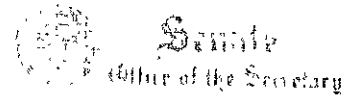


FIFTEENTH (15TH) CONGRESS)
REPUBLIC OF THE PHILIPPINES)
Second Regular Session)



12 JAN 26 10:40

SENATE

S.B. No. 3109

RECEIVED

BY:

Introduced by Senator Teofisto "TG" Guingona III

EXPLANATORY NOTE

Bound by a clear Constitutional mandate, "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 (Article 12, Section 19 of the Constitution)".

However, historical records reveal that through the years, different firms have committed prejudicial acts of market manipulation especially in times of calamities and national shortages. As a result, the consumers suffer while the competitive position of small and medium enterprises continues to be eroded.

Fair competition is the best guarantee that consumers, be they individuals or corporations, will be in a position to obtain the best products and services for their money. It likewise ensures that producers and service-providers will provide the best goods and services at the best prices, and that they would do so solely through astute decisions, business acumen and innovation – thus allowing other firms to enter into and compete fairly in the market.

In order to acquire more market shares, exploit economies of scale, obtain additional business know-how, businesses may acquire other business firms - sometimes even rival firms. However, such right has limits.

It is clear then that the Philippines has in fact a clear competition policy, albeit with different enabling laws, and without a single government entity concerned only with competition policy. It is widely believed then that our competition policy will be best implemented if we enact and strictly enforce a comprehensive competition law.

1 Among others, this bill seeks to define and enumerate prohibited acts that
2 restrict, prevent, limit, and/or distort competition. It likewise seeks to establish a
3 Philippine Fair Competition Commission, an independent agency with the original
4 and exclusive jurisdiction to implement the national competition policy and to
5 attain the objectives and purposes of this proposed measure. It likewise seeks to
6 provide strict penalties for anti-competitive acts and/or omissions.
7

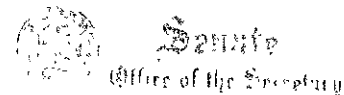
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9 The passage of this measure is sincerely sought.
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TEOFISTO "TG" GUINGONA III

1 FIFTEENTH (15TH) CONGRESS)
2 REPUBLIC OF THE PHILIPPINES)
3 Second Regular Session)



12 JAN 26 19:40

5 SENATE

7 S.B. No. 3109

8 BY:

11 **Introduced by Senator Teofisto "TG" Guingona III**

15 AN ACT TO IMPLEMENT THE COMPETITION POLICY UNDER THE
16 CONSTITUTION, STRENGTHEN THE PROHIBITION AGAINST ABUSE OF
17 MONOPOLY POWER OR DOMINANT POSITION, PREVENT CARTELS,
18 COMBINATIONS IN RESTRAINT OF TRADE AND OTHER ANTICOMPETITIVE
19 PRACTICES AND CONDUCT, AND FOR OTHER PURPOSES.

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

25 **CHAPTER I**
26 **GENERAL PROVISIONS**

28 SECTION 1. **Title.** – This Act shall be known and cited as the "Competition Policy
29 Act of 2011."

31 SEC. 2. **Declaration of Policy.** – Pursuant to the constitutional mandate that
32 the State shall regulate or prohibit monopolies when the public interest so
33 requires and that no combinations in restraint of trade or unfair competition shall
34 be allowed, the State shall:

36 (a) regulate business conduct with the objective of fomenting a business
37 climate conducive to productivity and sustainability, where businesses
38 compete in a level playing field, using only innovation, business
39 acumen, astute marketing, diligence, and ability to raise capital
40 through legitimate means, and in general offering quality goods and
41 services that reflect the best value for customers.

43 (b) safeguard the welfare of consumers, especially the more vulnerable
44 sectors of the economy, most especially in times of calamities, natural
45 disasters, and other disturbances affecting the daily routine and
46 business of persons in the Philippines;

- 1 (c) penalize all forms of unfair trade, anti-competitive conduct and
2 combinations in restraint of trade, with the objective of protecting
3 consumer welfare and advancing domestic and international trade and
4 economic development.
5
- 6 (d) promote and enhance productivity, innovation, economic efficiency,
7 and free, full and fair competition in trade, industry and all commercial
8 economic activities;
9
- 10 (e) prevent or reverse the concentration of economic power in a single or
11 a few persons or related persons in order to preclude a situation where
12 they - to the detriment of competitors or new entrants to the market,
13 suppliers, and the consumers - threaten to control the production,
14 purchase, trade, provision of goods and services, in order to stifle
15 competition, distort, manipulate or constrict the discipline of free
16 markets, or increase market prices in the Philippines.

17 **SEC. 3. *Scope and Application*** – This Act shall be enforceable within the
18 territory of the Republic of the Philippines and shall apply to all areas of trade,
19 industry and commercial economic activity.

20 The Act shall apply to: (a) all firms as defined hereunder and all their
21 commercial agreements, actions or transactions involving goods, services or
22 intellectual property; and, (b) all agents, officers, employees, partners, owners,
23 directors, consultants, stockholders, representatives, managers, supervisors, and
24 all other natural persons who, acting on behalf of juridical persons shall
25 authorize, engage or aid in the commission of restrictive practices prohibited
26 under this Act.
27

28 The absence of an employer-employee relationship under labor relations
29 laws and case law shall not be a defense for any violation of this Act.

30 It shall likewise be applicable to international trade having direct,
31 substantial and reasonably foreseeable effects in trade, industry or commerce in
32 the Republic of the Philippines including those that result from acts done outside
33 the Republic of the Philippines and to acts committed by foreign multinational
34 corporations or foreign entities operating in the Philippines, whether or not
35 organized under Philippine laws, including their subsidiaries, branches, agents,
36 regional offices, and other related entities such as joint ventures.

37 In order to allow affected parties time to renegotiate agreements or
38 restructure their business to comply with the new competition law the penal
39 provisions of this Act shall be imposed one (1) year after its effectivity. During
40 the said one (1) year period, the Philippine Fair Competition Commission shall
41 undertake an advocacy program of the provisions of this Act to the stakeholders
42 and the general public.
43

1 SEC. 4. **Definition of Terms.** – As used in this Act, the following terms shall be
2 defined as:

3
4 (a) "Agreements" shall refer to any type or form of contract, arrangement,
5 understanding, undertaking, concerted action, collective
6 recommendation, parallel action, whether formal or informal, written or
7 oral;

8
9 (b) "Cartel" shall mean a combination of firms or persons, providing goods
10 and/or services in relevant markets, acting or joined together to obtain
11 a shared monopoly or ability to control production, purchase, sale and
12 price, or to obtain control in any particular industry or commodity, or a
13 group of firms that agree to restrict trade. It shall also refer to firms or
14 section of firms having common interest designed to promote the
15 exchange of knowledge resulting from scientific and technical research,
16 exchange of patent rights and standardization of products among
17 themselves with the intent of preventing, restricting or distorting
18 competition;

19
20 (c) "Commission" shall mean the Philippine Fair Competition Commission
21 created under this Act.

22
23
24 (d) "Competition" shall mean both the economic condition and the process
25 by which economic agents, acting independently in a market, engage
26 in commerce through fair means, offering quality goods and services
27 for value, using solely business acumen, legitimate means of raising
28 capital, innovation, hard work, astute marketing, and rational industrial
29 organization. It also includes a process and a situation where
30 economic agents limit each other's ability to control the prevailing
31 conditions in the market, offer their goods and services to consumers
32 without limiting the ability of their competitors to market their goods or
33 provide services, or without preventing new entrants to the market.
34 Finally, it likewise includes a business climate where a firm or
35 combination of related or unrelated firms do not impose their will on
36 their suppliers to the detriment of the latter, the competitors of the
37 former, and the consumers.

38
39
40 (e) "Control" shall refer to at least fifty-one percent (51%) ownership,
41 directly or indirectly, of a firm or a group of firms by another firm;

42
43 (f) "Dominant Position" shall refer to a situation where a firm, either by
44 itself or acting with other firms, is in a position to control a relevant
45 market for the sale of a particular good or service by fixing its prices,
46 excluding competitor firm, or controlling the market in a specific
47 geographical area. It shall also mean a situation where under the pain
48 of boycotting or refusing to sell their supplier's products, the retailers,

1 wholesalers, distributors, with dominant position can force suppliers
2 and manufacturers to provide discounts not granted to competitors.
3 Finally, it shall also include a situation were the sellers are able to give
4 preferential treatment to their own "generic" brands, to the detriment
5 of manufacturers and distributors of other goods also sold by these
6 sellers.

