

SIXTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

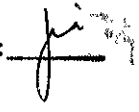


Senate
Office of the Secretary

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SENATE

Senate Bill No. 1293

RECEIVED BY: 

INTRODUCED BY SEN. JINGGOY EJERCITO ESTRADA

EXPLANATORY NOTE

Article XII, Section 19 of the Constitution provides that, "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."

With the local economy and industry being greatly influenced by global forces, it is difficult to protect the welfare of the consumers without sacrificing the interest of the business sector. Such a complex situation requires a comprehensive legislation that will address the different aspects of the issue. There have been various laws enacted to implement this constitutional provision but they run short of squarely and completely prohibiting and penalizing monopolies and unfair competition.

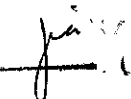
The "*Competition Act of 2013*" is a humble contribution to our country's desire for a more vibrant and fair economic field. This measure was submitted jointly by the Committee on Trade and Commerce, Economic Affairs, and Finance during the Fifteenth Congress. It is a product of thorough discussions with all the stakeholders. However, it was overtaken by events and was not enacted into law.

The immediate passage of this bill is earnestly sought.


JINGGOY EJERCITO ESTRADA
Senator

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SENATE

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Senate Bill No. 1293

INTRODUCED BY SEN. JINGGOY EJERCITO ESTRADA

AN ACT
PENALIZING ANTI-COMPETITIVE CONDUCT, ABUSE OF DOMINANCE, AND
ANTI-COMPETITIVE MERGERS, ESTABLISHING FOR THE PURPOSE AN
OFFICE FOR COMPETITION UNDER THE DEPARTMENT OF JUSTICE,
APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES

*Be it enacted by the Senate and the House of Representatives of the Philippines
in Congress assembled:*

CHAPTER I
GENERAL PROVISIONS

1
2
3
4
5 **SECTION 1.** *Title.* – This Act shall be known and cited as the “**Competition Act**
6 **of 2013**”.

7
8
9 **SEC. 2.** *Declaration of Policy.* – Pursuant to the constitutional mandate that the
10 State shall regulate or prohibit monopolies when the public interest so requires
11 and that no combinations in restraint of trade or unfair competition shall be
12 allowed, the State shall:

- 13
14 a. promote and enhance economic efficiency and free and fair competition in
15 trade, industry, commerce and all economic activities;
16
17 b. prevent the concentration of economic power in a few persons who
18 threaten to control the production, distribution or trade to stifle competition,
19 distort, manipulate or constrict the discipline of free markets, increase
20 market prices; and,
21
22 c. penalize unfair trade, anti-competitive conduct and combinations of
23 restraint of trade, with the objective of protecting consumer welfare and
24 advancing domestic and international trade and economic development.
25

26
27 **SEC. 3.** *Scope and Application.* – This Act shall be enforceable within the
28 territory of the Republic of the Philippines and shall apply to all areas of trade,
29 industry, commerce and all economic activities. It shall likewise be applicable to
30 international trade having direct, substantial and reasonably foreseeable anti-

1 competitive effects in trade, industry or commerce in the Republic of the
2 Philippines including those that result from acts done outside the country.

3
4 This Act shall apply to: (a) all firms as defined hereunder and their conduct,
5 agreements, actions or transactions involving goods or services; and, (b) all
6 agents, officers, employees, partners, owners, directors, consultants,
7 stockholders, representatives, managers, supervisors, and all other natural
8 persons who, acting on behalf of juridical persons shall authorize, engage or aid
9 in the commission of restrictive practices prohibited under this Act.

10
11 This Act shall apply neither to the combinations or activities of workers or
12 employees nor to agreements or arrangements with their employers when such
13 conduct, activities, or arrangements are designed solely to facilitate collective
14 bargaining in respect of conditions of employment.

15
16 This Act shall not apply to liner shipping agreements among vessel-operating
17 ocean carriers, which types of agreements have operated historically in the
18 Philippines foreign trades or are otherwise intended to promote efficiency,
19 maintenance of service or import or export shipments, or stability in ocean
20 shipping rates or services, including agreements to cooperate in the joint
21 provision or sharing of liner shipping vessels and related activities, or
22 agreements with respect to operational, technical, commercial, or price matters
23 for ocean, intermodal, or related services; *Provided*, That any agreement
24 covering rate or other price matters shall not restrict an individual carrier from
25 offering individual service contract terms.

