 12.

to establish that the government will always have a role in every aspect of society including the domestic retail fuel market. The mere passing of a deregulation law does not confer an absolute right on the part of oil companies to prohibit the government from unbundling their prices. Otherwise, the government and the consumers are faced with an absurd situation wherein it cannot do anything. The case of *Gerochi v. Department of Energy* held that the state as parens patriae gives effect to a host of its regulatory powers. The same case has defined the word "*regulate*" to mean protect, foster, promote, preserve, and control, with due regard for the interests primarily of the public, then the utility of its patrons.[56] Given this, there is a strong tension between the state's police power and the oil company's interests and obligations in contract law. On the one hand, the state would want to ensure that consumers and fairly priced for the best quality of fuel. On the other hand, the oil companies argue that it would be prejudicial on their part since their contractual agreements with their respective suppliers form part of trade secrets and have non-disclosure agreements embedded in them.[57] However, despite competing interest relative to whether such information of pricing breakdown may be obtained, the Supreme Court has already provided a discussion on which interest prevails between police power and private contractual agreements and obligations of persons whether natural or juridical. As a general rule, the non-impairment clause provided in the Bill of Rights under Article III Section 10[58] of the Philippine Constitution promotes contractual relations, encouraging trade and credit, and preventing undue interference from the state as discussed in the case of *The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*.[59] But there is an exception to the non-impairment clause since it is not absolute. In the case of *Southern Luzon Drug Corporation v. Department of Social Welfare and Development*, the court held that police power may trump the right against impairment of contracts as long as there as the standard of lawful subject and lawful means are met such that the interest of the general public will be involved and the means used by the state would promote public interest and are reasonably necessary.[60] The argument is

[56] Gerochi v. Department of Energy, G.R. No. 159796, 554 PHIL 563-590 (2007).
[57] Myrna M. Velasco, Marcos gov't urged to pursue legislation on 'fuel cost unbundling', MANILA BULLETIN, June 13, 2022, *available at* https://mb.com.ph/2022/06/13/marcos-govt-urged-to-pursue-legislation-on-fuel-cost-unbundling/ (last accessed Jul. 2, 2022) [https://perma.cc/V2EV-FCD2].
[58] PHIL. CONST. art. III, § 10.
[59] The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment, G.R. No. 202275 (2018).
[60] Southern Luzon Drug Corporation v. Department of Social Welfare and Development, G.R. No. 199669, 809 PHIL 315–398 (2017).

further supported by the case of *National Development Company v. Philippine Veterans Bank* where it was held by the Supreme Court that the non-impairment clause applies in cases "*where the contract is so related to the public welfare that it will be considered congenitally susceptible to change by the legislature in the interest of the greater number*".[61] In the case of the oil companies relative to the Oil Deregulation Law and the issue of unbundling, the involvement of great public interest is clear and while the contractual obligations of the oil companies include non-disclosure agreements, it falls squarely within the exception provided by the law and supported by the jurisprudence mentioned earlier. The tension between the conflicting interests should be in favor of the state and its power to unbundle regardless of whatever contractual agreements are made since the information needed by the DOE involves great public interest and affects the public consumers.

Fourth Analysis: The other uses of unbundling

The issue of unbundling retail prices based on statements of interested groups, public officials, and oil companies mainly focused on matters of cartelization and profiteering. However, other purposes make unbundling not only legal and useful but also necessary.

As established, the DOE is the executive agency tasked with overseeing the energy and oil sector. It has six different bureaus that are responsible for various departments of the energy trade: the Electric Power Industry Management Bureau, the Energy Policy and Planning Bureau, the Energy Resources Development Bureau, the Energy Utilization Management Bureau, the Oil Industry Management Bureau, and the Renewable Energy Management Bureau.[62] Out of all government bodies, the DOE and its bureaus are the most adept in energy and oil management. The public officials and staff who work in these offices have first-hand experience and knowledge of what goes on in the trade. Therefore, it is expected that these offices are in touch with Congress and are even invited at times to legislative inquiry in aid of legislation. Section 21 of Article 6 provides:

[61] National Development Company v. Philippine Veterans Bank, G.R. No. 84132-33, 270 PHIL 349-360 (1990).
[62] Department of Energy, DOE Organizational Structure, DEPARTMENT OF ENERGY WEBSITE, March 9, 2022, *available at* https://www.doe.gov.ph/doe-organizational-structure (last accessed Jul. 4, 2022).

