Choosing the Third Option: An Examination of the Plea of *Nolo Contendere* in Philippine Competition Law Enforcement Against Cartels

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I. INTRODUCTION

The game of cat-and-mouse between anti-competitive cartels and the laws punishing them have existed since time immemorial. It has been reported that cartels have been prohibited even during the time of the Byzantine Empire.[1] Under Byzantine law, "price fixing in relation to [certain commodities such as] clothes"[2] merited being perpetually exiled to far-off places such as Britain.[3]

Today, enforcement activities punishing these cartels have expanded throughout different parts of the world. In Europe, a price-fixing cartel has been fined by the European Commission for the amount of €313.69 million for raising prices and allocating markets for carbonless paper.[4] In the United States (U.S.), individuals found to be involved in a bid-rigging conspiracy on the sale of food to public and non-profit entities were required to provide restitutions amounting to more than U.S.$20 million and imprisonment was imposed as well.[5] In India, its Competition Commission imposed fines amounting to a total of almost €950 million against manufacturers of cement for cartelizing the industry through the creation of a trade association.[6] In South Korea, the Korean Fair Trade Commission imposed fines amounting to ₩132.2 billion against a group of construction companies for colluding in the bidding process for the construction of a large-scale subway project.[7] These cited enforcement activities are just samples of antitrust/competition

1. RICHARD WHISH & DAVID BAILEY, COMPETITION LAW 521 (9th ed. 2018).
2. *Id*.
3. *Id*.
4. ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, HARD CORE CARTELS: RECENT PROGRESS AND CHALLENGES AHEAD 13 (2003).
5. *Id*. at 14.
6. WHISH & BAILEY, *supra* note 1, at 523 (citing Competition Commission of India, PRESS RELEASE: CCI imposes penalties upon cement companies for cartelization, *available at* https://www.cci.gov.in/sites/default/files/whats_newdocument/Press%20release-%20Cement%20Orders.pdf (last accessed Nov. 30, 2020)).
7. WHISH & BAILEY, *supra* note 1, at 523 & 정주원, *FTC fines 21 builders for bidding collusion*, THE KOREA HERALD, Jan. 2, 2014, *available at* http://www.koreaherald.com/view.php?ud=20140102000716&ACE_SEARCH=1 (last accessed Nov. 30, 2020).

law enforcement actions against cartels — a list of actions that goes on and on.[8]

The Philippines has not been exempted from anti-competitive cartels. In a 2017 article,[9] Department of Agriculture Secretary Emmanuel F. Piñol stated that cartels exist in the following industries: dairy production, rice trading and importation, local garlic production, onion production, importation of garlic and onion, and meat importation.[10] In particular, Piñol said that cartels in collusion with government officials have been limiting the importation of garlic and onions as well as fixing the prices in the trading and importation of rice.[11] The issue of cartels has also reached the Supreme Court, where it held that Republic Act No. 8180, also known as the Downstream Oil Industry Deregulation Act of 1996,[12] contravened the antitrust policy provision of the 1987 Philippine Constitution as it, in effect, created "a *de facto* cartel among the three [biggest] oil companies [in the Philippines.]"[13]

To combat these cartels, the Philippines, in 2015, enacted Republic Act No. 10667 or the Philippine Competition Act.[14] Cartels are punished under Section 14 of the law —

8. *See* Organization for Economic Co-operation and Development, The OECD International Cartels Database, *available at* https://qdd.oecd.org/subject.aspx?Subject=OECD_HIC (last accessed Nov. 30, 2020).

9. Emmanuel F. Piñol, *Cartels, corruption stunt Philippine food production*, PTV NEWS, July 7, 2017, *available at* https://www.ptvnews.ph/cartels-corruption-stunt-philippine-food-production (last accessed Nov. 30, 2020). *See also* Chris Schnabel & Sabrina Schnabel, *What consumers need to know about the PH Competition Act*, RAPPLER, July 10, 2015, *available at* https://rappler.com/business/economy/philippine-competition-act-part-1 (last accessed Nov. 30, 2020).

10. Piñol, *supra* note 9.

11. *Id.*

12. An Act Deregulating The Downstream Oil Industry, And For Other Purposes [Downstream Oil Industry Deregulation Act of 1996], Republic Act No. 8180 (1996).

13. Tatad v. Secretary of Department of Energy, G.R. No. 124360, 281 SCRA 330, 346 (1997).

14. An Act Providing for A National Competition Policy Prohibiting Anti-Competitive Agreements, Abuse of Dominant Position and Anti-Competitive Mergers and Acquisitions, Establishing The Philippine Competition Commission And Appropriating Funds Therefor [Philippine Competition Act], Republic Act No. 10667 (2014).

> (1) The following agreements, between or among competitors, are per se prohibited:
>
> (a) Restricting competition as to price, or components thereof, or other terms of trade;
>
> (b) Fixing price at an auction or in any form of bidding including cover bidding, bid suppression, bid rotation and market allocation and other analogous practices of bid manipulation[.]
>
> (2) The following agreements, between or among competitors which have the object or effect of substantially preventing, restricting or lessening competition shall be prohibited:
>
> (a) Setting, limiting, or controlling production, markets, technical development, or investment;
>
> (b) Dividing or sharing the market, whether by volume of sales or purchases, territory, type of goods or services, buyers or sellers or any other means[.][15]

Since the Philippine Competition Act's effectivity, the Philippine Competition Commission (PCC) has initiated a number of investigations involving cartel-like activity prohibited under Section 14.[16] These investigations include: (a) a cold storage cartel in the onion industry which imposed restrictions on storage space and price manipulation;[17] (b) a rice cartel engaging in predatory practices leading to price increase;[18] (c) a cartel

15. *Id.* § 14.

16. Korina Ana T. Manibog, *Developments in the Philippine Competition Commission's enforcement activities*, BUSINESSWORLD, May 14, 2019, *available at* https://www.bworldonline.com/developments-in-the-philippine-competition-commissions-enforcement-activities (last accessed Nov. 30, 2020).

17. Roy Stephen C. Canivel, *PCC to look into alleged cold storage cartel in the onion industry*, PHIL. DAILY INQ., March 29, 2019, *available at* https://business.inquirer.net/267589/pcc-to-look-into-alleged-cold-storage-cartel-in-onion-industry (last accessed Nov. 30, 2020). *See also* Philippine Competition Commission, PCC Statement on Alleged Cold Storage Cartel in Onion Industry, March 29, 2019, *available at* https://phcc.gov.ph/press-statements/pcc-coldstorage-onion (last accessed Nov. 30, 2020).

