

Deregulation and Regulatory Process: Public Interest and Private Profit

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Regulation empowers the state to exercise control over the activities of individuals or business concerns. This comes in the form of public policies aiming to reconcile the competing, sometimes conflicting interests of private persons and business firms. In order to promote general welfare, the state takes steps through: 1) supervision and regulation of economic activities; 2) price fixing; 3) direct or indirect subsidies to selected industries; 4) grant of quotas; and 5) reporting requirements. There is a clamor for deregulation because it is the general impression that regulatory activity produces more costs than benefits. Procedures are said to be counterproductive, i.e., inconvenient and costly, and tend to encourage graft and corruption.

Introduction

The government's omnipresence in almost every aspect of life is a reality. From birth to death, the individual is subject to regulation through the requirement of registration in the Local Registrar's office to record his birth and paternity or filial relationship to his parent, and his death, to establish the fact of his demise which would enable his heirs to inherit his property.

Juridical or artificial persons, recognized and regulated by the Civil Code and the Corporation Code respectively must also be registered and licensed so that they can exist legally and do business. When the term of their existence expires, or for one reason or another they could no longer operate profitably or have forfeited their right to exist legally, their dissolution must be appropriately registered with the Securities and Exchange Commission.

Their start of operations also sets forth a chain of registration requirements in the Department of Trade and Industry, the Social Security System, the Department of Labor and the Bureau of Internal Revenue - to mention the most basic agencies which would process and issue documents of government authorization. Thus, regulation is an inescapable condition which empowers the state to exercise some control over the activities of individuals or business concerns.

Regulation of business through government policies takes the form of:

1) Supervision and regulation of economic activities to prevent harmful competition or prevent injury to the public;

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- 2) Price-fixing;
- 3) Support either through direct or indirect subsidies to selected industries;¹
- 4) Grant of quotas; and
- 5) Reporting requirement.

Regulation is also considered as a form of social intervention to assure a certain threshold level of access to all or segments of society, a particular subset of material goods and services. In effect, as a tool for intervention, it is used as a means for allocating exhaustible resources or scarce services, allowing equity considerations to take hold of otherwise unequal circumstances. For instance, price regulation of essential commodities in time of acute shortage when there is an emergency or war, such as those applied to drugs or building materials, alleviates the problem.

Regulations requiring the manufacturing firms to install pollutant control or protective devices to minimize the hazardous smoke emanating from vehicles are safety measures designed to protect the public. The conflict between the rights of the owner to the full or untrammelled use of his property for personal or business gains, and the right of the public to health or reasonably priced goods or services, is often resolved through regulations. These regulations are in the form of policies which attempt to reconcile the competing and sometimes conflicting interests of individuals and business firms.

The issues of regulation and deregulation had been raised in the United States a few years ago, specifically in the deregulation of the airline industry. Due to the active lobby of airline companies, the government removed price-fixing policies that set loose events which even now still cause discomfort and even danger to the lives of the passengers. Reports documented by *Newsweek* and *Time Magazine* show that passenger got stranded, services deteriorated and maintenance of aircrafts suffered as a result of price-cutting and deregulation.

Likewise, the consequences of deregulation of public utilities in the Philippines could bring about non-servicing of unprofitable routes or absence of service during lag periods.

Regulation is often an exercise by the State of the power to do what is necessary to protect its constituents. It is also a manifestation of the perception by the State of the desires, needs, and aspirations of the inarticulate

citizens who cannot organize themselves to bring out their intentions and expectations directly to the authorities. Regulation is an instrument of control in the exercise of absolute freedom and is more often than not, a reasonable limitation on the use of property.

It is not easy to simplify the issue of regulation or deregulation solely within the framework of profit-seeking policies of business concerns. It must be examined within the context of the complex environment of human society, the country, and other international relations which the State conduct as part of the community of nations. This paper, however, limits itself to the rationale of regulation in the Philippines and poses issues relative to deregulation. It is hoped that this modest effort brings about a better understanding of the merits of regulation and potentials for deregulation.

Rationale for Regulation

The State has three important powers: taxation, police power and eminent domain. These powers are essential for the survival of the State and the continued protection of its constituents. Laws are enacted by Congress and policies are issued by the Executive Branch to implement such laws.