> Section 21. The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in, or affected by, such inquiries shall be respected.[63]

The provision above supports the power of Congress to re-examine laws that have already been passed and assess their effectiveness, or for reference in aid of future legislation.[64]

In addition to legislative inquiry, the constitution provides the power of Congressional Oversight as found in section 22 of Article 6, which states:

> Section 22. The heads of departments may, upon their own initiative, with the consent of the President, or upon the request of either House, as the rules of each House shall provide, appear before and be heard by such House on any matter pertaining to their departments. Written questions shall be submitted to the President of the Senate or the Speaker of the House of Representatives at least three days before their scheduled appearance. Interpellations shall not be limited to written questions, but may cover matters related thereto. When the security of the State or the public interest so requires and the President so states in writing, the appearance shall be conducted in executive session.[65]

While there is a difference between Congress' power of legislative inquiry and congressional oversight, both are modes of discovery done by the legislative body to improve laws that they create and ensure that the laws are being implemented faithfully and properly. These powers would also necessarily be advantageous for the state to know how certain industries can

[63] PHIL. CONST. art. VI, § 21.
[64] Bengzon Jr. v. Senate Blue Ribbon Committee, G.R. No. 89914, 280 PHIL 829-861 (1991).
[65] PHIL. CONST. art. VI, § 22.

be improved. In the case of oil and fuel, the DOE Secretary and its directors will be the primary resource persons for Congress to assess and make helpful laws that improve the oil and energy industry.

Suppose that the DOE Secretary is deprived of the power to unbundle retail fuel prices. How would Congress determine if they are levying taxes the right amount of taxes or how will Congress decide if the best approach is to give PUV operators subsidies in light of rising retail prices for example? In the case of Republic Act No. 10963 more popularly known as TRAIN Law, the administration then decided to lower income taxes and instead increase excise taxes on certain products including fuel, to generate more revenue for the government.[66] [67]

Because of the injunction laid against the unbundling circular and the emergency provision, the government would be left to wait for a declaration of public emergency relative to fuel supply and pricing before the DOE can exercise its emergency powers to take over. By preventing the DOE from unbundling the prices, the option to prevent or prepare for a contingency concerning a crisis involving fuel costs before it even happens would not be viable. Therefore, any effort to address or avert a problem would be reactionary.

[66] An Act Amending Sections 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, And 288; Creating New Sections 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, And 265-A; And Repealing Sections 35, 62, And 89; All Under Republic Act No. 8424, Otherwise Known As The National Internal Revenue Code Of 1997, As Amended, And For Other Purpose [Tax Reform for Acceleration and Inclusion (TRAIN)], Republic Act No. 10963 (2017).

[67] Tax Reform, *THE TAX REFORM FOR ACCELERATION AND INCLUSION (TRAIN) ACT.*, THE DEPARTMENT OF FINANCE, December 27, 2017, *available at* https://taxreform.dof.gov.ph/news_and_updates/the-tax-reform-for-acceleration-and-inclusion-train-act/ (last accessed Jul. 4, 2022) [https://perma.cc/SC4Z-92ZL].

CHAPTER 3 – 2nd AMBIGUITY: THE LACK OF DEFINITION AND THRESHOLD OF WHAT AN UNREASONABLE RISE IN PRICE IS

First Analysis – The existence of provisions against the unreasonable rise in prices shows that the Oil Deregulation Law did not intend to fully deregulate the market without limit

The oil companies have continuously argued that the retail fuel trade is a deregulated market. But an analysis of the provisions in the deregulation law seems to suggest that it is not a fully deregulated market as the oil companies claim. Providing a provision that allows any person to report suspected unreasonable increases in prices which prompts the DOE-DOJ task force to investigate, negates the idea that the market and its pricing is untouchable. The oil companies claim that if the DOE gains access to the breakdown of retail prices or uses such breakdown to investigate an unreasonable rise in prices or cartelization, it is a path back to regulation.[68]

The fact that the government should logically participate in ensuring its citizens' welfare should always be a consideration. If the law intended to preclude the government from scrutinizing prices and obtaining information, then provisions on determining an unreasonable rise in prices and the DOE-DOJ task force should not have been included in the first place. Total deregulation of pricing, which oil companies firmly believe, would mean they should be able to increase or decrease prices at their pleasure. There should have been no consideration on whether certain actions are already unreasonable increases. It also would not be logical for companies to even wait for weekly price movements from the world market since, under a fully deregulated principle, they can raise or decrease prices daily.

Further, suppose that it is found that oil companies get a huge part of the total retail price per liter as profit, then the government should not even try to question the margins and profits if it were fully deregulated. Precisely because of the recognition of possible abuses the concept of deregulation brings, safeguard provisions against cartelization and profiteering were

[68] Ted Cordero, *'Unbundling' oil prices is not regulatory, DOE official says*, GMA NEWS, July 17, 2019, *available at* https://www.gmanetwork.com/news/money/companies/701352/unbundling-oil-prices-is-not-regulatory-doe-official-says/story/ (last accessed Jul. 4, 2022) [https://perma.cc/E24S-PDK5].

included in the law to promote fair trade practices instead.[69] Therefore, the DOE, as intended by the law, should have the power to access any information and determine an unreasonable rise in prices or cartelization and punish such acts accordingly.

