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SENATE
Senate Bill No. 1027

RE:

BY:

Introduced by: Senator Paolo Benigno "Bam" A. Aquino IV

EXPLANATORY NOTE

For businesses to thrive, sustain its employees, and generate more employment and greater productivity, it must operate within an environment that promotes fair competition and a level playing field. However, while the Philippines already has various laws that address and promote fair market competition, the reality is that it does not have a comprehensive competition policy that fully covers all areas and aspects of a competition framework. Moreover, the changing business climate, both on the local and global fronts, has deemed existing laws inadequate and ineffective.

At the root of competition laws or anti-trust legislation is the desire to foster and promote healthy and fair competition among the economy's players. Such legislation is being proposed because of the belief that competition leads to better choices for consumers, lower prices, increased product information, and a better distribution of wealth between consumers and producers.

Therefore, we propose this **Philippine Fair Competition Act** in order to address this gap in legislation in fostering a more dynamic and healthier market interaction.

The Philippine Fair Competition Act penalizes all forms of unfair trade, anti-competitive conduct, and combinations in restraint of trade, with the objective of protecting consumer welfare and advancing domestic and international trade and economic development.

The enactment of this Act will tighten regulations among competitors, specifically on issues of price-fixing and bid-rigging. It shall also introduce significant control over a vast area of commercial activities and arrangements in the country, aligning the Philippines with international standards and practices.

Senator Paolo Benigno "Bam" A. Aquino IV



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SENATE
S. No. 1027

RECEIVED BY: *ju*

Introduced by: Senator Paolo Benigno "Bam" A. Aquino IV

AN ACT
PROMOTING COMPETITION TO PROTECT CONSUMER WELFARE, ADVANCE DOMESTIC AND
INTERNATIONAL TRADE AND SUSTAINED ECONOMIC DEVELOPMENT BY, AMONG OTHERS,
REGULATING MONOPOLIES, ANTI-COMPETITIVE AGREEMENTS, ABUSE OF DOMINANT
POWER, AND ANTICOMPETITIVE MERGERS, ESTABLISHING THE PHILIPPINE FAIR
COMPETITION COMMISSION AND APPROPRIATING FUNDS THEREFOR, AND FOR OTHER
PURPOSES.

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

CHAPTER I
GENERAL PROVISIONS

1 **SECTION 1. Title** – This act shall be known and cited as the "Philippine Fair Competition Act of
2 2013."
3

4 **SECTION 2. Declaration of Policy** – Pursuant to the constitutional goals of the national economy
5 for a more equitable distribution of opportunities, income, and wealth; a sustained increase in
6 the amount of goods and services produced by the nation for the benefit of the people; and an
7 expanding productivity as the key to raising the quality of life for all, especially the
8 underprivileged; and the constitutional mandate that the State shall regulate or prohibit
9 monopolies when the public interest so requires and that no combinations in restraint of trade
10 or unfair competition shall be allowed, the State shall:

11
12 (a) Promote and enhance economic efficiency and competition in trade, industry and
13 commerce with the objective of protecting consumer welfare and advancing domestic and
14 international trade and economic development;

15
16 (b) Ensure that industrial concentration does not result in the exercise of economic power by a
17 few persons, including government-owned or controlled entities engaged directly or
18 indirectly in any economic activity, that threaten to control, or control production, trade, or
19 industry in order to stifle competition, distort, manipulate or constrict the discipline of free
20 markets, or increase market prices in the Philippines; and

21
22 (c) Regulate anti-competitive agreements, abuse of dominant position, and anti-competitive
23 mergers that threaten to control, or control production, trade, or industry in order to stifle
24 competition, distort, manipulate or constrict the discipline of free markets, or increase
25 market prices in the Philippines.
26

1 **SECTION 3. *Scope and Application*** – This Act shall be enforceable within the territory of the
2 Republic of the Philippines and shall apply to all areas of trade, industry and commerce. It shall
3 likewise be applicable to international trade having direct, substantial and reasonably
4 foreseeable effects in trade, industry or commerce in the Republic of the Philippines including
5 those that result from acts done outside the Republic of the Philippines.

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

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

17
18 **SECTION 4. *Definition of Terms*** - As used in this Act, the following terms shall be defined as:

19
20 (a) "Agreements" shall refer to any type or form of arrangement, understanding, undertaking
21 or concerted action, whether formal or informal, written or oral;

22
23 (b) "Anti-competitive agreements," may be either:

24
25 i. "Horizontal agreement" means an agreement entered into between two or more
26 enterprises operating at the same functional level of the production or distribution
27 chain to compete for the same customers in the relevant market;

28
29 ii. "Vertical agreement" means an agreement entered into between two or more
30 enterprises, each of which operates, for the purposes of the agreement, at different
31 functional levels of the production or distribution chain, and relating to the conditions
32 under which the parties may purchase, sell or resell certain goods or services;

33
34 (c) "Cartel" shall refer to a horizontal agreements that result to a dominant position for the
35 purpose of engaging in price fixing, output restriction, market allocation, bid-rigging and
36 other anti-competitive conduct to control or restrict competition in a particular industry or
37 commodity;

38
39 (d) "Commission" shall mean the Philippine Competition Commission created under this Act;

40
41 (e) "Competition" shall mean the process by which economic agents, acting independently in a
42 market, limit each other's ability to control the prevailing conditions in the market;

43
44 (f) "Control of a firm" shall refer to the ability to substantially influence or determine the
45 actions or decisions of a firm including but not limited to at least fifty one percent (51%)
46 ownership of shares in a stock entity, or in the position to cast at least fifty one (51%) of the
47 voting rights of a firm, or to designate a majority of a board of directors or equivalent
48 management entity, directly or indirectly, regardless of the number of intermediary firms;
49 (For further analysis and discussion)

50
51 (g) "Dominant Position" shall refer to a situation where a firm, either by itself or acting in
52 collusion with other firms, is in a position to control a relevant market for the sale of a
53 particular good or services by fixing its prices, excluding competitor firm, or controlling the
54 market in a specific geographical area;

1
2 (h) "Firm" shall include any person, natural or juridical, partnership, combination or association
3 in any form, whether incorporated or not, domestic or foreign, including those owned or
4 controlled by the government, engaged directly or indirectly in any economic activity:
5 *Provided, That, two firms, one of which is controlled by the other, shall be treated as one*
6 *firm: Provided, further, That two or more firms that are controlled by a single firm shall be*
7 *treated as one firm;*

8
9 (i) "Goods" and "Services":

10
11 "Goods" include all types of tangible and intangible property that could be bought and sold,
12 and the possession of which could be transferred in whole or in part, temporarily or
13 permanently; *Provided, that, intangible properties governed by existing laws shall be*
14 *excluded from the application of this Act;*

15
16 "Services" shall refer to the provision of things of value or articles or items that could be
17 used by one person, whether natural or juridical, to another through human interaction or
18 through the use, without transfer of ownership, of the facilities of the provider by the client,
19 or a combination of both. It shall include all non tangible goods. It is the non-material
20 equivalent of a good, consumed at the point of sale and does not result in ownership;

21
22 (j) "Market" shall refer to a place or venue for commercial activity, which may extend beyond
23 the borders of the Republic of the Philippines, where articles are bought or sold. It shall also
24 refer to the geographical or economic extent of commercial demand;

25
26 "Relevant Market" shall refer to the line of commerce in which competition has been
27 restrained. It shall also refer to the geographic area involved, including all reasonably
28 substitutable goods, and all nearby competitors, to which consumers could turn if the
29 restraint or abuse results in the significant increase in prices.