The power to regulate the use of property is now quite comprehensive under Section 6 of Article XII of the 1987 Constitution which states that:

the use of property bears a social function and all economic agents shall contribute to the common good. Individuals and private groups, including corporations, cooperatives, and similar collective organizations, shall have the right to own, establish and operate economic enterprises, subject to the duty of the State to promote distributive justice and to intervene when the common good so demands.
(italics supplied)

Thus, State intervention in business operations is warranted when societal objectives must be attained.

The Human Settlements Regulatory Commission exemplifies an agency whose extensive regulatory powers on land use and zoning can bring about beneficial results to the country. It can solve ecological problems arising from conflicting and inappropriate land uses, inadequate and substandard facilities in housing areas or subdivisions, and avert the mushrooming of blighted areas. It was empowered to grant permits to land developers, real estate brokers and to issue locational clearances to industries, plants, factories and other economic ventures. It has the authority to require compliance with design and other legal requirements so that the location of the business ventures may be conducive to economic viability and order in the area. Its power extends to the grant of locational clearances to cottage industries,

poultry, piggery, public markets, memorial parks and cockpits, to mention a few. It is empowered to impose penalties for the violation of its rules and regulations.

The power to regulate as a manifestation of the State's police power was characterized by the case filed in the Philippine Supreme Court involving motel and hotel operators as "the most essential, insistent and least limitable of powers extending as it does to all the great public needs" and illustrates the delicate balance between the police power of the state and the right of the individual to use his property and to protection under the due process clause of the Constitution. Evidently, profit yielded to the greater consideration of public interest in this interesting case.²

In the early 1960s, the City of Manila passed an ordinance requiring all guests of hotels or motels to register in a Registry Book their personal data (name, age, residence, occupation, sex, planned length of stay, number of companions and their names, relationships, age and sex, data from the guests' residence certificate and his passport number) together with the certification by the competent hotel or motel officer that in his presence, the person signing in the form, filled it up personally and affixed his signature. The ordinance likewise imposed a license fee on hotels and motels operating in the city. The ordinance was approved by the city government as a policy to curb the rampant use of motels for immoral purposes.

The Ermita-Malate hotel and motel operators sued the city government and challenged the constitutionality of the ordinance on the following legal grounds:

- 1) that the license fee was unreasonably high;
- 2) that the registration requirements violated due process for being arbitrary, that it was an invasion of privacy and that it infringed on the right against self-incrimination;
- 3) that the official inspection requirements violated due process;
- 4) that the minimum facilities requirements were arbitrary and oppressive;
- 5) that the requirement that persons less than 18 years of age may not be accepted unless accompanied by a parent or guardian and that no room may be let out more than twice every 24 hours, lacked certainty and were unreasonable and arbitrary; and

6) that the penalty of automatic cancellation of license violated due process.

The Supreme Court dismissed the issues of violation of the rights to privacy and against self-incrimination since they were not raised by an aggrieved hotel guest who, under procedural law is the proper party to raise such issues. Neither the hotel and motel operators nor an "accommodating intervenor" on the basis of his being merely a regular guest, were considered by the court as the individuals whose right to privacy and right against self-incrimination were affected. The Court resolved the case against the hotel and motel operators by asserting the right of the State or the city government to *regulate the use of property* for the purpose of checking the alarming increase in the rate of prostitution, adultery and fornication in Manila traceable in great part to the existence of motels, which provide the necessary atmosphere for clandestine entry, presence and exit and thus become ideal haven for prostitutes and thrill-seekers.³ (italics supplied)

In another case, the Taxicab Operators of Metro Manila, Inc. sued the Board of Transportation (BOT) for issuing a regulation pursuant to its authority under Presidential Decree No. 101 "to fit just and reasonable standards, classification, regulations, practices, measurements of service to be furnished, imposed, observed and followed by operators of public utility motor vehicles." The questioned regulation was a BOT Circular that required taxicab operators or firms in Metro Manila to retire their taxis whose year model is six years or older. The petitioner claimed that the circular was arbitrary and oppressive and violated the due process clause of the Constitution. It further argued that the six-year ceiling fixed for Metro Manila vehicles was legally faulty because the "roadworthiness of taxicabs depend upon their kind and maintenance and the use to which they are subjected and therefore their actual physical condition should be taken into account at the time of registration." The Supreme Court brushed aside this argument and ruled as follows:

It is impractical to subject every taxicab to constant and recurring evaluation, not to speak of the fact that it can open the door to multiple standards, possible collusion and even graft and corruption. A reasonable standard must be adopted and must apply to all vehicles affected uniformly, fairly and justly. The span of six years supplies the standard. The product of experience shows that by such time taxis have been fully depreciated, their cost recovered and fair return on investment obtained. They are also generally dilapidated and no longer fit for safe and comfortable service to the public especially considering that they are in continuous operation practically 24 hours every day in three shifts of eight hours per shift. With that standard of reasonableness and absence of arbitrariness, the requirement of due process has been met.⁴

On the argument that the operators in Metro Manila are discriminated against in comparison with operators outside of Metro Manila, the Court ruled that there is a basis for distinction since use of taxis, and therefore depreciation, is faster in Metro Manila. In this case, maximization of profits was the underlying objective of the petitioner, coupled with optimal use of the vehicles. However, underlying the decision of the Court is the need to protect the taxi-riding public from "rolling coffins" and battered-down vehicles, thereby averting road accidents that could cause injury or the loss of lives.

In this regard, business affected with public interest such as public utility companies are more closely regulated than other types of businesses. The implicit reason in the differential treatment is public safety, protection and general welfare. Thus, electric and telephone companies are covered by special laws limiting their profits to a ceiling that is deemed reasonable.

An illustrative case is *Alalayan vs. National Power Corporation (NPC)*. The NPC was empowered by Republic Act No. 3043 to require the franchise holder to realize a net profit of not more than 12% annually of its investments, plus 2 months operating expenses, as a condition for providing electric power at least 50% of its power or energy needs. As a franchise holder, Alalayan assailed the constitutionality of the law on the ground that it violated the due process clause of the Constitution. The Supreme Court disagreed with the petitioner and pronounced as valid the restriction to profits to not more than 12%. In clear and unequivocal terms, the ruling clarified the scope of the power of the NPC to regulate in the following language:

In the face of a constitutional provision that allows deprivation of liberty, including the liberty of contract, as long as due process is observed, the alleged nullity of a legislative act can only be shown if in fact there is such a denial. The liberty to contract, associated with business activities may be subjected in the interest of the general welfare under the police power, to restrictions varied in character and wide ranging in scope as long as due process is observed. Public welfare has at the bottom of the enactment of the law and *the state in order to promote general welfare may interfere with personal liberty, with property, with business and occupations*. Persons and property may be subjected to all kinds of restraints and burdens to secure the general comfort, health and property of the state. These considerations constitute more than sufficient justification for statutes curtailing liberty enjoyed by business enterprises whether conducted by natural or juridical persons to satisfy the needs of public welfare. (italics supplied)

Police power as an attribute to promote the common weal would be diluted considerably of its reach and effectiveness if on the mere plea that the liberty to contract would be restricted, the questioned statute is characterized as a denial of due process.⁵

Police power is so pervasive in scope and may cover policies relating to consumer protection, sale of drugs, food packaging, sale of insecticides or fungicides, advertising, banking insurance and other commercial activities.⁶

An interesting and important regulatory law is to protect marine life and fish by prohibiting their harvesting through the use of dynamite and the sale of disabled or stupefied fish.

Police power, simply stated, is the right of the state to intervene when it is necessary to do so for the common good.

Deregulation

Whither profit goes? In a free enterprise economy, regulation is assumed to be minimal. But some writers say that this is not so. Paul MacAvoy claims that industries in the United States are strictly regulated.⁷ He states that cost-benefit evaluation of certain industries do not unequivocally show that the regulatory policies resulted in better quality of goods or services, or less injury to the consumers. He observes that "There are no apparently commensurate benefits resulting from the activity . . . (of regulation). In the case of health, safety and environmental controls, there are no findings whatever. The general impression is that this regulatory activity now produces costs much greater than benefits, and that the costs are increasing rapidly in a way most adverse to smaller organizations in the production sectors of the economy...."