7
8
9 a. "Firms" shall include any person, natural or juridical, partnership,
10 combination or association in any form, whether incorporated or
11 not, domestic or foreign, including those owned or controlled by the
12 government, engaged directly or indirectly in any economic activity:
13 *Provided*, That, two firms, one of which is controlled by the other,
14 shall be treated as one firm: *Provided, further*, That two or more
15 firms that are controlled by a single firm, or controlled by a
16 common parent corporation or controlled by related entities, shall
17 be treated as a single firm;

18
19 (g) "Goods" and "Services": "Goods" include all types of tangible and
20 intangible property that could be bought and sold, and the possession
21 and/or ownership of which could be transferred in whole or in part,
22 temporarily or permanently;

23
24 "Services" shall refer to the provision of things of value or articles or
25 items that could be used by one person, whether natural or juridical, to
26 another through human interaction or through the use, without
27 transfer of ownership, of the facilities of the provider by the client, or a
28 combination of both. It shall include all non-tangible goods. It is the
29 non-material equivalent of a good, consumed at the point of sale and
30 does not result in ownership;

31
32 (h) "Market" shall refer to a place or venue for commercial activity, which
33 may be a barangay, city, province, region, the whole area of the
34 Philippines, or which may extend beyond the borders of the Republic of
35 the Philippines, where articles are bought or sold. It shall also refer to
36 the geographical or economic extent of commercial demand;

37
38 (i) "Mergers" and "Consolidations" refer to transactions or contracts where
39 two or more undertakings, previously independent of one another, join
40 together, regardless of the form by which such transactions or
41 contracts are structured. These would include:

- 42
43 1. two (2) or more corporations or firms merge into a single firm
44 which shall be one of the constituent firms;
45 2. two or more firms consolidate into a new single firm which shall be
46 the consolidated firm;
47 3. one firm takes sole control of, acquires, or takes over the whole or
48 part of another;

- 1 4. one firm or related firms take control of all or substantially all of the
- 2 assets of the another firm;
- 3 5. one firm or related firms take control of the majority shares of
- 4 stock, either by vote or value, or other share capital of another entity;
- 5 6. two or more firms acquire joint control over another firm (joint
- 6 ventures); and
- 7 7. other transactions, whereby one or more firms acquire control over
- 8 one or more firms, such as through interlocking directorates.
- 9

10
11 (j) "Monopoly" shall mean a privilege or undue advantage of one or more
12 firms, consisting in the exclusive right to carry on a particular business
13 or trade, and/or manufacture a particular product, article or object of
14 trade, commerce or industry. It is a form of market structure in which
15 one or only a few firms dominate the total sales of a product or
16 service;

17
18 (k) A "monopsony" exists in a market that has only a single buyer or a
19 cartel of buyers.

20
21 (l) "Relevant Market" shall refer to the line of commerce that must be
22 delineated in order to determine whether competition has been
23 restrained or could potentially be restrained. It shall also refer to the
24 geographic area involved, including all reasonably substitutable goods,
25 and all competitors, from which consumers could purchase should the
26 goods or services in question. The relevant market combines the
27 product market and the geographic market, defined as follows:

- 28
- 29
- 30 i. a relevant product market comprises all those products
- 31 and/or services which are regarded as interchangeable or
- 32 substitutable by the consumer by reason of the products'
- 33 characteristics, their prices and their intended use; and
- 34 ii. a relevant geographic market comprises the area in which
- 35 the firms concerned are involved in the supply of products or
- 36 services and in which the conditions of competition are
- 37 sufficiently homogeneous.
- 38

39 40 **CHAPTER II**

41 42 **PROHIBITED ACTS**

43 44 **SEC. 5. *Collusive Conducts and Anti-competitive Agreements.* –**

45
46
47 Unless otherwise exempted, related or unrelated firms are prohibited from
48 entering into any form of horizontal or vertical agreement, contract,

1 understanding, common or collective recommendation, nor shall they engage in
2 concerted or parallel actions directed at suppressing, undermining, distorting or
3 restricting competition.

4
5 a] "Horizontal agreement" means an agreement entered into between two
6 or more enterprises operating at the same level in the market;

7
8 b] "Vertical agreement" means an agreement entered into between two or
9 more enterprises, each of which operates, for the purposes of the
10 agreement, at a different level of the production or distribution chain, and
11 relating to the conditions under which the parties may purchase, sell or
12 resell certain goods or services;

13
14 Such collusive conducts or anti-competitive agreements shall include the
15 following:

16
17 (a) *Price-Fixing*– Any agreement among competitors, directly or indirectly,
18 to raise, suppress, fix or otherwise maintain the price and other terms
19 and conditions at which their goods and services are sold such as, but
20 not limited to, establishing or adhering to price discounts, holding
21 prices firmly, eliminating or reducing discounts, adopting a standard or
22 formula for computing prices, maintaining certain price differentials
23 between different types, sizes or quantities of products, adhering to a
24 minimum fee or schedule and other analogous schemes with the
25 purpose and effect of creating a monopoly or cartel or lessening
26 competition.

27
28 (b) *Bid Rigging* – Any agreement among bidders or between the bidders
29 and the auctioneer to fix price at auctions or in any other form of
30 bidding, with the purpose and effect of creating a monopoly or cartel,
31 or lessening competition such as, but not limited, to cover bidding, bid
32 suppression, bid rotation and market allocation and other analogous
33 practices of bid manipulation. In determining whether there is price
34 fixing or bid rigging, the following circumstances may be considered:

35
36
37 (1) generally, any considered evidence that two sellers of similar
38 goods have agreed to set the price of their goods, to sell only a
39 certain amount of their goods, or to sell only to a limited
40 number of buyers or consumers;

41
42 (2) a drastic change in prices of goods and services involving
43 more than one seller of similar goods of different brands,
44 particularly if the changes in prices take place in equal amount
45 and about the same time;

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(3) a seller refusing to sell based on an agreement with a competitor;

(4) the same firm has repeatedly been the low bidder who has been awarded contracts for a certain service or a particular bidder seems to win bids on a fixed-rotation;

(5) there is an unusual and unexplainable difference between the winning bid and all other bids; and

(6) the same bidder bids substantially higher on some bids than on others, and there is no logical cost reason to explain the difference.

(c) the limitation or control of the production or distribution, or the technical development, or of the investments.

(d) assignment of markets or the assignment of sources of supplies;

(e) unequal treatment in the sale or purchase of goods or provision of services that puts one or more competitors at a disadvantage.

(f) Monopsony.- A arrangement or a practice where a cartel or a group of firms forces sellers, producers, service providers to accept payment below market price, whether in the form of cash, credit or any other consideration, in exchange for their goods and services. This shall also include an arrangement where the cartel or its related entities will provide credit to the sellers, producers, and service providers only if they agree to sell at below market price and/or sell all of their products and render all of their services to the creditor or the cartel, or any member thereof, or to any person designated by the creditor, cartel, or any member of the latter.

(g) The subordination of the perfection of contracts to buy or sell goods or services to the acceptance by the buyers or sellers of supplementary obligations which, by their nature or pursuant to commercial usage, have no connection with the subject matter of the contract.

There shall be a *prima facie* case for the existence of an anti-competitive agreement or collusive conduct if and when the Commission finds that two or more firms that are ostensibly competing for the same relevant market actually perform uniform or complementary acts among themselves which tend to bring about artificial and unreasonable increase, decrease or fixing in the price of any goods or when they simultaneously and unreasonably increase, decrease or fix

1 the prices of their seemingly competing goods thereby lessening competition in
2 the relevant market among themselves.

3
4 **SEC. 6. *Abuse of Dominant Position.*** – It shall be unlawful for a firm, acting
5 alone, or in concert with one or more firms to abuse their dominant position by
6 engaging in unfair methods of competition, or in unfair or deceptive trade
7 practices, or entering into combinations in the form of trust or otherwise, or
8 conspiracy, for the purpose of preventing, restricting, or distorting competition.
9 Abusive conduct or agreements such as, but not limited to, any of the following,
10 shall be deemed to fall under the crime of abuse of dominant position:

11
12 (a) *Predatory Behavior Towards Competitors* – Any agreement or conduct,
13 including, but not limited to, selling goods or rendering services at below
14 relevant cost with the intent of driving competitors out of the market, or
15 creating barriers to entry;

16
17 (b) *Monopsony.*– A arrangement or a practice sellers, producers, service
18 providers are compelled to accept payment below market price, whether
19 in the form of cash, credit or any other consideration, in exchange for
20 their goods and services. This shall also include an arrangement where the
21 firm with dominant position or its related entities will provide credit to the
22 sellers, producers, and service providers only if they agree to sell at below
23 market price and/or sell all of their products and render all of their
24 services to the firm in possession of dominant position, the creditor, or to
25 any person designated by them.