The government has already conceded that under normal circumstances, it will not be able to dictate how much a liter of fuel should be sold. However, the law also did not intend for oil companies to have unbridled discretion on how much they could sell fuel for and how much they could earn from their margins. In fact, oil companies already determine how much they earn per liter including the profit share they impart with their retail partners or dealers. Therefore, the determination of profits and pricing should not be unlimited. Engaging in a business enterprise is a right of any person or group of people. However, no right is absolute. In the case of *Remman Enterprises, Inc v. Professional Regulatory Board of Real Estate Service*, the court held that:

> Indeed, no right is absolute, and the proper regulation of a profession, calling, business or trade has always been upheld as a legitimate subject of a valid exercise of the police power of the State particularly when their conduct affects the execution of legitimate governmental functions, the preservation of the State, public health and welfare and public morals.[70]

Similar to the exercise of a profession, a business or trade is always subject to the police power of the state relative to the protection of the public's welfare. Thus, the correct appreciation of the law should have been that at a particular instance, the government will be able to determine an unreasonable rise in prices through the unbundling of the retail prices.

[69] Republic Act 8479 § 7.
[70] Remman Enterprises, Inc v. Professional Regulatory Board of Real Estate Service, G.R. No. 197676, 726 PHIL 104-126 (2014).

Second Analysis – The Power to Monitor Is Not a Form Control

The difference between monitoring and control must be clarified and established. Despite having rights and independence, oil companies still operate under the law. Their existence is owed to the state as creatures of the law. Oil companies are mostly corporations after all. As stated in the case of *International Express Travel & Tour Services Inc. v. Court of Appeals*, the court held that "*Before a corporation may acquire juridical personality, the State must give its consent either in the form of a special law or by a general enabling act and the procedure and conditions provided under the law for the acquisition of such juridical personality must be complied with*".[71] As far as R.A. 8479 is concerned, the provisions are clear enough to manifest that oil companies are still subject to certain orders from the state or the DOE in this context because their existence is primarily owed to the state's consent in the first place.

The power to monitor relative to the relationship between private entities and the government has yet to be pronounced. However, the Supreme Court was able to distinguish the power to monitor from the power to control in the context of the national and local government. In the case of *Bito-Onon v. Fernandez*,[72] the Court held that "*Supervisory power, when contrasted with control, is the power of mere oversight over an inferior body; it does not include any restraining authority over such body*". The power of control, on the other hand, is generally defined as the power of an officer to alter or modify or set aside what a subordinate officer had done in the performance of his/her duties and to substitute the judgment of the former for the latter as established in the case of *Social Justice Society v. Atienza.*[73]

In transposition of concepts, we can consider the state as the superior and the oil companies as the subordinate with their relationship regulated by the law, and the existence of the oil companies owed to the consent and approval of the government. The power to monitor and ensure no cartelization by determining an unreasonable rise in prices is not under the power to control but only supervisory because the government does not dictate what should be

[71] International Express Travel & Tour Services Inc. v. Court of Appeals, G.R. 119020, 397 PHIL 751-762 (2000).
[72] Bito-Onon v. Fernandez, G.R. No. 139813, 403 PHIL 693-705 (2001).
[73] Social Justice Society v. Atienza, G.R. No. 156052, 546 PHIL 485-494 (2007).

the price of the product and the punishment for anti-competitive acts are protective measures of the government for the benefit of the consumers. Therefore, it is still consistent with the intent of deregulation since R.A. 8479 emphasized that the DOE and the DOE Secretary only generally exercise monitoring powers save in cases of emergencies. Given this analysis, Section 14 (d) must be harmonized with the general intent of the law of simply monitoring the retail fuel trade rather than exercising control. The same is what the DOE officials have been claiming. For them, the power to unbundle to determine an unreasonable rise in prices does not amount to control.[74] However, this chapter establishes the idea that the deregulation law is not equal to unbridled movements and decisions of companies when it comes to pricing because profiteering will be punished criminally and administratively at some point. Therefore, the power to determine an unreasonable rise in prices and unbundling should be considered deterrents for oil companies to avoid uncompetitive practices and profiteering. Deterrence does not control or regulate anything but rather ensures compliance in good faith through monitoring, for instance.