26
27
28 **SEC. 4. Definition of Terms.** – As used in this Act, the following terms shall be
29 defined as:

- 30
31 i. "Competition" shall refer to the process by which economic agents, acting
32 independently in a market, limit each other's ability to control the prevailing
33 conditions in the market;
34
35 ii. "Conduct" shall refer to any agreement, contract, arrangement,
36 understanding or concerted action, whether formal or informal, written or
37 oral;
38
39 iii. "Control of a firm" shall refer to the ability to substantially influence or
40 determine the actions or decisions of a firm including but not limited to at
41 least fifty one percent (51%) ownership of shares in a stock entity, or in
42 the position to cast at least fifty one percent (51%) of the voting rights of a
43 firm, or to designate a majority of a board of directors or equivalent
44 management entity, directly or indirectly, regardless of the number of
45 intermediary firms;
46
47 iv. "Dominance" shall refer to having the power to act independently of
48 competitors, customers, and/or consumers;
49
50 v. "Firms" shall include any person, natural or juridical, partnership,
51 combination or association in any form, whether incorporated or not,
52 domestic or foreign, including those owned and controlled by the
53 government, engaged directly or indirectly in any economic activity;
54 *Provided*, That two firms, one of which is controlled by the other, shall be
55 treated as one firm; *Provided further*, That two or more firms that are
56 controlled by a single firm shall be treated as one firm;
57

- 1 vi. "Goods" include all types of tangible and intangible property that could be
2 bought and sold, and the possession of which could be transferred in
3 whole or in part, temporarily or permanently;
4
- 5 vii. "Services" shall refer to the provision of things of value or articles or items
6 that could be used by one person, whether natural or juridical, to another
7 through human interaction or through the use, without transfer of
8 ownership, of the facilities of the provider by the client, or a combination of
9 both. It is the non-material equivalent of a good, consumed at the point of
10 sale and does not result in ownership;
11
- 12 viii. "Relevant Market" refers to the line of commerce in which competition has
13 been restrained and to the geographic area involved, including all
14 reasonable substitutable products or services, and all nearby competitors,
15 to which consumers could turn in the short term if the restraint or abuse
16 increased prices by a not significant amount;
17
- 18 ix. "Competitors" are buyers or sellers in the relevant market who trade or
19 offer to trade same, similar or substitutable goods or services or those
20 who plan to enter the relevant market.
21

22
23 **CHAPTER II**
24 **OFFICE FOR COMPETITION**
25

26
27 **SEC. 5. Office for Competition.** There shall be established an Office for
28 Competition, hereinafter to be called as the "Office".
29

30 For budgetary purposes, the Office shall be under the Department of Justice. In
31 the performance of its powers and functions, the Office shall endeavor to consult
32 with the Department of Trade and Industry and other regulatory and/or
33 appropriate government agencies to ensure effective implementation of this Act.
34

35
36 **SEC. 6. Powers and Functions of the Office for Competition.** – The Office shall
37 have the following powers and functions:
38

- 39 a. Investigate any violation of this Act *motu proprio*, or upon the filing of a
40 verified complaint by an interested party, or upon referral by the
41 concerned regulatory agency, or where it has reasonable grounds for
42 suspecting that an infringement of Sections 8, 9, 10 or 11 has occurred or
43 is occurring;
44
- 45 b. Issue *subpoena duces tecum* to require the production of books, records
46 or other documents or data which relate to any matter relevant to the
47 investigation, and summon witnesses;
48
- 49 c. Upon *order of the court*, undertake inspections of business premises and
50 other premises including land and vehicles, homes of firm directors,
51 officers and employees where it reasonable suspects that relevant books,
52 records, or other documents which relate to any matter relevant to the
53 investigation are kept; *Provided*, That such order may be granted *ex parte*
54 to prevent the removal, concealment, tampering with or destruction of the
55 books, records or other documents;
56

- 1 d. Question any firm director, officer or employee in connection with any
2 matter relevant to the investigation;
3
- 4 e. Conduct administrative proceedings as provided for under this Act;
5
- 6 f. Obtain *interim* measures by way of court order in order to stop a firm or
7 firms from continuing to engage in certain conduct and practices pending
8 investigation;
9
- 10 g. Issue a show cause order against any person conducting business, in
11 whole or in part, in a manner that may not be in accord with the provisions
12 of this Act or other competition laws;
13
- 14 h. Issue cease and desist orders *ex parte* or *de parte* depending on the
15 gravity of the injury and availability of immediate reliefs;
16
- 17 i. Conduct preliminary inquiry;
18
- 19 j. Approve, modify or disapprove proposals for consent order;
20
- 21 k. Institute civil or criminal proceedings;
22
- 23 l. Deputize any government agency to provide information and lend in the
24 discharge of its responsibilities under this Act and require submission or
25 examine records and documents in the possession or control of such
26 government agency;
27
- 28 m. Monitor compliance by the person or firms concerned with the cease and
29 desist order or consent judgment;
30
- 31 n. Gather and compile information and investigate from time to time, the way
32 a given industry, domestic or foreign, is structured or organized; the way
33 the firms within that industry act, behave, or conduct themselves in such
34 matters as setting prices, determining output, and the resulting
35 performance of the industry as a whole; the organization, business,
36 conduct, practices and management of any person or firm, or engaged in
37 trade, commerce, or industry and its relation to other persons or firms;
38
- 39 o. Require, by general or special orders, firms engaged in commerce, trade,
40 commerce, or industry to file such form as may be prescribed, annual or
41 special reports, or answers in writing to specific questions, furnishing such
42 information as it may require as to the organization, business, conduct,
43 practices, management and relation to other persons or the firms filing
44 such reports or answers in writing;
45
- 46 p. Make public, from time to time, such portions of the information obtained
47 by it under this Act as it shall deem expedient in the public interest;
48
- 49 q. To develop programs on the pernicious effects of anti-competitive
50 conduct, the methods and techniques used in such practices, the
51 detection of such schemes, the promotion of consumer welfare and the
52 effective ways of prosecuting and punishing violators; and,
53
- 54 r. Submit annual and special reports to Congress, including proposed
55 legislation for the regulation of commerce, trade or industry, and provide
56 for the publication of its reports and resolutions.
57