26
27 (c) *Limitation and Control of Markets* – Any agreement to limit or control
28 production, markets, technical development, or investment with the
29 purpose and effect of creating a monopoly or cartel, or lessening
30 competition;

31
32 (d) *Market Allocation* – Any agreement to divide the market, whether by
33 volume of sales or purchase or by territory, by type of goods sold, by
34 customers or sellers or by any other means, with the purpose and effect of
35 creating a monopoly or cartel, or lessening competition;

36
37 (e) *Arrangements to Share Markets or Sources of Supply* – Any agreement to
38 share markets or sources of supply of raw materials, with the purpose and
39 effect of creating a monopoly or cartel, or lessening competition;

40
41 (f) *Price Discrimination* – Any agreement prescribing or charging, directly or
42 indirectly, discriminatory pricing terms or conditions in the supply or
43 purchase of goods of like grade and quality with the purpose and effect of
44 creating a monopoly or cartel, or substantially lessening competition:
45 *Provided*, That nothing contained herein shall be construed to prohibit
46 permissible price differentials unless the same shall have the effect of
47 preventing, restricting or distorting competition: *Provided, further*, That for

1 the purpose of this section, the following shall be considered permissible
2 price differentials:

3
4
5 (1) Socialized Pricing – Socialized pricing for the less fortunate sectors
6 of the economy;

7
8 (2) Volume Discounts – Price differentials which reflect an allowance
9 for differences in the cost of manufacture, sale, or delivery resulting
10 from differing methods or quantities in which the goods are sold or
11 delivered to the purchasers;

12
13 (3) Competitive Pricing – A price differential or other terms of sale in
14 response to the competitive price of payments, services or facilities
15 furnished by a competitor;

16
17
18 (4) *Bonafide* Selection of Customers – The selection of customers on
19 *bona fide* transaction; and

20
21 (5) Price Differentials Due to Changing Market Conditions or
22 Marketability of Goods – Price changes from time to time in
23 response to changing conditions affecting the market or the
24 marketability of the goods concerned such as, but not limited to,
25 actual or imminent deterioration of perishable goods, obsolescence
26 of seasonal goods, distress sales under court process, or sale on
27 good faith in discontinuance of business.

28
29 (6) Price differentials providing for lower prices for cash payments.

30
31 (g) *Exclusivity Arrangement* – Any agreement imposing restrictions on the
32 lease or contract for sale or trade of goods concerning where, to whom, or
33 in what forms goods may be sold or traded, such as, but not limited to,
34 fixing prices, or giving preferential discounts, or rebate upon such price, or
35 imposing conditions not to deal with competing firms, where the purpose
36 of such agreement is to lessen competition: *Provided*, That nothing
37 contained herein shall prohibit or render unlawful permissible franchising,
38 licensing or exclusive distributorship agreements;

39
40 (h) *Tie-In Arrangements* – Any agreement making the supply of particular
41 goods dependent upon the purchase or lease of other goods from the
42 supplier or his consignee, where the purpose and effect of such sale or
43 lease or such condition is to substantially lessen competition or to create a
44 monopoly or cartel;

45
46 (i) The subordination of the perfection of contracts to buy or sell goods or
47 services to the acceptance by the buyers or sellers of supplementary

1 obligations which, by their nature or pursuant to commercial usage, are
2 not integral to the goods or services being purchased.

3
4 (j) Unequal treatment in the sale or purchase of goods or provision of
5 services that puts one or more competitors at a disadvantage.

6
7 (k) Unjustified refusal to sell goods or provide services.

8
9 (l) *Boycott* – Any concerted refusal to sell or conspiracy not to sell or to stop
10 doing business on the part of the suppliers of any goods, unless for a
11 legitimate purpose.

12
13 The acts described under this Section shall remain prohibited regardless of
14 the manner by which dominant position was obtained.

15
16 **SEC. 7. *Anti-competitive Mergers and Consolidations*** – No person or firm
17 shall be a party to any merger or consolidation and no firm engaged in
18 commerce or trade shall acquire, directly or indirectly, any part of the stock or
19 other share capital, or any part of the assets, of one or more firms engaged in
20 any line of commerce or trade where the effect of such merger or consolidation
21 or acquisition of such stocks, share capital, or assets, or of the use of such stock
22 by voting or granting of proxies or otherwise maybe to substantially lessen
23 competition, or tend to create a monopoly.

24
25 (a) *Permissible Stock or Asset Acquisition or Ownership*. – Nothing
26 contained herein, however, shall be construed to prohibit a
27 corporation from causing the formation of subsidiary corporations, or
28 from owning and holding all or part of the stock of such subsidiary
29 corporations, for the actual carrying on of their immediate lawful
30 business, or the natural and legitimate branches or extensions
31 thereof.

32
33 (b) *Notification Prior to Stock or Asset Acquisition*. – No firm shall acquire,
34 directly or indirectly, the shares of stock or assets of any other firm, if
35 as a result of the acquisition, the acquiring firm would own twenty
36 percent (20%) or more of the shares of stock, other share capital, or
37 assets of the acquired firm, unless, the acquiring and selling firm
38 notify, prior to the conclusion of the agreement for such acquisition
39 and in the prescribed form, the Commission of such proposed
40 acquisition. Only the acquiring firm is required to make the notification
41 in a tender offer. The contemplated acquisition shall be deemed
42 approved, unless the Commission, within thirty (30) calendar days
43 from receipt of the notification, orders the acquiring firm to show cause
44 why the proposed acquisition shall not be declared as prohibited under
45 this Act. The show cause order shall set forth the facts upon which it
46 is based. The acquiring or selling firm may contest the show cause
47 order, in which case, the proposed acquisition shall be considered
48 enjoined until the Commission shall have rendered a decision on the

1 proposed acquisition after due notice and hearing, in accordance with
2 the procedure prescribed herein for the disposition of a show cause
3 order.
4

5 (c) *Transactions Exempt from Prior Notice Requirement.* – The following
6 classes of transactions are exempt from the prior notice requirement
7 under this Section:
8

- 9 (1) Acquisition of goods or realty transferred in the ordinary course
10 of business;
- 11 (2) Acquisitions of bonds, mortgages, deeds of trust, or other
12 obligations which are not voting securities;
- 13 (3) Acquisitions of voting securities of an issuer at least fifty
14 percent (50%) of the voting securities of which are owned by
15 the acquiring firm prior to such acquisition;
- 16 (4) Transfers to, or from, government agencies or
17 instrumentalities, including government-owned or controlled
18 corporations;
- 19 (5) Transactions exempted from the provisions of this Act and
20 other proper and applicable laws;
- 21 (6) Acquisitions, solely for the purpose of investment, of voting
22 securities, if as a result of such acquisition the securities
23 acquired or held do not exceed ten percent (10%) of the
24 outstanding voting securities of the issuer;
- 25 (7) Acquisitions of voting securities pursuant to the preemptive
26 rights of the acquiring firm; or, if, as a result of such
27 acquisition, the voting securities acquired do not increase,
28 directly or indirectly, the acquiring firm's per centum share of
29 outstanding voting securities of the issuers; or
- 30 (8) Such other acquisitions, transfers, or transactions which the
31 Commission may declare as are not likely to violate the
32 provisions of this Act or any other proper and applicable law.
33
34

35 **CHAPTER III** 36 **PHILIPPINE FAIR COMPETITION COMMISSION**

37
38 **SEC. 8. *Philippine Fair Competition Commission.*** – To implement the
39 national policy and attain the objectives and purposes of this Act, an independent
40 Commission is hereby created, which shall be known as the Philippine Fair
41 Competition Commission (PFCC), hereinafter referred to as the Commission, and
42 which shall be organized within sixty (60) days after the approval of this Act. To
43 ensure that the Commission is organized within the mandated period and to
44 ensure that the provisions of the law are followed with regard to its structure, a
45 Task Force to be composed of members from the Office of the President, The
46 Civil Service Commission, Tariff Commission, Department of Trade and Industry,
47 Department of Justice, and the Department of Budget and Management shall be
48 created.

1
2 For budgetary purposes, the Commission shall be under the Office of the
3 President.

4
5 (a) *Composition.* – The Commission shall be composed of a Chairman and
6 four (4) Associate Commissioners. The Commissioners shall be citizens
7 and residents of the Philippines, at least forty (40) but not more than
8 sixty-five (65) years of age, of good moral character and of recognized
9 probity and independence. The Chairman and two (2) of the Associate
10 Commissioners shall be members of the Philippine Bar and the
11 remaining two (2) shall be of recognized competence in the field of
12 economics preferably in industrial organization economics, or finance,
13 commerce, accounting or management. They must have been in the
14 active practice of their professions for at least ten (10) years, but must
15 not have been candidates for any elective national or local office in the
16 immediately preceding elections, whether regular or special.