Third Analysis: The Definition and Limitations of Unreasonable Rise in Prices are Insufficient and Leave Too Much Discretion to the DOE-DOJ Task Force

As mentioned earlier, there is no actual definition of what an unreasonable rise in price is, and Congress has left the power of determination to the DOE-DOJ task force. Delegating rulemaking powers or supplemental legislation is completely legal.[75] However, according to the case of *Eastern Shipping Lines, Inc. v. Philippine Overseas Employment Administration*, such delegation must meet the completeness test, wherein the executive agency is left with nothing to do but implement what is written, and the sufficient standard test wherein the executive agency is able to determine with reasonable certainty what it can or cannot do based on specific limitations the law has provided.[76] The chapter puts forward that R.A. 8479, relative to the provision of determining what an unreasonable rise in price is, did not pass the sufficient standard test. Section 14 (d) only created the DOE-DOJ task force and mandated it to investigate an unreasonable increase in prices. But it

[74] Cordero, *supra* note 68.
[75] Social Justice Society v. Dangerous Drugs Board, G.R. No. 157870, 591 PHIL 393-420 (2008).
[76] Eastern Shipping Lines, Inc. v. Philippine Overseas Employment Administration, G.R. No. 76633, 248 PHIL 762-776 (1988).

did not provide any preliminary standard, guide, threshold, or limitation on what an unreasonable rise in price is. Congress, through its bicameral deliberations, simply left it to the discretion of the task force on how to determine such an unreasonable rise in prices.[77]

The law should have been clearer about what an unreasonable rise in price is. This phrase can even be broken down further by first determining what is unreasonable in this context. After which, what types of rises in price did R.A. 8479 contemplate? Does unreasonable talk about timing or amount? Suppose that it talked about timing, what intervals are considered unreasonable, and what is considered acceptable? Suppose that it talked about the amount, by how much is considered unreasonable? As for rise in prices, plenty of factors contribute to this as established in the previous chapters. This could be because of the movements in the world market, an increase in taxes, the cost of freight, or the decision of oil companies to raise their margins. What kind of rise in prices did the law contemplate? These are the thresholds, classifications, and limitations that should have been further elaborated in the law. The provision is ambiguous and leaves unbridled discretion on the DOE-DOJ task force's part. By clarifying this provision further, the task force will have a better guide and be aware of limitations on its investigation because the absence of thresholds or limitations only makes every case of a price increase viable for investigation. The framework should be able to determine legitimate cases of unreasonable rise in prices and narrow it down rather than leaving the determination solely to the task force.

Again, an executive agency like the DOE can only engage in supplemental legislation if there are clear limits and thresholds such that it will only need to issue rules and regulations to comply with the law's mandate. Therefore, any threshold or limitation prescribed by the task force could be considered unconstitutional for executive legislation, which the constitution prohibits since only Congress can create and pass laws.[78] The executive branch should only implement or create rules and regulations that cause effective implementation.[79] This chapter posits that the unreasonable rise in prices should have been determined by the wisdom of the law through Congress and not what the DOE-DOJ should find applicable or appropriate.

[77] Bicameral Conference Committee Meeting on Energy MHULEP III-1 (1996).
[78] PHIL. CONST. art. VI, § 1.
[79] PHIL. CONST. art. VII, § 17.

In creating the law, Congress should have consulted the DOE and the DOJ in crafting the limitations and thresholds and the acts covered by an unreasonable rise in prices and thereby codifying it in the law itself instead of simply leaving it up to the task force.

Based on the preceding, if the DOE-DOJ task force pursues an investigation of unreasonable rise in prices without Congress properly amending Section 14 (d) to provide a clear guide and limitation for it to operate under and with the task force making its own standards, there is a chance that the oil companies may raise the issue of the constitutionality of the power of the DOE-DOJ task force in investigating such because the provision based on R.A. 8479 is too general. It fails to provide standards and limitations. In the case of *Compañia General de Tabacos de Filipinas v. Board of Public Utility Commissioners*, several case laws support the doctrine that delegating legislative determinations that are too general is contrary to law. Below is an excerpt from the case demonstrating the prohibition and the rationale for such:

> In the case of Merchants Exchange vs. Knott (212 Mo., 616), in declaring unconstitutional, on the ground of delegation of legislative power, a statute authorizing the Board of Railroad and Warehouse Commissioners to establish state inspection of grain "at such places or in such territory . . . as in their opinion may be necessary," the court said:
>
> "It is obvious that the foregoing grant of power is given without statutory landmark, compass, map, guide-post or corner-stone in one whit controlling its exercise or prescribing its channel, or indicative of any certain intendment of the legislative mind, beyond the mere grant. In essence it is the power of pure and simple despotism."
>
> Commenting on the statute, the court further said:

> "True, the act was passed by the General Assembly, approved by the Chief Executive and stands published as authenticated law, but to all intents and purposes it is only a barren ideality, having such life as is thereafter breathed into it from an unconstitutional source. No Missourian may know whether it applies to him or his concerns, as a rule of civil conduct, or will ever apply until in the "opinion" of the commissioners it "may be" considered "necessary".
>
> "The General Assembly may not clip itself of one iota of its lawmaking power by a voluntary delegation of any element of it — by putting its constitutional prerogatives, its conscience and wisdom, "into commission."[80]

In the case of *U.S. v. Ang Tang Ho*, a law was passed that penalized the monopoly and holding of palay, rice, and corn during extraordinary circumstances. The same also regulated the sale of such products during extraordinary circumstances and authorized the Governor-General to issue rules and regulations for implementation, investigation, and penalization for any cause. The Supreme Court held that the law did not validly delegate legislative powers to the Governor-General because the law did not specify or define the conditions which prompt the Governor-General to issue a proclamation. Further, the phrases "*for any cause*" and "*extraordinary rise*" were not defined or qualified to leave too much discretion on the part of the Governor-General. Below is ruling the lifted from the case:

> When Act No. 2868 is analyzed, it is the violation of the proclamation of the Governor-General which constitutes the crime. Without that proclamation, it was no crime to sell rice at any price. In other words, the Legislature left it to the sole discretion of the Governor-General to say what was and what was not "*any cause*" for enforcing the act, and what

[80] Compañia General de Tabacos de Filipinas v. Board of Public Utility Commissioners, G.R. No. 11216, 34 PHIL 136-143 (1916).

> was and what was not "*an extraordinary rise in the price of palay, rice or corn*," and under certain undefined conditions to fix the price at which rice should be sold, without regard to grade or quality, also to say whether a proclamation should be issued, if so, when, and whether or not the law should be enforced, how long it should be enforced, and when the law should be suspended. The Legislature did not specify or define what was "*any cause*," or what was "*an extraordinary rise in the price of rice, palay or corn*." Neither did it specify or define the conditions upon which the proclamation should be issued. In the absence of the proclamation no crime was committed. The alleged sale was made a crime, if at all, because the Governor-General issued the proclamation. The act or proclamation does not say anything about the different grades or qualities of rice, and the defendant is charged with the sale of one Janet of rice at the price of eighty centavos (P0.80) which is a price greater than fixed by Executive Order No. 53.[81]

While it may be argued that the standard need not be expressed, such that it can simply be implied or gathered as embodied in the same law or other statutes based on the case of *Chiongban v. Orbos*[82], this study argues that because of the consequences attached to the lacking or insufficient standard relative to R.A. 8479, the standards need to be express and specific.

Similar to R.A. 8479, the law in the case of *Ang Tang Ho* aims to punish rice monopoly during extraordinary circumstances. The punitive nature of R.A. 8479, when it comes to finding an unreasonable rise in prices as attached to cartelization, gives it more reason and importance on why the law should have provided a more specific standard and not leave the creation of such standards to the discretion and opinion of the DOE-DOJ task force alone. If there is no standard, there is a risk of implementing measures that may either

[81] U.S. v. Ang Tang Ho, G.R. No. L-17122, 43 PHIL 1-19 (1922).
[82] Chiongban v. Orbos, G.R. No. 96754, 315 PHIL 251-269 (1995).

be too burdensome, or worse, oppressive. In this perspective, the concept of due process, a constitutional right, is touched upon.[83] It is also perhaps because of this lack of a standard that the DOE-DOJ task force is unable to carry out its mandate effectively. As of late, no successful implementation has taken place.

Fourth Analysis: The Unreasonable Rise in Price's Lack of Definition Also Makes It Difficult to Make Reports

The previous parts of this chapter tackled the DOE-DOJ's role in investigating unreasonable rise in prices. However, it is also important to point out that the ambiguity leaves consumers or any interested parties unsure as far as reporting is concerned. Section 14 (d) in its first part provides that "*Any report from any person of an unreasonable rise in the prices of petroleum products shall be immediately acted upon*". If there is no clear definition or limitation provided, how then can the ordinary consumer determine if they can report suspicious price movements? Relating to the previous point raised on whether unreasonable pertains to the amount or timing/interval of the increase, will consumers or interested parties only look at the price board? The perceived problem in this issue is without a public guide prescribed by the law; either consumers will not report at all because of their lack of certainty or knowledge or overly report every movement they see. In both cases, the government and the task force are put at a disadvantage because the former renders that part of the provision ineffective, and the latter burdens the task force with too much work because of the possible volume of reports. A standard would be helpful to eliminate baseless reports and claims and save the task force time to focus on legitimate cases.

[83] PHIL. CONST. art. III, § 1.