Do these observations parallel the Philippine situation? It is difficult to assess the impact and consequences of regulation in the national scene at this point in time. Presumably, in a developing economy which is legal-oriented, laws tend to move faster than effective implementation. Complaints were aired at the Bishops Conference held just before the end of the Marcos regime that there is need to deregulate, to examine the policies of government relating to business operations and other agencies; that procedures in regulatory bodies are counter-productive; and other agencies tend to encourage graft and corruption in the various agencies tasked with implementation of regulations.

The Reorganization Report of the Presidential Commission on Government Reorganization (PCGR) headed by former Secretary Luis Villafuerte strongly recommended deregulation. It suggested simplification of procedures and elimination of unnecessary rules in the government's processing of business and trade documents. It was pointed out that private businesses are unanimous in their complaint that too many initials and signatures are needed before a license or permit is issued by a number of government offices and agencies. Thus, delays are not only inconvenient but also costly.

However, the problem is not only limited to procedures. Commodities which are considered essential are subject to price controls. Thus, under

conditions brought about by shortage or emergency, the government may fix the price of food items to alleviate economic hardships on the consuming public. This situation presents a clear-cut case of state intervention which undoubtedly is easy to justify. On the other hand, deeper dilemma pertains to the exercise of control or supervision by regulatory or quasi-judicial bodies over trade or business decision. For instance, the Securities and Exchange Commission fulfills the role of arbiter and regulator of corporate activities.

It is not practicable to list all the economic activities which should be deregulated since policy should be harmonized with existing economic, political and social conditions. The environment where business operates should be taken into account so that policies of regulation and deregulation are consistent with the national strategy for development.

Nevertheless, businesses affected with public interest such as public utilities, or banking which is crucial to commercial development, are examples of economic undertakings which should be regulated under all circumstances. Here, the inherent nature of the economic activities requires State intervention either by regulating the profits or the relationship with the clients or beneficiaries.

In what areas is deregulation possible? Deregulation has two aspects: the substantive and the procedural aspect. In evaluating the substantive areas for deregulation, one has to assess the economic, social and political circumstances of the country. Thus, government has the right to critically determine for itself whether deregulation will help attain national goals or whether it will be dysfunctional to national development and survival. It is not wise to adopt a deregulation policy that ignores the environment.

Nevertheless, it is important that private initiative is not stifled by unduly restricting profits since they are the prime motivators of entrepreneurs. On the other hand, common good and public interest are goals which are constitutionally mandated and must be operationalized in meaningful ways through appropriate policies.

Is common good antithetical to profits? We do not think so. They are reconcilable through the balancing of diverse interests by the intervention and joint efforts of wise public leaders and socially-oriented businessmen who, working cooperatively, can fashion the instruments of control for the benefit of society.

Procedural reforms as dimensions of deregulation are attainable in less difficult ways. They involve the elimination of cumbersome, useless and impractical requirements in government activities, doing away with numerous

initials and signatures on government transactions, or facilitating the smooth flow of papers and removing red-tape to efficiently deliver services to the public. Deregulation through reforms of procedures is cost saving and beneficial to all. The success of these kind of changes may be considered in a sense, "profits" consisting of goodwill and confidence which the people will have in a productive and responsive government.

Endnotes

¹Vernon Mund and Ronald Wolf, *Government and Business*, 2nd Edition (N.Y.: Harper, 1955).

²L-24693, Vol. 20, SCRA (July 31, 1967).

³Joaquin J. Bernas, *Philippine Constitutional Law* (Quezon City: Rex Printing Company, Inc., 1984), pp. 92-93.

⁴Vol. 117, SCRA, Case # 613.

⁵Vol. 24, SCRA, Case # 173.

⁶Sulpicio Guevarra (ed.), *Public Laws Annotated*. Acts 1556, 5121, 3720, 1929, 2128, 1017.

⁷Paul MacAvoy, *The Regulated Industries and the Economy* (N.Y.: WW Norton, 1979).