18. David Cagahastian, *PCC zeroes in on rice-industry cartels*, BUS. MIRROR, December 24, 2016, *available at* https://businessmirror.com.ph/2016/12/24/pcc-zeroes-in-on-rice-industry-cartels (last accessed Nov. 30, 2020).

manipulating prices and supplies in the cement industry;[19] (d) a cartel of power suppliers;[20] (e) a cartel in the international shipping lines industry which imposed unnecessary shipping charges;[21] and (f) a garlic cartel.[22]

As of the year 2019, the PCC has mounted serious enforcement activities against anti-competitive conduct. In its 2019 Annual Report,[23] the PCC has reported to have received 135 informal complaints on alleged cartels and abuse of dominance cases.[24] To complement its investigation and enforcement powers and increase its capacity, the PCC has introduced an arsenal of tools at its disposal.[25] One of the first tools introduced by the PCC was the leniency program in accordance with Section 35 of the Philippine Competition Act.[26] It has been described as "a whistleblower-type program" aimed at preventing the creation of cartels as well as aiding the investigation and prosecution of these cartels.[27] Another tool which has been recently introduced to aid in competition law enforcement is the Rule on Administrative Search and Inspection under the Philippine Competition Act.[28] This tool was introduced by the Supreme Court, using its rule-making powers under the 1987 Constitution,[29] to aid the PCC in conducting dawn raids as allowed by the

19. *Id*. *See also* Manny B. Villar, *Alleged cement cartel a test case for competition law*, BUS. MIRROR, August 21, 2017, *available at* https://businessmirror.com.ph/2017/08/21/alleged-cement-cartel-a-test-case-for-competition-law (last accessed Nov. 30, 2020).

20. Manibog, *supra* note 16.

21. *Id*.

22. *Id*.

23. Philippine Competition Commission, Keeping Unfair Competition In Check (2019 Annual Report), *available at* https://phcc.gov.ph/wp-content/uploads/2017/08/06162020-2019-Annual-Report_web-version.pdf (last accessed Nov. 30, 2020).

24. *Id*. at 16.

25. *Id*.

26. Philippine Competition Act, § 35. *See also* Philippine Competition Commission, Rules of the Leniency Program of the Philippine Competition Commission (Dec. 27, 2018)

27. Philippine Competition Commission, *supra* note 23, at 16.

28. *See* RULE ON ADMINISTRATIVE SEARCH AND INSPECTION UNDER THE PHILIPPINE COMPETITION ACT, A.M. No. 19-08-06-SC, whereas cl. paras. 1-2 (Sept. 10, 2019).

29. PHIL. CONST. art. VIII, § 5 (5) & RULE ON ADMINISTRATIVE SEARCH AND INSPECTION UNDER THE PHILIPPINE COMPETITION ACT, whereas cl. para. 4.

Philippine Competition Act.[30] The set of rules issued by the Supreme Court provides the guidelines in the "application, issuance, and enforcement of inspection orders for administrative investigations of alleged violations of [the Philippine Competition Act.]"[31]

Aside from the recently introduced enforcement tools, the Philippine Competition Act also offers the availability of non-adversarial remedies to entities.[32] There is, however, one interesting provision in the Philippine Competition Act that may pique an erring entity's attention — the plea of *nolo contendere*.[33]

Prior to the Philippine Competition Act, the accused may only enter two pleas: the pleas of guilty or not guilty.[34] The introduction of the plea of *nolo contendere* thus presents itself as a third option that an erring entity may enter. Before the entity could enter the plea of *nolo contendere* during its arraignment, it must, however, know what the plea of *nolo contendere* is in the first place and its effects. In contrast, the PCC would also be cautious about the effectivity of the plea of *nolo contendere* in competition law enforcement in the Philippines. In light of these considerations, this Article intends to unravel the mysteries of the plea of *nolo contendere* and answer the questions presented above with the hopes of contributing to the literature in the use of the plea in competition law enforcement in the Philippines.

To answer the proposed question, this Article shall be split into five parts. Part I begins with a background on the existence of cartels and how this is addressed through competition enforcement by the PCC. Part II discusses the plea of *nolo contendere*. Specifically, it begins with the history and origins of the plea of *nolo contendere* and ends with a discussion of the plea in the Philippine setting before and after the creation of the Philippine Competition Act. Part III illustrates how the plea of *nolo contendere* has been applied in U.S. antitrust

30. Philippine Competition Act, § 12 (g) & RULE ON ADMINISTRATIVE SEARCH AND INSPECTION UNDER THE PHILIPPINE COMPETITION ACT, whereas cl. para. 2.

31. RULE ON ADMINISTRATIVE SEARCH AND INSPECTION UNDER THE PHILIPPINE COMPETITION ACT, § 1.

32. *See* Philippine Competition Act, §§ 35-37.

33. Philippine Competition Act, § 36.

34. 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 116, § 1 (a).

enforcement.[35] Part IV initially presents and discusses the other enforcement tools, i.e., the leniency program and non-adversarial remedies, provided by the Philippine Competition Act. Afterwards, this Part shall compare and contrast these enforcement mechanisms with the plea of *nolo contendere* by taking into account possible parameters to be considered by the entities availing of these options. Part V concludes the discussion and provides recommendations to be considered by the PCC, concerned government agencies, as well as the judiciary.

II. THE THIRD OPTION: THE PLEA OF *NOLO CONTENDERE*

A. The Plea of Nolo Contendere and its Origins

The plea of *nolo contendere*, as found in the Philippine Competition Act, is not a novel feature under the Philippine legal system. Its origins can be traced as far back to the English common law system during the reign of Henry IV.[36] The accepted essential characteristics of the plea of *nolo contendere* under English common law can be found in the treatise of Hawkins.[37] According to Hawkin's treatise, the plea of *nolo contendere* is

> '[a]n implied confession [ ] when a defendant, in a case not capital, doth not directly own himself guilty, but in a manner admits it by yielding to the King's mercy, and desiring to submit to a small fine: in which case, if the court think fit to accept of such submission, and make an entry that defendant *prosuit se in gratiam regis,* without putting him to a direct confession, or plea (which in such cases seems to be left to discretion), the defendant shall not be estopped to plead not guilty to an action for the same fact, as he shall if the entry is *quod cognovit indictamentum*.'[38]

It has been argued that the original plea of *nolo contendere* was not a form of plea but was rather of "a nature of a petition to the sovereign's mercy."[39]

35. The terms "antitrust" and "competition law" are interchangeable. These terms shall be used depending on the context of this Article, i.e., competition law in the Philippine setting vis-à-vis antitrust in the U.S. setting.