30
31 (k) "Mergers" refers to situations where two or more undertakings, previously independent of
32 one another, join together. This definition includes transactions whereby two companies
33 legally merge into one (mergers), one firm takes sole control of the whole or part of another
34 (acquisitions or takeovers), two or more firms acquire joint control over another firm (joint
35 ventures) and other transaction, whereby one or more undertakings acquire control over
36 one or more undertakings, such as interlocking directorates;

37
38 (l) "Monopoly" shall mean a privilege or undue advantage of one firm, consisting in the
39 exclusive right to carry on a particular business or trade, and/or manufacture a particular
40 product, article or object of trade, commerce or industry. It is a form of market structure in
41 which one firm dominate the total sales of a product or service;

42
43 "Monopoly Power" or "Dominant Position" shall refer to a situation where a firm, either by
44 itself or acting in collusion with other firms, is in a position to control a relevant market for
45 the sale of a particular good or service by fixing its prices, excluding competitor firm, or
46 controlling the market in a specific geographical area; and

47
48 **CHAPTER II**
49 **PHILIPPINE FAIR COMPETITION COMMISSION**

50
51 **SECTION 5. Philippine Fair Competition Commission** - To implement the national policy and
52 attain the objectives and purposes of this Act, an independent Commission is hereby created,
53 which shall be known as the Philippine Fair Competition Commission (PFCC), hereinafter

1 referred to as the Commission, and which shall be organized within one hundred eighty (180)
2 days after the approval of this Act.

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

5
6 (a) *Composition.* – The Commission shall be composed 1 of a Chairperson and four (4) Associate
7 Commissioners. The Chairperson and Commissioners shall be citizens and residents of the
8 Philippines, at least forty (40) but not more than sixty-five (65) years of age, of good moral
9 character and of recognized probity and independence. The Chairperson and two (2) of the
10 Associate Commissioners shall be members of the Philippine Bar and the remaining two (2)
11 shall be of recognized competence in the field of economics preferably in industrial
12 organization economics, or finance, commerce, accounting or management. They must have
13 been in the active practice of their professions for at least ten (10) years, but must not have
14 been candidates for any elective national or local office in the immediately preceding elections,
15 whether regular or special.

16
17 (b) *Term of Office.* – The Chairperson and the Associate Commissioners shall be appointed by
18 the President of the Philippines. The term of office of the Chairperson and the Associate
19 Commissioners shall be six (6) years without reappointment. The Chairperson shall hold office
20 for six years and of the first four (4) Associate Commissioners, two (2) shall hold office for a
21 term of four (4) years and two (2) for a term of two (2) years. In case a vacancy occurs before
22 the expiration of the term of office, the appointment to such vacancy shall be only for the
23 unexpired term of the predecessor;

24
25 (c) *Prohibition and Disqualifications.* – The Commissioners shall not, during their tenure, hold
26 any other office of employment. They shall not, during their tenure, directly or indirectly
27 practice any profession, participate in any business, or be financially interested in any contract
28 with, or any franchise, or special privileges granted by the government or any subdivision,
29 agency, or instrumentality thereof, including government-owned and controlled corporations
30 of their subsidiaries. They shall strictly avoid conflict of interest in the conduct of their office.
31 They shall not be qualified to run for any office in the election immediately succeeding their
32 cessation from office. They shall not be allowed to appear or practice before the Commission
33 for two (2) years following their cessation from office.

34
35 No spouse or relative by consanguinity or affinity within the fourth civil degree and no former
36 law, business, or professional partner or associate of any of the Commissioners, the
37 Chairperson and the Secretary of the Commission may appear as counsel or agent on any
38 matter pending before the Commission or transact business directly or indirectly therein during
39 his/her incumbency and within one (1) year from his/her cessation of office.

40
41 (d) *Compensation of Commissioners.* – The Chairperson of the Commission shall hold the rank
42 of and shall have the privileges and compensation equivalent to that of a Department Secretary
43 or Presiding Justice of the Court of Appeals, whichever is higher, while the Associate
44 Commissioners shall each hold the rank of and shall have the privileges and compensation
45 equivalent to that of a Department Undersecretary or Associate Justice of the Court of Appeals,
46 whichever is higher.

47
48 (e) *Quorum.* – Three (3) members of the Commission shall constitute a quorum and the
49 affirmative vote of three members (3) shall be necessary for the adoption of any rule, ruling,
50 order, resolution, decision or other acts of the Commission *en banc*.

51
52 (f) *Principal Office, Branch and Venue.* – The Commission shall hold its principal office in Metro
53 Manila but it may conduct hearings outside of Metro Manila upon prior notice for inquiries,
54 studies or any other proceedings required for the proper and efficient exercise of its power and

1 the discharge of its duties. It may establish branch offices outside of Metro Manila as may be
2 necessary for the effective discharge of its functions.

3
4 (g) *Staff.* – The Commission shall appoint, fix the compensation in accordance with the Revised
5 Compensation and Position Classification Law, determine the status, qualifications and duties of
6 an adequate staff, which shall include an Executive Director of the Commission. The Executive
7 Director shall be appointed by the President and shall have relevant experience in any of the
8 fields of law, economics, commerce, management or finance for at least ten (10) years.
9 *Provided, that, he shall be a Career Executive Service Officer (CESO). The members of the*
10 *technical staff, except those performing purely clerical functions, shall possess at least a*
11 *Bachelor Degree in the following lines of specialization: economics, preferably in industrial*
12 *organization; law; finance; commerce; accounting; or management.*

13
14 Competition Advocacy role of the Commission

15
16 **SECTION 6. *Original and Exclusive Jurisdiction, Powers and Functions*** – The Commission shall
17 have original and exclusive jurisdiction to enforce and implement the administrative provisions
18 of this Act, its implementing rules and regulations, and all other competition laws, and in
19 particular:

20
21 (a) *Powers of the Commission Without Hearing.* – The Commission shall have the power
22 to do the following acts, without hearing:

23 (1) *Motu Proprio Investigation or Upon Complaint.* – To commence investigation,
24 on its own initiative or upon the complaint of any person, any and all violations
25 of this Act and other competition laws and cause the issuance of a cease and
26 desist order prior to the commencement of a preliminary inquiry, and/or the
27 institution of a civil or administrative action;

28
29 (2) *Administrative Action.* – To attest and file all complaints for appropriate
30 administrative relief from, or against, violations of this Act or other competition
31 laws;

32
33 (3) *Civil Action.* – To attest and file on behalf of the State, civil complaints for
34 damages to business or property of the State, arising from a violation of this Act
35 and other competition laws;

