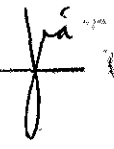




SIXTEENTH CONGRESS OF THE )  
REPUBLIC OF THE PHILIPPINES )  
First Regular Session )

13 JUL -4 AMO :34

SENATE  
S. B. No. 473

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.

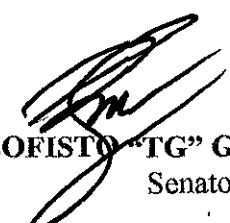
Fair competition is the best guarantee that consumers, be they individuals or corporations, will be in a position to obtain the best products and services for their money. It likewise ensures that producers and service-providers will provide the best goods and services at the best prices, and that they 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.

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

The passage of this measure is sincerely sought.

  
**TEOFISTO "TG" GUINGONA III**  
Senator



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

RECEIVED BY: *[Signature]*

SENATE

S. B. No. 473

Introduced by Senator TEOFISTO "TG" GUINGONA III

**AN ACT TO IMPLEMENT THE COMPETITION POLICY UNDER THE  
CONSTITUTION, STRENGTHEN THE PROHIBITION AGAINST ABUSE OF  
MONOPOLY POWER OR DOMINANT POSITION, PREVENT CARTELS,  
COMBINATIONS IN RESTRAINT OF TRADE AND OTHER ANTICOMPETITIVE  
PRACTICES AND CONDUCT, 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 SECTION 1. **Title.** - This Act shall be known and cited as the "*Competition Policy Act of 2013.*"
- 2
- 3 SEC. 2. **Declaration of Policy.** - Pursuant to the constitutional mandate that the State shall
- 4 regulate or prohibit monopolies when the public interest so requires and that no combinations in
- 5 restraint of trade or unfair competition shall be allowed, the State shall:
- 6
- 7 (a) regulate business conduct with the objective of fomenting a business climate
- 8 conducive to productivity and sustainability, where businesses compete in a level playing
- 9 field, using only innovation, business acumen, astute marketing, diligence, and ability to
- 10 raise capital through legitimate means, and in general offering quality goods and services
- 11 that reflect the best value for customers.
- 12
- 13 (b) safeguard the welfare of consumers, especially the more vulnerable sectors of the
- 14 economy, most especially in times of calamities, natural disasters, and other disturbances
- 15 affecting the daily routine and business of persons in the Philippines;
- 16
- 17 (c) penalize all forms of unfair trade, anti-competitive conduct and combinations in
- 18 restraint of trade, with the objective of protecting consumer welfare and advancing
- 19 domestic and international trade and economic development;
- 20
- 21

1 (d) promote and enhance productivity, innovation, economic efficiency, and free, full and  
2 fair competition in trade, industry and all commercial economic activities; and  
3

4 (e) prevent or reverse the concentration of economic power in a single or a few persons or  
5 related persons in order to preclude a situation where they - to the detriment of  
6 competitors or new entrants to the market, suppliers, and the consumers - threaten to  
7 control the production, purchase, trade, provision of goods and services, in order to stifle  
8 competition, distort, manipulate or constrict the discipline of free markets, or increase  
9 market prices in the Philippines.  
10

11 **SEC. 3. Scope and Application.** - This Act shall be enforceable within the territory of the  
12 Republic of the Philippines and shall apply to all areas of trade, industry and commercial  
13 economic activity. The Act shall apply to: (a) all firms as defined hereunder and all their  
14 commercial agreements, actions or transactions involving goods, services or intellectual  
15 property; and, (b) all agents, officers, employees, partners, owners, directors, consultants,  
16 stockholders, representatives, managers, supervisors, and all other natural persons who, acting on  
17 behalf of juridical persons shall authorize, engage or aid in the commission of restrictive  
18 practices prohibited under this Act.  
19

20 The absence of an employer-employee relationship under labor relations laws and case law shall  
21 not be a defense for any violation of this Act. It shall likewise be applicable to international trade  
22 having direct, substantial and reasonably foreseeable effects in trade, industry or commerce in  
23 the Republic of the Philippines including those that result from acts done outside the Republic of  
24 the Philippines and to acts committed by foreign multinational corporations or foreign entities  
25 operating in the Philippines, whether or not organized under Philippine laws, including their  
26 subsidiaries, branches, agents, regional offices, and other related entities such as joint ventures.  
27 In order to allow affected parties time to renegotiate agreements or restructure their business to  
28 comply with the new competition law the penal provisions of this Act shall be imposed one (1)  
29 year after its effectivity. During the said one (1) year period, the Philippine Fair Competition  
30 Commission shall undertake an advocacy program of the provisions of this Act to the  
31 stakeholders and the general public.  
32

33 **SEC. 4. Definition of Terms.** - As used in this Act, the following terms shall be defined as:  
34

35 (a) "Agreements" shall refer to any type or form of contract, arrangement, understanding,  
36 undertaking, concerted action, collective recommendation, parallel action, whether  
37 formal or informal, written or oral;  
38

39 (b) "Cartel" shall mean a combination of firms or persons, providing goods and/or services in  
40 relevant markets, acting or joined together to obtain a shared monopoly or ability to control  
41 production, purchase, sale and price, or to obtain control in any particular industry or  
42 commodity, or a group of firms that agree to restrict trade. It shall also refer to firms or  
43 section of firms having common interest designed to promote the exchange of knowledge  
44 resulting from scientific and technical research, exchange of patent rights and standardization  
45 of products among themselves with the intent of preventing, restricting or distorting  
46 competition;

1  
2 (c) "Commission" shall mean the Philippine Fair Competition Commission created under this  
3 Act.

4  
5 (d) "Competition" shall mean both the economic condition and the process by which  
6 economic agents, acting independently in a market, engage in commerce through fair means,  
7 offering quality goods and services for value, using solely business acumen, legitimate means  
8 of raising capital, innovation, hard work, astute marketing, and rational industrial  
9 organization. It also includes a process and a situation where economic agents limit each  
10 other's ability to control the prevailing conditions in the market, offer their goods and  
11 services to consumers without limiting the ability of their competitors to market their goods  
12 or provide services, or without preventing new entrants to the market. Finally, it likewise  
13 includes a business climate where a firm or combination of related or unrelated firms do not  
14 impose their will on their suppliers to the detriment of the latter, the competitors of the  
15 former, and the consumers.

16  
17 (e) "Control" shall refer to at least fifty-one percent (51%) ownership, directly or indirectly,  
18 of a firm or a group of firms by another firm;

19  
20 (f) "Dominant Position" shall refer to a situation where a firm, either by itself or acting with  
21 other firms, is in a position to control a relevant market for the sale of a particular good or  
22 service by fixing its prices, excluding competitor firm, or controlling the market in a specific  
23 geographical area. It shall also mean a situation where under the pain of boycotting or  
24 refusing to sell their supplier's products, the retailers, wholesalers, distributors, with  
25 dominant position can force suppliers and manufacturers to provide discounts not granted to  
26 competitors. Finally, it shall also include a situation where the sellers are able to give  
27 preferential treatment to their own "generic" brands, to the detriment of manufacturers and  
28 distributors of other goods also sold by these sellers.