CHAPTER 4 – CONCLUSION

This study laid down the ambiguous provisions of the Downstream Industry Deregulation Law (R.A. 8479), determined the problems with such ambiguities, and analyzed the arguments and points that address the ambiguities. The study has found that the two ambiguities of unbundling and unreasonable rise in prices depend on each other as a framework for the Department of Energy to uphold and execute the mandates of R.A. 8479 effectively.

The Ambiguity of Unbundling the Retail Fuel Prices

Out of the two ambiguities, this is the more hotly contested issue. The study has discussed points, arguments, legal basis, and analysis in supporting that the power of the DOE Secretary to unbundle the retail fuel prices of oil companies through its monitoring powers is lawful and valid in the first place. The provision of the law was general enough to cover and allow such an exercise of power. However, because of the injunction issued against the circular, which would have implemented the unbundling power, the DOE is precluded from doing anything related to unbundling in the meantime. No pending cases before the Supreme Court claim the validity or unlawfulness of the unbundling circular.

The study was able to address the critical questions in the statement of the problem of the study. First, what qualifies as appropriate information? This question was answered by analyzing the law's intent and what it aims to do. As seen in the declaration of policy of the law itself, statements made in a bicameral session of Congress when the Oil Deregulation Law was being drafted, and analyzing the provisions of the passed law as a whole, appropriate information qualifies as anything that the DOE Secretary needs to implement and uphold the purpose of the deregulation law which is to monitor the retail fuel trade and safeguard the public consumers against anti-competitive practices such as predatory pricing and cartelization. How else can the government and the DOE do that than by being able to access specific information relative to the retail fuel market, such as business practices and operations? This study firmly argues that prices and pricing structure of the companies' products are undoubtedly part of business practices. However, because of the ambiguity, which was defeated by the argument of a trade

secret in the trial courts, this provision has suffered nullity to a certain extent. Another question answered is what kind of information can be obtained. Similar to the answer to the first question, all types of information can and should be obtained except for those that the *Pennswell* case definitively laid out as part of a trade secret. The mentioned case qualified ingredients, compositions, plans, and formulas to reiterate. Pricing of the product and its specific rate breakdown were not included. The non-inclusion supports the idea that the pricing structure is not a trade secret. While it is confidential, it is not privileged information, and there are other ways to discover these prices. Still, because of what R.A. 8479 has empowered the DOE Secretary to do, it affords the executive agency expediency by being able to directly obtain information without having to derive such from other means.

The last question under this problem is whether the power to unbundle is considered regulatory and controlling at best. The study has established that such a power under the general monitoring powers of the DOE Secretary is only supervisory and only accords with the executive agency's awareness of what transpires in the retail fuel market. Even if the DOE can obtain information, as long as no anti-competitive practices are found, there should not be a problem. However, oil companies argue that the power to monitor will have a chilling effect on oil companies to operate independently and proceed with day-to-day retail sales without fear of government intervention. The oil companies claim that the power to unbundle is a significant first step toward regulation. However, if the law is analyzed as a whole, Congress may have used the word deregulation. Still, it did not say total absolute deregulation, wherein the government is precluded from having remedies under certain circumstances. It must be remembered that the retail fuel trade is still a massive issue of public interest that the government cannot leave alone. This idea is seen in the anti-trust provisions because the government acknowledges that an entirely deregulated market could be subject to abuse. The prices of diesel and gasoline affect the prices of most consumer goods because of their necessity in freight and logistics.

Further, oil companies view the unbundling powers as a very stringent measure. The power to unbundle is not solely to uphold anti-trust provisions of the law, and the DOE can also use it as the executive branch's primary agency tasked to oversee the energy sector in gathering information which Congress can use either for legislative inquiries in aid of legislation or

congressional oversight. The DOE will have first-hand information on what goes on in the retail fuel trade, and this information could be vital for Congress to improve laws or pass new and innovative ones that keep up with the developments in the energy sector.

The Lack of Definition and Limitations in Determining Unreasonable Rise in Prices

While this issue may not be as hotly contested as the first ambiguity relative to unbundling, this can be the more problematic ambiguity down the line if no improvements and amendments to the law are made. The approach to addressing the questions under this issue is not the same as the first one because there are no definite answers to the questions. This lack of clarity is why the study argues that the provisions on unbundling can be problematic down the line. To reiterate, the questions were: What is unreasonable in this context, and how is it shown? What are the types of rise in prices included in the statement "*unreasonable rise in prices*"? How much is considered unreasonable as opposed to the regular movements sanctioned by price movements in the world market?