36
37 (4) *Deputization.* – To require any government agency to lend assistance and
38 information necessary in the discharge of its responsibilities under this Act, and
39 examine if necessary, pertinent records and documents in the possession of such
40 government agency;

41
42 (5) *Issuance of Subpoena.* – To issue *subpoena, subpoena duces tecum* and
43 *subpoena ad testificandum* in the exercise of its functions, powers and duties
44 under this Act, subject to the following standards:

45 i. No subpoena shall be issued to require the production or disclosure of trade
46 secrets as defined in paragraph (c)(2) hereof;

47
48 ii. A *subpoena* may be quashed only by means of a motion duly set for hearing
49 and on the grounds prescribed by the Rules of Court;

50
51 iii. A person appearing before the Commission in obedience to a *subpoena* shall
52 be advised, before he is required to testify or produce any documentary or real
53 evidence, of his right to be assisted or represented by a counsel of his choice, or

1 if he has none, the Commission shall appoint a *de officio* counsel for him; and of
2 his rights to avail of the immunity from prosecution privilege herein prescribed;

3
4 (b) *Powers of the Commission Upon Prior Notice and Hearing.* – The Commission may
5 exercise the following powers, only upon prior notice and hearing:

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

7
8 (2) *Show Cause Order and Decision* – To issue show cause orders, and
9 thereafter, render decision thereon;

10
11 (3) *Consent Judgment* – To approve, or disapprove, proposals for consent
12 judgment;

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

18
19 (5) *Administrative Fines, Penalties and Sanctions* – To impose the appropriate
20 administrative fines or penalties herein authorized to be imposed.

21
22 (c) *Other Powers of the Commission:*

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

33
34 (2) *Annual and Special Reports.* – To require, by general or special orders, firms
35 engaged in trade, commerce, or industry to file with the Commission in such
36 form as the Commission may prescribe, annual or special reports, or answers in
37 writing to specific questions, furnishing the Commission such information as it
38 may require as to the organization, business, conduct, practices, management
39 and relation to other persons of the respective natural or juridical persons or
40 entities filing such reports or answers in writing except that the Commission shall
41 not require, either by a specific order or by a *subpoena*, the disclosure or
42 production of trade secrets such as a secret formula, pattern, device or
43 compilation of information, including names of customers, which is used in one's
44 business and which gives one an opportunity to obtain advantage over
45 competitors who do not know or use it.

46 Trade secrets shall include a plan or process, tool, mechanism, or compound
47 known only to the owner and his employees to whom it is necessary to confide
48 it;

49
50 (3) *Public Disclosure of Information.* – To make public, from time to time, such
51 portions of the information obtained by it under this Act, except trade secrets
52 and names of customers, as it shall deem expedient in the public interest;

53

1 (4) *Reports and Recommendations to Congress.* – To submit annual and special
2 reports to Congress, through the Congressional Oversight Committee On Fair
3 Competition created under this Act, including proposed legislation for the
4 regulation of trade, commerce, or industry, and provide for the publication of its
5 reports and resolutions in such form and manner as may be best adopted for
6 public information and transparency; and
7

8 (5) *Trade Conditions, Domestic and Foreign.* – To study, from time to time, trade
9 conditions in and with foreign countries where associations, combinations, or
10 practices of manufacturers, merchants, or traders, or other conditions, may
11 affect the foreign trade of the Philippines, and report to Congress its findings and
12 recommendations thereon as it may deem advisable.
13

14 **SECTION 7. *Jurisdiction of Regional Trial Courts*** - The Regional Trial Court shall have jurisdiction
15 over cases arising from violations of the provisions of this Act.
16

17 With respect to personal actions arising from violations of the provisions of this Act, actions
18 may be commenced and tried where the plaintiff or any of the principal plaintiff resides, or
19 where the defendant or any of the principal defendants reside, or in the case of a non-resident
20 defendant, where he may be found, at the election of the plaintiff.
21

22 **CHAPTER III** 23 **PROHIBITED ACTS** 24

25 **SECTION 8. *Anti-competitive Agreements*** – It shall be unlawful for firms to engage in horizontal
26 and vertical agreements that prevent, distort or restrict competition, unless otherwise
27 exempted.
28

29 i. “Horizontal agreement” means an agreement entered into between two or more
30 enterprises operating at the same level in the market;
31

32 ii. “Vertical agreement” means an agreement entered into between two or more
33 enterprises, each of which operates, for the purposes of the agreement, at a different
34 level of the production or distribution chain, and relating to the conditions under which
35 the parties may purchase, sell or resell certain goods or services;
36

37 There shall be a *prima facie* case for the existence of an anti-competitive agreement if and
38 when the Commission finds that two or more firms that are ostensibly competing for the same
39 relevant market and actually perform uniform or complementary acts among themselves which
40 tend to bring about artificial and unreasonable increase, decrease or fixing in the price of any
41 goods or when they simultaneously and unreasonably increase, decrease or fix the prices of
42 their seemingly competing goods thereby lessening competition in the relevant market among
43 themselves.
44

45 (a) *Price Fixing* – Any agreement among competitors to raise, suppress, fix or otherwise
46 maintain the price at which their goods and services are sold such as, but not limited to,
47 establishing or adhering to price discounts, holding prices firmly, eliminating or reducing
48 discounts, adopting a standard or formula for computing prices, maintaining certain
49 price differentials between different types, sizes or quantities of products, adhering to a
50 minimum fee or schedule and other analogous schemes with the purpose and effect of
51 creating a monopoly or cartel or lessening competition;
52

53 (b) *Bid Rigging* – Any agreement to fix price at auctions or in any other form of bidding,
54 with the purpose and effect of creating a monopoly or cartel, or lessening competition

1 such as, but not limited, to cover bidding, bid suppression, bid rotation and market
2 allocation and other analogous practices of bid manipulation.

3
4 In determining whether there is price fixing or bid rigging, the following circumstances
5 may be considered:

6
7 (1) generally, any considered evidence that two sellers of similar goods have agreed to
8 set the price of their goods, to sell only a certain amount of their goods, or to sell only
9 to a limited number of buyers or consumers;

10
11 (2) a drastic change in prices of goods and services involving more than one seller of
12 similar goods of different brands, particularly if the changes in prices take place in
13 equal amount and about the same time;

14
15 (3) a seller refusing to sell based on an agreement with a competitor;

16
17 (4) the same firm has repeatedly been the low bidder who has been awarded
18 contracts for a certain service or a particular bidder seems to win bids on a
19 fixed-rotation;

20
21 (5) there is an unusual and unexplainable difference between the winning bid and all
22 other bids; and

23
24 (6) the same bidder bids substantially higher on some bids than on others, and there is
25 no logical cost reason to explain the difference.