1 **SEC. 7. Powers of Concerned Regulatory Agencies.** – The exercise of
2 enforcement and regulatory powers by the Office shall be cumulative to the
3 power and authority of the different government agencies over an industry or a
4 sector of an industry and shall not in any way derogate the power and authority
5 of the concerned agency. The Office shall enlist the assistance of any branch,
6 department, bureau, office, agency or instrumentality of the government in
7 undertaking any and all mandated functions under this Act, which may include
8 the use of its personnel, facilities and resources for the more resolute prevention
9 of anti-competition conduct, detection of such violations and prosecution of
10 offenders.

11
12
13 **CHAPTER III**
14 **PROHIBITED ACTS**
15

16
17 **SEC. 8. Anti-Competitive Conduct.** – It shall be unlawful for firms to engage in
18 any conduct with the object or effect of unreasonably preventing, restricting or
19 lessening substantially competition including but not limited to:

- 20
21 a. Any conduct to directly or indirectly fix, control or maintain prices;
22
23 b. Any conduct to set, limit or control production, markets, technical
24 development, or investment;
25
26 c. Any conduct to divide or share the market, whether by volume of sales or
27 purchases, territory, type of goods or services, buyers or sellers or any
28 other means;
29
30 d. Any conduct to fix price at an auction or in any form of bidding including
31 cover bidding, bid suppression, bid rotation and market allocation and
32 other analogous practices of bid manipulation;
33
34 e. Any conduct to apply dissimilar conditions to equivalent transactions with
35 other parties, thereby placing them at a competitive disadvantage.
36

37 *Provided,* That any such agreement which contributes to improving the
38 production or distribution of goods and services or to promoting technical or
39 economic progress, while allowing consumers a fair share of the resulting
40 benefits, shall not be deemed a violation of this Act.
41

42
43 **SEC. 9. Abuse of Dominance.** – It shall be unlawful for one or more firms to
44 abuse their dominance by engaging in unfair competition with the object or effect
45 or preventing, restricting, or lessening competition including but not limited to:

- 46
47 a. Selling goods or services below cost; *Provided,* That the following shall be
48 permissible:
49 i. for clearance, inventory or sale purposes;
50
51 ii. as a reaction to a competitor lowering its price or as a reaction to
52 market forces;
53
54 iii. in such other instances determined by the Office for Competition in
55 consultation with the Department of Trade and Industry (DTI);
56
57 b. Imposing barriers to entry;

- 1
2 c. Setting prices or other terms or conditions that differ or discriminate
3 between their customers or sellers; *Provided*, That the following shall be
4 considered permissible price differentials:
5
6 i. Socialized pricing for the less fortunate sector of the economy;
7
8 ii. Price differentials which reflect an allowance for differences in the
9 cost of manufacture, sale or delivery resulting from differing
10 methods or quantities in which the goods or services are sold or
11 delivered to the buyers or sellers;
12
13 iii. Price differential or terms of sale in response to the competitive
14 price of payments, services or facilities furnished by a competitor;
15
16 iv. Price changes in response to changing market conditions or
17 marketability of goods or services.
18
19 d. Imposing restrictions on the lease or contract for sale or trade of goods or
20 services concerning where, to whom, or in what forms goods or services
21 may be sold or traded, such as, but not limited to, fixing prices, or giving
22 preferential discounts, or rebate upon such price, or imposing conditions
23 not to deal with competing firms, where the object or effect of such
24 restrictions is to prevent, restrict or lessen competition; *Provided*, That
25 nothing contained herein shall prohibit or render unlawful permissible
26 franchising, licensing, exclusive distributorship or merchandising
27 agreements;
28
29 e. Making the supply of particular goods or services dependent upon the
30 purchase of other goods or services from the supplier;
31
32 f. Any unjustified refusal to sell or conspiracy not to sell or to stop doing
33 business on the part of the supplier of any goods or services.
34

35 There shall be a rebuttable presumption of dominance if a firm controls at least
36 forty percent (40%) of the market. If market shares are not available to the
37 Office, the structure of the market, degree of integration, technological and
38 financial advantages and other relevant factors shall be considered in
39 determining control of the market.
40

41
42 **SEC. 10. *Anti-Competitive Mergers.*** – No firm engaged in commerce, trade or
43 industry shall acquire, directly or indirectly, the whole or any part of the stock or
44 other share capital, assets or voting rights of one or more firms engaged in any
45 commerce, trade or industry where the object or effect of such conduct is to
46 prevent, restrict or substantially lessen competition.
47