17
18 (b) *Term of Office.* – The Chairman and the Associate Commissioners
19 shall be appointed by the President of the Philippines. The term of
20 office of the Chairman and the Associate Commissioners shall be six
21 (6) years without reappointment. The Chairman shall hold office for six
22 years and of the first four (4) Associate Commissioners, two (2) shall
23 hold office for a term of four (4) years and two (2) for a term of two
24 (2) years. In case a vacancy occurs before the expiration of the term
25 of office, the appointment to such vacancy shall be only for the
26 unexpired term of the predecessor;

27
28 (c) *Prohibition and Disqualifications.* – The Commissioners shall not, during
29 their tenure, hold any other office of employment. They shall not,
30 during their tenure, directly or indirectly practice any profession,
31 participate in any business, or be financially interested in any contract
32 with, or any franchise, or special privileges granted by the government
33 or any subdivision, agency, or instrumentality thereof, including
34 government-owned and controlled corporations of their subsidiaries.
35 They shall strictly avoid conflict of interest in the conduct of their
36 office, they shall not be qualified to run for any office in the election
37 immediately succeeding their cessation from office. They shall not be
38 allowed to appear or practice before the Commission for two (2) years
39 following their cessation from office.

40
41 No spouse or relative by consanguinity or affinity within the fourth
42 civil degree and no former law, business, or professional partner or
43 associate of any of the Commissioners, the Chairman and the Secretary
44 of the Commission may appear as counsel or agent on any matter
45 pending before the Commission or transact business directly or
46 indirectly therein during his/her incumbency and within one (1) year
47 from his/her cessation of office.
48

1 (e) *Compensation of Commissioners.* – The Chairman of the Commission
2 shall hold the rank of and shall have the privileges and compensation
3 equivalent to that of a Department Secretary or Presiding Justice of the
4 Court of Appeals, whichever is higher, while the Associate
5 Commissioners shall each hold the rank of and shall have the privileges
6 and compensation equivalent to that of a Department Undersecretary
7 or Associate Justice of the Court of Appeals, whichever is higher.
8

9 (f) *Quorum.* – Three (3) members of the Commission shall constitute a
10 quorum and the affirmative vote of three members (3) shall be
11 necessary for the adoption of any rule, ruling, order, resolution,
12 decision or other acts of the Commission *en banc*.
13

14 (g) *Principal Office, Branch and Venue.* – The Commission shall hold its
15 principal office in Metro Manila but it may, conduct hearings outside of
16 Metro Manila upon prior notice for inquiries, studies or any other
17 proceedings required for the proper and efficient exercise of its power
18 and the discharge of its duties. It may establish branch offices outside
19 of Metro Manila as may be necessary for the effective discharge of its
20 functions.
21

22 (h) *Staff.* – The Commission shall appoint, fix the compensation in
23 accordance with the Revised Compensation and Position Classification
24 Law, determine the status, qualifications, and duties of an adequate
25 staff, which shall include an Executive Director of the Commission. The
26 Executive Director shall be appointed by the President and shall have
27 relevant experience in any of the fields of law, economics, commerce,
28 management or finance for at least ten (10) years. Provided, that, he
29 shall be a Career Executive Service Officer (CESO). The members of
30 the technical staff, except those performing purely clerical functions
31 shall possess at least a Bachelor Degree in the following lines of
32 specialization: economics, preferably in industrial organization; law;
33 finance; commerce; accounting; or management.
34

35 **SEC. 9. *Original and Exclusive Jurisdiction.*** – The Commission shall have
36 original and exclusive jurisdiction to enforce, implement and administer the
37 provisions of this Act, its implementing rules and regulations, and all other
38 competition laws, and in particular:
39

40 (a) *Powers of the Commission Upon Prior Notice and Hearing.* – The
41 Commission may exercise the following powers, only upon prior notice
42 and hearing:
43

44 (1) *Binding Rules* – To issue binding rulings;

45
46 (2) *Show Cause Order and Decision* – To issue show cause orders, and
47 thereafter, render decision thereon;

- 1 (3) *Consent Judgment* – To approve, or disapprove, proposals for
2 consent judgment;
3
- 4 (4) *Preliminary Inquiry* – To conduct the required preliminary inquiry of
5 cases involving violations of this Act and other competition laws;
6 and thereafter, if appropriate, to sign and file the proper criminal
7 complaint before the Department of Justice;
8
- 9 (5) *Administrative Fines and Penalties* – To impose the appropriate
10 administrative fines or penalties herein authorized to be imposed;
11
- 12 (6) *Issuance of Injunctions, Restraining Order, and Cease and Desist*
13 *Orders.* – To issue a writ of mandatory injunction, to enjoin or
14 restrain, temporarily or permanently, any actual or threatened
15 commission of any or all prohibited or unlawful acts or to require
16 the performance of a particular act which, if not restrained or
17 performed forthwith, may cause grave or irreparable damage to
18 competitors, consumers, or suppliers, or render ineffectual any
19 decision in favor of a party to a competition dispute.
20
- 21 (7) *Delegation of Power Which Require Notice and Hearing.* – The
22 Commission sitting *en banc* may delegate, on a case to case basis,
23 its power to hear and decide any case or matter which require prior
24 notice and hearing, to a division of one (1) Commissioner. The
25 resolution of the Commission sitting *en banc* making such a
26 delegation shall be made part of the records of the case or matter
27 and the assignment of a case of matter to a particular division shall
28 be made by means of a raffle conducted in public; and
29
- 30 (8) *Appeal to the Commission En Banc.* – Final orders, resolutions,
31 judgments, or decisions of a division may be appealed to the
32 Commission sitting *en banc*, by any party adversely affected
33 thereby, within a period of fifteen (15) days from receipt of such
34 order, resolution, judgment, or decision on all issues of fact and
35 law. The Commissioner whose order, resolution, judgment, or
36 decision is the subject of the appeal is disqualified from
37 participating, nor shall he be present, in the deliberations and
38 decision of the Commission *en banc*. In case of a tie, the appealed
39 order, resolution, judgment, or decision is deemed affirmed. The
40 Commission, on its own, or upon motion of a party who has actively
41 participated in the proceedings, order the presentation of additional
42 material evidence as part of the appellate proceedings.
43
- 44 (b) *Powers of the Commission Without Hearing.* – The Commission shall
45 have the power to do the following acts, without hearing:
46
- 47 (1) *Motu Proprio Investigation or Upon Complaint.* – To
48 investigate, on its own initiative or upon the complaint of any

1 person, any and all violations of this Act and other competition
2 laws prior to the commencement of a preliminary investigation,
3 or the issuance of a show cause order, or the institution of a
4 civil or administrative action;

5
6 (2) *Civil Action.* – To attest and file on behalf of the State, civil
7 complaints for damages to business or property of the State,
8 arising from a violation of this Act and other competition laws;

9
10 (3) *Administrative Action.* – To attest and file all complaints for
11 appropriate administrative relief from, or against, violations of
12 this Act or other trade competition laws;

13
14 (4) *Request for Assistance.* – To require any government agency
15 to lend assistance and information necessary in the discharge
16 of its responsibilities under this Act, and examine if necessary,
17 pertinent records and documents in the possession of such
18 government agency;

19
20 (5) *Industry Studies and Company Profile.* – To gather and compile
21 information and investigate from time to time, the way a given
22 industry is structured or organized whether as a monopoly,
23 oligopoly, or competitive; the way the firms within that industry
24 act, behave, or conduct themselves in such matters as setting
25 prices, determining output, and the resulting performance of
26 the industry as a whole; the organization, business, conduct,
27 practices and management of any person, partnership, or
28 corporation engaged in trade, commerce, or industry and its
29 relation to individuals, partnerships, associations, corporations,
30 firms and other business enterprises;

31
32 (6) *Issuance of Subpoena.* – To issue *subpoena*, *subpoena duces*
33 *tecum* and *subpoena ad testificandum* in the exercise of its
34 functions, powers and duties under this Act, subject to the
35 following standards:

36
37
38 i. No *subpoena* shall be issued to require the production or
39 disclosure of trade secrets as defined in sub-paragraph (7)
40 hereof;

41 ii. A *subpoena* may be quashed only by means of a motion
42 duly set for hearing and on the grounds prescribed by the
43 Rules of Court;

44 iii. A person appearing before the Commission, or any of its
45 Divisions, in obedience to a *subpoena* shall be advised,
46 before he is required to testify or produce any
47 documentary or real evidence, of his right to be assisted or
48 represented by a counsel of his choice, or if he has none,

1 the Commission shall appoint a *de officio* counsel for him;
2 and of his rights to avail of the immunity from prosecution
3 privilege herein prescribed;
4

5 (7) *Annual and Special Reports, etc.* – To require, by general or
6 special orders, firms engaged in trade, commerce, or industry
7 to file with the Commission in such form as the Commission
8 may prescribe, annual or special reports, or answers in writing
9 to specific questions, furnishing the Commission such
10 information as it may require as to the organization, business,
11 conduct, practices, management and relation to other persons
12 of the respective *natural or juridical persons* or entities filing
13 such reports or answers in writing except that the Commission
14 shall not require, either by a specific order or by a *subpoena*,
15 the disclosure or production of trade secrets such as a secret
16 formula, pattern, device or compilation of information,
17 including names of customers, which is used in one's business
18 and which gives one an opportunity to obtain advantage over
19 competitors who do not know or use it. Trade secrets shall
20 include a plan or process, tool, mechanism, or compound
21 known only to the owner and his employees to whom it is
22 necessary to confide it;
23