26
27 **SECTION 9. Abuse of Dominant Position** - It shall be unlawful for one or more firms to abuse
28 their dominant position, by engaging in unfair methods of competition, or in unfair or deceptive
29 trade practices, or entering into combinations in the form of trust or otherwise, or conspiracy,
30 with the purpose and effect to prevent, restrict, or distort competition. Abusive agreements
31 such as, but not limited to, any of the following, shall be deemed to fall under the crime of
32 abuse of dominant position:

33
34 (a) *Predatory Behavior Towards Competitors* – Any agreement, including, but not limited to,
35 selling goods at below relevant cost with the intent of driving competitors out of the market,
36 or creating barriers to entry;

37
38 (b) *Limitation and Control of Markets* – Any agreement to limit or control production,
39 markets, technical development, or investment with the purpose and effect of creating a
40 monopoly or cartel, or lessening competition;

41
42 (c) *Market Allocation* – Any agreement to divide the market, whether by volume of sales or
43 purchase or by territory, by type of goods sold, by customers or sellers or by any other
44 means, with the purpose and effect of creating a monopoly or cartel, or lessening
45 competition;

46
47 (d) *Arrangements to Share Markets or Sources of Supply* – Any agreement to share markets
48 or sources of supply of raw materials, with the purpose and effect of creating a monopoly or
49 cartel, or lessening competition;

50
51 (e) *Price Discrimination* – Any agreement prescribing or charging, directly or indirectly,
52 discriminatory pricing terms or conditions in the supply or purchase of goods of like grade
53 and quality with the purpose and effect of creating a monopoly or cartel, or substantially
54 lessening competition: *Provided*, That nothing contained herein shall be construed to

1 prohibit permissible price differentials unless the same shall have the effect of preventing,
2 restricting or distorting competition: *Provided, further,* That for the purpose of this section,
3 the following shall be considered permissible price differentials:
4

- 5 (1) Socialized Pricing – Socialized pricing for the less fortunate sector of the economy;
- 6 (2) Volume Discounts – Price differentials which reflect an allowance for differences in
7 the cost of manufacture, sale, or delivery resulting from differing methods or
8 quantities in which the goods are sold or delivered to the purchasers;
- 9 (3) Competitive Pricing – A price differential or other terms of sale in response to the
10 competitive price of payments, services or facilities furnished by a competitor;
- 11 (4) *Bonafide* Selection of Customers – The selection of customers on *bona fide*
12 transaction; and
- 13 (5) Price Differentials Due to Changing Market Conditions or Marketability of Goods –
14 Price changes from time to time in response to changing conditions affecting the
15 market or the marketability of the goods concerned such as, but not limited to, actual
16 or imminent deterioration of perishable goods, obsolescence of seasonal goods,
17 distress sales under court process, or sale on good faith in discontinuance of
18 business.

19
20 (f) *Exclusivity Arrangement* – Any agreement imposing restrictions on the lease or contract
21 for sale or trade of goods concerning where, to whom, or in what forms goods may be sold
22 or traded, such as, but not limited to, fixing prices, or giving preferential discounts, or
23 rebate upon such price, or imposing conditions not to deal with competing firms, where the
24 purpose of such agreement is to lessen competition: *Provided,* That nothing contained
25 herein shall prohibit or render unlawful permissible franchising, licensing or exclusive
26 distributorship agreements;
27

28 (g) *Tie-In Arrangements* – Any agreement making the supply of particular goods dependent
29 upon the purchase or lease of other goods from the supplier or his consignee, where the
30 purpose and effect of such sale or lease or such condition is to substantially lessen
31 competition or to create a monopoly or cartel;
32

33 (h) *Boycott* – Any concerted refusal to sell or conspiracy not to sell or to stop doing business
34 on the part of the suppliers of any goods, unless for a legitimate purpose.
35

36 **SECTION 10. Anti-competitive Mergers** - No firm engaged in commerce or trade shall acquire,
37 directly or indirectly, the whole or any part of the stock or other share capital, or the whole or
38 any part of the assets, of one or more firms engaged in any line of commerce or trade where
39 the effect of such acquisition of such stocks, share capital, or assets, or of the use of such stock
40 by voting or granting of proxies or otherwise may be to substantially lessen competition, or
41 tend to create a monopoly.
42

43 (a) *Permissible Stock or Asset Acquisition or Ownership.* – Nothing contained herein,
44 however, shall be construed to prohibit:

- 45 (1) A firm from purchasing the stock or other share capital of one or more
46 corporations solely for investment and not using the same by voting or otherwise to
47 bring about, or in attempting to bring about, the substantial lessening of competition;
- 48 (2) A corporation from causing the formation of subsidiary corporations, or from
49 owning and holding all or part of the stock of such subsidiary corporations, for the
50 actual carrying on of their immediate lawful business, or the natural and legitimate
51 branches or extensions thereof; and
52

53 (3) A firm from continuing to own and hold the stock or other share capital or assets
54 of another corporation which it acquired prior to the approval of this Act.

1
2 (b) *Notification Prior to Stock or Asset Acquisition.* No firm shall acquire, directly or
3 indirectly, the shares of stock or assets of any other firm, if as a result of the acquisition,
4 the acquiring firm would own twenty percent (20%) or more of the shares of stock or
5 assets of the acquired firm, unless, the acquiring and selling firm notify, prior to the
6 conclusion of the agreement for such acquisition and in the prescribed form, the
7 Commission of such proposed acquisition. Only the acquiring firm is required to make
8 the notification in a tender offer. The contemplated acquisition shall be deemed
9 approved, unless the Commission, within thirty (30) calendar days from receipt of the
10 notification, orders the acquiring firm to show cause why the proposed acquisition shall
11 not be declared as prohibited under this Act. The show cause order shall set forth the
12 facts upon which it is based. The acquiring or selling firm may contest the show cause
13 order, in which case, the proposed acquisition shall be considered enjoined until the
14 Commission shall have rendered a decision on the proposed acquisition after due notice
15 and hearing, within a further sixty (60) calendar days in accordance with the procedure
16 prescribed herein for the disposition of a show cause order. If the Commission fails to
17 make a decision within the prescribed 60 calendar days limit, the acquisition shall be
18 deemed approved and the parties may proceed to implement it.

19
20 (c) *Transactions Exempt from Prior Notice Requirement.* – The following classes of
21 transactions are exempt from the prior notice requirement under this Section:

22 (1) Acquisition of goods or realty transferred in the ordinary course of business;

23
24 (2) Acquisitions of bonds, mortgages, deeds of trust, or other obligations which are
25 not voting securities;

26
27 (3) Acquisitions of voting securities of an issuer at least fifty percent (50%) of the
28 voting securities of which are owned by the acquiring firm prior to such acquisition;

29
30 (4) Transfers to, or from, government agencies or instrumentalities, including
31 government-owned or controlled corporations;

32
33 (5) Transactions exempted from the provisions of this Act and other proper and
34 applicable laws;

35
36 (6) Transactions which require the approval of a specialized agency which regulates
37 the particular industry;

38
39 (7) Acquisitions, solely for the purpose of investment, of voting securities, if as a
40 result of such acquisition the securities acquired or held do not exceed ten percent
41 (10%) of the outstanding voting securities of the issuer;

42
43 (8) Acquisitions of voting securities pursuant to the preemptive rights of the acquiring
44 firm; or, if, as a result of such acquisition, the voting securities acquired do not
45 increase, directly or indirectly, the acquiring firm's per centum share of outstanding
46 voting securities of the issuers; or

47
48 (9) Such other acquisitions, transfers, or transactions which the Commission may
49 declare as are not likely to violate the provisions of this Act or any other proper and
50 applicable law.
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**CHAPTER IV
FINES AND PENALTIES**

SECTION 11. Administrative Penalties –

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

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

(b) Failure to Comply With An Order of the Commission. – Any person who fails or neglects to comply with any term or condition of a binding ruling, a cease and desist order or an order for readjustment issued by the Commission, shall pay a fine of not less than Fifty Thousand Pesos (Php50,000.00) for each violation. Each violation shall be deemed a separate offense: *Provided*, That in the case of a violation through a continuing failure or neglect to comply, each day of continuance of such failure or neglect shall be deemed a separate offense.