29  
30 a. -"Firms" shall include any person, natural or juridical,  
31 partnership, combination or association in any form, whether  
32 incorporated or not, domestic or foreign, including those owned or  
33 controlled by the government, engaged directly or indirectly in any  
34 economic activity: Provided, That, two firms, one of which is  
35 controlled by the other, shall be treated as one firm: Provided  
36 further, That two or more  
37 firms that are controlled by a single firm, or controlled by a  
38 common parent corporation or controlled by related entities, shall  
39 be treated as a single firm;

40  
41 (g) "Goods" and "Services": "Goods" include all types of tangible and intangible property  
42 that could be bought and sold, and the possession and/or ownership of which could be  
43 transferred in whole or in part, temporarily or permanently;

44  
45 "Services" shall refer to the provision of things of value or articles or items that could be  
46 used by one person, whether natural or juridical, to another through human interaction or

1 through the use, without transfer of ownership, of the facilities of the provider by the  
2 Client, or a combination of both. It shall include all non-tangible goods. It is the non-  
3 material equivalent of a good, consumed at the point of sale and does not result in  
4 ownership;

5  
6 (h) "Market" shall refer to a place or venue for commercial activity, which may be a  
7 barangay, city, province, region, the whole area of the Philippines, or which may extend  
8 beyond the borders of the Republic of the Philippines, where articles are bought or sold.  
9 It shall also refer to the geographical or economic extent of commercial demand;

10  
11 (i) "Mergers" and "Consolidations" refer to transactions or contracts where two or more  
12 undertakings, previously independent of one another, join together, regardless of the form  
13 by which such transactions or contracts are structured. These would include:

- 14  
15 1. two (2) or more corporations or firms merge into a single firm which shall be  
16 one of the constituent firms;
- 17 2. two or more firms consolidate into a new single firm which shall be the  
18 consolidated firm;
- 19 3. one firm takes sole control of, acquires, or takes over the whole or part of  
20 another;
- 21 4. one firm or related firms take control of all or substantially all of the 2 assets of  
22 the another firm;
- 23 5. one firm or related firms take control of the majority shares of stock, either by  
24 vote or value, or other share capital of another entity;
- 25 6. two or more firms acquire joint control over another firm (joint ventures); and  
26 7. other transactions, whereby one or more firms acquire control over one or more  
27 firms, such as through interlocking directorates.

28  
29 (j) "Monopoly" shall mean a privilege or undue advantage of one or more firms,  
30 consisting in the exclusive right to carry on a particular business or trade, and/or  
31 manufacture a particular product, article or object of trade, commerce or industry. It is a  
32 form of market structure in which one or only a few firms dominate the total sales of a  
33 product or service;

34  
35 (k) A "monopsony" exists in a market that has only a single buyer or a cartel of buyers.

36  
37 (l) "Relevant Market" shall refer to the line of commerce that must be delineated in order  
38 to determine whether competition has been restrained or could potentially be restrained.  
39 It shall also refer to the geographic area involved, including all reasonably substitutable  
40 goods, and all competitors, from which consumers could purchase should the goods or  
41 services in question. The relevant market combines the product market and the  
42 geographic market, defined as follows:

- 43  
44 i. a relevant product market comprises all those products and/or  
45 services which are regarded as interchangeable or substitutable by

1 the consumer by reason of the products' characteristics, their prices  
2 and their intended use; and  
3 ii. a relevant geographic market comprises the area in which the  
4 firms concerned are involved in the supply of products or services  
5 and in which the conditions of competition are sufficiently  
6 homogeneous.

7  
8 **CHAPTER II**  
9 **PROHIBITED ACTS**

10  
11 **SEC. 5. Collusive Conducts and Anti-competitive Agreements.** - Unless otherwise exempted,  
12 related or unrelated firms are prohibited from entering into any form of horizontal or vertical  
13 agreement, contract, understanding, common or collective recommendation, nor shall they  
14 engage in concerted or parallel actions directed at suppressing, undermining, distorting or  
15 restricting competition.

16  
17 a) "Horizontal agreement" means an agreement entered into between two or more  
18 enterprises operating at the same level in the market;

19  
20 b) "Vertical agreement" means an agreement entered into between two or more  
21 enterprises, each of which operates, for the purposes of the agreement, at a different level  
22 of the production or distribution chain, and relating to the conditions under which the  
23 parties may purchase, sell or resell certain goods or services;

24  
25 Such collusive conducts or anti-competitive agreements shall include the following.

26  
27 (a) Price-Fixing- Any agreement among competitors, directly or indirectly, to raise,  
28 suppress, fix or otherwise maintain the price and other terms and conditions at which  
29 their goods and services are sold such as, but not limited to, establishing or adhering to  
30 price discounts, holding prices firmly, eliminating or reducing discounts, adopting a  
31 standard or formula for computing prices, maintaining certain price differentials between  
32 different types, sizes or quantities of products, adhering to a minimum fee or schedule  
33 and other analogous schemes with the purpose and effect of creating a monopoly or cartel  
34 or lessening competition.

35  
36 (b) Bid Rigging - Any agreement among bidders or between the bidders and the  
37 auctioneer to fix price at auctions or in any other form of bidding, with the purpose and  
38 effect of creating a monopoly or cartel, or lessening competition such as, but not limited,  
39 to cover bidding, bid suppression, bid rotation and market allocation and other analogous  
40 practices of bid manipulation. In determining whether there is price fixing or bid rigging,  
41 the following circumstances may be considered:

42  
43 (1) generally, any considered evidence that two sellers of  
44 similar goods have agreed to set the price of their goods, to  
45 sell only a certain amount of their goods, or to sell only to a  
46 limited number of buyers or consumers;

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- (2) a drastic change in prices of goods and services involving more than one seller of similar goods of different brands, particularly if the changes in prices take place in equal amount and about the same time;
- (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 the prices of their seemingly competing goods thereby lessening competition in the relevant market among themselves.

**SEC. 6. Abuse of Dominant Position.** - It shall be unlawful for a firm, acting alone, or in concert with one or more firms to abuse their dominant position by engaging in unfair methods

1 of competition, or in unfair or deceptive trade practices, or entering into combinations in the  
2 form of trust or otherwise, or conspiracy, for the purpose of preventing, restricting, or distorting  
3 competition. Abusive conduct or agreements such as, but not limited to, any of the following,  
4 shall be deemed to fall under the crime of abuse of dominant position:

5  
6 (a) Predatory Behavior Towards Competitors - Any agreement or conduct, including, but  
7 not limited to, selling goods or rendering services at below relevant cost with the intent of  
8 driving competitors out of the market, or creating barriers to entry;

9  
10 (b) Monopsony.- A arrangement or a practice sellers, producers, service providers are  
11 compelled to accept payment below market price, whether in the form of cash, credit or  
12 any other consideration, in exchange for their goods and services. This shall also include  
13 an arrangement where the firm with dominant position or its related entities will provide  
14 credit to the sellers, producers, and service providers only if they agree to sell at below  
15 market price and/or sell all of their products and render all of their services to the firm in  
16 possession of dominant position, the creditor, or to any person designated by them.