48 In the case of merger of banks or banking institutions, building and loan
49 associations, trust companies, insurance companies, public utilities, educational
50 institutions and other special corporations governed by special laws, the
51 favorable recommendation of the appropriate government agency shall first be
52 obtained.
53

54
55 **SEC. 11. *Criminal Offense.*** – A person commits an offense when he or it
56 engages in any conduct with another person:
57

- 1 a. to fix, maintain, increase or control the price for the supply of goods or
2 services;
3
4 b. to allocate sales, territories, customers or markets for the production or
5 supply of goods or services; or
6
7 c. to fix, maintain, control, prevent, lessen or eliminate the production or
8 supply of goods or services.
9

10 A person that shall be found to have violated this Section, shall, for each and
11 every violation, be punished by a fine up to ten percent (10%) of the person's
12 gross revenue for the immediately preceding fiscal year; *Provided*, That to be
13 convicted, the anti-competitive conduct must be proved beyond reasonable
14 doubt.
15

16 17 CHAPTER IV 18 ENFORCEMENT 19

20
21 **SEC. 12. Preliminary Inquiry.** – The Office shall *motu proprio*, or upon the filing
22 of a verified complaint by an interested party or upon referral by the concerned
23 regulatory agency, initiate a preliminary inquiry for the enforcement of this Act.
24

25 No criminal or civil case for violation of this Act shall be filed or instituted by a
26 private party directly in court, unless there has been a preliminary inquiry
27 conducted by the Office and the same has been endorsed for filing by the Office.
28

29
30 **SEC. 13. Power to Investigate and Enforce Orders and Resolutions.** – The
31 Office shall conduct preliminary inquiries by administering oaths, issuing
32 subpoena *duces tecum* and summoning witnesses, and commissioning
33 consultants or experts. It shall determine if any provision of this Act has been
34 violated, enforce its orders and carry out its resolutions by making use of any
35 available means, provisional or otherwise, under existing laws and procedures
36 including the power to punish for contempt and to impose fines.
37

38
39 **SEC. 14. Self-incrimination.** – A person subject of any preliminary inquiry or
40 investigation by the Office shall produce the specified document or information
41 when so required by written notice subject only to the limitations provided for in
42 Article III, Section 17 of the 1987 Philippine Constitution.
43

44
45 **SEC. 15. Confidentiality of Information.** – Any document or information
46 submitted by firms, as determined and marked confidential by the Office, relevant
47 to any investigation being conducted pursuant to this Act shall not, in any
48 manner, be directly or indirectly disclosed, published, transferred, copied, or
49 disseminated. The identity of persons who provide information to the Office and
50 who need confidentiality to protect themselves against economic retaliation, and
51 any deliberations in regard to current or pending matters shall remain
52 confidential.
53

54 Any person who violates this provision shall be punished by a fine of not less
55 than One hundred thousand pesos (Php 100,000.00) but not more than Five
56 hundred thousand pesos (Php500,000.00).
57

1 **SEC. 16. Immunity from Suit; Leniency program.** – Any person or firm which
2 cooperates or furnishes any information, document or data to the Office before or
3 during the conduct of the preliminary inquiry that constitutes material evidence
4 under this Act shall be immune from any suit or charge including from affected
5 parties and third parties; *Provided*, That the person or firm is not the most guilty;
6 *Provided, further*, That any person or firm which cooperates or furnishes
7 information, document or data to the Office in connection with an investigation
8 being conducted shall not be subjected to any form of reprisal or discrimination;
9 *Provided, furthermore*, That such reprisal or discrimination shall be considered a
10 violation of this Act and subjected to the penalties provided for under Section 16
11 of this Act; *Provided, finally*, That the Office shall promulgate a leniency program
12 in accordance with this Section.

13
14 Nothing in this section shall preclude prosecution for persons and firms who
15 report to the Office false, misleading or malicious information, data or documents
16 damaging to the business or integrity of the persons or firms under inquiry. Such
17 act shall be considered as a violation of this Act and subject to the penalties
18 provided in relevant sections.

19
20
21 **SEC. 17. Consent Order.** – Any firm under inquiry may submit a proposal for a
22 consent order at any time before the termination of the preliminary inquiry with: a)
23 the payment of an amount within the range of fines provided for under Section
24 19; b) by entering into an undertaking to effectively stop and rectify the acts
25 complained of, make restitution to the affected parties, whether or not the parties
26 are plaintiffs or witnesses; and, c) submitting regular compliance reports as may
27 be directed.

28
29 Nothing in this section shall preclude prosecution for persons and firms who
30 reported to the Office with malicious information, data and falsified documents
31 which are damaging to the business and integrity of the persons and firms under
32 inquiry. Such act shall likewise be considered as an unfair trade practice
33 punishable under this Act.