Using case law and legal analysis, the study found no official definition of an unreasonable rise in prices. The term was left undefined by Congress in R.A. 8479 with an additional problem: it did not set any standard, limitation, or threshold. Based on a bicameral session on drafting the law, Congress left the determination of the unreasonable price rise with the DOE-DOJ joint task force. The task force then created its own rules and regulations in determining what is an unreasonable rise in prices. This shows the intent that while Congress may have used the word "*Deregulation*" the law did not intend complete deregulation, which precludes the government from being able to do anything, whatever the circumstances. The existence of provisions relative to determining an unreasonable rise in price shows that oil companies will be punished for predatory pricing, cartelization, and profiteering at some point. This is contradictory to the concept of total deregulation because the latter would then allow oil companies to double their profit margins or go to rates they desire without fear of punishment or dictation from the government. This is not what Congress had in mind because it knew full well that total deregulation would be disastrous and prejudicial to consumers when companies start to engage in anti-competitive practices. Therefore, the belief

of total deregulation by oil companies is titular rather than substantial in nature upon examination of the provisions. There is nothing wrong with not implementing complete deregulation of the retail fuel market since this is within the wisdom of Congress. The study raises the issue of how this power to determine an unreasonable rise in price is a problem. First, the law failed to provide a definition and proper standards and limitations in determining an unreasonable rise in prices. Instead, it simply left the discretion to the DOE-DOJ task force as they find appropriate. This accords the task force too much power in its discretion when investigating what is unreasonable. The oil companies do not have a basis on whether what they do is legal or illegal because there are no limitations. Instead, the limitations were given by the task force in the DOE circular and memorandum of agreement with the DOJ on what the task force will consider when a complaint is submitted. This tends to violate due process and makes the standard arbitrary as the task force finds it convenient in every particular situation. The study points out that this situation is a possible case of undue delegation of legislative powers to an executive agency for failing to comply with the completeness test or the sufficient standard test. If there is no standard or limitation in the law, then the DOE will act without limitation in determining an unreasonable rise in prices. This is prejudicial to the oil companies since they are not accorded what is acceptable and what is punishable. This may even have an adverse chilling effect resulting in oil companies not wanting to do any price movements based on competition because of fear of being penalized due to lack of standards.

The Tension between Police Power and Contractual Law

Under the standards of jurisprudence and the law, as a general rule, the non-impairment clause under the Bill of Rights of the Philippine cannot be violated by the State. However, such right is not absolute according to the Supreme Court. As long as the law passed meets the standards of valid police power covering lawful subjects and lawful means, and that the law concerns itself with possibly impairing contractual obligations that involve public interest or public welfare, then the law may impair such contractual obligations. In this instance, contractual obligations of oil companies to refrain from disclosing supplier agreements and specifications are met with great public interest because such affects the pricing of products in the retail fuel industry. As established earlier, fuel products affect the general pricing

of goods and services and is clearly a matter of great public interest relative to public transportation, cost of consumer goods, and freight among others.

The Joint Task Force and the Consumers

The lack of standards and limitations makes it hard for the regular consumer to report an unreasonable rise in prices. The standards set by the DOE and the joint task force should be validly based on a general limitation and threshold set by R.A. 8479 before lawful implementing rules and regulations can be enforced. Not even the consumers can make an accurate report because no clear guides are provided. This ambiguity will either result in consumers over-reporting price movements unnecessarily or not reporting because they do not know what the standard should be. It would also not be suitable for the DOE to entertain all claims of the unreasonable rise in prices because it will overly burden the government agency. The DOE is not the biggest and the most well-funded executive agency. It is one of the smaller ones, and its task to monitor is a tall order considering the number of service stations and oil companies in the country, and this only accounts for those who are legally engaged in the fuel market and have yet to include smugglers and illegal retailers.

CHAPTER 5 – RECOMMENDATION

The following recommendations are all to be done in sequence from the first until the last.

First Recommendation - Legislative Act Amending and Supplementing R.A. 8479

The proponent of this study submits that Section 14 (d) and Section 15 (a) of R.A. 8479 should be amended. With the rephrases and additions done to these provisions, ambiguities, as this study has identified, will be resolved with clarity in favor of the intent of the law. Some parts of the amendment will be based on DOE Resolution 08-01 since it provides a good general standard that should have been embedded in R.A. 8479 in the first place instead of being part of DOE's resolution and implementing rules and regulations.

