

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



'13 AUG 29 P5:20

SENATE
S. No. 1453

RECEIVED BY: *[Signature]*

Introduced by Senator Miriam Defensor Santiago

EXPLANATORY NOTE

The Constitution, Article 17, Section 19, provides:

Sec. 19. 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.

Any undue advantage of one or more firms consisting in the exclusive right to carry on a particular business or trade is referred to as a monopoly. It is a type of market structure wherein only one or a small number of companies dominate the total sales of a product or service. Monopolies generally stifle competition and lead to higher prices to the detriment of the public.

Except perhaps for the Energy Regulatory Commission in the case of the electric power industry, the prosecution of persons engaged in anti-trust or unfair competition behavior as well as recovery of civil damages arising there from is the primary responsibility of the private offended party. While the Department of Justice supervises the prosecutorial service for all criminal complaints in the country, it does not function like a trade board or commission dedicated to the enforcement of anti-competition legal provisions. Apart from this lack of specialized implementation and the absence of a comprehensive law against monopoly, there is also a dearth of jurisprudence on the matter. All laws relating to anti-trust are scattered in different codes. The existing anti-trust laws do not provide for clear-cut guidelines, elements/requisites or evidence to determine

whether an act constitutes unfair competition, monopolistic behavior or restraint of trade. We need a proper body to determine whether there is any violation of anti-trust laws.

There is a need to promote and enhance economic efficiency as well as fair competition in trade and all commercial economic activities. This bill seeks to prevent the concentration of economic power in a few by penalizing combinations or conspiracies in restraint of trade or those that will prevent free market competition. It prohibits anti-competitive agreements and mergers and abuse of dominant position.

Miriam Defensor Santiago
SEN. MIRIAM DEFENSOR SANTIAGO

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'13 AUG 29 P5 :20

SENATE
S. No. 1453

RECEIVED BY: ji

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AN ACT

**PENALIZING ANTI-COMPETITIVE AGREEMENTS, ABUSE OF
DOMINANT POSITION, AND ANTI-COMPETITIVE MERGERS,
ESTABLISHING THE PHILIPPINE FAIR COMPETITION COMMISSION**

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

SECTION 1. Title. – This Act shall be known and cited as the “Fair
Competition Law.”

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

(a) promote and enhance economic efficiency and free, full and fair
competition in trade, industry and all commercial economic activities;

(b) prevent the concentration of economic power in a few persons who
threaten to control the production, trade, or industry in order to stifle
competition, distort, manipulate or constrict the discipline of free markets,
increase market prices in the Philippines; and

(c) penalize all forms of anti-competitive agreements, abuse of dominant
position, and anti-competitive mergers, with the objective of protecting

1 consumer welfare and advancing domestic and international trade and
2 economic development.

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

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

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

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

21 (a) “Agreement” shall refer to any type or form of arrangement,
22 understanding, undertaking or concerted action, whether formal or
23 informal or tacit, written or oral;

24 (b) “Cartel” shall refer to a combination of firms, providing goods in relevant
25 markets, acting or joined together to obtain a shared monopoly to control
26 production, sale and price, or to obtain a obtain control in any particular
27 industry or commodity, or a group of firms that agree to restrict trade. It
28 shall also refer to firms or section of firms having common interests
29 designed to promote the exchange of knowledge resulting from scientific

1 and technical research, exchange of patent rights and standardization of
2 products among themselves with the intent of preventing, restricting or
3 distorting competition;

4 (c) "Commission" shall refer to the Philippine Fair Competition Commission
5 created under this Act;

6 (d) "Competition" shall refer to the process by which economic agents, acting
7 independently in the market, limit each other's ability to control the
8 prevailing conditions in the market;

9 (e) "Control" shall refer to at least twenty percent (20%) ownership, directly
10 or indirectly, of a firm or a group of firms by another firm;

11 (f) "Dominant Position" shall refer to a situation where a firm, either by itself
12 or acting in collusion with other firms, is in a position to control a relevant
13 market for the sale of a particular good or service by fixing its prices,
14 excluding competitor firm, or controlling the market in a specific
15 geographical area;

16 (g) "Firm" shall refer to any person, natural or juridical, partnership,
17 combination or association in any form, whether incorporated or not,
18 domestic or foreign, including those owned or controlled by the
19 government, engaged directly or indirectly in any economic activity;
20 *Provided*, That, two firms, one of which is controlled by the other, shall
21 be treated as one firm: *Provided, further*, That two or more firms that are
22 controlled by a single firm shall be treated as one firm;

23 (h) "Goods" and "Services"; "Goods" shall refer to all types of tangible and
24 intangible property that could be bought and sold, and the possession of
25 which could be transferred in whole or in part, temporarily or
26 permanently;

27 "Services" shall refer to the provision of things of value or articles or
28 items that could be used by one person, whether natural or juridical
29 through human interaction or through the use, without transfer of

1 ownership, of the facilities of the provider by the client, or a combination
2 of both. It shall include all non-tangible goods. It is the non-material
3 equivalent of a good, consumed at the point of sale and does not result in
4 ownership;