17  
18 (c) Limitation and Control of Markets - Any agreement to limit or control production,  
19 markets, technical development, or investment with the purpose and effect of creating a  
20 monopoly or cartel, or lessening competition;

21  
22 (d) Market Allocation - Any agreement to divide the market, whether by volume of sales  
23 or purchase or by territory, by type of goods sold, by customers or sellers or by any other  
24 means, with the purpose and effect of creating a monopoly or cartel, or lessening  
25 competition;

26  
27 (e) Arrangements to Share Markets or Sources of Supply- Any agreement to share  
28 markets or sources of supply of raw materials, with the purpose and effect of creating a  
29 monopoly or cartel, or lessening competition;

30  
31 (f) Price Discrimination - Any agreement prescribing or charging, directly or indirectly,  
32 discriminatory pricing terms or conditions in the supply or purchase of goods of like  
33 grade and quality with the purpose and effect of creating a monopoly or cartel, or  
34 substantially lessening competition: That nothing contained herein shall be construed to  
35 prohibit permissible price differentials unless the same shall have the effect of  
36 preventing, restricting or distorting competition: Provided further, That for the purpose of  
37 this section, the following shall be considered permissible price differentials:

38  
39 (1) Socialized Pricing - Socialized pricing for the less  
40 fortunate sectors of the economy;

41  
42 (2) Volume Discounts - Price differentials which reflect an  
43 allowance for differences in the cost of manufacture, sale,  
44 or delivery resulting from differing methods or quantities in  
45 which the goods are sold or delivered to the purchasers;

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

(4) Bona fide Selection of Customers - The selection of customers on bona fide transaction; and

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

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

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

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

(i) 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, are not integral to the goods or services being purchased.

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

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

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

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

1 **SEC. 7. Anti-competitive Mergers and Consolidations.** - No person or firm shall be a party to  
2 any merger or consolidation and no firm engaged in commerce or trade shall acquire, directly or  
3 indirectly, any part of the stock or other share capital, or any part of the assets, of one or more  
4 firms engaged in any line of commerce or trade where the effect of such merger or consolidation  
5 or acquisition of such stocks, share capital, or assets, or of the use of such stock by voting or  
6 granting of proxies or otherwise maybe to substantially lessen competition, or tend to create a  
7 monopoly.

8  
9 (a) **Permissible Stock or Asset Acquisition or Ownership.** - Nothing contained herein,  
10 however, shall be construed to prohibit a corporation from causing the formation of  
11 subsidiary corporations, or from owning and holding all or part of the stock of such  
12 subsidiary corporations, for the actual carrying on of their immediate lawful business, or  
13 the natural and legitimate branches or extensions thereof.

14  
15 (b) **Notification Prior to Stock or Asset Acquisition.** - No firm shall acquire, directly or  
16 indirectly, the shares of stock or assets of any other firm, if as a result of the acquisition,  
17 the acquiring firm would own twenty percent (20%) or more of the shares of stock, other  
18 share capital, or assets of the acquired firm, unless, the acquiring and selling firm notify,  
19 prior to the conclusion of the agreement for such acquisition and in the prescribed form,  
20 the Commission of such proposed acquisition. Only the acquiring firm is required to  
21 make the notification in a tender offer. The contemplated acquisition shall be deemed  
22 approved, unless the Commission, within thirty (30) calendar days from receipt of the  
23 notification, orders the acquiring firm to show cause why the proposed acquisition shall  
24 not be declared as prohibited under this Act. The show cause order shall set forth the  
25 facts upon which it is based. The acquiring or selling firm may contest the show cause  
26 order, in which case, the proposed acquisition shall be considered enjoined until the  
27 Commission shall have rendered a decision on the proposed acquisition after due notice  
28 and hearing, in accordance with the procedure prescribed herein for the disposition of a  
29 show cause order.

30  
31 (c) **Transactions Exempt from Prior Notice Requirement** - The following classes of  
32 transactions are exempt from the prior notice requirement under this Section:

- 33  
34 (1) Acquisition of goods or realty transferred in the ordinary course of business;  
35 (2) Acquisitions of bonds, mortgages, deeds of trust, or other obligations which  
36 are not voting securities;  
37 (3) Acquisitions of voting securities of an issuer at least fifty percent (50%) of the  
38 voting securities of which are owned by the acquiring firm prior to such  
39 acquisition;  
40 (4) Transfers to, or from, government agencies or instrumentalities, including  
41 government-owned or controlled corporations;  
42 (5) Transactions exempted from the provisions of this Act and other proper and  
43 applicable laws;  
44 (6) Acquisitions, solely for the purpose of investment, of voting securities, if as a  
45 result of such acquisition the securities acquired or held do not exceed ten percent  
46 (10%) of the outstanding voting securities of the issuer;

1 (7) Acquisitions of voting securities pursuant to the preemptive rights of the  
2 acquiring firm; or, if, as a result of such acquisition, the voting securities acquired  
3 do not increase, directly or indirectly, the acquiring firm's per centum share of  
4 outstanding voting securities of the issuers; or

5 (8) Such other acquisitions, transfers, or transactions which the Commission may  
6 declare as are not likely to violate the provisions of this Act or any other proper  
7 and applicable law.  
8

9  
10 **CHAPTER III**  
11 **PHILIPPINE FAIR COMPETITION COMMISSION**

12 **SEC. 8. Philippine Fair Competition Commission.** - To implement the national policy and  
13 attain the objectives and purposes of this Act, an independent Commission is hereby created,  
14 which shall be known as the Philippine Fair Competition Commission (PFCC), hereinafter  
15 referred to as the Commission, and which shall be organized within sixty (60) days after the  
16 approval of this Act. To ensure that the Commission is organized within the mandated period and  
17 to ensure that the provisions of the law are followed with regard to its structure, a Task Force to  
18 be composed of members from the Office of the President, The Civil Service Commission, Tariff  
19 Commission, Department of Trade and Industry, Department of Justice, and the Department of  
20 Budget and Management shall be created.