The law proposed is submitted as follows:

AN ACT QUALIFYING SECTIONS 14 – 15 OF THE DOWNSTREAM OIL INDUSTRY DEREGULATION ACT OF 1998, AMENDING FOR THE PURPOSE OF R.A. 8479 OTHERWISE KNOWN AS AN ACT DEREGULATING THE DOWNSTREAM OIL INDUSTRY AND FOR OTHER PURPOSES

SECTION 1. Declaration of Policy – It shall be the policy of the State to ensure that the retail fuel market and the entities that profit and do business within the trade adhere to the most faithful exercise of fair competition and abstain from any prejudicial practices against consumers such as cartelization, predatory pricing, price manipulation, and profiteering. The State shall ensure that despite the deregulation of the downstream oil industry, it shall still retain its power to monitor and deter any prejudicial practices without exercising control or acts that are inimical

to deregulation.

SECTION 2. Section 14 (d) is hereby amended to be read as follows:

"d) Any report from any person of an unreasonable rise in the prices of petroleum products shall be immediately acted upon. An unreasonable rise in prices is an increasing price movement that is too high or too recurring in a short amount of period of time without valid grounds that sanction the movement. For this purpose, there is prima facie '*unreasonable rise in prices*' when the increase in retail prices for a single price movement is 6% or higher for both Automotive Diesel Oil (ADO) and for Motor Gas (MOGAS) regardless of whether the price increase is done within or outside the most recent weekly price adjustment of retail prices, or when there are 3 successive price increases including the weekly price movement regardless of the amount within the week from the regular weekly movement. The creation of the DOE-DOJ-PCC Tripartite Task Force is hereby mandated to determine within thirty (30) days the merits of the report and initiate the necessary actions warranted under the circumstance: Provided, That nothing herein shall prevent the said task force from investigating and/or filing the necessary complaint with the proper court or agency motu proprio. The DOE shall further issue implementing rules and regulations prescribing a reporting system framework that enables any person to report an unreasonable rise in prices based on the limitations provided hereinafter and implementing rules and regulations issued regarding the determination of unreasonable rise in prices.

The following parameters and limitations shall serve as a guide for the Tripartite Task Force in determining whether a rise in price within retail fuel prices is unreasonable:

1. Price Movements in the World Market – When an increase in the retail fuel market price is reasonably far from or inconsistent with the increase in the world

market relative to Crude Oil and other Petroleum products as registered in the Singapore market, based on the official Means of Platts Singapore (MOPS), or other official benchmarks used by the DOE within a particular period in consideration of when the order from the foreign supplier was officially made and when the arrival of the stock actually is.

2. Foreign Exchange Movements – When an increase is reasonably far or inconsistent with movements of foreign currency rates or changes between the exchange of the United States Dollar and the Philippine Peso.

3. Timing, Interval, and Frequency – When the increase is not warranted since the current stock of fuel being sold was not purchased based on the increased price. The timing of the delivery of stock to which the price increase is applied and the current inventory will be analyzed. As an accepted practice now codified by this law, the price movement is observed weekly every Tuesday at 6 A.M., and the DOE shall be notified of any other price increases implemented outside this interval.

4. Failure to Comply with Reportorial Requirements – When oil companies fail to duly notify the DOE through means it deems acceptable and necessary and in accordance with Rule V Section 18-A of the Implementing Rules and Regulations of R.A. 8479."

SECTION 3. Section 15 (a) is hereby amended to be read as follows:

"a) To gather and compile appropriate information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any person or entity in the industry. Such power to gather and compile information includes but not is limited to

compelling any entity to submit a report or to disclose any information regarding the importation, environmental compliance and measures, unbundling retail prices of fuel products revealing its breakdown, and other necessary information deemed necessary."

SECTION 4. Separability Clause – Should any provision or portion of this Act be held unconstitutional or unlawful, the other provisions that remain shall not be affected and remain to be in force and in full effect.

Second Recommendation – Standards for Unreasonable Rise in Prices

The proponent of this study suggests that the Department of Energy, Department of Justice, and the Philippine Competition Commission create implementing rules and regulations (IRR) based on the above amendment of R.A. 8479 and adhering to the limitations and thresholds it provides. As mentioned in the previous chapters, the task force should consider various types of increases and clearly lay out which increases are allowed or not. The IRR should also provide an accessible mechanism for reports and monitoring. This would entail the DOE and the proposed tripartite task force to forge a partnership with both public and private entities to ensure the proper monitoring and implementation against an unreasonable rise in prices.

Third Recommendation – Revive DC2019-05-0008

The study has extensively argued that DC2019-05-0008 or the "*Unbundling Circular*" is a valid exercise and implementation measure of the DOE Secretary's power to measure. The only thing keeping it from being implemented is the injunction issued by the trial courts against it. However, since no Supreme Court decision has held on the lawfulness or constitutionality of such power to unbundle through the circular along with the proposed amendments in R.A. 8479, the implementing rules and regulations of the unbundling circular should be revived and used since it is not substantially defective and works squarely within limits on the proposed monitoring power amendments which expressly allow the unbundling of retail fuel prices.

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