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

10 "Relevant Market" shall refer to the line of commerce in which
11 competition has been restrained. It shall also refer to the geographic area
12 involved, including all reasonably substitutable goods, and all
13 competitors, to which consumers could turn if the restraint or abuse results
14 in the significant increase in prices;

15 (j) "Mergers" shall refer to two or more undertakings, previously
16 independent of one another, join together. This definition includes
17 transactions whereby two firms legally merge into one (mergers), one firm
18 takes sole control of the whole or part of another (acquisitions or
19 takeovers), two or more firms acquire joint control over another firm
20 (joint ventures) and other transaction, whereby one or more undertakings
21 acquire control over one or more undertakings, such as interlocking
22 directorates; and

23 (k) "Monopoly" shall refer to a privilege or undue advantage of one or more
24 firms, consisting in the exclusive right to carry on a particular business or
25 trade, and/or manufacture a particular product, article or object of trade,
26 commerce or industry. It is a form of market structure in which one or
27 only a few firms dominate the total sales of a product or service.

28 (l) "Subsidiary" shall refer to a corporation more than fifty percent (50%) of
29 the voting stock of which is owned or controlled, directly or indirectly,

1 through one or more intermediaries, by another corporation, which
2 thereby becomes its parent corporation.

3 Chapter II

4 PHILIPPINE FAIR COMPETITION COMMISSION

5 **SEC. 5. *Philippine Fair Competition Commission.*** - To implement the
6 national policy and attain the objectives and purposes of this Act, an independent
7 Commission is hereby created, to be known as the Philippine Fair Competition
8 Commission (PFCC), which shall hereinafter be referred to as the Commission,
9 and shall be organized within one hundred eighty (180) days after the approval of
10 this Act.

11 For budgetary purposes, the Commission shall be under the Office of the
12 President.

13 (a) *Composition.* - The Commission shall be composed of a Chairperson and
14 four (4) Associate Commissioners. The Chairperson and Commissioners
15 shall be citizens and residents of the Philippines, at least forty (40) but
16 not more than sixty-five (65) years of age, of good moral character and of
17 recognized probity and independence. The Chairperson and two (2) of the
18 Associate Commissioners shall be members of the Philippine Bar and the
19 remaining two (2) shall be of recognized competence in the field of
20 economics preferably in industrial organization economics, or finance,
21 commerce, accounting, or management. They must have actively
22 practiced their professions for at least ten (10) years, but must not have
23 been candidates for any elective national or local office in the
24 immediately preceding elections, whether regular or special.

25 (b) *Term of Office.* - The Chairperson and the Associate Commissioners
26 shall be appointed by the President of the Philippines. The term of office
27 of the Chairperson and the Associate Commissioners shall be six (6) years
28 without reappointment. The Chairperson shall hold office for six years
29 and of the first four (4) Associate Commissioners, two (2) shall hold
30 office for a term of four (4) years and two (2) for a term of two (2) years.

1 In case a vacancy occurs before the expiration of the term of office, the
2 appointment to such vacancy shall be only for the unexpired term of the
3 predecessor,

4 (c) *Prohibition and Disqualifications.* – The Commissioners shall not, during
5 their tenure, hold any other office of employment. They shall not, during
6 their tenure, directly or indirectly practice any profession, participate in
7 any business, or be financially interested in any contract with, or any
8 franchise, or special privileges granted by the government or any
9 subdivision, agency, or instrumentality thereof, including government-
10 owned and controlled corporations of their subsidiaries. They shall strictly
11 avoid conflict of interest in the conduct of their office. They shall not be
12 qualified to run for any office in the election immediately succeeding their
13 cessation from office. They shall not be allowed to appear or practice
14 before the Commission for two (2) years following their cessation from
15 office.

16 No spouse or relative by consanguinity or affinity within the fourth civil
17 degree and no former law, business, or professional partner or associate
18 of any of the Commissioners, the Chairperson and the Secretary of the
19 Commission may appear as Counsel or agent on any matter pending
20 before the Commission or transact business directly or indirectly therein
21 during his/her incumbency and within one (1) year from his/her cessation
22 of office.

23 (d) *Compensation of Commissioners.* – the Chairperson of the Commission
24 shall hold the rank of and shall have the privileges and compensation
25 equivalent to that of a Department Secretary or Presiding Justice of the
26 Court of Appeals, whichever is higher, while the Associate
27 Commissioners shall each hold the rank of and shall have the privileges
28 and compensation equivalent to that of a Department Undersecretary or
29 Associate Justice of the Court of Appeals, whichever is higher.

30 (e) *Quorum.* – Three (3) members of the Commission shall constitute a
31 quorum and the affirmative vote of three members (3) shall be necessary

1 for the adoption of any rule, ruling, order, resolution, decision or other
2 acts of the Commission *en banc*.

3 (f) *Principal Office, Branch and Venue*. — The Commission shall hold its
4 principal office in Metro Manila but it may conduct hearings outside of
5 Metro Manila upon prior notice for inquiries, studies or any other
6 proceedings required for the proper and efficient exercise of its power
7 and the discharge of its duties. It may establish branch office outside of
8 Metro Manila as may be necessary for the effective discharge of its
9 functions.