36. Thomas C. Hayden, Jr., *The Plea of Nolo Contendere*, 25 MD. L. REV. 227, 227 (1965) (citing WILLIAM HAWKINS, A TREATISE OF THE PLEAS OF THE CROWN 466 (8th ed. 1824)).

37. *Id.*

38. *Id.*

39. Nathan B. Lenvin and Ernest S. Meyers, *Nolo Contendere: Its Nature and Implications*, 51 YALE L.J. 1255, 1256 (1941-42) & Hayden, *supra* note 36, at 227.

Nevertheless, the plea of *nolo contendere* has not been in use in England since the year 1702 despite originating from English common law.[40]

The "extinct" plea of *nolo contendere*, however, survived by crossing the Atlantic and reaching the shores of the U.S.;[41] as compared to English common law, the version of the plea used in the U.S. can be found in Rule 11 of its Federal Rules of Criminal Procedure.[42] Based on the Federal Rules of Criminal Procedure, a party may enter into the plea of *nolo contendere* with the court's consent; however, "[b]efore accepting a plea of *nolo contendere*, the court must consider the parties' views and the public interest in the effective administration of justice."[43] It must be noted that, unlike the plea of *nolo contendere* in the Philippine legal system, which shall be discussed later on, the availability of the plea of *nolo contendere* in the U.S. is not limited to antitrust enforcement,[44] as it has found application in cases "involving the [crimes of] abortion, arson, assault, espionage, larceny, and rape."[45]

With respect to the nature of the plea of *nolo contendere*, U.S. case law has consistently characterized the plea as an implied confession which does not create estoppel on the accused but is similar to the "admission of guilt for the purpose[s] of the case[.]"[46] Thus, the courts will no longer be concerned with the question of guilt but only with the character and extent of punishment.[47] While there is a consensus on how the plea was characterized, U.S. case law

40. Hayden, *supra* note 36, at 227.

41. *Id.*

42. UNITED STATES FEDERAL RULES OF CRIMINAL PROCEDURE, rule 11 (a) (3).

43. *Id.* rule 11 (a) (3).

44. *See* Hayden, *supra* note 36, at 228.

45. *Id.* (citing State ex rel. Gehrmann v. Osborne, 82 A. 424, 79 N.J.E. 430 (N.J. Ch. 1912) (U.S.); Teslovich et Ux. v. Fire. F. Ins. Co., 168 A. 354 (Pa. Super. Ct. 1933) (U.S.); Orabona v. Linscott, 49 R.I. 443, 144 A. 52 (R.I. 1928) (U.S.); Farnsworth v. Sanford, 33 F. Supp. 400 (N.D. Ga. 1940) (U.S.); Collins v. Benson, 81 N.H. 10, 120 A. 724 (N.H. 1923) (U.S.); & Johnson v. Johnson, 80 A. 119, 78 N.J.E. 607 (N.J. Ch. 1911) (U.S.)).

46. Hayden, *supra* note 36, at 233 (citing United States v. Norris, 281 U.S. 619 (1930); United States v. Reisfeld, 188 F. Supp. 631 (D. Md. 1960) (U.S.); Twin Ports Oil Co. v. Pure Oil Co., 26 F. Supp. 366 (D. Minn. 1939) (U.S.); State ex. Rel. Woods v. Thrower, 131 So. 2d 420 (1961) (U.S.); & *Tesolovich*, 168 A.).

47. Hayden, *supra* note 36, at 232-33 (citing United States v. Denniston 89 F.2d 696 (1937) (U.S.) & United States v. Norris, 281 U.S. 619 (1930)). *See also* Tucker v. United States, 196 F. 260 (C.C.A. 7th 1912) (U.S.); Hudson v. United States, 272 U.S. 451 (1926); & *Norris*, 281 U.S.

would show that the plea has evolved from its English common law origins to the modern understanding of the plea today. Initially, it was understood that the plea of *nolo contendere* must be interpreted in accordance with the description of Hawkins in his treatise.[48] In *Tucker v. United States*,[49] it was held that courts would only accept the plea in cases where the crime is only punished by a fine, or in crimes where it is punishable by imprisonment or a fine at the discretion of the court.[50] This meant that a prison sentence cannot be imposed on a person entering the plea of *nolo contendere*.[51]

The English common law treatment of the plea of *nolo contendere* in the U.S. would not, however, last for too long. In *Hudson v. United States*,[52] the U.S. Supreme Court ruled that limited applicability of the plea as discussed in the case of *Tucker* had no substantial basis aside from the passage of Hawkins, which it described as "ambiguous."[53] The court held that the passage of Hawkins only pertained to the effect of the implied confession and did not state the "precise effect of the [ ] confession on the sentence."[54] At most, the phrase "desiring to submit to a small fine"[55] was used for "illustrative [purposes] only."[56] Thus, the court clarified that by entering into the plea of *nolo contendere*, "a court may, in its discretion, mitigate the punishment on a plea of *nolo contendere* and feel constrained to do so whenever the plea is accepted with the understanding that only a fine is to be imposed."[57]

As seen in this part of the Article, it must be noted that the development of the plea of *nolo contendere* was limited to only two jurisdictions, i.e., the English common law system and U.S. legal system. Consequentially, this meant that there is only a narrow understanding of the nature and effects of the plea are, namely: (a) it is an admission of guilt without admitting liability;[58] (b) the admission of guilty does not create estoppel against the person in other

48. *Tucker*, 196 F. at 263.

49. Tucker v. United States, 196 F. 260 (C.C.A. 7th 1912) (U.S.).

50. *Id.* at 266.

51. *Id.*

52. Hudson v. United States, 272 U.S. 451 (1926).

53. *Id.* at 453.

54. *Id.* at 455.

55. *Id.*

56. *Id.* & Hayden, *supra* note 36, at 229.

57. *Hudson*, 272 U.S. at 457.

58. *See* Hayden, *supra* note 36, at 227.

cases;[59] and (c) courts, at their discretion, are not limited to impose only a fine against the person or entity entering the plea.[60]

B. The Plea of Nolo Contendere in the Philippines

1. The Plea of *Nolo Contendere* Prior to the Philippine Competition Act

In comparison to the U.S., the plea of *nolo contendere* was inexistent in Philippine statutes until the enactment of the Philippine Competition Act. The term *nolo contendere*, however, has been referred to in three Supreme Court decisions despite the plea having no relevance to any of the issues resolved by the Court. The Article shall present the decisions in accordance to when they were promulgated by the Court to show how the use of the term has allegedly developed in Philippine jurisprudence.