(c) Supply of Incorrect or Misleading Information. - The Commission may likewise impose upon persons or entities fines of not less than Five Thousand Pesos (Php 5,000.00) to not more than One Hundred Thousand Pesos (Php100,000.00) where, intentionally or negligently, they supply incorrect or misleading information in any document, application or other paper filed with or submitted to the Commission or supply incorrect or misleading information in an application or other paper filed with or submitted to the Commission or supply incorrect or misleading information in an application for a binding ruling, a proposal for a consent judgment, proceedings relating to a show cause order, or application for modification of the Commission's ruling, order or approval, as the case may be.

SECTION 12. Criminal Penalties - Without prejudice to the violation of other laws, any firm that shall be found to have violated Sections 8, 9 and of this Act, or any combination thereof, shall, for each and every violation, be punished by a fine of not less than Ten Million Pesos (Php10,000,000.00) and not exceeding Fifty Million Pesos (Php 50,000,000.00) if a natural person; by a fine of not less than Two Hundred Fifty Million Pesos (Php250,000,000.00) but not exceeding Seven Hundred Fifty Million Pesos (Php750,000,000.00) if a firm, and by imprisonment not exceeding ten (10) years, or both, at the discretion of the court.

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

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

**CHAPTER V
ENFORCEMENT**

1 **SECTION 13. Preliminary Inquiry** – The Commission shall *motu proprio*, or upon the filing of a
2 verified complaint by an interested party or upon referral by the concerned regulatory agency,
3 initiate a preliminary inquiry for the enforcement of this Act.
4

5 **No criminal or civil case for violation of this Act shall be filed or instituted by a private party**
6 **directly in court, unless there has been a preliminary inquiry conducted by the Commission and**
7 **the same has been endorsed for filing by the Commission.**
8

9 **SECTION 14. Powers of Concerned Government Agencies** – Notwithstanding the provisions of
10 the preceding section, the exercise of regulatory powers by different government agencies,
11 including local government units, over an industry or a sub-sector of an industry shall be
12 cumulative and shall not be construed in any way as derogating from the power and authority
13 of the concerned agency. The government agencies shall cooperate and coordinate with one
14 another in the exercise of their powers in order to prevent overlap, to share confidential
15 information, or for other effective measures. The Commission can seek technical assistance
16 from sectoral regulators.
17

18 The Commission shall have primary and sole jurisdiction over competition issues, while the
19 regulatory body shall continue to exercise jurisdiction over all matters with regard to the firms'
20 operation and existence.
21

22 **SECTION 15. Power to Investigate and Enforce Orders and Resolutions** – The Commission shall
23 conduct preliminary inquiries by administering oaths, issuing *subpoena duces tecum* and
24 summoning witnesses, and commissioning consultants or experts. It shall determine if any
25 provision of this Act has been violated, enforce its orders and carry out its resolutions by
26 making use of any available means, provisional or otherwise, under existing laws and
27 procedures including the power to punish for contempt and to impose fines.
28

29 **SECTION 16. Self-incrimination** – Pursuant to the preceding section, a person subject of any
30 preliminary inquiry or investigation by the Commission shall produce the specified document or
31 information when so required by written notice: *Provided*, That no person shall be excused
32 from disclosing any *document* or information to the inquiring officer on the ground that the
33 disclosure of the information or document may be incriminating: *Provided, further*, That such
34 document or information produced by the person subject of investigation shall not be
35 admissible as evidence against him in criminal proceedings: *Provided, finally*, That such
36 document or information shall be admissible in evidence in civil proceedings including those
37 arising from or in connection to the implementation of this Act
38

39 **SECTION 17. Privileged Communication Exclusion** – Nothing in the preceding section shall
40 compel the disclosure of privileged communication: *Provided*, That the person who refuses to
41 disclose the information or produce the document or other material required by the inquiring
42 officer in relation to the preliminary inquiry being conducted shall nevertheless be obliged to
43 give the name and address of the firm to whom, or by whom, or on whose behalf, such
44 privileged communication was made.
45

46 **SECTION 18. Confidentiality of Information** – Any document or information submitted by firms,
47 as determined and marked confidential by the Commission, relevant to any investigation being
48 conducted pursuant to this Act shall not, in any manner, be directly or indirectly disclosed,
49 published, transferred, copied, or disseminated. The identity of persons who provide
50 information to the Commission and who need confidentiality to protect themselves against
51 economic retaliation, and any Commission deliberations in regard to current or still
52 uncompleted matters shall remain confidential.
53

1 Any violation of this provision shall be imposed a fine of not less than One Hundred Thousand
2 Pesos (Php100,000.00) but not more than Five Hundred Thousand Pesos (Php500,000.00).

3
4 **SECTION 19. Leniency** – Any person or firm which cooperates or furnishes any information,
5 document or data to the Commission before or during the conduct of the preliminary inquiry
6 that constitutes material evidence as determined by the under this Act shall be immune from
7 any suit or charge including from affected parties and third parties: *Provided*, That the person
8 or firm is not the most guilty. *Provided, further*, That any person or firm which cooperates or
9 furnishes information, document or data to the Commission in connection to an investigation
10 being conducted shall not be subjected to any form of reprisal or discrimination: *Provided*,
11 *furthermore*, That such reprisal or discrimination shall be considered a violation of this Act and
12 subjected to the penalties provided for under Section 11.

13
14 Nothing in this section shall preclude prosecution for persons and firms who reported to the
15 Commission with malicious information, data and falsified documents which is damaging to the
16 business and integrity of the persons and firms under inquiry. Such act shall likewise be
17 considered as an unfair trade practice punishable under this Act.

18
19 **SECTION 20. Termination and Action on Preliminary Inquiry.** – The Commission, after
20 considering the statements made, or documents or articles produced, in the course of an
21 inquiry conducted by it, shall terminate the preliminary inquiry by issuing a resolution ordering
22 its closure if no violation or infringement of this Act is found; or by issuing a *nolo contendere*
23 resolution; or issuing a resolution to, singly or cumulatively, (a) impose penalties in the range
24 provided under Section 11 hereof; (b) order the rectification of certain acts or omissions; or (c)
25 order the restitution to the affected parties. When determined by the facts and circumstances,
26 the Commission shall institute a civil action by class suit in the name of the Republic of the
27 Philippines, as *parens patriae*, on behalf of persons residing in the Philippines, to secure treble
28 damages for any injury sustained by such persons by reason of any violation of this Act, plus the
29 cost of suit and reasonable attorney's fee. If the evidence so warrants, the Commission shall file
30 criminal cases for violation of this Act or relevant laws before the Department of Justice
31 pursuant to Section 12 of this Act.