10 (g) *Staff*. □ The Commission shall appoint an adequate staff which shall be
11 headed by an Executive Director, fix the compensation in accordance
12 with the Revised Compensation and Position Classification Law and
13 determine their status, qualifications and duties. The Executive Director
14 shall be appointed by the President and shall have relevant experience in
15 any of the fields of law; economics, commerce, management or finance
16 for at least ten (10) years. *Provided*, That the Executive Director shall be
17 a Career Executive Service Officer (CESO). The members of the technical
18 staff, except those performing purely clerical functions, shall possess at
19 least a Bachelor's Degree in the following lines of specialization:
20 economics, preferably in industrial organization; law; finance;
21 commerce; accounting; or management.

22 **SEC. 6. *Original and Exclusive Jurisdiction, Powers and Functions*** —

23 The Commission shall have the original and exclusive Jurisdiction to enforce and
24 implement the administrative provisions of this Act, its implementing rules and
25 regulations, and all other competition laws, and in particular:

26 (a) *Powers of the Commission without Hearing*. — The Commission shall
27 have the power to do the following acts, without hearing:

28 (1) *Motu Proprio Investigation or Upon Complaint*. — To commence
29 investigation, on its own initiative or upon the complaint of any person,
30 any and all violations of this Act and other competition laws and cause

1 the issuance of a cease and desist order prior to the commencement of a
2 preliminary inquiry, and/or the institution of a civil or administrative
3 action;

4 (2) *Administrative Action*. — To attest and file all complaints for appropriate
5 administrative relief from or against violations of this Act or other
6 competition laws;

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

10 (4) *Deputization*. — To require any government agency to lend assistance
11 and information necessary in the discharge of its responsibilities under
12 this Act, and examine, if necessary, pertinent records and documents in
13 the possession of such government agency;

14 (5) *Issuance of Subpoena*. — To issue *subpoena*, *subpoena duces tecum* and
15 *subpoena ad testificandum* in the exercise of its functions, powers and
16 duties under this Act, subject to the following standards:

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

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

21 iii. A person appearing before the Commission in obedience to a
22 *subpoena* shall be advised, before he is required to testify or
23 produce any documentary or real evidence, of his right to be
24 assisted or represented by a counsel of his choice, and if he has
25 none, the Commission shall appoint a *de officio* counsel for him;
26 and of his right to avail of the privilege of immunity from
27 prosecution herein prescribed;

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

4 (1) *Binding Rules* — To issue binding rulings;

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

7 (3) *Consent Judgment* — To approve, or disapprove, proposals for consent
8 judgment;

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

13 (5) *Administrative Fines, Penalties and Sanctions* — To impose the
14 appropriate administrative fines or penalties herein authorized to be
15 imposed.

16 (c) *Other Powers and Functions of the Commission:*

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

27 (2) *Annual and Special Reports.* — To require, by general or special orders,
28 firms engaged in trade, commerce, or industry to file with the
29 Commission in such form as the Commission may prescribe, annual or

1 special reports, or answers in writing to specific questions, furnishing
2 the Commission such information as it may require as to the
3 organization, business, conduct, practices, management and relation to
4 other persons of the respective natural or juridical persons or entities
5 filing such reports or answers in writing except that the Commission
6 shall not require, either by a specific order or by a *subpoena*, the
7 disclosure or production of trade secrets such as a secret formula,
8 pattern, device or compilation of information, including names of
9 costumers, which is used in one's business and which gives one an
10 opportunity to obtain advantage over competitors who do not know or
11 use it. Trade secrets shall include a plan or process, tool, mechanism,
12 or compound known only to the owner and his employees to whom it
13 is necessary to confide it:

14 (3)*Public Disclosure of Information.* — To make public, from time to
15 time, such portions of the information obtained by it under this Act,
16 except trade secrets and names of customers, as it shall deem expedient in
17 the public interest;

18 (4)*Reports and Recommendations to Congress.* — To submit annual and
19 special reports to Congress, through the Congressional Oversight
20 Committee on Fair Competition created under this Act, including
21 proposed legislation for the regulation of trade, commerce, or
22 industry, and provide for the publication of its reports and resolutions
23 in such form and manner as may be best adopted for public
24 information and transparency; and

25 (5)*Trade Conditions, Domestic and Foreign.* — To study from time to
26 time, trade conditions in and with foreign countries where
27 associations, combinations, or practices of manufacturers, merchants,
28 or traders, or other conditions, may affect the foreign trade of the
29 Philippines, and report to Congress its findings and recommendations
30 thereon as it may seem advisable.

1 **Sec. 7. Jurisdiction of Regional Trial Courts.** — The Regional Trial
2 Court shall have jurisdiction over cases arising from violations of the provisions
3 of this Act.

4 With respect to personal actions arising from the violations of the provisions of
5 this Act, actions may be commenced and tried where the plaintiff or any of the
6 principal plaintiff resides, or where the defendant or any of the principal
7 defendants reside, or in the case of a non-resident defendant, where he may be
8 found, at the election of the plaintiff.