The first case to mention the plea of nolo contendere was *People v. Sarip*.[61] Therein, the issue resolved was whether the accused were found guilty for the crime they have committed.[62] The plea of *nolo contendere* only appeared in the ratio of the case where the decision described the plea entered by the accused as the "plea of guilty or *nolo contendere*."[63] Based on a reading of the decision, the Court did not delve into distinguishing between the plea of guilty entered by one of the accused and the plea of *nolo contendere* inasmuch as it was not the crux of the case.[64]

In *University of the East v. Secretary of Labor and Employment*,[65] the issue resolved was

> whether ... the Secretary of Labor [and Employment] ha[d] the authority to award attorney's fees in favor of ... [the] former counsel of the University of the East Faculty Association ... despite ... the compromise agreement presented ... and approved by the Department of Labor and Employment ... not provid[ing] for attorney's fees.[66]

59. *Id.*

60. *Hudson*, 272 U.S. at 457.

61. People v. Sarip, G.R. No. L-31481, 88 SCRA 666 (1979).

62. *Id.* at 668.

63. *Id.* at 673.

64. *See id.* at 673-74.

65. University of the East v. Secretary of Labor and Employment, G.R. No. 93310, 204 SCRA 254 (1991).

66. *Id.* at 254-55.

In this decision, the term "*nolo contendere*" was merely cited in the decision based on an order issued by the Department of Labor and Employment's Undersecretary where the compromise agreement was described to have been "entered into *nolo contendere* or without any admission of any liability[.]"[67]

In *People v. Arrojado*,[68] the Court resolved the issue of whether "the failure of an investigating prosecutor to indicate [his or] her [Mandatory Continuing Legal Education] [ ] number and [the] date of issuance thereof in [a criminal] information ... warranted the dismissal of the same."[69] Reference to the term "*nolo contendere*" only related to the question of what are considered as pleadings under the United States Federal Rules of Criminal Procedure.[70] As stated in the decision, the United States Federal Rules of Criminal Procedure define a pleading in criminal proceedings as "the indictment, the information, [or] the pleas of not guilty, guilty, and *nolo contendere*."[71]

While these decisions did not focus on discussing issues relating to the plea of *nolo contendere*, the following points can be inferred with respect to the early understanding of the plea in the Philippines. *First*, it can be argued that the plea of guilty and *nolo contendere* are interchangeable and have a similar effect.[72] *Second*, the plea of *nolo contendere* can also be understood to be separate from a plea of guilty inasmuch as it is an admission of guilt "without any admission of any liability."[73] *Third*, case law has made reference to the treatment of the plea as separate from the plea of guilty in accordance with the rules of a different jurisdiction.[74]

2. The Plea of *Nolo Contendere* Under the Philippine Competition Act

As mentioned, it was only upon the enactment of the Philippine Competition Act that the plea of *nolo contendere* was formally introduced in Philippine law. The plea of *nolo contendere* and its effects can be found in Section 36 of the Philippine Competition Act.

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67. *Id.* at 263.

68. People v. Arrojado, G.R. No. 207041, 774 SCRA 193 (2015).

69. *Id.* at 198-99.

70. *Id.* at 200 (citing UNITED STATES FEDERAL RULES OF CRIMINAL PROCEDURE, rule 12 (a)).

71. *Id.*

72. *See Sarip*, 88 SCRA at 673.

73. *University of the East*, 204 SCRA at 263.

74. *See Arrojado*, 774 SCRA at 200.

> Section 36. Nolo Contendere. — An entity charged in a criminal proceeding pursuant to Section 14 (a) and 14 (b) of this Act may enter a plea of *Nolo Contendere*, in which he does not accept nor deny responsibility for the charges but agrees to accept punishment as if he had pleaded guilty. The plea cannot be used against the defendant entity to prove liability in a civil suit arising from the criminal action nor in another cause of action: *Provided*, That a plea of *Nolo Contendere* may be entered only up to arraignment and subsequently, only with the permission of the court which shall accept it only after weighing its effect on the parties, the public and the administration of justice.[75]

To better understand the plea of *nolo contendere* under Section 36 of the Philippine Competition Act, this Article will break the provision down and discuss each part. Section 36 describes the plea of *nolo contendere* as a plea where an entity "does not accept nor deny responsibility for the charges but agrees to accept punishment as if he pleaded guilty."[76] This description similarly fits the above description in Part II of this Article as well as in the case of *University of the East*, where it was mentioned that the plea was an admission of guilt "without the admission of any liability."[77]

Moving to the applicability of the provision, the law limits the availability of the plea of *nolo contendere* to entities that have been charged with the violation of Section 14 (a) and 14 (b) of the Philippine Competition Act or acts constituting as anti-competitive agreements.[78]

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75. Philippine Competition Act, § 36.

76. *Id*.

77. *University of the East*, 204 SCRA at 263.

78. Philippine Competition Act, § 36. Section 14 (a)-(b) of the Philippine Competition Act states —

> Section 14. Anti-Competitive Agreements. —
>
> (a) The following agreements, between or among competitors, are per se prohibited:
>
> (1) Restricting competition as to price, or components thereof, or other terms of trade;
>
> (2) Fixing price at an auction or in any form of bidding including cover bidding, bid suppression, bid rotation and market allocation and other analogous practices of bid manipulation[.]
>
> (b) The following agreements, between or among competitors which have the object or effect of substantially preventing, restricting or lessening competition shall be prohibited:

As regards the effects of taking the plea of *nolo contendere*, the entity taking it shall still be punished in accordance with the Philippine Competition Act.[79] Nevertheless, its plea "cannot be used against [it] ... to prove [its] liability in a civil suit arising from the criminal action nor in another cause of action[.]"[80] This, in effect, prevents private parties from using an entity's plea in an independent civil action instituted under Section 45 of the same law.[81]

Lastly, the plea of *nolo contendere* can only be availed by an entity during two instances: *first*, up until the arraignment of the entity in court; or *second*, after the arraignment but only with the permission of the court, which shall then accept or deny the plea "after weighing its effects on the parties, the public, and the administration of justice."[82] In connection with this, it has been clarified that courts are still required to render a decision based on law and the evidence presented by the parties when it refuses to accept the plea, as they may not use the plea as the sole basis of the decision, following the Revised Rules on Evidence.[83]

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(1) Setting, limiting, or controlling production, markets, technical development, or investment;
(2) Dividing or sharing the market, whether by volume of sales or purchases, territory, type of goods or services, buyers or sellers or any other means[.]