24 (8) *Public Disclosure of Information.* – To make public, from time
25 to time, such portions of the information obtained by it under
26 this Act, except trade secrets and names of customers, as it
27 shall deem expedient in the public interest;
28

29 (9) *Reports and Recommendations to Congress.* – To submit
30 annual and special reports to Congress, including proposed
31 legislation for the regulation of trade, commerce, or industry,
32 and provide for the publication of its reports and resolutions in
33 such form and manner as may be best adopted for public
34 information and transparency;
35

36 (10) *Trade Conditions, Domestic and Foreign.* – To study, from time
37 to time, trade conditions in and with foreign countries where
38 associations, combinations, or practices of manufacturers,
39 merchants, or traders, or other conditions, may affect the
40 foreign trade of the Philippines, and report to Congress its
41 findings and recommendations thereon as it may deem
42 advisable.
43

44 **Sec. 10. *Jurisdiction of Regional Trial Courts.*** – The Regional Trial Court
45 shall have jurisdiction over all criminal and civil aspects of the violations of this
46 act. The venue shall be in accordance with the Rules of Court.
47
48

1
2
3 **CHAPTER IV**
4 **FINES AND PENALTIES**
5

6 **SEC. 11. *Administrative Penalties.*** –
7

8 **(a)** Without prejudice to the violation of other laws, any firm that shall be
9 found to have violated Sections 8, 9 and 10 of this Act, or any combination
10 thereof, shall, for each and every violation, be punished by a fine of not less than
11 Ten million pesos (Php10,000,000.00) and not exceeding Fifty million pesos
12 (Php50,000,000.00) if a natural person; by a fine of not less than Two hundred
13 fifty million pesos (Php250,000,000.00) but not exceeding Seven hundred fifty
14 million pesos (Php750,000,000.00) at the discretion of the Commission.
15

16 In addition, a fine shall be imposed in an amount double the gross
17 proceeds gained by the violator/s or double the gross loss suffered by the
18 plaintiffs, whichever is higher.
19

20 **(b) *Failure to Comply with an order of the Commission.*** – In
21 addition to the administrative penalties, any person who fails or neglects to
22 comply with any term or condition of a binding ruling, a cease and desist order or
23 an order for readjustment issued by the Commission, shall pay a fine of not less
24 than Fifty Thousand Pesos (Php50,000.00) for each violation. Each violation shall
25 be deemed a separate offense: *Provided*, That in the case of a violation through
26 a continuing failure or neglect to comply, each day of continuance of such failure
27 or neglect shall be deemed a separate offense.
28

29 **(c) *Supply of Incorrect or Misleading Information.*** – In addition to
30 (a) and (b) above, the Commission may likewise impose upon persons or entities
31 fines of not less than Five Thousand Pesos (Php5,000.00) to not more than One
32 Hundred Thousand Pesos (Php100,000.00) where, intentionally or negligently,
33 they supply incorrect or misleading information in any document, application or
34 other paper filed with or submitted to the Commission or supply incorrect or
35 misleading information in an application or other paper filed with or submitted to
36 the Commission or supply incorrect or misleading information in an application
37 for a binding ruling, a proposal for a consent judgment, proceedings relating to a
38 show cause order, or application for modification of the Commission's ruling,
39 order or approval, as the case may be.
40

41 **Sec. 12. *Criminal Penalties.*** - Without prejudice to the violation of other laws,
42 any firm that shall be found to have violated Sections 8, 9 and 10 of this Act, or
43 any combination thereof, shall, for each and every violation, be punished by a
44 fine of not less than Ten million pesos (Php10,000,000.00) and not exceeding
45 Fifty million pesos (Php50,000,000.00) if a natural person; by a fine of not less
46 than Two hundred fifty million pesos (Php250,000,000.00) but not exceeding
47 Seven hundred fifty million pesos (Php750,000,000.00) if a firm, and by
48 imprisonment not exceeding ten (10) years, or both, at the discretion of the

1 court. In the alternative, a fine shall be imposed in the amount double the gross
2 proceeds gained by the violator or double the gross loss suffered by the plaintiffs.

3
4 **CHAPTER V**
5 **ENFORCEMENT**
6

7 **SEC. 13. *Preliminary Inquiry.*** – The Commission shall *motu proprio*, or upon
8 the filing of a verified complaint by an interested party or upon referral by the
9 concerned regulatory agency, initiate a preliminary inquiry for the enforcement of
10 this Act.

11
12 **SEC. 14. *Power over acts committed prior to the passage of this law.*** –
13 Subject to the constitutional prohibition on the passage of *ex post facto* laws, the
14 Commission shall have the power to decide on and regulate acts related to
15 competition issues despite the fact that the acts complained of were committed
16 or the contracts were perfected or consummated prior to the passage of this law.
17 This power shall include orders to break-up mergers and consolidations and un-
18 bundle products sold as a package.

19
20
21 **Sec. 15. *Powers of Concerned Regulatory Agencies.*** – Notwithstanding the
22 provisions of the preceding section, the exercise of regulatory powers by
23 different government agencies over an industry or a sub-sector of an industry
24 shall be cumulative and shall not be construed in any way as derogating from the
25 power and authority of the concerned agency; Provided, that: the Commission
26 shall have exclusive jurisdiction over competition matters, including all of the
27 prohibited acts under this Act and other laws, but can decide on competition
28 issues only after requesting and obtaining technical assistance from the
29 regulatory agencies.

30
31
32
33 The government agencies shall cooperate and coordinate with one
34 another in the exercise of their powers in order to prevent overlap, to share
35 confidential information, or for other effective measures. The failure of the
36 regulatory agencies to provide technical assistance or opinion after having been
37 given a reasonable time, shall not prevent the Commission from performing its
38 functions in a timely manner; Provided, that: in situations where time is of the
39 essence, and the Commission cannot suspend its action and wait for the opinion
40 of the regulatory agencies, the Commission may so decide or act accordingly,
41 without prejudice to correcting or modifying its action after obtaining the opinion
42 of the regulatory agency.

43
44 **SEC. 16. *Power to Investigate and to Enforce Orders and Resolutions.*** –
45 The Commission shall conduct preliminary inquiries by administering oaths,
46 issuing *subpoena duces tecum* and summoning witnesses, and commissioning
47 consultants or experts. It shall determine if any provision of this Act has been
48 violated, enforce its orders and carry out its resolutions by making use of any

1 available means, provisional or otherwise, under existing laws and procedures
2 including the power to punish for contempt and to impose fines.

3
4 **Sec. 17. *Self-incrimination.*** Pursuant to the preceding section, a person
5 subject of any preliminary inquiry or investigation by the Commission shall
6 produce the specified document or information when so required by written
7 notice: *Provided,* That no person shall be excused from disclosing any *document*
8 or information to the inquiring officer on the ground that the disclosure of the
9 information or document may be incriminating: *Provided, further,* That such
10 document or information produced by the person subject of investigation shall
11 not be admissible as evidence against him in criminal proceedings: *Provided,*
12 *finally,* That such document or information shall be admissible in evidence in civil
13 proceedings including those arising from or in connection to the implementation
14 of this Act.

15
16 **Sec. 18. *Privileged Communication Exclusion.*** Nothing in the preceding
17 section shall compel the disclosure of privileged communication: *Provided,* That
18 the person who refuses to disclose the information or produce the document or
19 other material required by the inquiring officer in relation to the preliminary
20 inquiry being conducted shall nevertheless be obliged to give the name and
21 address of the firm to whom, or by whom, or on whose behalf, such privileged
22 communication was made.

23
24 **Sec. 19. *Confidentiality of Information.*** Any document or information
25 submitted by firms, as determined and marked confidential by the Commission,
26 relevant to any investigation being conducted pursuant to this Act shall not, in
27 any manner, be directly or indirectly disclosed, published, transferred, copied, or
28 disseminated. The identity of persons who provide information to the
29 Commission and who need confidentiality to protect themselves against economic
30 retaliation, and any Commission deliberations_in regard to current or still
31 uncompleted matters shall remain confidential.¹

32
33 Any violation of this provision shall be imposed a fine of not less than One
34 hundred thousand pesos (Php100,000.00) but not more than Five hundred
35 thousand pesos (Php500,000.00).