34
35
36 **SEC. 18. Termination and Action on Preliminary Inquiry.** – The Office, after
37 considering the statements made, or documents or articles produced, in the
38 course of an inquiry conducted by it, shall terminate the preliminary inquiry by
39 issuing a resolution ordering its closure if no violation or infringement of this Act
40 is found; or by issuing a consent order resolution; or issuing a resolution to,
41 singly or cumulatively: (a) impose penalties in the range provided under this Act;
42 (b) order the rectification of certain acts or omissions; or (c) order the restitution
43 of the affected parties.

44
45 When determined by the facts and circumstances, the Office shall institute a civil
46 action by class suit in the name of the Republic of the Philippines, as *parens*
47 *patriae*, on behalf of persons residing in the Philippines, to secure treble
48 damages for any injury sustained by such persons by reason of any violation of
49 this Act, plus the cost of suit and reasonable attorney's fees.

50
51 If the evidence so warrants, the Office shall file criminal cases for violation of this
52 Act or relevant laws before the Department of Justice.

53
54
55 **SEC. 19. Non-Adversarial Administrative Remedies.** – The Office shall, under
56 such rules and regulations it may prescribe, encourage voluntary compliance
57 with this Act and other competition laws by making available to the parties

1 concerned the following and other analogous non-adversarial and non-
2 adjudicatory administrative remedies, before the institution of administrative, civil
3 or criminal action:

- 4
- 5 a. Request for Binding Ruling. – Any person who is in doubt as to whether
6 the contemplated or existing act, course of conduct, agreement, decision
7 or practice is in compliance with, is exempt from, or in violation of any of
8 the provisions of this Act, other competition laws, or implementing rules
9 and regulations thereof, may request the Office, in writing, to render a
10 binding ruling thereon;
- 11
- 12 b. Show Cause Order. – Upon preliminary findings *motu proprio* or on written
13 complaint under oath by an interested party, that any person is conducting
14 his business, in whole or in part in a manner that may not be in accord
15 with the provisions of this Act or other competition laws, and it finds that
16 the issuance of a show cause order would be in the interest of the public,
17 the Office shall issue and serve upon such person or persons a written
18 description of its business conduct complained of, a statement of the facts,
19 data, and information together with a summary of the evidence thereof,
20 with an order requiring the said person or persons to show cause, within
21 the period therein fixed, why no order shall issue requiring such person or
22 persons to cease and desist from continuing with ties identified business
23 conduct, or pay the administrative fine therein specified, or readjust its
24 business conduct or practices;
- 25
- 26 c. Proposal for Consent Judgment. – At any time prior to the issuance of a
27 binding ruling, the promulgation of a cease and desist judgment under a
28 show cause order or the promulgation of a decision of judgment in any
29 administrative, civil, or criminal case, the person or persons, whose
30 business conduct is under inquiry in the particular proceedings may,
31 without in any manner admitting a violation of this Act or any other
32 competition laws, submit to the Office a written proposal for the entry of a
33 consent judgment, specifying therein the terms and conditions of the
34 proposed consent judgment;
- 35
- 36 d. Consultations. – Prior to the fitting of a request for a binding ruling or the
37 submission of a proposal for consent judgment, the person or persons
38 concerned may communicate, in writing, with the Office on matters that
39 should be included or excluded in such request or proposal, which the
40 Office may consider necessary for the effective enforcement of this Act or
41 other competition laws;
- 42
- 43 e. Binding Ruling, Cease and Desist Order, and Consent Judgment. – Based
44 upon the facts, data, and information disclosed or supplied by the persons
45 concerned, or established by substantial evidence during the hearing, the
46 Office shall issue a binding ruling, a cease and desist order or an approval
47 of the proposal for a consent judgment, as the case may be, with or
48 without conditions, to the effect that the particular act, course of conduct,
49 agreement, decision or practice is in accord with this Act or other
50 competition laws, or is exempt therefrom, or constitutes a violation thereof.
51 If the Office finds that there is substantial evidence tending to show that
52 the act, course of conduct, agreement, decision or practice of the person
53 or persons concerned is prohibited, it shall include in its decision the
54 appropriate order requiring the person or persons concerned to perform
55 certain acts:
- 56