Id. § 14 (a)-(b).

79. *Id.* § 36.

80. *Id.*

81. Section 45 of the Philippine Competition Act states —

> Section 45. Private Action. — Any person who suffers direct injury by reason of any violation of this Act may institute a separate and independent civil action after the Commission has completed the preliminary inquiry provided under Section 31.

Id. § 45.

82. *Id.* § 36. *See also* FRANCISCO E. LIM & ERIC RECALDE, THE PHILIPPINE COMPETITION ACT: SALIENT POINTS AND EMERGING ISSUES 197 (2016).

83. LIM & RECALDE, *supra* note 82, at 197 (citing 1989 REVISED RULES ON EVIDENCE, rule 130, § 27). The Author notes that Rule 130, § 27 of the Rules on Evidence can now be found in Rule 130, § 28 of the 2019 Proposed Amendments to the Revised Rules on Evidence (A.M. No. 19-08- 15-SC, October 8, 2019). *See* 2019 AMENDMENTS TO THE 1989 REVISED RULES ON EVIDENCE, rule 130, § 28.

3. Legislative Intent Behind the Plea of *Nolo Contendere*

In order to further appreciate the plea of *nolo contendere*, this Article will also refer to legislative records to discuss its purpose and nature in accordance with legislative intent. According to Representative Magtanggol T. Gunigundo, the plea of *nolo contendere* was meant to serve as a "user-friendly provision" in favor of an erring entity for the following purposes: (a) to protect the entity's reputation; and (b) to prevent a protracted litigation of the criminal action.[84]

On the plea's nature, Representative Xavier J. Romualdo compares the plea of *nolo contendere* to an application of a consent order from the PCC.[85] He stated that the plea is similar to the application of a consent order in its effect but is different as the plea is availed of in a criminal action whereas an application for a consent order is purely administrative in character.[86]

Following this Part's discussion, it can be understood that the plea of *nolo contendere* does not have a widespread application around the world. In line with this, there are only limited resources which the Philippines can refer to in order to understand its effects and its application in competition law enforcement. Nevertheless, the plea of *nolo contendere* can now be simplified based on this description: The plea is a creature of the Philippine Competition Act that can be availed of by an entity that has allegedly entered into an anti-competitive agreement for the purpose of accepting punishment without admitting any liability thereof. Availing of the plea prevents the PCC and private parties from using the plea as evidence in proving an entity's liability in any action.[87]

Moreover, it can be understood that the plea was primarily intended to benefit erring entities. In light of this, it would be essential to know how the plea has been used and appreciated in competition law by looking into the lens of U.S. antitrust enforcement.

84. H. REC., Vol. 2, No. 56, at 22, 16th Cong., 2d Reg. Sess. (March 3, 2015).

85. Fair Competition Act of 2015, Bicameral Conference Committee on the Disagreeing Provisions of House Bill No. 5286 and Senate Bill No. 2282, Bicameral Committee Conference, Record of June 8, 2015, at 53, 16th Cong., 2d Reg. Sess. (2015).

86. *Id.*

87. *See* Philippine Competition Act, § 36.

III. THE PLEA OF NOLO CONTENDERE UNDER THE LENS OF UNITED STATES ANTITRUST ENFORCEMENT

A. Development of the Plea of Nolo Contendere in United States Antitrust Enforcement

The relevance of the plea of *nolo contendere* in U.S. antitrust enforcement came into force due to the evidentiary effects of a final judgment or decree rendered in an antitrust criminal proceeding as applied to other suits.[88] Under both the Sherman Act[89] and the Clayton Act,[90] a final judgment or decree rendered in an antitrust criminal proceeding which shows that the accused has violated the said law can be used as "*prima facie* evidence against [him or her] in any [other suit of] proceeding brought by any party against [the accused] under [the] said laws ... would be an estoppel [ ] between the parties [in the separate suit.]"[91] Thus, a question propounded was whether the evidentiary effects found would also apply to the plea of *nolo contendere*. In answering the query, it was held that the plea was similar to a "consent judgment" where the plea cannot be used by party in a separate proceeding particularly, in a civil suit.[92]

The rationale behind the use of the plea in antitrust cases can be explained in the case of *United States v. Safeway Stores, Inc.*[93] In *Safeway Stores, Inc.*, Safeway Stores, Inc. (Safeway) and its officers were charged with the violation of the Sherman Act for selling groceries in its retail stores in some parts of the U.S. at a price lower than those charged in other parts of the U.S.[94] Having been charged with the violation of the Sherman Act, Safeway entered the plea of *nolo contendere* to which the U.S. government objected.[95] The U.S. government objected to the plea based on the following reasons: (a) Safeway was a multiple offender; and (b) the court's acceptance of the plea would "deprive private litigants of the benefits to be derived from a [guilty] verdict

88. PAUL EMERY HADLICK, CRIMINAL PROSECUTIONS UNDER THE SHERMAN ANTI-TRUST ACT 131 (1939).

89. Sherman Antitrust Act of 1890, 15 U.S.C. §§ 1–38 (2012).

90. Clayton Antitrust Act of 1914, 15 U.S.C. §§ 12–27 (2012).

91. 15 U.S.C. § 16 (a).

92. *See Twin Ports Oil Co.*, 26 F. Supp. at 371.

93. United States v. Safeway Stores, Inc., 20 F.R.D. 451 (N.D. Tex. 1957) (U.S.).

94. *Id.* at 452.

95. *Id.* at 455.

... [as the verdict may be used by private litigants] as prima facie evidence against the defendants[.]"[96]

In rejecting the U.S. government's opposition to the plea of *nolo contendere*, the court in *Safeway Stores, Inc.* based its ruling on the legislative history of the Clayton Act, stating that the acceptance of the plea of *nolo contendere* was for the purpose of avoiding long criminal proceedings and not granting a benefit to private litigants.[97] Moreover, it was emphasized that the discretion to accept or reject the plea still rests with the judiciary due to the Congress' conferment of the authority to prescribe remedial procedure to the judiciary.[98]

Under its current practice, the U.S. government has opposed the acceptance of the plea of *nolo contendere* except for the existence of "unusual circumstances."[99] In a recent case, the U.S. Department of Justice had argued that admitting a plea of *nolo contendere* would undermine its antitrust leniency program which "encourages [the voluntary]reporting of anti-competitive conduct."[100] Similar to the objections in *Safeway Stores, Inc.*, it was also argued that entering the plea of *nolo contendere* "would permit [entities] to avoid the negative effects [of a plea of guilty in] ... civil actions."[101] Nevertheless, the district court ruled against the U.S. government's objections and stated that the plea of *nolo contendere* does not allow the accused to escape liability as the courts still have full discretion to impose the appropriate penalty and fine.[102]

B. Comparing United States Antitrust Enforcement with the Philippine Competition Act

A look at the discussion would show that the nature, effect and purpose of the plea of *nolo contendere* in the U.S. is somewhat akin to that of the plea of *nolo*

96. *Id.*

97. *Id.* at 458. (citing *Twin Ports Oil Co.*, 26 F. Supp. at 372).