9 **CHAPTER III**
10 **PROHIBITED ACTS**

11 **SEC. 8. Anti-competitive Agreements.** — It shall be unlawful for firms to
12 engage in horizontal and vertical agreements that prevent, distort or restrict
13 competition, unless otherwise exempted.

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

16 ii. “Vertical Agreement” means an agreement entered into between two or
17 more enterprises, each of which operates, for the purposes of the
18 agreement, at different levels of the production or distribution chain, and
19 relating to the conditions under which the parties may purchase, sell or
20 resell certain goods or services;

21 There shall be a *prima facie* case for the existence of an anti-competitive
22 agreement if and when the Commission finds that two or more firms that are
23 ostensibly competing for the same relevant market and actually perform uniform
24 or complimentary acts among themselves which tend to bring about artificial and
25 unreasonable increase, decrease or fixing in the price of any goods or when they
26 simultaneously and unreasonably increase, decrease or fix the prices of their
27 seemingly competing goods thereby lessening competition in the relevant market
28 among themselves.

1 (a) *Price Fixing* — Any agreement among competitors to raise, suppress, fix
2 or otherwise maintain the price at which their goods and services are sold
3 such as, but not limited to, establishing or adhering to price discounts,
4 holding prices firmly, eliminating or reducing discounts, adopting a
5 standard or formula for computing prices, maintaining certain price
6 differentials between different types, sizes or quantities of products,
7 adhering to a minimum fee or schedule and other analogous schemes with
8 the purpose and effect of creating a monopoly of cartel or lessening
9 competition.

10 (b) *Bid Rigging* — Any agreement to fix prices at auctions or in any other
11 form of bidding, with the purpose and effect of creating a monopoly or
12 cartel, or lessening competition such as, but not limited to, cover
13 bidding, bid suppression, bid rotation and market allocation and other
14 analogous practices of bid manipulation.

15 In determining whether there is price fixing or bid rigging, the following
16 circumstances may be considered:

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

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

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

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

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

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

3 **SEC. 9. Abuse of Dominant Position.** — it shall be unlawful for one or
4 more firms to abuse their dominant position, by engaging in unfair methods of
5 competition, or in unfair or deceptive trade practices, or entering into
6 combinations in the form of trust or otherwise, or conspiracy, with the purpose
7 and effect to prevent, restrict, or distort competition. Abusive agreements such as,
8 but not limited to, any of the following, shall be deemed to fall under the crime of
9 abuse of dominant position;

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

13 (b) *Limitation and Control of Markets* — Any agreement to limit or control
14 production, markets, technical development, or investment with the purpose
15 and effect of creating a monopoly or cartel, or lessening competition;

16 (c) *Market Allocation* — Any agreement to divide the market, whether by
17 volume of sales or purchase or by territory, by type of goods sold, by
18 customers or sellers or by any other means, with the purpose and effect of
19 creating a monopoly or cartel, or lessening competition;

20 (d) *Arrangements to Share Markets or Sources of Supply* — Any agreement to
21 share markets or sources of supply of raw materials, with the purpose and
22 effect of creating a monopoly or cartel, or lessening competition;

23 (e) *Price Discrimination* — Any agreement prescribing or charging, directly or
24 indirectly, discriminatory pricing terms or conditions in the supply or
25 purchase of goods of like grade and quality with the purpose and effect of
26 creating a monopoly or cartel, or substantially lessening competition:
27 *Provided*, That nothing contained herein shall be construed to prohibit
28 permissible price differentials unless the same shall have the effect of
29 preventing, restricting or distorting competition: *Provided, further*, That for

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

3 (1) Socialized Pricing — Socialized pricing for the less fortunate sector of
4 the economy;

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

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

12 (4) *Bona fide* Selection of Customers — the selection of customers on *bona*
13 *fide* transaction; and

14 (5) Price Differentials Due to Changing Market Conditions or Marketability
15 of Goods — Price changes from time to time in response to changing
16 conditions affecting the market or the marketability of the goods
17 concerned such as, but not limited to, actual or imminent deterioration
18 of perishable goods, obsolescence of seasonal goods, distress sales
19 under court process, or sale on good faith when a business is going to
20 be discontinued.

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

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

6 (h) *Boycott* — Any concerted refusal to sell or conspiracy not to sell or to stop
7 doing business on the part of the suppliers of any goods, unless for a legitimate
8 purpose.

9 (i) *Applicability of the Prohibited Acts to Non-dominant Persons or Firms* - It
10 shall be unlawful for persons or firms who may not be holding a dominant
11 position to commit the same acts specified in this section.

12 **SEC. 10. *Anti-competitive Mergers*** — No firm engaged in commerce or trade
13 shall acquire, directly or indirectly, the whole or any part of the stock or other
14 share capital, or the whole or any part of the assets, of one or more firms engaged in
15 any line of commerce or trade where the effect of such acquisition of such stocks,
16 share capital, or assets, or of the use of such stock by voting or granting of proxies or
17 otherwise maybe to substantially lessen competition, or tend to create a monopoly.