36
37 **Sec. 20. *Immunity from Suit.*** Any person or firm which cooperates or
38 furnishes any information, document or data to the Commission before or during
39 the conduct of the preliminary inquiry that constitutes material evidence as
40 determined by the under this Act shall be immune from any suit or charge
41 including from affected parties and third parties: *Provided,* that the person or
42 firm is not the most guilty. *Provided, further,* That any person or firm which
43 cooperates or furnishes information, document or data to the Commission in
44 connection to an investigation being conducted shall not be subjected to any
45 form of reprisal or discrimination: *Provided, furthermore,* That such reprisal or

¹ Taken from the UNCTAD Model Law on Competition.

1 available means, provisional or otherwise, under existing laws and procedures
2 including the power to punish for contempt and to impose fines.

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8 or information to the inquiring officer on the ground that the disclosure of the
9 information or document may be incriminating: *Provided, further*, That such
10 document or information produced by the person subject of investigation shall
11 not be admissible as evidence against him in criminal proceedings: *Provided,*
12 *finally*, That such document or information shall be admissible in evidence in civil
13 proceedings including those arising from or in connection to the implementation
14 of this Act.

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25 submitted by firms, as determined and marked confidential by the Commission,
26 relevant to any investigation being conducted pursuant to this Act shall not, in
27 any manner, be directly or indirectly disclosed, published, transferred, copied, or
28 disseminated. The identity of persons who provide information to the
29 Commission and who need confidentiality to protect themselves against economic
30 retaliation, and any Commission deliberations in regard to current or still
31 uncompleted matters shall remain confidential.¹

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38 furnishes any information, document or data to the Commission before or during
39 the conduct of the preliminary inquiry that constitutes material evidence as
40 determined by the under this Act shall be immune from any suit or charge
41 including from affected parties and third parties: *Provided*, that the person or
42 firm is not the most guilty. *Provided, further*, That any person or firm which
43 cooperates or furnishes information, document or data to the Commission in
44 connection to an investigation being conducted shall not be subjected to any
45 form of reprisal or discrimination: *Provided, furthermore*, That such reprisal or

¹ Taken from the UNCTAD Model Law on Competition.

1 discrimination shall be considered a violation of this Act and subjected to the
2 penalties provided for under Section 11.

3
4 Nothing in this section shall preclude the prosecution of persons and firms
5 who furnished the Commission with malicious information, data and falsified
6 documents which is damaging to the business and integrity of the persons and
7 firms under inquiry. Such act shall likewise be considered as an unfair trade
8 practice punishable under this Act.

9
10 The Commission may refuse to admit information, document or data that
11 is merely corroborative or is not essential for the conduct of the preliminary
12 inquiry.

13
14 Any person or firm which cooperates or furnishes any information,
15 document or data to the Commission before or during the conduct of the
16 preliminary inquiry that constitutes material evidence as determined by the under
17 this Act shall be immune from any suit or charge related to such disclosure.

18
19 **SEC. 21. *Termination and Action on Preliminary Inquiry.*** –The Commission,
20 after considering the statements made, or documents or articles produced, in the
21 course of an inquiry conducted by it, shall terminate the preliminary inquiry by
22 issuing a resolution ordering its closure if no violation or infringement of this Act
23 is found; or by issuing a *nolo contendere* resolution; or issuing a resolution to,
24 singly or cumulatively, (a) impose penalties in the range provided under Section
25 11 hereof; (b) order the rectification of certain acts or omissions; or (c) order the
26 restitution to the affected parties.

27
28 When determined by the facts and circumstances, the Commission shall
29 institute a civil action by class suit in the name of the Republic of the Philippines,
30 as *parens patriae*, on behalf of persons residing in the Philippines, to secure
31 treble damages for any injury sustained by such persons by reason of any
32 violation of this Act, plus the cost of suit and reasonable attorney's fee.

33
34 If the evidence so warrants, the Commission shall file criminal cases for
35 violation of this Act or relevant laws before the Department of Justice pursuant to
36 Section 12 of this Act.

37
38 Any decision or order of the Commission to lodge a criminal complaint with
39 the Department of Justice shall not be the subject of a motion for reconsideration
40 and shall not be subject to appeal. After rendering such decision or order, the
41 Commission shall file a criminal complaint with the Department of Justice, which
42 shall then conduct the requisite preliminary investigation in accordance with the
43 Rules of Criminal procedure in the Rules of Court.

44
45 **SEC. 22. *Nolo Contendere Resolution.*** – Any firm under inquiry under the
46 provisions of this Act may submit to a *nolo contendere* resolution at any time
47 before the termination of the preliminary inquiry by: a) the payment of an
48 amount within the range of penalties provided for under Section 11; b) by

1 entering into an undertaking to effectively stop and rectify the acts complained
2 against, make restitution to the affected parties, whether or not the parties are
3 plaintiffs or witnesses; and, c) by submitting regular compliance reports as may
4 be directed: *Provided*, That, ten percent (10%) of the amounts paid under this
5 section shall equitably accrue to the Commission: *Provided, further*, That a *nolo*
6 *contendere* resolution shall not bar any inquiry for the same or similar acts if
7 continued or repeated.

8
9 **SEC. 23. *Implementing Policy; Non-Adversarial Administrative***
10 ***Remedies.*** – As an implementing and enforcement policy, the Commission shall,
11 under such rules and regulations it may prescribe, encourage voluntary
12 compliance with this Act and other competition laws by making available to the
13 parties concerned the following and other analogous non-adversarial and non-
14 adjudicatory administrative remedies, before the institution of administrative, civil
15 or criminal action:

16
17 (a) *Request for Binding Ruling.* – Any person who is in doubt as to
18 whether his contemplated or existing act, course of conduct,
19 agreement, decision or practice is in compliance with, is exempt from,
20 or in violation of any of the provisions of this Act, other trade
21 competition laws, or implementing rules and regulations thereof, may
22 request the Commission, in writing, to render a binding ruling thereon;
23

24 (b) *Show Cause Order.* – Upon preliminary findings *motu proprio* or on
25 written complaint under oath by an interested party, that any person is
26 conducting his business, in whole or in part, that any person is
27 conducting his business, in whole or in part, in a manner that may not
28 be in accord with the provisions of this Act or other trade competition
29 laws, and it finds that the issuance of a show cause order would be in
30 the interest of the public, the Commission shall issue and serve upon
31 such person or persons a written description of its business conduct
32 complained of, a statement of the facts, data, and information together
33 with a summary of the evidence thereof, with an order requiring the
34 said person or persons to show cause, within the period therein fixed,
35 why no order shall issue requiring such person or persons to cease and
36 desist from continuing with ties identified business conduct, or pay the
37 administrative fine therein specified, or readjust its business conduct or
38 practices;
39

40 (c) *Proposal for Consent Judgment.* – At any time prior to the issuance of
41 a binding ruling, the promulgation of a cease and desist judgment
42 under a show cause order or the promulgation of a decision of
43 judgment in any administrative, civil, or criminal case, the person or
44 persons, whose business conduct is under inquiry in the particular
45 proceedings may, without in any manner admitting a violation of this
46 Act or any other trade competition laws, submit to the Commission a
47 written proposal for the entry of a consent judgment, specifying
48 therein the terms and conditions of the proposed consent judgment.

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(d) *Consultations.* – Prior to the fitting of a request for a binding ruling or the submission of a proposal for consent judgment, the person or persons concerned may communicate, in writing, with the Commission on matters that should be included or excluded in such request or proposal, which the Commission may consider necessary for the effective enforcement of this Act or other trade competition laws.

(e) *Binding Ruling, Cease and Desist Order, and Consent Judgment.* – Based upon the facts, data, and information disclosed or supplied by the persons concerned, or established by substantial evidence during the hearing, the Commission shall issue a binding ruling, a cease and desist order or an approval of the proposal for a consent judgment, as the case may be, with or without conditions, to the effect that the particular act, course of conduct, agreement, decision or practice is in accord with this Act or other trade competition laws, or is exempt therefrom, or is constitutive of a violation thereof. If the Commission finds that there is substantial evidence tending to show that the act, course of conduct, agreement, decision or practice of the person or persons concerned is prohibited, it shall include in its decision an order requiring the person or persons concerned:

- (1) *Cease and Desist Order.* – To cease and desist from continuing with the identified act, course or conduct, agreement, decision, or practice found to be violative of the provisions of this Act;
- (2) *Administrative Penalty or Fine.* – To pay the fine therein fixed; and
- (3) *Readjustment of Business Methods.* – To readjust, within a reasonable period therein fixed, its method of doing business, including a corporate reorganization or divestment in the manner and under the terms and conditions prescribed by the Commission, as it may deem proper for the protection of the public interest.