98. *Safeway Stores, Inc.*, 20 F.R.D. at 458 (citing United States v. Standard Ultramarine and Color Co., 137 F. Supp 167, 174 (1955)).

99. United States Department of Justice, Justice Manual: 9-27.500 — Offers to Plead Nolo Contendere—Opposition Except in Unusual Circumstances, *available at* https://www.justice.gov/jm/jm-9-27000-principles-federal-prosecution#9-27.500 (last accessed Nov. 30, 2020).

100. United States v. Florida West International Airways, Inc., 282 F.R.D. 695, 696 (S.D. Fla. 2012) (U.S.).

101. *Id.*

102. *Id.* at 697.

contendere found in the Philippine Competition Act. Both versions treat the plea as an admission of guilt, but such an admission cannot be used in other actions against the pleading entity. Similarly, both contemplate the use of the plea of *nolo contendere* to prevent long protracted actions against an entity.

Despite the similarities, the Philippine version and the U.S. version of the plea of *nolo contendere* have some notable differences. One difference can be found as to when the plea of *nolo contendere* may be entered by an entity. In the Philippine Competition Act, the plea can occur during or after the arraignment of the entity.[103] On the other hand, the plea of *nolo contendere* can only be entered during the arraignment of the entity under the Federal Rules of Criminal Procedure.[104] Another distinction relates to the covered acts by the plea. In the Philippine Competition Act, the plea is only limited to acts covered by Section 14 (a) and 14 (b) of the law,[105] whereas the Federal Rules on Criminal Procedure does not limit the anti-competitive conduct to which an entity can plead to.[106] One other difference between the two jurisdictions involves the participation of the parties when an entity enters the plea. Under U.S. practice, the U.S. government can either accept or oppose the plea of *nolo contendere* entered by the entity.[107] On the other hand, it is not clear whether the PCC or the Department of Justice-Office for Competition (DOJ-OFC) can accept or oppose the plea under the Philippine Competition Act.[108]

C. Lessons From the United States Antitrust Enforcement

While there may be differences between the U.S. and Philippine concepts of the plea of *nolo contendere* in antitrust or competition law enforcement, it is still important to learn from the experiences of the U.S. with respect to the use of the plea in antitrust enforcement.

As previously mentioned in this Article, it is a practice of the U.S. government to oppose pleas of *nolo contendere* except for the existence of

103. Philippine Competition Act, § 36.

104. *See* UNITED STATES FEDERAL RULES OF CRIMINAL PROCEDURE, rule 10 (a) (3) & rule 11 (a) (3) & (e).

105. Philippine Competition Act, § 36.

106. *See* UNITED STATES FEDERAL RULES OF CRIMINAL PROCEDURE, rule 11 (a) (3).

107. *Id.* rule 11 (b).

108. *See* Philippine Competition Act, § 36.

unusual circumstances.[109] Despite its opposition, it has been argued that the following criteria could be considered important in determining whether or not an opposition to the plea should be done based on the cases handled by the U.S. government:

> (1) The seriousness of the violation [(e.g.,] ... price fixing [violations] ... merit the opposition [of] the plea[);]
>
> (2) The impact [of the violation to] the economy[;] ...
>
> (3) The flagrance of the violation [(e.g., the willfulness of the act);]
>
> (4) The [government's desire] to secure the benefits of Section 5 [of the Clayton Act] for private litigants [with respect to the evidentiary value of the conviction in civil suits for treble damages; and]
>
> (5) The desire to subject defendants to public censure.[110]

Needless to say, that aside from the criteria presented, there is a need to take into account the U.S. government's attitude towards the plea vis-à-vis its other enforcement programs. As discussed, the U.S. government has been in favor of violators of its antitrust laws to apply for the leniency program than entering the plea of *nolo contendere*.[111]

Knowing that the courts have the discretion in accepting the plea of *nolo contendere*, the following have been observed with respect to the attitude of the courts vis-à-vis the plea itself. *First*, the courts have used legislative intent in accepting the plea inasmuch as the plea is a tool in favor of the defendant rather than the private litigants.[112] *Second*, courts have also accepted the plea for purposes of expediting litigation.[113] It was argued that courts took into consideration the amount of resources to be used, given that there exists two protracted trials which will have the same proof.[114] *Third*, it has also been argued that courts take into consideration special circumstances (e.g., when treble damages are more severe than the penalty imposed in a criminal case).[115]

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109. *See* United States Department of Justice, Justice Manual, *supra* note 99.

110. *Section 5 of the Clayton Act and the Nolo Contendere Plea*, 75 YALE L. J. 845, 853-54 (1966).

111. *Florida West International Airways, Inc.*, 282 F.R.D. at 696.

112. *Section 5 of the Clayton Act and the Nolo Contendere Plea*, *supra* note 110, at 861.

113. *Id.* at 862.

114. *See id.* at 863-66.

115. *Section 5 of the Clayton Act and the Nolo Contendere Plea*, *supra* note 110, at 867-70.

Looking at the conduct of the U.S. government and the courts, it can be observed that their attitudes seem to be at opposing ends. The U.S. government has been very cautious in accepting the plea as a matter of policy as well as to encourage the use of leniency program.[116] At the other end, courts have been more accepting of the plea on the basis of legislative intent and the efficient administration of justice.[117] The mentioned observations can be taken into consideration as a guide by the PCC and the courts once a plea has been entered by the accused.

IV. The Other Options: How They Fare Against the Plea of Nolo Contendere

Similar to the U.S. antitrust laws, it must be noted that the Philippine Competition Act also provides for other options that may be availed of by any entity charged under the Philippine Competition Act aside from the plea of *nolo contendere*. These options are the leniency program and the non-adversarial remedies.[118] This Part undertakes to present these options as well as compare these options with the viability of entering into the plea of *nolo contendere*.