21  
22 For budgetary purposes, the Commission shall be under the Office of the President.  
23

24 (a) **Composition.** - The Commission shall be composed of a Chairman and four (4)  
25 Associate Commissioners. The Commissioners shall be citizens and residents of the  
26 Philippines, at least forty (40) but not more than sixty-five (65) years of age, of good  
27 moral character and of recognized probity and independence. The Chairman and two (2)  
28 of the Associate Commissioners shall be members of the Philippine Bar and the  
29 remaining two (2) shall be of recognized competence in the field of economics preferably  
30 in industrial organization economics, or finance, commerce, accounting or management.  
31 They must have been in the active practice of their professions for at least ten (10) years,  
32 but must not have been candidates for any elective national or local office in the  
33 immediately preceding elections, whether regular or special.  
34

35 (b) **Term of Office.** - The Chairman and the Associate Commissioners shall be appointed  
36 by the President of the Philippines. The term of office of the Chairman and the Associate  
37 Commissioners shall be six (6) years without reappointment. The Chairman shall hold  
38 office for six years and of the first four (4) Associate Commissioners, two (2) shall hold  
39 office for a term of four (4) years and two (2) for a term of two (2) years. In case a  
40 vacancy occurs before the expiration of the term of office, the appointment to such  
41 vacancy shall be only for the unexpired term of the predecessor;  
42

43 (c) **Prohibition and Disqualifications.** - The Commissioners shall not, during their tenure,  
44 hold any other office of employment. They shall not, during their tenure, directly or  
45 indirectly practice any profession, participate in any business, or be financially interested  
46 in any contract with, or any franchise, or special privileges granted by the government or

1 any subdivision, agency, or instrumentality thereof, including government-owned and  
2 controlled corporations of their subsidiaries. They shall strictly avoid conflict of interest  
3 in the conduct of their office. They shall not be qualified to run for any office in the  
4 election immediately succeeding their cessation from office. They shall not be allowed to  
5 appear or practice before the Commission for two (2) years following their cessation  
6 from office.  
7

8 No spouse or relative by consanguinity or affinity within the fourth civil degree and no  
9 former law, business, or professional partner or associate of any of the Commissioners,  
10 the Chairman and the Secretary of the Commission may appear as counselor agent on any  
11 matter pending before the Commission or transact business directly or indirectly therein  
12 during his/her incumbency and within one (1) year from his/her cessation of office.  
13

14 (e) Compensation of Commissioners. - The Chairman of the Commission shall hold the  
15 rank of and shall have the privileges and compensation equivalent to that of a Department  
16 Secretary or Presiding Justice of the Court of Appeals, whichever is higher, while the  
17 Associate Commissioners shall each hold the rank of and shall have the privileges and  
18 compensation equivalent to that of a Department Undersecretary or Associate Justice of  
19 the Court of Appeals, whichever is higher.  
20

21 (f) Quorum. - Three (3) members of the Commission shall constitute a quorum and the  
22 affirmative vote of three members (3) shall be necessary for the adoption of any rule,  
23 ruling, order, resolution, decision or other acts of the Commission en bane  
24

25 (g) Principal Office, Branch and Venue. - The Commission shall hold its principal office  
26 in Metro Manila but it may, conduct hearings outside of Metro Manila upon prior notice  
27 for inquiries, studies or any other proceedings required for the proper and efficient  
28 exercise of its power and the discharge of its duties. It may establish branch offices  
29 outside of Metro Manila as may be necessary for the effective discharge of its functions.  
30

31 (h) Staff. - The Commission shall appoint, fix the compensation in accordance with the  
32 Revised Compensation and Position Classification law, determine the status,  
33 qualifications, and duties of an adequate staff, which shall include an Executive Director  
34 of the Commission. The Executive Director shall be appointed by the President and shall  
35 have relevant experience in any of the fields of law, economics, commerce, management  
36 or finance for at least ten (10) years. Provided, that, he shall be a Career Executive  
37 Service Officer (CESO). The members of the technical staff, except those performing  
38 purely clerical functions shall possess at least a Bachelor Degree in the following lines of  
39 specialization: economics, preferably in industrial organization; law; finance; commerce;  
40 accounting; or management.  
41

42 **SEC. 9. Original and Exclusive Jurisdiction.** - The Commission shall have original and  
43 exclusive jurisdiction to enforce, implement and administer the provisions of this Act, its  
44 implementing rules and regulations, and all other competition laws, and in particular:  
45

1 (a) Powers of the Commission Upon Prior Notice and Hearing. - The Commission may  
2 exercise the following powers, only upon prior notice and hearing:

3  
4 (1) Binding Rules- To issue binding rulings;

5  
6 (2) Show Cause Order and Decision - To issue show cause orders, and thereafter,  
7 render decision thereon;

8  
9 (3) Consent Judgment - To approve, or disapprove, proposals for consent  
10 judgment;

11  
12 (4) Preliminary Inquiry- To conduct the required preliminary inquiry of cases  
13 involving violations of this Act and other competition laws; and thereafter, if  
14 appropriate, to sign and file the proper criminal complaint before the Department  
15 of Justice;

16  
17 (5) Administrative Fines and Penalties - To impose the appropriate administrative  
18 fines or penalties herein authorized to be imposed;

19  
20 (6) Issuance of Injunctions, Restraining Order, and Cease and Desist Orders. - To  
21 issue a writ of mandatory injunction, to enjoin or restrain, temporarily or  
22 permanently, any actual or threatened commission of any or all prohibited or  
23 unlawful acts or to require the performance of a particular act which, if not  
24 restrained or performed forthwith, may cause grave or irreparable damage to  
25 competitors, consumers, or suppliers, or render ineffectual any decision in favor  
26 of a party to a competition dispute.

27  
28 (7) Delegation of Power Which Require Notice and Hearing. - The Commission  
29 sitting en banc may delegate, on a case to case basis, its power to hear and decide  
30 any case or matter which require prior notice and hearing, to a division of one (1)  
31 Commissioner. The resolution of the Commission sitting en banc making such a  
32 delegation shall be made part of the records of the case or matter and the  
33 assignment of a case of matter to a particular division shall be made by means of a  
34 raffle conducted in public; and

35  
36 (8) Appeal to the Commission En Banc - Final orders, resolutions, judgments, or  
37 decisions of a division may be appealed to the Commission sitting en banc, by  
38 any party adversely affected thereby, within a period of fifteen (15) days from  
39 receipt of such order, resolution, judgment, or decision on all issues of fact and  
40 law. The Commissioner whose order, resolution, judgment, or decision is the  
41 subject of the appeal is disqualified from participating, nor shall he be present, in  
42 the deliberations and decision of the Commission en banc. In case of a tie, the  
43 appealed order, resolution, judgment, or decision is deemed affirmed. The  
44 Commission, on its own, or upon motion of a party who has actively participated  
45 in the proceedings, order the presentation of additional material evidence as part  
46 of the appellate proceedings.