- 1 i. Cease and Desist Order. – To cease and desist from continuing
2 with the identified act, course of conduct, agreement, decision, or
3 practice found to be in violation of the provisions of this Act;
4
5 ii. Administrative Penalty or Fine. – To pay the fine therein fixed;
6
7 f. Monitoring of Compliance. – The Office shall monitor the compliance by
8 the person or persons concerned, their officers and employees, with the
9 final and executory binding ruling, cease and desist order, or approval of a
10 consent judgment. Upon motion of an interested party, the Office shall
11 issue a certification to the effect that the person or persons concerned
12 have, or have not, as the case may be, complied with a final and
13 executory ruling, order or approval;
14
15 g. Inadmissibility in Evidence. – The request for a binding ruling, the show
16 cause order, or the proposal for consent judgment; the facts, data, and
17 information therein contained or subsequently supplied by the person or
18 persons concerned; the admissions, oral or written, made by them against
19 their interest; all other documents filed by them including their evidence
20 presented in the proceedings before the Office; and the judgment
21 rendered thereon, shall not be admissible as evidence in any
22 administrative, civil or criminal proceedings against such person or
23 persons, their officers, employees, and agents nor constitute a basis for
24 the introduction of the binding ruling, the cease and desist order, or the
25 consent judgment as *prima facie* evidence against such persons in any
26 such action or proceeding;
27
28 h. Modification or Reversal of Ruling, Order or Approval. – The Office may
29 *motu proprio* or upon petition of an interested party, after notice and
30 hearing, reopen and alter, modify, or set aside, in whole or in part, a
31 binding ruling, a cease and desist order, or an approved consent
32 judgment:
33
34 i. Whenever conditions of material fact or law have so changed as to
35 require such action;
36
37 ii. When the concerned person or persons fail or refuse, without
38 justifiable cause therefore, to comply with any condition attached to
39 such ruling, order or approval, including an order to readjust their
40 method of doing business; or
41
42 iii. When the ruling, order or approval was based on deliberately
43 falsified material fact, data or information supplied by an interested
44 party benefited by such ruling, order or approval.
45

46 The modification or reversal of a binding ruling, a cease and desist order, or an
47 approved consent judgment shall have no retroactive effect and shall not affect
48 or impair any right legally acquired prior to the modification or reversal thereof,
49 except, that the party who is guilty of unjustified failure or refusal to comply as
50 specified in paragraph (2) hereof, or have deliberately supplied such falsified
51 material fact, data or information as specified in paragraph (3) above, is barred
52 from claiming any vested right therein.
53

54
55 **SEC. 20. Standards.** – In the exercise of its powers or in the discharge of its
56 duties under this Act, the Office shall consider the following:
57

- 1 a. The way a given industry is structured or organized whether monopolistic,
2 oligopolistic, or competitive;
3
- 4 b. The ways the persons engaged in business within a given industry act,
5 behave or conduct themselves in such matters as setting prices,
6 determining output, and other relevant factors and the resulting
7 performance of the industry as a whole;
8
- 9 c. The supply and demand situation for the relevant goods or services;
10
- 11 d. The appreciable impact of the particular market conduct on market
12 conditions, if any;
13
- 14 e. The need to bring together complimentary skills to avoid duplication and
15 promote efficiency in the industry;
16
- 17 f. The need to determine whether or not the anticompetitive effect of a
18 particular market conduct may be offset by increased efficiency and
19 reduction of excessive or unnecessary expenses;
20
- 21 g. The cost and profit levels of the industry;
22
- 23 h. The need to increase productivity in the particular industry involved;
24
- 25 i. The state of the industry, including the need to develop it or to save it from
26 its distressed state;
27
- 28 j. The need of the industry to work more rationally and increase their
29 productivity and competitiveness on a larger market;
30
- 31 k. The need to respond to international competition and other developments
32 in the international market;
33
- 34 l. The need to encourage or develop small and medium-sized industries;
35
- 36 m. The impact of the market conduct on the economy and on the consuming
37 public, particularly low-income groups;
38
- 39 n. The need to pool capital resources;
40
- 41 o. The extent to which the consumers have a possibility of choice of the
42 product or service involved;
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- 44 p. The economic and financial power of the parties concerned;
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- 46 q. The attainment of the objectives which are given priority interest in the
47 general interest of the country, including the need for accelerated
48 industrialization; and,
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- 50 r. The extent to which less restrictive practices are available.
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CHAPTER V
FINES, PENALTIES AND DECISION

SEC. 21. Administrative Penalties. –

- a. Without prejudice to the violation of other laws, any firm that shall be found to have violated Sections 8, 9, 10 and 11 of this Act, or any combination thereof, shall, for each and every violation, be punished by a fine of not less than Ten million pesos (P10,000,000.00) and not exceeding Fifty million pesos (P50,000,000.00) if a natural person; by a fine of not less than Two hundred fifty million pesos (P250,000,000.00) but not exceeding Seven hundred fifty million pesos (P750,000,000.00) if a firm, at the discretion of the Office.
- b. In addition, a fine shall be imposed in an amount double the gross proceeds gained by the violator/s or double the gross loss suffered by the plaintiffs.
- c. Failure to Comply With an Order of the Office. – Any person who fails or neglects to comply with any term or condition of a binding ruling, a cease and desist order or an order for readjustment issued by the Office, shall pay a fine of not less than Fifty thousand pesos (P50,000.00) for each violation. Each violation shall be deemed a separate offense.
- d. Supply of Incorrect or Misleading Information. – The Office may likewise impose upon persons or entities fines of not less than Five thousand pesos (P5,000.00) to not more than One hundred thousand pesos (P100,000.00) where, intentionally or negligently, they supply incorrect or misleading information in any document, application or other paper filed with or submitted to the Office or supply incorrect or misleading information in an application or other paper filed with or submitted to the Office or supply incorrect or misleading information in an application for a binding ruling, a proposal for a consent judgment, proceedings relating to a show cause order, or application for modification of the Office's ruling, order or approval, as the case may be.