A. The Leniency Program

Similar to the plea of *nolo contendere*, the leniency program is also applicable to acts arising from Section 14 (a) and (b) of the Philippine Competition Act, which requires the voluntary disclosure by a participant of the anti-competitive agreement.[119] In contrast to the acceptance of punishment when taking the plea of *nolo contendere*, the program allows the participant to be immune from suit or have a reduced fine in exchange for "voluntary ... information of the agreement ... which satisfies [certain] criteria[, provided that the participants enter into the program] prior to or during the fact-finding or preliminary inquiry stage of the case."[120] The "immunity" granted by the leniency program includes "immunity from any suit or charge of affected parties and third parties, exemption, waiver, or gradation of fines and/or penalties giving precedence to the entity submitting the evidence."[121] It is important to note that the power to grant leniency or immunity to a

116. *See Florida West International Airways, Inc.*, 282 F.R.D. at 696.

117. *See Section 5 of the Clayton Act and the Nolo Contendere Plea*, *supra* note 110, at 861–62.

118. Philippine Competition Act, §§ 35 & 37.

119. *Id.* § 35.

120. *Id.*

121. *Id.* § 35, para. 4.

participant in an anti-competitive agreement is also conferred upon the DOJ-OFC, provided that there is a pending preliminary investigation before it.[122]

The immunity granted to a participant is further clarified by the Philippine Competition Commission in its Rules of the Leniency Program. According to the Rules, immunity from suit includes not only "immunity from administrative and criminal liability arising from [the act but also liability] from civil actions initiated by the PCC ... [and] third parties."[123] Subject to certain limitations, the Rules also provide that any self-incriminating information and documents provided by the entity to the PCC shall not be used against it or its officers when the application is denied, withdrawn or abandoned.[124] It must be noted, however, that the participants must comply with certain conditions before the grant of immunity or reduction of fines may be afforded to them.[125]

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122. *Id.* § 35, para. 6.

123. Rules of the Leniency Program of the Philippine Competition Commission, § 1, para. 2.

124. *Id.* § 11.

125. Sections 3 and 4 of the Rules of the Leniency Program provide the following conditions:

> Section 3. *Immunity from suit.* An entity reporting an anti-competitive activity under Section 14 (a) or 14 (b) of the Act before a fact-finding or preliminary inquiry has begun shall be eligible for immunity from suit subject to the following conditions:
>
> (a) At the time the entity comes forward, the PCC has not received information about the activity from any other source. For purposes of these Rules, "any other source" shall mean and entity has been granted conditional immunity from suit;
>
> (b) Upon the entity's discovery of illegal activity, it took prompt and effective action to terminate its participation therein;
>
> (c) The entity reports the wrongdoing with candor and completeness, and provides full, continuing, and complete cooperation throughout the investigation until the finality of any and all administrative case(s), as well as civil case(s) initiated by the PCC on behalf of affected parties and third parties; and
>
> (d) The entity did not coerce another to participate or to continue participating in the activity, and clearly was not the leader in, or the originator, of the activity.

B. Non-adversarial Remedies

Other than the plea of *nolo contendere* and the leniency program, the Philippine Competition Act also provides for non-adversarial remedies that can be availed by an entity prior to the institution of a criminal action.[126] One example is a binding ruling which can be complied with by an entity to avoid

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> Further, an entity that reports the illegal anti-competitive activity under Section 14 (a) or 14 (b) after the commencement of a fact-finding or preliminary inquiry may, at the discretion of the PCC, still be qualified to avail of the benefit of immunity. In such a case, the entity must comply with all the conditions in this Section and subparagraphs (d) and (e) in Section 4 hereof.
>
> Furthermore, an entity that is otherwise ineligible for the benefit of immunity from suit may be considered for the benefit of reduction of administrative fines in accordance with the appropriate guidelines or issuances of the PCC.
>
> Section 4. *Reduction of administrative fines*. Even after the PCC has received information about an anti-competitive activity under Section 14 (a) or 14 (b) of the Act or after a fact-finding or preliminary inquiry has begun, the entity may be eligible for exemption, waiver, or gradation of administrative fines that would otherwise have been imposed on it subject to the following conditions:
>
> (a) The entity is the first to come forward and qualify for reduction of administrative fines, or is the first to qualify when a previous grant of conditional reduction of administrative fines has been revoke;
>
> (b) Upon the entity's discovery of an anti-competitive activity under Section 14 (a) or 14 (b) of the Act, it took prompt and effective action to terminate its participation therein;
>
> (c) The entity reports the wrongdoing with candor and completeness, and provides full, continuing, and complete cooperation throughout the investigation until the finality of any and all administrative case(s), as well as civil case(s) initiated by the PCC on behalf of affected parties and third parties;
>
> (d) At the time the entity comes forward, the PCC does not have evidence against the entity that is likely to result in a sustainable conviction for the reported violation under Section 14 (a) and 14 (b) of the Act; and
>
> (e) The PCC determines that granting such leniency would not be unfair to others.

Id. §§ 3-4.

126. Philippine Competition Act, § 37

being the subject of an administrative, civil, or criminal action.[127] Another example of a non-adversarial remedy is the consent order which an entity can apply for prior to the termination of an investigation "without admitting ... a violation of the [Philippine Competition Act.]"[128]

Similar to taking the plea of *nolo contendere*, availing of non-adversarial remedies also has an effect in criminal proceedings. Facts, data, and information presented by entities in proceedings before the PCC are "not [ ] admissible as evidence in any criminal proceeding arising from the same act[.]"[129]

C. The Plea of Nolo Contendere vis-à-vis The Leniency Program and Non-adversarial Remedies: The Entity's Point of View

Looking at the above discussion, an entity violating Section 14 (a) and 14 (b) of the Philippine Competition Act has a number of options to choose from to avoid litigation. For purposes of determining how effective the plea of *nolo contendere* is compared to the leniency program and non-adversarial remedies, it is also necessary to look at these options using the point of view of an entity that would be charged under the Philippine Competition Act.

An entity taking the plea of *nolo contendere* has the following matters to consider before entering the plea. *First*, the entity entering the plea in effect is adjudged guilty for violating the law but without admitting any liability.[130] *Second*, entering the plea puts an end to the criminal proceeding but the entity shall still be liable by taking the punishment imposed by the Philippine Competition Act as a consequence.[131] *Third*, the act of entering the plea and the plea itself cannot be used in any other action to prove the entity's liability in the commission of the same act.[132] *Lastly*, the entity may enter this plea any time during the course of the entire proceedings subject to certain limitations.[133] The entity must, however, consider that there is some risk in

127. *Id.* § 37 (a).

128. *Id.* § 37 (c).

129. *Id.* § 37 (e).