18 (a) *Permissible Stock or Asset Acquisition or Ownership*. — Nothing contained
19 herein, however, shall be construed to prohibit:

20 (1) A firm from purchasing the stock or other share capital of one or more
21 corporations solely for investment and not using the same by voting or
22 otherwise to bring about, or in attempting to bring about, the substantial
23 lessening of competition;

24 (2) A corporation from causing the formation of subsidiary corporations,
25 or from owning and holding all or part of the stock of such
26 subsidiary corporations, for the actual carrying on of their immediate
27 lawful business, or the natural and legitimate branches or extensions
28 thereof; and

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

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

25 (c) *Transactions Exempt from Prior Notice Requirement.* — The following
26 classes of transactions are exempt from the prior notice requirement under
27 this Section:

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

30 (2) Acquisitions of bonds, mortgages, deeds of trust, or other
31 obligations which are not voting securities;

- 1 (3) Acquisition of voting securities of an issuer at least fifty percent
2 (50%) of the voting securities of which are owned by the
3 acquiring firm prior to such acquisition;
- 4 (4) Transfers to, or from, government agencies or instrumentalities,
5 including government-owned or controlled corporations;
- 6 (5) Transactions exempted from the provision of this Act and other
7 proper and applicable laws;
- 8 (6) Transactions which require the approval of a specialized agency
9 which regulates the particular industry;
- 10 (7) Acquisitions, solely for the purpose of investment, of voting
11 securities, if as a result of such acquisition the securities acquired
12 or held do not exceed ten percent (10%) of the outstanding voting
13 securities of the issuer;
- 14 (8) Acquisitions of voting securities pursuant to the preemptive rights
15 of the acquiring firm or, if, as a result of such acquisition, the voting
16 securities acquired do not increase, directly or indirectly, the
17 acquiring firm's per centum share of outstanding voting securities
18 of the issuers; or
- 19 (9) Such other acquisitions, transfers, or transactions which the
20 Commission may declare as not likely to violate the provisions of
21 this Act or any other proper and applicable law.

22 **CHAPTER IV**
23 **FINES AND PENALTIES**

24 **SEC. 11. *Administrative Penalties.* —**

25 (a) Without prejudice to the violation of other laws, any firm that shall be
26 found to have violated Sections 8, 9 and 10 of this Act, or any combination thereof,
27 shall, for each and every violation, be punished by a fine of not less than one

1 hundred thousand pesos (Php100,000.00) and not exceeding twenty million pesos
2 (Php 20,000,000.00) if a natural person; by a fine of not less than one million pesos
3 (Php 1,000,000.00) but not exceeding one hundred million pesos
4 (Php100,000,000.00) if a firm, at the discretion of the Commission.

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

7 **(b) Failure to Comply With an Order of the Commission.** — Any person
8 who unjustifiably fails or neglects to comply with any term or condition of a
9 binding ruling, or a cease and desist order issued by the Commission, shall pay a
10 fine of not less than Fifty thousand pesos (Php50,000.00) for each violation. Each
11 violation shall be deemed a separate offense. In the case of continued non-
12 compliance, the legal interest (herein fixed at 6% per annum) shall be levied on the
13 fine imposed until the orders are complied with.

14 **(c) Supply of Incorrect or Misleading Information.** — The Commission
15 may likewise impose upon persons or entities fines of not less than Five thousand
16 pesos (Php 5,000.00) to not more than One hundred thousand pesos (Php
17 100,000.00) where, intentionally or negligently, they supply incorrect or
18 misleading information in any document, application or other paper filed with or
19 submitted to the Commission or supply incorrect or misleading information in an
20 application or other paper filed with or submitted to the Commission or supply
21 incorrect or misleading information in an application for a binding ruling, a
22 proposal for a consent judgment, proceedings relating to a show cause order, or
23 application for modification of the Commission's ruling, order or approval, as the
24 case may be.

25 **SEC. 12. Criminal Penalties.** — Without prejudice to the violation of other
26 laws, any firm that shall be found to have violated Sections 8, 9, and 10 of this
27 Act, or any combination thereof, shall, for each and every violation, be punished
28 by a fine of not less one hundred thousand pesos (Php100,000.00) and not
29 exceeding twenty million pesos (Php 20,000,000.00) if a natural person; by a fine
30 of not less than one million pesos (Php 1,000,000.00) but not exceeding one

1 hundred million pesos (Php100,000,000.00) if a firm, and by imprisonment not
2 exceeding ten (10) years, or both, at the discretion of the court.

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

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

9 **CHAPTER V**
10 **ENFORCEMENT**

11 **SEC. 13. *Preliminary Inquiry.*** — The Commission shall *motu proprio*, or
12 upon the filing of a verified complaint by an interested party or upon referral by the
13 concerned regulatory agency, initiate a preliminary inquiry for the enforcement of
14 this Act.

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

19 **SEC. 14. *Powers of Concerned Government Agencies.*** — Notwithstanding
20 the provisions of the preceding section, the exercise of regulatory powers by
21 different government agencies, including local government units, over an industry
22 or a sub-sector of an industry shall be cumulative and shall not be construed in
23 any way as derogating from the power and authority of the concerned agency. The
24 government agencies shall cooperate and coordinate with one another in the
25 exercise of their powers in order to prevent overlap, to share confidential
26 information, or for other effective measures. The Commission can seek technical
27 assistance from sectoral regulators.