(f) *Suspension of Administrative, Civil or Criminal Proceedings.* – No pending administrative, civil or criminal proceedings or those filed thereafter, against any person, corporation or any other juridical entity or its officers and employees, shall be suspended, except upon order of the Commission on proper motion, on the ground of the filing of a request for binding ruling, the issuance of a show cause order or the filing of a proposal for a consent judgment based, in whole or in part, on the same set of facts and issues as that of the proceedings sought to be suspended;

(g) *Monitoring of Compliance.* – The Commission shall monitor the compliance by the person or persons concerned, their officers, and employees, with the final and executory binding ruling, cease and desist order, or approval of a consent judgment. Upon motion of an

1 interested party, the Commission shall issue a certification to the effect
2 that the person or persons concerned have, or have not, as the case
3 may be, complied with a final and executory ruling, order, or approval;
4

5 *(h) Inadmissibility in Evidence.* – The request for a binding ruling, the
6 show cause order, or the proposal for consent judgment; the facts,
7 data, and information therein contained or subsequently supplied by
8 the person or persons concerned; admissions, oral or written, made by
9 them against their interest; all other documents filed by them including
10 their evidence presented in the proceedings before the Commission;
11 and the judgment rendered thereon, shall not be admissible as
12 evidence in any administrative, civil or criminal proceedings against
13 such person or persons, their officers, employees, and agents nor
14 constitute a basis for the introduction of the binding ruling, the cease
15 and desist order, or the consent judgment as prima facie evidence
16 against such persons in any such action of proceeding;
17

18 *(i) Modification or Reversal of Ruling, Order or Approval.* – The
19 Commission may *motu proprio* or upon petition of an interested party,
20 after notice and hearing, reopen and alter, modify, or set aside, in
21 whole or in part, a binding ruling, a cease and desist order, or an
22 approved consent judgment:
23

24 (1) Whenever conditions of material fact or law have so
25 changed as to require such action;

26 (2) When the concerned person or persons fail or refuse,
27 without justifiable cause therefore, to comply with any
28 condition attached to such ruling, order, or approval,
29 including an order to readjust their method of doing
30 business; or

31 (3) When the ruling, order, or approval was based on
32 deliberately falsified material fact, data, or information
33 supplied by an interested party benefited by such ruling,
34 order, or approval.
35

36 The modification or reversal of a binding ruling, a cease and desist
37 order, or an approved consent judgment shall have no retroactive effect
38 and shall not affect or impair any right legally acquired prior to the
39 modification or reversal thereof, except, that the party who is guilty of
40 unjustified failure or refusal to comply as specified in paragraph (2)
41 hereof, or have deliberately supplied such falsified material fact, data or
42 information as specified in paragraph (3) above, is barred from claiming
43 any vested right therein.
44

45 **SEC. 24. Contempt.** – The Commission, or any of its Divisions, may summarily
46 punish for contempt, or by a fine not exceeding thirty (30) days, or both, any
47 person guilty of such misconduct in the presence of the Commission or any of its
48 Divisions in its vicinity as to seriously interrupt any hearing, session or any

1 proceedings before it, including cases in which a person willfully fails or refuses,
2 without just cause, to comply with a summons, *subpoena* or *subpoena duces*
3 *tecum* legally issued by the Commission or any of its Division, being present at a
4 hearing, proceeding, session or investigation, refused to be sworn as a witness or
5 to answer questions or to furnish information when lawfully required to do so.

6
7 **SEC. 25. *Decisions of the Commission.*** – Decisions of the Commission *en*
8 *banc* shall be appealable to the Court of Appeals as hereinafter provided. The
9 appeal shall not stay the order, ruling or decision sought to be reviewed, unless
10 the Court of Appeals shall direct otherwise upon such terms and conditions it
11 may deem just.

12
13 **SEC. 26. *Appeal to the Court of Appeals.*** – Any party who has actively
14 participated in the proceedings before the Commission and is adversely affected
15 by a binding ruling, order, or resolution, decision, judgment, rule or regulation
16 promulgation after notice and hearing by the Commission sitting *en banc*, may
17 appeal, by means of a notice of appeal and a verified petition for review served
18 upon the Commission and other parties who actively participated in the
19 proceedings, to the Court of Appeals within thirty (30) days from receipt thereof,
20 on the ground that the appealed action of the Commission:

- 21
22 (a) is contrary to constitutional rights, power, privilege, or immunity;
23 (b) is in excess of statutory jurisdiction, authority, or limitations, or is
24 contrary to law;
25 (c) is without observance of the procedure required by law;
26 (d) is not supported by substantial evidence.
27 (e) contains errors on findings of fact; or
28 (f) contains errors on conclusions of law.

29
30 The Commission shall be included as a party respondent to the case and
31 shall be represented by its own legal staff.

32
33 The Commission shall be included as a party respondent to the case and
34 shall be represented by its own legal staff.

35
36 **SEC. 27. *Appeal to the Supreme Court.*** – A decision of the Court of Appeals
37 may be appealed to the Supreme Court in the manner and on the grounds
38 prescribed by the Rules of Court.

39
40 **SEC. 28. *Reception of Additional Evidence.*** – Any party in the appellate
41 proceedings may apply for leave to the Court of Appeals or the Supreme Court,
42 to adduce additional evidence before the Commission. The Court may, under
43 such terms and conditions as it may prescribe, order the Commission to receive
44 such additional evidence upon showing that it is material and there are
45 reasonable grounds for the failure to present said evidence in the proceedings
46 before the Commission. The Commission, sitting *en banc*, may modify its
47 findings as to the facts, or make new findings, by reason of the additional
48 evidence taken, and it shall file with the appellate court such modified or new

1 findings and its recommendations for the affirmance, modification, or setting
2 aside of the appealed binding ruling, order, resolution, decision, judgment, rule
3 or regulation.

4 SEC. 29. **Writ of Execution.** – Upon the finality of its binding ruling, order,
5 resolution, decision, judgment, or rule or regulation, (collectively, "Decision"),
6 the Commission may issue a writ of execution to enforce its decision and the
7 payment of the administrative fines provided in the preceding sections.

8
9 SEC. 30. **Violation by Corporation, Partnership, Association, and Other**
10 **Entity.** – Whenever a corporation, partnership, association, firm or other entity,
11 whether domestic or foreign, shall commit any of the acts declared to be
12 unlawful under this Act, the Chairman of the Board of Directors, the President,
13 the General Manager of the corporation, the general partners of a partnership,
14 and the officers and employees directly responsible, shall be jointly and severally
15 liable with the firm for the fine imposed therein.

16
17 Should the offense be committed by a foreign corporation licensed to do
18 business in the Philippines, the person or persons directly responsible in the
19 Philippines for the management and operation thereof, shall be liable. In
20 addition, its license to do business in the Philippines shall be cancelled.

21
22 It shall not be a defense for the Chairman of the Board of Directors, the
23 President or the General Manager of the corporation or the general partners of a
24 partnership, or the persons responsible for the management and operation of a
25 foreign corporation licensed to do business in the Philippines, that he was
26 unaware of the violation, unless, he shall have established to the satisfaction of
27 the court that even with the exercise of due diligence and proper supervision, he
28 could not have avoided or prevented the violation.

29
30 Any agreement between an officer, partner or any other officer and a
31 corporation or partnership whereby the latter directly or indirectly agrees to
32 assume, satisfy or indemnify, in whole or in part, the fine of civil obligation
33 imposed under this Act of such corporate officer, partner, manager or other
34 officer found guilty of violating this Act, shall be void.

35
36 SEC. 31. **Alien Violators.** – If the person violating any provision of this Act is a
37 foreigner, he shall, in addition to the other penalties imposed herein, be deported
38 after service of sentence without need of any further proceedings.

39
40 SEC. 32. **Essential Commodities.** – If the violation involves the trade or
41 movement of prime commodities such as rice, corn, sugar, chicken, pork, beef,
42 fish, vegetables, and other articles or commodities of prime or basic necessity as
43 declared by the appropriate government agency, through publication, the fine
44 imposed by the Commission or the courts, as the case may be, shall
45 automatically be tripled and the offender shall pay such threefold fine.

46
47 SEC. 33. **Private Action.** – Regardless of the status or pendency of any
48 proceedings, any firm that suffers injury by reason of any violation of this Act

1 may institute a separate and independent civil action, irrespective of the amount
2 involved in the controversy against the defendant or defendants and shall
3 recover treble damages sustained, the costs of suit and reasonable attorney's
4 fees: *Provided, however,* That no filing fees shall be collected: *Provided, further,*
5 That filing fees shall constitute a first lien in the award of damages.

6
7 **SEC. 34. *Effect of Final Judgment.*** – Any final judgment in a civil or criminal
8 action brought by the Commission on behalf of the people of the Philippines
9 under this Act to the effect that a defendant has violated any or all of the
10 provisions of this Act shall be *res judicata* as to any claim by any person on
11 whose behalf such action was brought: *Provided,* That such person notifies the
12 court having jurisdiction of the case within the period given by the court:
13 *Provided, further,* That such period shall not be less than ninety (90) days.