1 (b) Powers of the Commission Without Hearing. - The Commission shall have the power to  
2 do the following acts, without hearing:  
3

4 (1) Motu Proprio Investigation or Upon Complaint - To investigate, on its own initiative  
5 or upon the complaint of any person, any and all violations of this Act and other  
6 competition laws prior to the commencement of a preliminary investigation, or the  
7 issuance of a show cause order, or the institution of a civil or administrative action;

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

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

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

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

26 (6) Issuance of Subpoena. - To issue subpoena, subpoena duces tecum and subpoena ad  
27 testificandum in the exercise of its functions, powers and duties under this Act, subject to  
28 the following standards:  
29

30 i. No subpoena shall be issued to require the production or disclosure of trade  
31 secrets as defined in sub-paragraph (7) hereof;

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

34 iii. A person appearing before the Commission, or any of its Divisions, in  
35 obedience to a subpoena shall be advised, before he is required to testify or  
36 produce any documentary or real evidence, of his right to be assisted or  
37 represented by a counsel of his choice, or if he has none, the Commission shall  
38 appoint a de officio counsel for him; and of his rights to avail of the immunity  
39 from prosecution privilege herein prescribed;  
40

41 (7) Annual and Special Reports, etc. - To require, by general or special orders, firms  
42 engaged in trade, commerce, or industry to file with the Commission in such form as the  
43 Commission may prescribe, annual or special reports, or answers in writing to specific  
44 questions, furnishing the Commission such information as it may require as to the  
45 organization, business, conduct, practices, management and relation to other persons of  
46 the respective natural or juridical persons or entities filing such reports or answers in

1 writing except that the Commission shall not require, either by a specific order or by a  
2 subpoena, the disclosure or production of trade secrets such as a secret formula, pattern,  
3 device or compilation of information, including names of customers, which is used in  
4 one's business and which gives one an opportunity to obtain advantage over competitors  
5 who do not know or use it. Trade secrets shall include a plan or process, tool, mechanism,  
6 or compound known only to the owner and his employees to whom it is necessary to  
7 confide it;

8  
9 (8) Public Disclosure of Information. - To make public, from time to time, such portions  
10 of the information obtained by it under this Act, except trade secrets and names of  
11 customers, as it shall deem expedient in the public interest;

12  
13 (9) Reports and Recommendations to Congress. - To submit annual and special reports to  
14 Congress, including proposed legislation for the regulation of trade, commerce, or  
15 industry, and provide for the publication of its reports and resolutions in such form and  
16 manner as may be best adopted for public information and transparency;

17  
18 (10) Trade Conditions, Domestic and Foreign. - To study, from time to time, trade  
19 conditions in and with foreign countries where associations, combinations, or practices of  
20 manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of  
21 the Philippines, and report to Congress its findings and recommendations thereon as it  
22 may deem advisable.

23  
24 **Sec. 10. Jurisdiction of Regional Trial Courts.** - The Regional Trial Court shall have  
25 jurisdiction over all criminal and civil aspects of the violations of this act. The venue shall be in  
26 accordance with the Rules of Court.

27  
28 **CHAPTER IV**  
29 **FINES AND PENALTIES**

30  
31 **SEC. 11. Administrative Penalties.** -

32  
33 (a) Without prejudice to the violation of other laws, any firm that shall be found to have  
34 violated Sections 8, 9 and 10 of this Act, or any combination thereof, shall, for each and  
35 every violation, be punished by a fine of not less than Ten million pesos  
36 (Php10,000,000.00) and not exceeding Fifty million pesos (Php50,000,000.00) if a  
37 natural person; by a fine of not less than Two hundred fifty million pesos  
38 (Php250,000,000.00) but not exceeding Seven hundred fifty million pesos  
39 (Php750,000,000.00) at the discretion of the Commission.

40  
41 In addition, a fine shall be imposed in an amount double the gross proceeds gained by the  
42 violator/s or double the gross loss suffered by the plaintiffs, whichever is higher.

43  
44 (b) Failure to Comply with an order of the Commission. - In addition to the administrative  
45 penalties, any person who fails or neglects to comply with any term or condition of a binding  
46 ruling, a cease and desist order or an order for readjustment issued by the Commission, shall

1 pay a fine of not less than Fifty Thousand Pesos (Php50,000.00) for each violation. Each  
2 violation shall be deemed a separate offense: Provided, That in the case of a violation  
3 through a continuing failure or neglect to comply, each day of continuance of such failure or  
4 neglect shall be deemed a separate offense.

5  
6 (c)Supply of Incorrect or Misleading Information. - In addition to (a) and (b) above, the  
7 Commission may likewise impose upon persons or entities fines of not less than Five  
8 Thousand Pesos (Php5,000.00) to not more than One Hundred Thousand Pesos  
9 (Php100,000.00) where, intentionally or negligently, they supply incorrect or misleading  
10 information in any document, application or other paper filed with or submitted to the  
11 Commission or supply incorrect or misleading information in an application or other paper  
12 filed with or submitted to the Commission or supply incorrect or misleading information in  
13 an application for a binding ruling, a proposal for a consent judgment, proceedings relating to  
14 a show cause order, or application for modification of the Commission's ruling, order or  
15 approval, as the case may be.

16  
17 **Sec. 12. Criminal Penalties.** - Without prejudice to the violation of other laws, any firm that  
18 shall be found to have violated Sections 8, 9 and 10 of this Act, or any combination thereof,  
19 shall, for each and every violation, be punished by a fine of not less than Ten million pesos  
20 (Php10,000,000.00) and not exceeding Fifty million pesos (Php50,000,000.00) if a natural  
21 person; by a fine of not less than Two hundred fifty million pesos (Php250,000,000.00) but not  
22 exceeding Seven hundred fifty million pesos (Php750,000,000.00) if a firm, and by  
23 imprisonment not exceeding ten (10) years, or both, at the discretion of the court. In the  
24 alternative, a fine shall be imposed in the amount double the gross proceeds gained by the  
25 violator or double the gross loss suffered by the plaintiffs.

## 26 27 **CHAPTER V** 28 **ENFORCEMENT**

29  
30 **SEC. 13. Preliminary Inquiry.** - The Commission shall motu proprio or upon the filing of a  
31 verified complaint by an interested party or upon referral by the concerned regulatory agency,  
32 initiate a preliminary inquiry for the enforcement of this Act.

33  
34 **SEC. 14. Power over acts committed prior to the passage of this law.** -Subject to the  
35 constitutional prohibition on the passage of ex post facto laws, the Commission shall have the  
36 power to decide on and regulate acts related to competition issues despite the fact that the acts  
37 complained of were committed or the contracts were perfected or consummated prior to the  
38 passage of this law. This power shall include orders to break-up mergers and consolidations and  
39 un-bundle products sold as a package.

40  
41 **Sec. 15. Powers of Concerned Regulatory Agencies.** - Notwithstanding the provisions of the  
42 preceding section, the exercise of regulatory powers by different government agencies over an  
43 industry or a sub-sector of an industry shall be cumulative and shall not be construed in any way  
44 as derogating from the power and authority of the concerned agency; Provided, that: the  
45 Commission shall have exclusive jurisdiction over competition matters, including all of the



1 prohibited acts under this Act and other laws, but can decide on competition issues only after  
2 requesting and obtaining technical assistance from the regulatory agencies.

3  
4 The government agencies shall cooperate and coordinate with one another in the exercise  
5 of their powers in order to prevent overlap, to share confidential information, or for other  
6 effective measures. The failure of the regulatory agencies to provide technical assistance or  
7 opinion after having been given a reasonable time, shall not prevent the Commission from  
8 performing its functions in a timely manner; Provided, that: in situations where time is of the  
9 essence, and the Commission cannot suspend its action and wait for the opinion of the regulatory  
10 agencies, the Commission may so decide or act accordingly, without prejudice to correcting or  
11 modifying its action after obtaining the opinion of the regulatory agency.