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

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

11 **SEC. 16. *Self-Incrimination.*** – Pursuant to the preceding section, a person
12 who is the subject of any preliminary inquiry or investigation by the Commission
13 shall produce the specified document or information when so required by written
14 notice subject only to the limitations provided for in Article III, Section 17 of the
15 1987 Philippine Constitution.

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

23 **SEC. 18. *Confidentiality of Information.*** – Any document or information
24 submitted by firms, as determined and marked confidential by the Commission,
25 relevant to any investigation being conducted pursuant to this Act shall not, in any
26 manner, be directly or indirectly disclosed, published, transferred, copied, or
27 disseminated. The identity of persons who provide information to the Commission
28 and who need confidentiality to protect themselves against economic retaliation,

1 and any Commission deliberations in regard to current or still uncompleted matters
2 shall remain confidential.

3 Any violation of this provision shall be imposed a fine of not less than One
4 hundred thousand pesos (Php 100,000.00) but not more than Five hundred thousand
5 pesos (Php 500,000.00).

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

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

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

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

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

9 **SEC. 21. *Nolo Contendere Resolution.*** – Any firm under inquiry for
10 violation of the provisions of this Act may submit to a *nolo contendere* resolution
11 at any time before the termination of the preliminary inquiry by: a) the payment of
12 an amount within the range of penalties provided for under Section 11 hereof b) by
13 entering into an undertaking to effectively stop and rectify the acts complained
14 against, make restitution to the affected parties, whether or not the parties are
15 plaintiffs or witnesses; and, c) by submitting regular compliance reports as may be
16 directed: *Provided*, That a *nolo contendere* resolution shall not bar any inquiry for
17 the same or similar acts if continued or repeated.

18 **SEC. 22. *Implementing Policy; Non-Adversarial Administrative***
19 ***Remedies.*** – As an implementing and enforcement policy, the Commission shall,
20 under such rules and regulations it may prescribe, encourage voluntary compliance
21 with this Act and other competition laws by making available to the parties
22 concerned the following and other analogous non-adversarial and non-adjudicatory
23 administrative remedies, before the institution of administrative, civil, or criminal
24 action:

25 i. *Request for Binding Ruling* – Any person who is in doubt as to whether
26 the contemplated or existing act, course of conduct, agreement, decision
27 or practice is in compliance with, is exempt from, or in violation of any of
28 the provisions of this Act, other competition laws, or implementing rules
29 and regulations thereof, may request the Commission, in writing, to
30 render a binding ruling thereon;

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

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

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

29 (e) *Binding Ruling, Cease and Desist Order, and Consent Judgment.* - Based
30 upon the facts, data, and information disclosed or supplied by the persons
31 concerned, or established by substantial evidence during the hearing, the

1 Commission shall issue a binding ruling, a cease and desist order or an
2 approval of the proposal for a consent judgment, as the case may be, with
3 or without conditions, to the effect that the particular act, course of conduct,
4 agreement, decision or practice is in accord with this Act or other
5 competition laws, or is exempt therefrom, or constitutes a violation thereof.
6 If the Commission finds that there is substantial evidence tending to show
7 that the act, course of conduct, agreement, decision or practice of the person
8 or persons concerned is prohibited, it shall include in its decision the
9 appropriate order requiring the person or persons concerned to perform
10 certain acts:

11 (1) *Cease and Desist Order.* – To cease and desist from continuing
12 with the identified act, course of conduct, agreement, decision, or
13 practice found to be in violation of the provisions of this Act; and

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

15 (f) *Monitoring of Compliance.* – The Commission shall monitor the compliance
16 by the person or persons concerned, their officers, and employees, with the
17 final and executory binding ruling, cease and desist order, or approval of a
18 consent judgment. Upon motion of an interested party, the Commission shall
19 issue a certification to the effect that the person or persons concerned have,
20 or have not, as the case may be, complied with a final and executory ruling,
21 order, or approval;

22 (g) *Inadmissibility in Evidence.* – The request for a binding ruling, the show
23 cause order, or the proposal for consent judgment; the facts, data, and
24 information therein contained or subsequently supplied by the person or
25 persons concerned; admissions, oral or written, made by them against their
26 interest; all other documents filed by them including their evidence
27 presented in the proceedings before the Commission; and the judgment
28 rendered thereon, shall not be admissible as evidence in any administrative,
29 civil or criminal proceedings against such person or persons, their officers,
30 employees, and agents nor constitute a basis for the introduction of the

1 binding ruling, the cease and desist order, or the consent judgment as *prima*
2 *facie* evidence against such persons in any such action of proceeding;

3 (h) *Modification or Reversal of Ruling, Order or Approval.* – The Commission
4 may *motu proprio* or upon petition of an interested party, after notice and
5 hearing, reopen and alter, modify, or set aside, in whole or in part, a binding
6 ruling, a cease-and-desist order, or an approved consent judgment:

7 (1) Whenever conditions of material fact or law have so change as to
8 require such action;

9 (2) When the concerned person or persons fail or refuse, without
10 justifiable cause therefore, to comply with any condition attached to
11 such ruling, order, or approval; or

12 (3) When the ruling, order, or approval was based on deliberately
13 falsified material fact, data, or information supplied by an interested
14 party benefited by such ruling, order, or approval.