For purposes of determining the persons who will suffer the punishment of imprisonment as provided under the preceding paragraph, provisions of the Revised Penal Code, Title II, Articles 16, 17, 18 and 19 on criminal liability of principals, accomplices, and accessories shall apply.

SEC. 22. Contempt. – To effectively implement the provisions of this Act, the Office may summarily punish for contempt by a fine not exceeding One hundred thousand pesos (Php100,000.00), any person guilty of such misconduct in its presence or in its vicinity as to seriously interrupt any hearing, session or any proceedings before it, including cases in which a person willfully fails or refuses, without just cause; to comply with a summons, *subpoena* or *subpoena duces tecum*; being present at a hearing, proceeding, session or investigation, refused to be sworn as a witness or to answer questions or to furnish information when lawfully required to do so.

SEC. 23. Violation by Corporation, Partnership, Association, or Other Entity. – Whenever a corporation, partnership, association, firm or other entity, whether domestic or foreign, shall commit any of the violations under this Act, the

1 chairman of the board of directors, executive officers of the firm, the general
2 partners of a partnership and employees directly responsible, shall be jointly and
3 severally liable with the firm for any sanction or fines imposed under this Act.
4

5 Should the offense be committed by a foreign corporation licensed to do
6 business in the Philippines, the person or persons directly responsible in the
7 Philippines for its management and operation shall be liable. In addition, the
8 Office may apply before the court for its license to do business in the Philippines
9 to be cancelled.
10

11 It shall not be a defense for the persons directly responsible for the violation to
12 claim lack of knowledge or being unaware of the violation unless it can be
13 established that even with the exercise of due diligence and proper supervision,
14 the violation could not have been avoided or prevented.
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16 Any agreement between the officer or employee with the firm for the latter to
17 directly or indirectly assume, satisfy or indemnify, in whole or in part, the fine or
18 penalty imposed under this Act against such officer or employee shall be void.
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21 **SEC. 24. Alien Violators.** – A foreigner who violates any provision of this Act
22 shall, in addition to the other imposable penalties, be deported after service of
23 sentence without need of further proceedings.
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26 **SEC. 25. Effect of Final Judgment.** – Any final judgment in a civil or criminal
27 action brought by or on behalf of the People of the Philippines under this Act to
28 the effect that a defendant has violated any or all of the provisions of this Act
29 shall be *res judicata* as to any claim by any person on whose behalf such action
30 was brought; *Provided*, That such person notifies the court having jurisdiction of
31 the case within the period given by the court; *Provided, further*, That such period
32 shall not be less than ninety (90) days.
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34 It shall be *prima facie* evidence against such defendant in any civil action brought
35 by any other party against such defendant under this Act as to all matters
36 respecting which said judgment would be an estoppel as between the parties
37 concerned.
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40 **SEC. 26. Decisions of the Office for Competition.** – Decisions, awards,
41 resolutions and orders of the Office shall become final after the lapse of fifteen
42 (15) days from receipt of a copy thereof by the parties, unless a motion for
43 reconsideration is filed within such period. Only one (1) motion for
44 reconsideration by anyone party shall be allowed and entertained except in
45 highly meritorious cases. Decisions or final orders of the Office shall be
46 appealable to the Court of Appeals.
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49 **SEC. 27. Private Action.** – Regardless of the status or pendency of any
50 proceedings, any person or firm that suffers injury by reason of any violation of
51 this Act may institute a separate independent civil action, irrespective of the
52 amount involved in the controversy against the defendants and shall recover
53 treble damages sustained, the costs of suit and attorney's fees equivalent to
54 Twenty percent (20%) of the award; *Provided, however*, That no filing fees shall
55 be collected; *Provided, further*, That filing fees shall constitute a first lien in the
56 award of damages.
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2 **SEC. 28. Measurement of Damages.** – Damages may be proved and assessed
3 in the aggregate by statistical or sampling methods, by the computation of illegal
4 overcharges, or by such other reasonable system of estimating total damages
5 without the necessity of separately proving the individual claim of, or amount of
6 damage to, persons on whose behalf the suit was bought.
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10 **CHAPTER VI**
11 **OTHER PROVISIONS**
12