32
33 **SECTION 21. Nolo Contendere Resolution** – Any firm under inquiry under the provisions of this
34 Act may submit to a *nolo contendere* resolution at any time before the termination of the
35 preliminary inquiry by: a) the payment of an amount within the range of penalties provided for
36 under Section 12; b) by entering into an undertaking to effectively stop and rectify the acts
37 complained against, make restitution to the affected parties, whether or not the parties are
38 plaintiffs or witnesses; and, c) by submitting regular compliance reports as may be directed:
39 *Provided*, That, ten percent (10%) of the amounts paid under this section shall equitably accrue
40 to the Commission: *Provided, further*, That a *nolo contendere* resolution shall not bar any
41 inquiry for the same or similar acts if continued or repeated.

42
43 **SECTION 22. Implementing Policy; Non-Adversaria Administrative Remedies.** – As an
44 implementing and enforcement policy, the Commission shall, under such rules and regulations
45 it may prescribe, encourage voluntary compliance with this Act and other competition laws by
46 making available to the parties concerned the following and other analogous non-adversarial
47 and non-adjudicatory administrative remedies, before the institution of administrative, civil or
48 criminal action:

49
50 (a) *Request for Binding Ruling.* – Any person who is in doubt as to whether his
51 contemplated or existing act, course of conduct, agreement, decision or practice is in
52 compliance with, is exempt from, or in violation of any of the provisions of this Act,
53 other competition laws, or implementing rules and regulations thereof, may request the
54 Commission, in writing, to render a binding ruling thereon.

1
2 (b) *Show Cause Order.* – Upon preliminary findings *motu proprio* or on written complaint
3 under oath by an interested party, that any person is conducting his business, in whole
4 or in part in a manner that may not be in accord with the provisions of this Act or other
5 competition laws, and it finds that the issuance of a *show cause order* would be in the
6 interest of the public, the Commission shall issue and serve upon such person or
7 persons a written description of its business conduct complained of, a statement of the
8 facts, data, and information together with a summary of the evidence thereof, with an
9 order requiring the said person or persons to show cause, within the period therein
10 fixed, why no order shall issue requiring such person or persons to cease and desist
11 from continuing with ties identified business conduct, or pay the administrative fine
12 therein specified, or readjust its business conduct or practices;

13
14 (c) *Proposal for Consent Judgment.* – At any time prior to the issuance of a binding
15 ruling, the promulgation of a *cease and desist judgment* under a *show cause order* or
16 the promulgation of a decision of judgment in any administrative, civil, or criminal case,
17 the person or persons, whose business conduct is under inquiry in the particular
18 proceedings may, without in any manner admitting a violation of this Act or any other
19 competition laws, submit to the Commission a written
20 proposal for the entry of a consent judgment, specifying therein the terms and
21 conditions of the proposed consent judgment.

22
23 (d) *Consultations.* – Prior to the fitting of a request for a binding ruling or the submission
24 of a proposal for consent judgment, the person or persons concerned may
25 communicate, in writing, with the Commission on matters that should be included or
26 excluded in such request or proposal, which the Commission may consider necessary for
27 the effective enforcement of this Act or other competition laws.

28
29 (e) *Binding Ruling, Cease and Desist Order, and Consent Judgment.* –

30 Based upon the facts, data, and information disclosed or supplied by the persons
31 concerned, or established by substantial evidence during the hearing, the Commission
32 shall issue a binding ruling, a *cease and desist order* or an approval of the proposal for a
33 consent judgment; as the case may be, with or without conditions, to the effect that the
34 particular act, course of conduct, agreement, decision or practice is in accord with this
35 Act or other competition laws, or is exempt therefrom, or is constitutive of a violation
36 thereof. If the Commission finds that there is substantial evidence tending to show that
37 the act, course of conduct, agreement, decision or practice of the person or persons
38 concerned is prohibited, it shall include in its decision an order requiring the person or
39 persons concerned:

40
41 (1) *Cease and Desist Order.* – To cease and desist from continuing with the identified
42 act, course or conduct, agreement, decision, or practice found to be violative of the
43 provisions of this Act;

44
45 (2) *Administrative Penalty or Fine.* – To pay the fine therein fixed; and

46
47 (3) *Readjustment of Business Methods.* – To readjust, within a reasonable period
48 therein fixed, its method of doing business, including a corporate reorganization or
49 divestment in the manner and under the terms and conditions prescribed by the
50 Commission, as it may deem proper for the protection of the public interest.

51
52 (f) *Suspension of Administrative, Civil or Criminal Proceedings.* – No pending
53 administrative, civil or criminal proceedings or those filed thereafter, against any
54 person, corporation or any other juridical entity or its officers and employees, shall be

1 suspended, except upon order of the Commission on proper motion, on the ground of
2 the filing of a request for binding ruling, the issuance of a show cause order or the filing
3 of a proposal for a consent judgment based, in whole or in part, on the same set of facts
4 and issues as that of the proceedings sought to be suspended;

5
6 (g) *Monitoring of Compliance.* – The Commission shall monitor the compliance by the
7 person or persons concerned, their officers, and employees, with the final and
8 executory binding ruling, cease and desist order, or approval of a consent judgment.
9 Upon motion of an interested party, the Commission shall issue a certification to the
10 effect that the person or persons concerned have, or have not, as the case may be,
11 complied with a final and executory ruling, order, or approval;

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

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

28
29 (1) Whenever conditions of material fact or law have so changed as to require such
30 action;

31
32 (2) When the concerned person or persons fail or refuse, without justifiable cause
33 therefore, to comply with any condition attached to such ruling, order, or approval,
34 including an order to readjust their method of doing business; or

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

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

47
48 **SECTION 23. Standards** - In the exercise of its powers or in the discharge of its duties under this
49 act, the Commission shall consider the following:

50
51 (a) The way a given industry is structured or organized whether monopolistic,
52 oligopolistic, or competitive;

53

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

45 **SECTION 24. Contempt** – The Commission or any of its Divisions may summarily punish for
46 contempt by imprisonment not exceeding thirty (30) days or by fine, or both, any person guilty
47 of such misconduct in the presence of the Commission or any of its Divisions in its vicinity as to
48 seriously interrupt any hearing, session or any proceedings before it, including cases in which a
49 person willfully fails or refuses, without just cause, to comply with a summons, *subpoena* or
50 *subpoena duces tecum* legally issued by the Commission or any of its Division, being present at
51 a hearing, proceeding, session or investigation, refused to be sworn as a witness or to answer
52 questions or to furnish information when lawfully required to do so.
53

1 **SECTION 25. *Decisions of the Commission*** – Decisions of the Commission *en banc* shall be
2 appealable to the Court of Appeals as hereinafter provided. The appeal shall not stay the order,
3 ruling or decision sought to be reviewed, unless the Court of Appeals shall direct otherwise
4 upon such terms and conditions it may deem just.
5

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

- 14 (a) is arbitrary to constitutional rights, power, privilege, or immunity;
- 15 (b) is contrary to constitutional rights, power, privilege, or immunity;
- 16 (c) is in excess of statutory jurisdiction, authority, or limitations, or is contrary to law;
- 17 (d) is without observance of the procedure required by law; and
- 18 (e) is not supported by substantial evidence.