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

22 **SEC. 23. Standards.** – In the exercise of its powers or in the discharge of
23 its duties under this act, the Commission shall consider the following:

24 (a) the way a given industry is structured or organized whether monopolistic,
25 oligopolistic, or competitive;

26 (b) the ways the persons engaged in business within a given industry act,
27 behave or conduct themselves in such matters as setting prices, determining

- 1 output, and other relevant factors and the resulting performance of the
2 industry as a whole;
- 3 (c) the supply and demand situation for the relevant goods or services;
- 4 (d) the appreciable impact of the particular market conduct on market
5 conditions, if any;
- 6 (e) the need to bring together complimentary skills to avoid duplication and
7 promote efficiency in the industry;
- 8 (f) the need to determine whether or not the anticompetitive effect of a
9 particular market conduct may be offset by increased efficiency and
10 reduction of excessive or unnecessary expenses;
- 11 (g) the cost and profit levels of the industry;
- 12 (h) the need to increase productivity in the particular industry involved;
- 13 (i) the state of the industry, including the need to develop it or to save it from
14 its distressed state;
- 15 (j) the need of the industry to work more rationally and increase their
16 productivity and competitiveness on a larger market;
- 17 (k) the need to respond to international competition and other developments in
18 the international market;
- 19 (l) the need to encourage or develop small and medium-sized industries;
- 20 (m) the impact of the market conduct on the economy and on the
21 consuming public, particularly low income groups;
- 22 (n) the need to pool capital resources;
- 23 (o) the extent to which the consumers have a possibility of choice of the
24 product or service involved;
- 25 (p) the economic and financial power of the parties concerned;

1 (q) the attainment of the objectives which are given priority interest in the
2 general interest of the country, including the need for the accelerated
3 industrialization; and

4 (r) the extent to which less restrictive practices are available.

5 **SEC. 24. Contempt.**— The Commission or any of its Divisions may
6 summarily punish for contempt by imprisonment not exceeding thirty (30) days
7 or by fine, or both, any person guilty of such misconduct in the presence of the
8 Commission or any of its Divisions in its vicinity as to seriously interrupt any
9 hearing, session or any proceedings before it, including cases in which a person
10 willfully fails or refuses, without just cause, to comply with a summon,
11 *subpoena* or *subpoena duces tecum* legally issued by the Commission or any of
12 its Division, being present at a hearing, proceeding, session or investigation,
13 refused to be sworn as a witness or to answer questions or to furnish information
14 when lawfully required to do so.

15 **SEC. 25. Decision of the Commission.** – Decisions of the Commission *en*
16 *banc* shall be appealable to the Court of Appeals as hereinafter provided. The
17 appeal shall not stay the order, ruling or decision sought to be reviewed, unless the
18 Court of Appeals shall direct otherwise upon such terms and conditions it may
19 deem just.

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

28 i. is arbitrary to constitutional rights, power, privilege, or immunity;

- 1 ii. is contrary to the constitutional rights, power, privilege, or immunity;
- 2 iii. is in excess of statutory jurisdiction, authority, or limitations, or is contrary
- 3 to law;
- 4 iv. is without observance of the procedure required by law; and
- 5 v. is not supported by substantial evidence.

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

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

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

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

26 **SEC. 30. *Violation by Corporation, Partnership, Association, and Other***
27 ***Entity***. – Whenever a corporation, partnership, association, firm or other entity,

1 whether domestic or foreign, shall commit any of the acts declared to be unlawful
2 under this Act, the Chairperson of the Board of Directors, the President, the
3 General Manager of the corporation, the general partners of a partnership, and the
4 officers and employees directly responsible, shall be jointly and severally liable
5 with the firm for the fine imposed therein.

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

10 It shall not be a defense for the Chairperson of the Board of Directors, the
11 President or the General Manager of a corporation or the general partners of a
12 partnership, or the persons responsible for the management and operation of a
13 foreign corporation licensed to do business in the Philippines, that the person was
14 unaware of the violation, unless, it can be established to the satisfaction of the
15 court that even with the exercise of due diligence and proper supervision, the
16 person could not have avoided or prevented the violation.

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

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

25 **SEC. 32. *Essential Commodities*** – If the violation involves the trade or
26 movement of prime commodities such as rice, corn, sugar, chicken, pork, beef,
27 fish, vegetables, and other articles or commodities of prime or basic necessity as
28 declared by the appropriate government agency, through publication, the fine

1 imposed by the Commission or the courts, as the case may be, shall automatically
2 be tripled and the offender shall pay such threefold fine.