130. *Id.* § 36.

131. *Id.*

132. Philippine Competition Act, § 36.

133. *Id.*

entering the plea inasmuch as accepting the plea is subject to the discretion of the judge handling the matter.[134]

Next, an entity may also consider entering into the leniency program for a number of reasons. *First*, the leniency program allows a participant to be immune from any suit or liability arising from the anti-competitive agreement complained of, or to at least be entitled to the reduction of fines.[135] *Second*, self-incriminating information and documents provided by the participant cannot be used against it even if the application for the leniency program is denied, withdrawn or abandoned.[136] Yet there are some risks that the entity has to take into account before entering the leniency program. The first risk relates to the availability of the leniency program. The entity must act fast in entering into the program because it is only available "prior to or during the fact-finding or preliminary inquiry stage of the case."[137] Aside from the window of opportunity for the entity to enter the program, the entity must also consider other participants in the anti-competitive agreement which may likewise intend to enter into the program as only one entity can avail of the leniency program.[138] The second risk is the participant's capacity to fulfill the conditions required prior to the availability of the immunity from suit or reduction of fines.[139]

The last option that an entity may consider is the availability of non-adversarial remedies. By entering and complying with a binding ruling, the entity can avoid being subject to administrative, civil or criminal action.[140] The entity must consider that it can only obtain a binding ruling if: (a) the contemplated act or conduct has not yet been in effect or implemented;[141] (b) there is "no [ ] verified complaint or referral by [another government] agency

134. *Id.*

135. *Id.* § 35.

136. *Id.* & Philippine Competition Commission, Rules of the Leniency Program of the Philippine Competition Commission, § 11.

137. Philippine Competition Act, § 35, para. 1. *See also* Rules of the Leniency Program of the Philippine Competition Commission, § 3.

138. Philippine Competition Act, § 35, para. 3 (1).

139. Rules of the Leniency Program of the Philippine Competition Commission, §§ 3-4.

140. Philippine Competition Act, § 37 (a).

141. Philippine Competition Commission, 2017 Rules of Procedure of the Philippine Competition Commission, Rule III, art. 1, § 3.1 (Sept. 11, 2017).

... filed [with the PCC;]"[142] or (c) there has yet to be an investigation on the contemplated act or conduct.[143] On the other hand, the entity may also obtain a consent order prior to the termination of an investigation by the PCC.[144] The entity can consider that any fact, data or information presented with the PCC are "[in]admissible as evidence in any criminal proceeding arising from the same act" once it chooses to take the non-adversarial remedies.[145]

By looking at the three options, the entity will need to account for two common factors: (a) the timing of the option, and (b) the benefits available to the entity. Timing is an important consideration given that the three options have different windows of opportunity. The available benefits are similarly important to the entity because of the costs and risks attributed to each of the options.

Applying these two factors, the first option the entity will consider would either be entering the leniency program or filing an application for any of the non-adversarial rulings. Entering into the leniency program with the PCC would be a top priority inasmuch as it affords the entity with immunity from any suit or at least a reduction of fines for as long as it fulfills the required conditions.[146] The contingent risks that exist relate to the existence of an investigation over the anti-competitive agreement as well as the possibility that another participant has already applied for the leniency program.[147] Similar to the leniency program, the non-adversarial remedies also offer the same benefit to the entity as regards the avoidance of any form of suit but there is a connected risk to the timing of the application inasmuch as the existence of any investigation or verified complaint is outside the control of the applicant.[148]

Entering the plea of *nolo contendere* would be the last resort for the entity, inasmuch as the entity taking plea would still incur punishment, having been adjudged guilty for the complained act,[149] as compared to the immunity conferred by the two options. Moreover, the plea will only be considered if the above options would become unavailable due to the closing of application

142. *Id.*

143. *Id.*

144. Philippine Competition Act, § 37 (c).

145. *Id.* § 37 (e).

146. *See* Philippine Competition Act, § 35, paras. 1- 2.

147. *See id.* § 35, paras. 1 & 3 (1).

148. *See id.* § 37, para. 1.

149. *See id.* § 36.

windows[150] or if the entity would fail to comply with the conditions imposed by the PCC.[151] In other words, the entity will always consider attempting to do the first two options prior to proceeding with taking the plea of nolo contendere, considering that these three options are not mutually exclusive.

V. CONCLUSION

From this Article, the following can be concluded: *First*, the plea of *nolo contendere* has existed in other jurisdictions prior to its recent creation under the Philippine Competition Act. It could be argued that the development of the plea around the world is somewhat limited given its history and origins. *Second*, entering the plea of *nolo contendere* itself in the Philippine setting has its limitations regarding its applicability to certain anti-competitive acts and its availability as compared to other jurisdictions. *Third*, it can be seen that the U.S. government has a negative attitude with respect to the plea, given its more favorable treatment of its leniency program. *Lastly*, the availability of the leniency program and non-adversarial remedies may decrease the chances of an entity opting to enter the plea of nolo contendere based on the benefits and effects on the entity.

Despite the conclusions above, the existence of the plea, together with the other options, serves to benefit numerous stakeholders in the administration of justice. By entering the plea, an erring entity avoids protracted litigation and tempers the impact of the anti-competitive acts on its goodwill as well as on the punishment to be imposed under the Philippine Competition Act. Similarly, the plea can allow the PCC to refocus its efforts and costs on other investigations, since the PCC also avoids protracted litigation. Lastly, the plea can benefit the courts as the expeditious rendering of a decision prevents the clogging of court dockets.

To strengthen the plea of *nolo contendere* and, in turn, Philippine competition law enforcement against cartels, it is recommended that the Supreme Court, in consultation with the PCC and DOJ-OFC, enact new rules establishing the procedure of entering the plea while taking note of the U.S. practices. These rules can detail the process and effect of entering and accepting the plea, since the courts have the discretion on whether it would accept the plea or not according to a number of factors. The said rules may include a rule allowing the courts to receive respective memoranda from the PCC, the DOJ-OFC, and the accused prior to accepting or denying entering of the plea. To complement this recommendation, it is also suggested that the

150. *See id.* §§ 35, para. 1 & 37, para. 1.

151. *See id.* §§ 35, para. 2 & 37.

PCC together with the DOJ-OFC enact an internal manual which they may refer to in considering whether they would accept or oppose the plea of *nolo contendere* entered by the accused.

By strengthening the plea through these recommendations, it is hoped that it can serve to enable a more effective competition law enforcement in the Philippines, to create a win-win situation in favor of promoting and protecting both competition and consumer welfare.