19 The Commission shall be included as a party respondent to the case and shall be represented
20 by its own legal staff.
21

22 **SECTION 27. *Appeal to the Supreme Court*** – A decision of the Court of Appeals may be appealed
23 to the Supreme Court in the manner and on the grounds prescribed by the Rules of Court.
24

25 **SECTION 28. *Reception of Additional Evidence*** – Any party in the appellate proceedings may
26 apply for leave to the Court of Appeals or the Supreme Court, to adduce additional evidence
27 before the Commission. The Court may, under such terms and conditions as it may prescribe,
28 order the Commission to receive such additional evidence upon showing that it is material and
29 there are reasonable grounds for the failure to present said evidence in the proceedings before
30 the Commission. The Commission, sitting *en banc*, may modify its findings as to the facts, or
31 make new findings, by reason of the additional evidence taken, and it shall file with the
32 appellate court such modified or new findings and its recommendations for the affirmation,
33 modification, or setting aside of the appealed binding ruling, order, resolution, decision,
34 judgment, rule or regulation.
35

36 **SECTION 29. *Writ of Execution*** – Upon the finality of its binding ruling, order, resolution,
37 decision, judgment, or rule or regulation, (collectively, “Decision”), the Commission may issue
38 a writ of execution to enforce its decision and the payment of the administrative fines provided
39 in the preceding sections.
40

41 **SECTION 30. *Violation by Corporation, Partnership, Association, and Other Entity.*** – Whenever a
42 corporation, partnership, association, firm or other entity, whether domestic or foreign, shall
43 commit any of the acts declared to be unlawful under this Act, the Chairperson of the Board of
44 Directors, the President, the General Manager of the corporation, the general partners of a
45 partnership, and the officers and employees directly responsible, shall be jointly and severally
46 liable with the firm for the fine imposed therein.
47

48 Should the offense be committed by a foreign corporation licensed to do business in the
49 Philippines, the person or persons directly responsible in the Philippines for the management
50 and operation thereof, shall be liable. In addition, its license to do business in the Philippines
51 shall be cancelled.
52

53 It shall not be a defense for the Chairperson of the Board of Directors, the President or the
54 General Manager of the corporation or the general partners of a partnership, or the persons

1 responsible for the management and operation of a foreign corporation licensed to do business
2 in the Philippines, that he was unaware of the violation, unless, he shall have established to the
3 satisfaction of the court that even with the exercise of due diligence and proper supervision, he
4 could not have avoided or prevented the violation.

5
6 Any agreement between an officer, partner or any other officer and a corporation or
7 partnership whereby the latter directly or indirectly agrees to assume, satisfy or indemnify, in
8 whole or in part, the fine of civil obligation imposed under this Act of such corporate officer,
9 partner, manager or other officer found guilty of violating this Act, shall be void.

10
11 **SECTION 31. Alien Violators** – If the person violating any provision of this Act is a foreigner, he
12 shall, in addition to the other penalties imposed herein, be deported after service of sentence
13 without need of any further proceedings.

14
15 **SECTION 32. Essential Commodities** – If the violation involves the trade or movement of prime
16 commodities such as rice, corn, sugar, chicken, pork, beef, fish, vegetables, and other articles or
17 commodities of prime or basic necessity as declared by the appropriate government agency,
18 through publication, the fine imposed by the Commission or the courts, as the case may be,
19 shall automatically be tripled and the offender shall pay such threefold fine.

20
21 **SECTION 33. Private Action** – Regardless of the status or pendency of any proceedings, any
22 firm that suffers injury by reason of any violation of this Act may institute a separate and
23 independent civil action, irrespective of the amount involved in the controversy against the
24 defendant or defendants and shall recover treble damages sustained, the costs of suit and
25 reasonable attorney's fees: *Provided, however,* That no filing fees shall be collected: *Provided,*
26 *further,* That filing fees shall constitute a first lien in the award of damages.

27
28 **SECTION 34. Effect of Final Judgment** – Any final judgment in a civil or criminal action brought
29 by the Commission on behalf of the people of the Philippines under this Act to the effect that a
30 defendant has violated any or all of the provisions of this Act shall be *res judicata* as to any
31 claim by any person on whose behalf such action was brought: *Provided,* That such person
32 notifies the court having jurisdiction of the case within the period given by the court: *Provided,*
33 *further,* That such period shall not be less than ninety (90) days.

34
35 It shall be *prima facie* evidence against such defendant in any civil action brought by any other
36 party against such defendant under this Act as to all matters respecting which said judgment
37 would be an estoppel as between the parties concerned.

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

49
50 **SECTION 36. Measurement of Damages** – Damages may be proved and assessed in the
51 aggregate by statistical or sampling methods, by the computation of illegal overcharges, or by
52 such other reasonable system of estimating aggregate damages as the court in its discretion
53 may permit without the necessity of separately proving the individual claim, of, or amount of
54 damage to, persons on whose behalf the suit was brought.

1
2 **SECTION 37. *Immunity from Suit*** – The Commissioners and the Staff of the Commission shall not
3 be subject to any action, claim or demand in connection with any act done or omitted by them
4 in the performance of their duties and exercise of their powers except for those actions and
5 omissions done in evident bad faith or gross negligence.

6
7 The Commission shall indemnify each Commissioner and Staff of the Commission for all costs
8 and expenses reasonably incurred by such persons in connection with any civil or criminal
9 actions, suits or proceedings, to which they may be or made a party by reason of the
10 performance of their duties or exercise of their powers, unless they are finally adjudged in such
11 actions or proceedings to be liable for evident bad faith or gross negligence.

12
13 **CHAPTER VI**
14 **OTHER PROVISIONS**

15
16 **SECTION 38. *Statute of Limitations*** – Any civil or criminal action to enforce any cause of action
17 arising from a violation of any provision of this Act shall be forever barred unless commenced
18 within five (5) years after the cause of action accrues. The running of the statute of limitation
19 shall be suspended during the pendency of any proceeding.

20
21 The cause of action begins to run when the plaintiff suffers injury to its business or property:
22 *Provided*, That when the damage suffered by the plaintiff is too speculative to prove, the cause
23 of action does not accrue until the damage becomes probable: *Provided, however*, That if the
24 plaintiff's injury is the result of the continuing violations of this Act, each independent anti-
25 competitive act may restart the limitation period or when a plaintiff reasonably fails to uncover
26 a cause or action that was fraudulently concealed by a defendant.