3 **SEC. 33. *Private Action*** – Regardless of the status or pendency of any
4 proceedings, any firm that suffers injury by reason of any violation of this Act may
5 institute a separate and independent civil action, irrespective of the amount
6 involved in the controversy against the defendant or defendants and shall recover
7 treble damages sustained, the costs of suit and reasonable attorney’s fees:
8 *Provided, however,* That no filing fees shall be collected: *Provided, further,* That
9 the filing fees shall constitute a first lien in the award of damages.

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

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

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

1 restart the limitation period or when a plaintiff reasonably fails to uncover a cause or
2 action that was fraudulently concealed by a defendant.

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

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

12 **SEC. 41. *Congressional Oversight Committee.*** - To oversee the
13 implementation of this Act, there shall be created a Congressional Oversight
14 Committee on Fair Competition (COCFC) to be composed of the Chairpersons of
15 the Senate Committees on Trade and Commerce, Economic Affairs, and Finance;
16 the Chairpersons of the House of Representatives Committees on Trade and
17 Industry, Economic Affairs and Appropriations; and two members each from the
18 Senate and the House of Representatives who shall be designated by the Senate
19 President and the Speaker of the House of Representatives; *Provided*, That one of
20 the two Senators and one of the two House Members shall be nominated by the
21 respective Minority Leaders of the Senate and the House of Representatives. The
22 Congressional Oversight Committee shall be jointly chaired by the Chairpersons of
23 the Senate Committee on Trade and Commerce and the House of Representatives
24 Committee on Trade and Industry. The Vice-Chair of the Congressional Oversight
25 Committee shall be jointly held by the Chairpersons of the Senate Committee on
26 Economic Affairs and the House of Representatives Committee on Economic
27 Affairs.

1 The Secretariat of the Congressional Oversight Committee on Fair
2 Competition shall be drawn from the existing personnel of the Senate and House of
3 Representatives committees comprising the Congressional Oversight Committee.

4 **CHAPTER VII**
5 **FINAL PROVISIONS**

6 **SEC. 42. *Implementing Rules and Regulations.*** – The Commission
7 shall prepare the necessary rules and regulations within one hundred twenty (120)
8 days from the effectivity of this Act: *Provided*, That, where the same would apply
9 to an industry or a sub-sector of industry that is subject to the jurisdiction of a
10 regulatory agency, the Commission shall, in preparing the guidelines, consult, with
11 the concerned regulatory agency and stakeholders: *Provided, further*, That the
12 Commission may revise such guidelines as it deems necessary: *Provided, however*,
13 That such revised guidelines shall only take effect following its publication in two
14 newspapers of general circulation.

15 **SEC. 43. *Appropriations.*** – The amount necessary to implement the
16 provisions of this Act shall be included in the annual General Appropriations Act.
17 However, for the initial budgetary requirements of the Commission, the amount of
18 One hundred million pesos (P100,000,000.00) is hereby appropriated.

19 **SEC. 44. *Transitory Provision.*** – For the purpose of ensuring that the
20 Commission is organized within the mandated period of one hundred eighty (180)
21 days after the approval of this Act, an Inter-Agency Task Force shall be created
22 and composed of the following agencies:

- 23 a.) Agencies which will provide administrative support to the Commission:
- 24 i. Office of the President, to be represented by the Executive Secretary
25 with the Deputy Executive Secretary for Legal Affairs as alternate;

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

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

6 i. Tariff Commission, to be represented by the Chairperson and with an
7 Associate Commissioner permanently designated as alternate;

8 ii. Department of Trade and Industry, to be represented by the Secretary
9 with the Director of the Bureau of Trade Regulation and Consumer
10 Protection as alternate representative;

11 iii. Department of Justice, to be represented by the Secretary with an
12 officer holding at least an Assistant Secretary rank as alternate.

13 The Task Force shall also meet in Executive Session with all the agency
14 heads to deliberate on possible appointees for the position of Chairperson and
15 Associate Commissioners of the Commission for submission to and consideration
16 of the President of the Philippines.

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

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

27 **SEC. 46. *Separability Clause.*** - If any clause, sentence, section or part of
28 this Act shall be adjudged by a court of competent jurisdiction to be invalid, such

1 judgment shall not affect, impair or invalidate the remainder of this Act, but shall
2 be confined in its operation to the clause, sentence, paragraph, section, or part
3 thereof directly involved in the controversy.

4 **SEC. 47. *Repealing Clause.*** – The following laws, insofar as they are
5 inconsistent with any of the provisions of this Act, are hereby repealed, amended or
6 otherwise modified accordingly:

7 (a) Sec. 5(3) of Republic Act No. 7851 or the Price Act;

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

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

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

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

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

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

20 **SEC. 48. *Effectivity Clause.*** – This Act shall take effect fifteen (15) days
21 following its publication in the *Official Gazette* and in at least two (2) national
22 newspapers of general circulation: *Provided, however,* That in order to allow
23 affected parties time to renegotiate agreements or restructure their business to
24 comply with the new competition law, the penal provisions under Section 12 of
25 this Act, except for those already prohibited under the Revised Penal Code, shall be
26 imposed one (1) year after the effectivity of the Implementing Rules and
27 Regulations of this Act.

Approved,