14
15 It shall be *prima facie* evidence against such defendant in any civil action
16 brought by any other party against such defendant under this Act as to all
17 matters respecting which said judgment would be an estoppel as between the
18 parties concerned.

19
20 **SEC. 35. *Distribution of Damages Recovered.*** – The damages recovered in a
21 civil action under Section 20 of this Act shall be distributed in the following
22 manner: (1) as determined and to be authorized by the Court having jurisdiction
23 of the case; (2) ten percent (10%) of the total amount of damages shall accrue
24 to the Commission and/or regulatory agency to be used exclusively in the
25 enforcement of this Act; and, (3) the remainder of which total amount of
26 damages shall be deemed a civil penalty by the Court and shall be deposited to
27 the National Treasury as part of the general fund of the government: *Provided,*
28 That any distribution procedure adopted by the Court shall give preference to
29 individual consumers and afford each person having an interest a reasonable
30 opportunity to secure his appropriate portion of the net damages obtained.

31
32 **SEC. 36. *Measurement of Damages.*** – Damages may be proved and assessed
33 in the aggregate by statistical or sampling methods, by the computation of illegal
34 overcharges, or by such other reasonable system of estimating aggregate
35 damages as the court in its discretion may permit without the necessity of
36 separately proving the individual claim, of, or amount of damage to, persons on
37 whose behalf the suit was brought.

38
39 **CHAPTER VI**
40 **OTHER PROVISIONS**

41
42 **SEC. 37. *Statute of Limitations.*** – Any civil or criminal action to enforce any
43 cause of action arising from a violation of any provision of this Act shall be
44 forever barred unless commenced within five (5) years after the cause of action
45 accrues. The running of the statute of limitation shall be suspended during the
46 pendency of any proceeding.

1 The cause of action begins to run when the plaintiff suffers injury to its
2 business or property: *Provided*, That when the damage suffered by the plaintiff is
3 too speculative to prove, the cause of action does not accrue until the damage
4 becomes probable: *Provided, however*, That if the plaintiff's injury is the result of
5 the continuing violations of this Act, each independent anti-competitive act may
6 restart the limitation period or when a plaintiff reasonably fails to uncover a
7 cause or action that was fraudulently concealed by a defendant.

8
9 **SEC. 38. *Prohibition on the Issuance of Temporary Restraining Orders,***
10 ***Preliminary Injunctions and Preliminary Mandatory Injunctions.*** –

11 Except for the Supreme Court, no other court shall issue any temporary
12 restraining order, preliminary injunction or preliminary mandatory injunction
13 against the Commission in the exercise of its duties or functions: *Provided*, That,
14 this prohibition shall apply in all cases, disputes or controversies instituted by a
15 private party, including, but not limited to, cases filed by regulated firms or those
16 claiming to have rights through such firms: *Provided, however*, That, this
17 prohibition shall not apply when the matter is of extreme urgency involving a
18 constitutional issue, such that the non-issuance of a temporary restraining order
19 will result in grave injustice and irreparable injury to the public: *Provided,*
20 *further*, That, the applicant shall file a bond, in an amount to be fixed by the
21 Court, but in no case shall it be less than half of the imposable fines provided for
22 under Section 11 of this Act: *Provided, finally*, That in the event that the court
23 finally decides that the applicant was not entitled to the relief applied for, the
24 bond shall accrue in favor of the Commission.

25
26 Any temporary restraining order, preliminary injunction or preliminary
27 mandatory injunction issued in violation of this section is void and of no force and
28 effect. Any judge who violates this section shall be penalized by suspension of at
29 least one (1) year without pay in addition to other criminal, civil or administrative
30 penalties.

31
32 The Supreme Court may designate regional trial courts to act as
33 commissioners with the sole function of receiving facts of the case involving the
34 acts of the Commission. The designated Regional Trial Court shall, within thirty
35 (30) days from the date of receipt of the referral, forward its findings of facts to
36 the Supreme Court for appropriate action.

37
38 **SEC. 39. *Intellectual Property Rights.*** – The implementation of the provisions
39 of this Act shall be without prejudice to the rights, liabilities and remedies under
40 Republic Act No. 8293, otherwise known as the Intellectual Property Code of the
41 Philippines: *Provided*, That, the exercise of intellectual property rights shall not in
42 any way be used to justify violations of this Act.

43
44 **SEC. 40. *Trade Associations.*** – Nothing contained in this Act shall be construed
45 to prohibit the existence and operation of trade associations organized to
46 promote quality standards and safety issues: *Provided*, That, these associations
47 shall not in any way be used to justify any violation of this Act.

1 SEC. 41. **Implementing Rules and Regulations.** – The Commission shall
2 prepare the necessary rules and regulations within one hundred twenty (120)
3 days from the effectivity of this Act: *Provided*, That, where the same would apply
4 to an industry or a sub-sector of industry that is subject to the jurisdiction of a
5 regulatory agency, the Commission shall, in preparing the guidelines, consult
6 with the concerned regulatory agency and stakeholders: *Provided, further*, That
7 the Commission may revise such guidelines as it deems necessary: *Provided*,
8 *however*, That such revised guidelines shall only take effect following its
9 publication in two newspapers of general circulation.

10
11 SEC. 42. **Congressional Oversight Committee.** - To oversee the
12 implementation of this Act, there shall be created a Congressional Oversight
13 Committee on Fair Competition (COCFC) to be composed of the Chairpersons of
14 the Senate Committees on Trade and Commerce, Economic Affairs, and Finance;
15 the Chairpersons of the House of Representatives Committees on Trade and
16 Industry, Economic Affairs and Appropriations; and two members each from the
17 Senate and the House of Representatives who shall be designated by the Senate
18 President and the Speaker of the House of Representatives: *Provided*, That one
19 of the two Senators and one of the two House Members shall be nominated by
20 the respective Minority Leaders of the Senate and the House of Representatives.
21 The Congressional Oversight Committee shall be jointly chaired by the
22 Chairpersons of the Senate Committee on Trade and Commerce and the House
23 of Representatives Committee on Trade and Industry. The Vice-Chair of the
24 Congressional Oversight Committee shall be jointly held by the Chairpersons of
25 the Senate Committee on Economic Affairs and the House of Representatives
26 Committee Economic Affairs.

27
28 The Secretariat of the Congressional Oversight Committee on Fair
29 Competition shall be drawn from the existing personnel of the Senate and House
30 of Representatives committees comprising the Congressional Oversight
31 Committee.

32
33 SEC. 43. **Appropriations.** – The amount necessary to implement the provisions
34 of this Act shall be included in the annual General Appropriations Act. However,
35 for the initial budgetary requirements of the Commission, the amount of One
36 Hundred Million Pesos (P100,000,000) is hereby appropriated.

37
38 *Provided*, that all moneys recovered or charges or composition sums
39 collected under this Act, other than financial penalties, shall be paid into and
40 form part of the moneys of the Commission.

41
42 SEC. 44. **Separability Clause.** – If any clause, sentence, section or part of this
43 Act shall be adjudged by a court of competent jurisdiction to be invalid, such
44 judgment shall not affect, impair or invalidate the remainder of this Act, but shall
45 be confined in its operation to the clause, sentence, paragraph, section, or part
46 thereof directly involved in the controversy.

47

1 SEC. 45. **Suppletory Application.** – For purposes of this Act, the Revised Penal
2 Code, as amended, and other applicable laws shall be applied in a suppletory
3 character.

4
5 SEC. 46. **Repealing Clause.** – The following laws, insofar as they are
6 inconsistent with any of the provisions of this Act are hereby repealed, amended
7 or otherwise modified accordingly:

8
9 (a) Sec. 5 (3) of Republic Act No. 7581 or The Price Act;

10 (b) Sec. 5 (f) of Republic Act No. 7925 or The Public Telecommunications
11 Policy Act;

12 (c) Sec. 11 (a) and (b) of Republic Act No. 8479 or The Downstream Oil
13 Industry Deregulation Act;

14 (d) Sec. 45 of Republic Act No. 9136 or The Electric Power Industry Reform
15 Act;

16 (e) Sec. 13 of Republic Act No. 9295 or The Domestic Shipping Development
17 Act;

18 (f) Sec. 24 and 25 of Republic Act No. 9502 or The Universally-Accessible
19 Cheaper and Quality Medicines Act.

20
21 *Provided,* That in case of conflict between this Act and such provisions of
22 existing competition laws and regulations, the provisions of this Act shall prevail.

23
24 SEC. 47. **Effectivity Clause.** – This Act shall take effect fifteen (15) days
25 following its publication in the *Official Gazette* or in at least two (2) national
26 newspapers of general circulation. *Provided* however, In order to allow affected
27 parties time to renegotiate agreements or restructure their business to comply
28 with the new competition law, the penal provisions of this Act shall be imposed
29 one (1) year after its effectivity.

30
31 Approved,