12  
13 **SEC. 16. Power to Investigate and to Enforce Orders and Resolutions.** -The Commission  
14 shall conduct preliminary inquiries by administering oaths, issuing subpoena duces tecum and  
15 summoning witnesses, and commissioning consultants or experts. It shall determine if any  
16 provision of this Act has been violated, enforce its orders and carry out its resolutions by making  
17 use of any available means, provisional or otherwise, under existing laws and procedures  
18 including the power to punish for contempt and to impose fines.

19  
20 **Sec. 17. Self-incrimination.** - Pursuant to the preceding section, a person subject of any  
21 preliminary inquiry or investigation by the Commission shall produce the specified document or  
22 information when so required by written notice: Provided, That no person shall be excused from  
23 disclosing any document or information to the inquiring officer on the ground that the disclosure  
24 of the information or document may be incriminating: Provided, further, That such document or  
25 information produced by the person subject of investigation shall not be admissible as evidence  
26 against him in criminal proceedings: Provided, finally, That such document or information shall  
27 be admissible in evidence in civil proceedings including those arising from or in connection to  
28 the implementation of this Act.

29  
30 **Sec. 18. Privileged Communication Exclusion.** - Nothing in the preceding section shall compel  
31 the disclosure of privileged communication: Provided, That the person who refuses to disclose  
32 the information or produce the document or other material required by the inquiring officer in  
33 relation to the preliminary inquiry being conducted shall nevertheless be obliged to give the  
34 name and address of the firm to whom, or by whom, or on whose behalf, such privileged  
35 communication was made.

36  
37 **Sec. 19. Confidentiality of Information.** - Any document or information submitted by firms, as  
38 determined and marked confidential by the Commission, relevant to any investigation being  
39 conducted pursuant to this Act shall not, in any manner, be directly or indirectly disclosed,  
40 published, transferred, copied, or disseminated. The identity of persons who provide information  
41 to the Commission and who need confidentiality to protect themselves against economic  
42 retaliation, and any Commission deliberations in regard to current or still uncompleted matters  
43 shall remain confidential. Any violation of this provision shall be imposed a fine of not less than  
44 One hundred thousand pesos (Php100,000.00) but not more than Five hundred thousand pesos  
45 (Php500,000.00).

46

1 **Sec. 20. Immunity from Suit.** - Any person or firm which cooperates or furnishes any  
2 information, document or data to the Commission before or during the conduct of the  
3 preliminary inquiry that constitutes material evidence as determined by the under this Act shall  
4 be immune from any suit or charge including from affected parties and third parties: Provided,  
5 that the person or firm is not the most guilty. Provided, further, That any person or firm which  
6 cooperates or furnishes information, document or data to the Commission in connection to an  
7 investigation being conducted shall not be subjected to any form of reprisal or discrimination:  
8 Provided, furthermore, That such reprisal or available means, provisional or otherwise, under  
9 existing laws and procedures including the power to punish for contempt and to impose fines.

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

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

27  
28 **Sec. 19. Confidentiality of Information.** - Any document or information submitted by firms, as  
29 determined and marked confidential by the Commission, relevant to any investigation being  
30 conducted pursuant to this Act shall not, in any manner, be directly or indirectly disclosed,  
31 published, transferred, copied, or disseminated. The identity of persons who provide information  
32 to the Commission and who need confidentiality to protect themselves against economic  
33 retaliation, and any Commission deliberations in regard to current or still uncompleted matters  
34 shall remain confidential. Any violation of this provision shall be imposed a fine of not less than  
35 One hundred thousand pesos (Php100,000.00) but not more than Five hundred thousand pesos  
36 (Php500,000.00).

37  
38 **Sec. 20. Immunity from Suit.** -Any person or firm which cooperates or furnishes any  
39 information, document or data to the Commission before or during the conduct of the  
40 preliminary inquiry that constitutes material evidence as determined by the under this Act shall  
41 be immune from any suit or charge including from affected parties and third parties: Provided,  
42 that the person or 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 connection to an  
44 investigation being conducted shall not be subjected to any form of reprisal or discrimination:  
45 Provided, furthermore, That such reprisal or discrimination shall be considered a violation of this  
46 Act and subjected to the penalties provided for under Section 11.

1  
2 Nothing in this section shall preclude the prosecution of persons and firms who furnished  
3 the Commission with malicious information, data and falsified documents which is damaging to  
4 the business and integrity of the persons and firms under inquiry. Such act shall likewise be  
5 considered as an unfair trade practice punishable under this Act.  
6

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

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

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

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

28 If the evidence so warrants, the Commission shall file criminal cases for violation of this  
29 Act or relevant laws before the Department of Justice pursuant to Section 12 of this Act.  
30

31 Any decision or order of the Commission to lodge a criminal complaint with the  
32 Department of Justice shall not be the subject of a motion for reconsideration and shall not be  
33 subject to appeal. After rendering such decision or order, the Commission shall file a criminal  
34 complaint with the Department of Justice, which shall then conduct the requisite preliminary  
35 investigation in accordance with the Rules of Criminal procedure in the Rules of Court.  
36

37 **SEC. 22. Nolo Contendere Resolution.** - Any firm under inquiry under the provisions of this  
38 Act may submit to a nolo contendere resolution at any time before the termination of the  
39 preliminary inquiry by: a) the payment of an amount within the range of penalties provided for  
40 under Section 11; b) by entering into an undertaking to effectively stop and rectify the acts  
41 complained against, make restitution to the affected parties, whether or not the parties are  
42 plaintiffs or witnesses; and, c) by submitting regular compliance reports as may be directed:  
43 Provided, That, ten percent (10%) of the amounts paid under this section shall equitably accrue  
44 to the Commission: Provided, further, That a nolo contendere resolution shall not bar any inquiry  
45 for the same or similar acts if continued or repeated.  
46

1 SEC. 23. **Implementing Policy; Non-Adversarial Administrative Remedies.** - As an  
2 implementing and enforcement policy, the Commission shall, under such rules and regulations it  
3 may prescribe, encourage voluntary compliance with this Act and other competition laws by  
4 making available to the parties concerned the following and other analogous non-adversarial and  
5 non-adjudicatory administrative remedies, before the institution of administrative, civil or  
6 criminal action:  
7

8 (a) Request for Binding Ruling. - Any person who is in doubt as to whether his  
9 contemplated or existing act, course of conduct, agreement, decision or practice is in  
10 compliance with, is exempt from, or in violation of any of the provisions of this Act,  
11 other trade competition laws, or implementing rules and regulations thereof, may request  
12 the Commission, in writing, to render a binding ruling thereon;  
13

14 (b) Show Cause Order. - Upon preliminary findings motu proprio or on written complaint  
15 under oath by an interested party, that any person is conducting his business, in whole or  
16 in part, that any person is conducting his business, in whole or in part, in a manner that  
17 may not be in accord with the provisions of this Act or other trade competition laws, and  
18 it finds that the issuance of a show cause order would be in the interest of the public, the  
19 Commission shall issue and serve upon such person or persons a written description of its  
20 business conduct complained of, a statement of the facts, data, and information together  
21 with a summary of the evidence thereof, with an order requiring the said person or  
22 persons to show cause, within the period therein fixed, why no order shall issue requiring  
23 such person or persons to cease and desist from continuing with ties identified business  
24 conduct, or pay the administrative fine therein specified, or readjust its business conduct  
25 or practices;  
26