27
28 **SECTION 39. *Prohibition on the Issuance of Temporary Restraining Orders, Preliminary***
29 ***Injunctions and Preliminary Mandatory Injunctions*** – Except for the Supreme Court, no other
30 court shall issue any temporary restraining order, preliminary injunction or preliminary
31 mandatory injunction against the regulatory agency in the exercise of its duties or functions:
32 *Provided*, That, this prohibition shall apply in all cases, disputes or controversies instituted by a
33 private party, including, but not limited to, cases filed by regulated firms or those claiming to
34 have rights through such firms:

35
36 *Provided, however*, That, this prohibition shall not apply when the matter is of extreme urgency
37 involving a constitutional issue, such that the non-issuance of a temporary restraining order will
38 result in grave injustice and irreparable injury to the public:

39
40 *Provided, further*, That, the applicant shall file a bond, in an amount to be fixed by the Court,
41 but in no case shall it be less than half of the imposable fines provided for under Section 11 of
42 this Act:

43
44 *Provided, finally*, That in the event that the court finally decides that the applicant was not
45 entitled to the relief applied for, the bond shall accrue in favour of the regulatory agency.

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

51
52 The Supreme Court may designate regional trial courts to act as commissioners with the sole
53 function of receiving facts of the case involving the acts of the regulatory agency. The

1 designated Regional Trial Court shall, within thirty (30) days from the date of receipt of the
2 referral, forward its findings of facts to the Supreme Court for appropriate action.

3
4 **SECTION 40. Intellectual Property Rights** – The implementation of the provisions of this Act
5 shall be without prejudice to the rights, liabilities and remedies under Republic Act No. 8293,
6 otherwise known as the Intellectual Property Code of the Philippines: *Provided, That,* the
7 exercise of intellectual property rights shall not in any way be used to justify violations of this
8 Act.

9
10 **SECTION 41. Trade Associations** – Nothing contained in this Act shall be construed to prohibit
11 the existence and operation of trade associations organized to promote quality standards and
12 safety issues: *Provided, That,* these associations shall not in any way be used to justify any
13 violation of this Act.

14
15 **SECTION 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
20 and the House of Representatives who shall be designated by the Senate President and the
21 Speaker of the House of Representatives: *Provided, That* one of the two Senators and one of
22 the two House Members shall be nominated by the respective Minority Leaders of the Senate
23 and the House of Representatives. The Congressional Oversight Committee shall be jointly
24 chaired by the Chairpersons of the Senate Committee on Trade and Commerce and the House
25 of 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 on Economic Affairs.

28
29 **CHAPTER VII**
30 **FINAL PROVISIONS**

31
32 **SECTION 43. Implementing Rules and Regulations.** – The Commission shall prepare the
33 necessary rules and regulations within one hundred twenty (120) days from the effectivity of
34 this Act: *Provided, That,* where the same would apply to an industry or a sub-sector of industry
35 that is subject to the jurisdiction of a regulatory agency, the Commission shall, in preparing the
36 guidelines, consult with the concerned regulatory agency and stakeholders: *Provided, further,*
37 That the Commission may revise such guidelines as it deems necessary: *Provided, however,* That
38 such revised guidelines shall only take effect following its publication in two newspapers of
39 general circulation.

40
41 **SECTION 44. Appropriations.** – The amount necessary to implement the provisions of this Act
42 shall be included in the annual General Appropriations Act. However, for the initial budgetary
43 requirements of the Commission, the amount of One Hundred Million Pesos (P100,000,000.00)
44 is hereby appropriated. *Provided, That* all moneys recovered or charges or composition sums
45 collected under this Act, other than financial penalties, shall be paid into and form part of the
46 moneys of the Commission.

47
48 **SECTION 45. Transitory Provision** – For the purpose of ensuring that the Commission is
49 organized within the mandated period of one hundred eighty (180) days after the approval of
50 this Act, an Inter-Agency Task Force shall be created and composed of the following agencies:

51
52 (a) Agencies which will provide administrative support to the Commission:

- 53 i. Office of the President, to be represented by the Executive Secretary with the
54 Deputy Executive Secretary for Legal Affairs as alternate;

- 1 ii. Department of Budget and Management, to be represented by the Secretary
2 with the Undersecretary in charge of organization of new offices and position
3 classifications as alternate;

4 (b) Agencies which currently perform functions germane or are related to the purposes of
5 the Commission:

- 6 i. Tariff Commission, to be represented by the Chairperson and with an Associate
7 Commissioner permanently designated as alternate;
8 ii. Department of Trade and Industry, to be represented by the Secretary with an
9 officer holding at least an Assistant Secretary rank as alternate.

10
11 The Task Forces shall also meet an Executive Session with all agency heads to deliberate on
12 possible appointees for the position of Chairperson and Associate Commissioners of the
13 Commission for submission to and consideration of the President of the Philippines.

14
15 The Task Force shall also commence the coordinated advocacy for this Act within ninety (90)
16 days from the effectivity thereof. It shall also implement a broad-based consultation on inputs
17 for the Implementing Rules and Regulations of this Act which must be completed within one
18 hundred twenty (120) days from the effectivity of this Act. The report consultations shall be
19 submitted to the Commission within fifteen (15) days from its establishment a copy of which
20 will be furnished to the Congressional Oversight Committee on Fair Competition.

21
22 **SECTION 46. *Supplementary Application*** – For purposes of this Act, the Revised Penal Code, as
23 amended, and other applicable laws shall be applied in a supplementary character.

24
25 **SECTION 47. *Separability Clause*** – If any clause, sentence, section or part of this Act shall be
26 adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect,
27 impair or invalidate the remainder of this Act, but shall be confined in its operation to the
28 clause, sentence, paragraph, section, or part thereof directly involved in the controversy.

29
30 **SECTION 48. *Repealing Clause*** – The following laws, insofar as they are inconsistent with any of
31 the provisions of this Act are hereby repealed, amended or otherwise modified accordingly:

32
33 (a) Sec. 5 (3) of Republic Act No. 7581 or The Price Act;

34
35 (b) Sec. 5 (f) of Republic Act No. 7925 or The Public Telecommunications Policy Act;

36
37 (c) Sec. 11 (a) and (b) of Republic Act No. 8479 or The Downstream Oil Industry
38 Deregulation Act;

39
40 (d) Sec. 45 of Republic Act No. 9136 or The Electric Power Industry Reform Act;

41
42 (e) Sec. 13 of Republic Act No. 9295 or The Domestic Shipping Development Act;

43
44 (f) Sec. 24 and 25 of Republic Act No. 9502 or The Universally-Accessible Cheaper and
45 Quality Medicines Act.

46
47 *Provided*, That in case of conflict between this Act and such provisions of existing competition
48 laws and regulations, the provisions of this Act shall prevail.

49
50 **SECTION 49. *Effectivity Clause*** – This Act shall take effect fifteen (15) days following its
51 publication in the *Official Gazette* and in at least two (2) national newspapers of general
52 circulation. *Provided however*, That in order to allow affected parties time to renegotiate
53 agreements or restructure their business to comply with the new competition law, the penal
54 provisions under Section 12 of this Act, except for those already prohibited under the Revised

- 1 Penal Code, shall be imposed one (1) year after the effectivity of the Implementing Rules and
- 2 Regulations of this Act.
- 3
- 4 Approved,