13 **SEC. 29. Statute of Limitations.** – Any civil or criminal action to enforce any
14 cause of action arising from a violation of any provision of this Act shall be
15 forever barred unless commenced within five (5) years after the cause of action
16 accrues. The running of the statute of limitation shall be suspended during the
17 pendency of any proceeding.
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19 The cause of action begins to run when the plaintiff suffers injury to its business
20 or property; *Provided*, That when the damage suffered by the plaintiff is too
21 speculative to prove, the cause of action does not accrue until the damage
22 becomes probable; *Provided, however*, That if the plaintiff's injury is the result of
23 the continuing violations of this Act, each independent anti-competitive act may
24 restart the limitation period or when a plaintiff reasonably fails to uncover a cause
25 or action that was fraudulently concealed by a defendant.
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28 **SEC. 30. Prohibition on the Issuance of Temporary Restraining Orders,**
29 **Preliminary Injunctions and Preliminary Mandatory Injunctions.** – Except for the
30 Supreme Court, no other court shall issue any temporary restraining order,
31 preliminary injunction or preliminary mandatory injunction against the regulatory
32 agency in the exercise of its duties or functions; *Provided*, That, this prohibition
33 shall apply in all cases, disputes or controversies instituted by a private party,
34 including, but not limited to, cases filed by regulated firms or those claiming to
35 have rights through such firms; *Provided, however*, That, this prohibition shall not
36 apply when the matter is of extreme urgency involving a constitutional issue,
37 such that the non-issuance of a temporary restraining order will result in grave
38 injustice and irreparable injury to the public; *Provided, further*, That, the applicant
39 shall file a bond, in an amount to be fixed by the Court, but in no case shall it be
40 less than half of the imposable fines provided for under this Act; *Provided, finally*,
41 That in the event that the court finally decides that the applicant was not entitled
42 to the relief applied for, the bond shall accrue in favor of the regulatory agency.
43

44 Any temporary restraining order, preliminary injunction or preliminary mandatory
45 injunction issued in violation of this Section is void and of no force and effect.
46 Any judge who violates this Section shall be penalized by suspension of at least
47 one (1) year without pay in addition to other administrative, civil or criminal
48 penalties.
49

50
51 **SEC. 31. Intellectual Property Rights.** – The implementation of the provisions of
52 this Act shall be without prejudice to the rights, liabilities and remedies under
53 Republic Act No. 8293, otherwise known as the Intellectual Property Code of the
54 Philippines; *Provided, That*, the exercise of intellectual property rights shall not in
55 any way be used to justify violations of this Act.
56
57

1 **SEC. 32. Trade Associations.** – Trade associations are expressly covered by
2 this Act; *Provided*, That trade associations can be organized to promote quality
3 standards and safety issues and advocate positions on issues that are mutually
4 relevant to its members.
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7 **SEC. 33. Implementing Rules and Regulations.** – Implementing rules and
8 regulations shall be issued within one hundred eighty (180) days from the
9 effectivity of the Act in consultation with the Department of Trade and Industry
10 and concerned regulatory agencies and stakeholders; *Provided*, That the Office
11 shall promulgate guidelines to give further effect to this Act; *Provided, further*,
12 That the implementing rules and regulations may be revised as necessary;
13 *Provided however*, That such guidelines and revised rules and regulations shall
14 only take effect following its publication in two (2) newspapers of general
15 circulation or posting on the official website.
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18 **SEC. 34. Appropriations.** – The amount necessary to implement the provisions
19 of this Act shall be included in the annual General Appropriations Act. However,
20 for its initial budgetary requirements, the amount of One Hundred Million Pesos
21 (P 100,000,000.00) is hereby appropriated from whatever savings or sources
22 available.
23

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25 **SEC. 35. Separability Clause.** – If any clause, sentence, section or part of this
26 Act shall be adjudged by a court of competent jurisdiction to be invalid, such
27 judgment shall not affect, impair or invalidate the remainder of this Act, but shall
28 be confined in its operation to the clause, sentence, paragraph, section, or part
29 thereof directly involved in the controversy.
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32 **SEC. 36. Suppletory Application.** – For purposes of this Act, the Revised Penal
33 Code, as amended, and other applicable laws shall be applied in a suppletory
34 character.
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37 **SEC. 37. Repealing Clause.** – The following laws, insofar as they are
38 inconsistent with any of the provisions of this Act are hereby repealed, amended
39 or otherwise modified accordingly:
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- 41 a. Sec. 5 (3) of Republic Act No. 7581 or The Price Act;
- 42
- 43 b. Sec. 5 (f) of Republic Act No. 7925 or The Public Telecommunications
44 Policy Act;
- 45
- 46 c. Sec. 11 (a) and (b) of Republic Act No. 8479 or The Downstream Oil
47 Industry Deregulation Act;
- 48
- 49 d. Sec. 45 of Republic Act No. 9136 or The Electric Power Industry Reform
50 Act;
- 51
- 52 e. Sec. 13 of Republic Act No. 9295 or The Domestic Shipping Development
53 Act;
- 54
- 55 f. Sec. 24 and 25 of Republic Act No. 9502 or The Universally-Accessible
56 Cheaper and Quality Medicines Act.
57

1 *Provided*, That in case of conflict between this Act and provisions of existing
2 competition laws and regulations, the provisions of this Act shall prevail.
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5 **SEC. 38. Effectivity Clause.** – This Act shall take effect fifteen (15) days
6 following its complete publication in the *Official Gazette* or in at least two (2)
7 national newspapers of general circulation; *Provided, however*, to allow affected
8 parties to renegotiate agreements or restructure their business to comply with the
9 provisions of the Act, its full implementation will begin six (6) months from
10 issuance of the Implementing Rules and Regulations.
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16 *Approved*,