27 (c) Proposal for Consent Judgment - At any time prior to the issuance of a binding ruling,  
28 the promulgation of a cease and desist judgment under a show cause order or the  
29 promulgation of a decision of judgment in any administrative, civil, or criminal case, the  
30 person or persons, whose business conduct is under inquiry in the particular proceedings  
31 may, without in any manner admitting a violation of this Act or any other trade  
32 competition laws, submit to the Commission a written proposal for the entry of a consent  
33 judgment, specifying therein the terms and conditions of the proposed consent judgment.  
34

35 (d) Consultations. - Prior to the fitting of a request for a binding ruling or the submission  
36 of a proposal for consent judgment, the person or persons concerned may communicate,  
37 in writing, with the Commission on matters that should be included or excluded in such  
38 request or proposal, which the Commission may consider necessary for the effective  
39 enforcement of this Act or other trade competition laws.  
40

41 (e) Binding Ruling, Cease and Desist Order, and Consent Judgment -Based upon the  
42 facts, data, and information disclosed or supplied by the persons concerned, or  
43 established by substantial evidence during the hearing, the Commission shall issue a  
44 binding ruling, a cease and desist order or an approval of the proposal for a consent  
45 judgment, as the case may be, with or without conditions, to the effect that the particular  
46 act, course of conduct, agreement, decision or practice is in accord with this Act or other

1 trade competition laws, or is exempt therefrom, or is constitutive of a violation thereof. If  
2 the Commission finds that there is substantial evidence tending to show that the act,  
3 course of conduct, agreement, decision or practice of the person or persons concerned is  
4 prohibited, it shall include in its decision an order requiring the person or persons  
5 concerned:

6  
7 (1) Cease and Desist Order. - To cease and desist from continuing with the  
8 identified act, course or conduct, agreement, decision, or practice found to  
9 be violative of the provisions of this Act;

10 (2) Administrative Penalty or Fine. - To pay the fine therein fixed; and

11 (3) Readjustment of Business Methods. - To readjust, within a reasonable  
12 period therein fixed, its method of doing business, including a corporate  
13 reorganization or divestment in the manner and under the terms and  
14 conditions prescribed by the Commission, as it may deem proper for the  
15 protection of the public interest.  
16

17 (f) Suspension of Administrative, Civil or Criminal Proceedings. - No pending  
18 administrative, civil or criminal proceedings or those filed thereafter, against any person,  
19 corporation or any other juridical entity or its officers and employees, shall be suspended,  
20 except upon order of the Commission on proper motion, on the ground of the filing of a  
21 request for binding ruling, the issuance of a show cause order or the filing of a proposal  
22 for a consent judgment based, in whole or in part, on the same set of facts and issues as  
23 that of the proceedings sought to be suspended;  
24

25 (g) Monitoring of Compliance. - The Commission shall monitor the compliance by the  
26 person or persons concerned, their officers, and employees, with the final and executory  
27 binding ruling, cease and desist order, or approval of a consent judgment. Upon motion  
28 of an interested party, the Commission shall issue a certification to the effect that the  
29 person or persons concerned have, or have not, as the case may be, complied with a final  
30 and executory ruling, order, or approval;  
31

32 (h) Inadmissibility in Evidence. - The request for a binding ruling, the show cause order,  
33 or the proposal for consent judgment; the facts, data, and information therein contained or  
34 subsequently supplied by the person or persons concerned; admissions, oral or written,  
35 made by them against their interest; all other documents filed by them including their  
36 evidence presented in the proceedings before the Commission; and the judgment  
37 rendered thereon, shall not be admissible as evidence in any administrative, civil or  
38 criminal proceedings against such person or persons, their officers, employees, and  
39 agents nor constitute a basis for the introduction of the binding ruling, the cease and  
40 desist order, or the consent judgment as prima facie evidence against such persons in any  
41 such action of proceeding;  
42

43 (i) Modification or Reversal of Ruling, Order or Approval. - The Commission may motu  
44 proprio or upon petition of an interested party, after notice and hearing, reopen and alter,  
45 modify, or set aside, in whole or in part, a binding ruling, a cease and desist order, or an  
46 approved consent judgment:

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- (1) Whenever conditions of material fact or law have so changed as to require such action;
- (2) When the concerned person or persons fail or refuse, without justifiable cause therefore, to comply with any condition attached to such ruling, order, or approval, including an order to readjust their method of doing business; or
- (3) When the ruling, order, or approval was based on deliberately falsified material fact, data, or information supplied by an interested party benefited by such ruling, order, or approval.

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

**SEC. 24. Contempt.** - The Commission, or any of its Divisions, may summarily punish for contempt, or by a fine not exceeding thirty (30) days, or both, any person guilty of such misconduct in the presence of the Commission or any of its Divisions 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 legally issued by the Commission or any of its Division, 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. 25. Decisions of the Commission.** - Decisions of the Commission en banc shall be appealable to the Court of Appeals as hereinafter provided. The appeal shall not stay the order, ruling or decision sought to be reviewed, unless the Court of Appeals shall direct otherwise upon such terms and conditions it may deem just.

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

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

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2 The Commission shall be included as a party respondent to the case and shall be  
3 represented by its own legal staff. The Commission shall be included as a party respondent to the  
4 case and shall be represented by its own legal staff.  
5

6 **SEC. 27. Appeal to the Supreme Court.** - A decision of the Court of Appeals may be appealed  
7 to the Supreme Court in the manner and on the grounds prescribed by the Rules of Court.  
8

9 **SEC. 28. Reception of Additional Evidence.** - Any party in the appellate proceedings may  
10 apply for leave to the Court of Appeals or the Supreme Court, to adduce additional evidence  
11 before the Commission. The Court may, under such terms and conditions as it may prescribe,  
12 order the Commission to receive such additional evidence upon showing that it is material and  
13 there are reasonable grounds for the failure to present said evidence in the proceedings before the  
14 Commission. The Commission, sitting en banc, may modify its findings as to the facts, or make  
15 new findings, by reason of the additional evidence taken, and it shall file with the appellate court  
16 such modified or new findings and its recommendations for the affirmance, modification, or  
17 setting aside of the appealed binding ruling, order, resolution, decision, judgment, rule or  
18 regulation.  
19

20 **SEC. 29. Writ of Execution.** - Upon the finality of its binding ruling, order, resolution, decision,  
21 judgment, or rule or regulation, (collectively, "Decision"), the Commission may issue a writ of  
22 execution to enforce its decision and the payment of the administrative fines provided in the  
23 preceding sections.  
24

25 **SEC. 30. Violation by Corporation, Partnership, Association, and Other Entity.** - Whenever  
26 a corporation, partnership, association, firm or other entity, whether domestic or foreign, shall  
27 commit any of the acts declared to be unlawful under this Act, the Chairman of the Board of  
28 Directors, the President, the General Manager of the corporation, the general partners of a  
29 partnership, and the officers and employees directly responsible, shall be jointly and severally  
30 liable with the firm for the fine imposed therein.  
31

32 Should the offense be committed by a foreign corporation licensed to do business in the  
33 Philippines, the person or persons directly responsible in the Philippines for the management and  
34 operation thereof, shall be liable. In addition, its license to do business in the Philippines shall be  
35 cancelled.  
36

37 It shall not be a defense for the Chairman of the Board of Directors, the President or the  
38 General Manager of the corporation or the general partners of a partnership, or the persons  
39 responsible for the management and operation of a foreign corporation licensed to do business in  
40 the Philippines, that he was unaware of the violation, unless, he shall have established to the  
41 satisfaction of the court that even with the exercise of due diligence and proper supervision, he  
42 could not have avoided or prevented the violation.  
43

44 Any agreement between an officer, partner or any other officer and a corporation or  
45 partnership whereby the latter directly or indirectly agrees to assume, satisfy or indemnify, in

1 whole or in part, the fine of civil obligation imposed under this Act of such corporate officer,  
2 partner, manager or other officer found guilty of violating this Act, shall be void.

3  
4 **SEC. 31. Alien Violators.** - If the person violating any provision of this Act is a foreigner, he  
5 shall, in addition to the other penalties imposed herein, be deported after service of sentence  
6 without need of any further proceedings.

7  
8 **SEC. 32. Essential Commodities.** - If the violation involves the trade or movement of prime  
9 commodities such as rice, corn, sugar, chicken, pork, beef, fish, vegetables, and other articles or  
10 commodities of prime or basic necessity as declared by the appropriate government agency,  
11 through publication, the fine imposed by the Commission or the courts, as the case may be, shall  
12 automatically be tripled and the offender shall pay such threefold fine.

13  
14 **SEC. 33. Private Action.** - Regardless of the status or pendency of any proceedings, any firm  
15 that suffers injury by reason of any violation of this Act may institute a separate and independent  
16 civil action, irrespective of the amount involved in the controversy against the defendant or  
17 defendants and shall recover treble damages sustained, the costs of suit and reasonable attorney's  
18 fees: Provided however, That no filing fees shall be collected: Provided, further, That filing fees  
19 shall constitute a first lien in the award of damages.

20  
21 **SEC. 34. Effect of Final Judgment.** - Any final judgment in a civil or criminal action brought  
22 by the Commission on behalf of the people of the Philippines under this Act to the effect that a  
23 defendant has violated any or all of the provisions of this Act shall be res judicata as to any claim  
24 by any person on whose behalf such action was brought: Provided, That such person notifies the  
25 court having jurisdiction of the case within the period given by the court: Provided further, That  
26 such period shall not be less than ninety (90) days.

27  
28 It shall be prima facie evidence against such defendant in any civil action brought by any  
29 other party against such defendant under this Act as to all matters respecting which said  
30 judgment would be an estoppel as between the parties concerned.

31  
32 **SEC. 35. Distribution of Damages Recovered.** - The damages recovered in a civil action under  
33 Section 20 of this Act shall be distributed in the following manner: (1) as determined and to be  
34 authorized by the Court having jurisdiction of the case; (2) ten percent (10%) of the total amount  
35 of damages shall accrue to the Commission and/or regulatory agency to be used exclusively in  
36 the enforcement of this Act; and, (3) the remainder of which total amount of damages shall be  
37 deemed a civil penalty by the Court and shall be deposited to the National Treasury as part of the  
38 general fund of the government: Provided, That any distribution procedure adopted by the Court  
39 shall give preference to individual consumers and afford each person having an interest a  
40 reasonable opportunity to secure his appropriate portion of the net damages obtained.

41  
42 **SEC. 36. Measurement of Damages.** - Damages may be proved and assessed in the aggregate  
43 by statistical or sampling methods, by the computation of illegal overcharges, or by such other  
44 reasonable system of estimating aggregate damages as the court in its discretion may permit  
45 without the necessity of separately proving the individual claim, of, or amount of damage to,  
46 persons on whose behalf the suit was brought.



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**CHAPTER VI**  
**OTHER PROVISIONS**

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

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

**SEC. 38. Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Injunctions and Preliminary Mandatory Injunctions.** -Except for the Supreme Court, no other court shall issue any temporary restraining order, preliminary injunction or preliminary mandatory injunction against the Commission in the exercise of its duties or functions: Provided That, this prohibition shall apply in all cases, disputes or controversies instituted by a private party, including, but not limited to, cases filed by regulated firms or those claiming to have rights through such firms: Provided however, That, this prohibition shall not apply when the matter is of extreme urgency involving a constitutional issue, such that the non-issuance of a temporary restraining order will result in grave injustice and irreparable injury to the public: Provided further, That, the applicant shall file a bond, in an amount to be fixed by the Court, but in no case shall it be less than half of the imposable fines provided for under Section 11 of this Act: Provided finally, That in the event that the court finally decides that the applicant was not entitled to the relief applied for, the bond shall accrue in favor of the Commission.

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

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

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

1 **SEC. 40. Trade Associations.** - Nothing contained in this Act shall be construed to prohibit the  
2 existence and operation of trade associations organized to promote quality standards and safety  
3 issues: Provided, That, these associations shall not in any way be used to justify any violation of  
4 this Act.

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

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

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

32  
33 **SEC. 43. Appropriations.** - The amount necessary to implement the provisions of this Act shall  
34 be included in the annual General Appropriations Act. However, for the initial budgetary  
35 requirements of the Commission, the amount of One Hundred Million Pesos (P100,000,000.00)  
36 is hereby appropriated.

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

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

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

3  
4 SEC. 46. **Repealing Clause.** - The following laws, insofar as they are inconsistent with any of  
5 the provisions of this Act are hereby repealed, amended or otherwise modified accordingly:

6  
7 (a) Sec. 5 (3) of Republic Act No. 7581 or The Price Act;

8 (b) Sec. 5 (f) of Republic Act No. 792.5 or The Public Telecommunications Policy Act;

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

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

12 (e) Sec. 13 of Republic Act No. 92.95 or The Domestic Shipping Development Act;

13 (f) Sec. 24 and 2.5 of Republic Act No. 9502 or The Universally-Accessible Cheaper and  
14 Quality Medicines Act.

15  
16 Provided, That in case of conflict between this Act and such provisions of existing  
17 competition laws and regulations, the provisions of this Act shall prevail.

18  
19 SEC. 47. **Effectivity Clause.** - This Act shall take effect fifteen (15) days following its  
20 publication in the Official Gazette or in at least two (2) national newspapers of general  
21 circulation. Provided however, In order to allow affected parties time to renegotiate agreements  
22 or restructure their business to comply with the new competition law, the penal provisions of this  
23 Act shall be imposed one (1) year after its effectivity.

24  
25 Approved,  
26