

SENATE
Senate Bill No. **2282**

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Prepared by the Committee on Trade, Commerce and Entrepreneurship joint with the Committees on Economic Affairs, Justice and Human Rights, and Finance with Senators Osmena III, Guingona III, Defensor-Santiago, Ejercito Estrada, Trillanes and Aquino IV as authors thereof.

AN ACT PROMOTING FAIR 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 POSITION, AND ANTI-COMPETITIVE MERGERS, ESTABLISHING THE 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**

SECTION 1. Title – This act shall be known and cited as the “Fair Competition Act of 2014.”

SECTION 2. Declaration of Policy. - The efficiency of market competition as a mechanism for allocating goods and services is a generally accepted precept. The State recognizes that past measures undertaken to liberalize key sectors in the economy. This needs to be reinforced by measures that safeguard competitive conditions. The State also recognizes that the provision of equal opportunities to all promotes entrepreneurial spirit, encourages private investments, facilitates technology development and transfer and enhances resource productivity. Unencumbered market competition also serves the interest of consumers by allowing them to exercise their right of choice over goods and services offered in the market.

Pursuant to the constitutional goals for the national economy to attain a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged; and 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:

1 (a) Promote and enhance economic efficiency and competition in trade, industry and commerce
2 with the objective of protecting consumer welfare and advancing domestic and international trade
3 and economic development;

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

9 (c) Prohibit anti-competitive agreements, abuses of dominant position, and anti-competitive
10 combinations that distort, manipulate or constrict the operations of relevant markets in the
11 Philippines.

12 **SECTION 3. Scope and Application** –This Act shall be enforceable within the territory of the Republic
13 of the Philippines and shall apply to all areas of trade, industry and commerce. It shall likewise be
14 applicable to international trade having direct, substantial and reasonably foreseeable effects in domestic
15 trade, commerce, and industry in, or national economy of, the Republic of the Philippines, including those
16 that result from acts done outside the country.

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

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

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

1 (a) "Anti-competitive agreement" refers to any type or form of contract, arrangement,
2 understanding, collective recommendation or concerted action, whether formal or informal,
3 explicit or tacit, written or oral, with the object or effect of substantially preventing, restricting or
4 lessening competition;

5 (b) "Conduct" refers to any type or form of undertaking, collective recommendation,
6 independent, concerted or parallel action or practice, whether formal or informal;

7 (c) "Cartel" refers to a combination of entities or persons, providing goods and/or services in
8 relevant markets, acting or joined together to obtain a shared monopoly or ability to control
9 production, purchase, sale and price, or to obtain control in any particular industry or commodity,
10 or a group of entities that agree to restrict trade;

11 (d) "Commission" refers to the Fair Competition Commission created under this Act;

12 (e) "Competition" refers to the process by which economic agents, acting independently in a
13 market, limit each other's ability to control the prevailing conditions in the market;

14 (f) "Control" means the power to direct or cause the direction of the management policies of an
15 Entity by contract, agency or otherwise;

16 (g) "Dominant Position" refers to a position held by an entity in a relevant market, individually or
17 jointly with others that affords it the ability to behave to a significant extent independently of its
18 competitors and consumers.

19 (h) "Entity" refers to any person, natural or juridical, partnership, combination or association in
20 any form, whether incorporated or not, domestic or foreign, including those owned or controlled
21 by the government, engaged directly or indirectly in any economic activity: Provided, that, two
22 entities, one of which is controlled by the other, shall be treated as one entity: Provided, further,
23 that two or more entities that are controlled by a single entity shall be treated as one entity;

1 (i) "Goods" and "Services":

2 (i) "Goods" refer to all types of tangible property that could be bought and sold, and the
3 possession of which could be transferred in whole or in part, temporarily or permanently;

4 (ii) "Services" refer to all types of commercial activities which enable the supply, access
5 to, consumption or use of goods, intellectual property or other services :

6 (j) "Market" refers to the group of goods or services that are sufficiently interchangeable or
7 substitutable and the object of competition, and the geographic area where said goods or services
8 are offered;

9 (k) "Market concentration" refers to the distribution of production or sale within a relevant
10 market.

11 (l) "Mergers" refer to situations where two or more undertakings, previously independent of one
12 another, join together. This definition includes transactions whereby: (i) two entities legally
13 combine into one (mergers); (ii) one entity takes sole control of the whole or part of another
14 (acquisitions or takeovers); (iii) two or more entities acquire joint control over another entity
15 (joint ventures); and (iv) other transaction whereby one or more undertakings acquire control over
16 one or more undertakings, such as interlocking directorates;

17 (m) "Monopoly" refers to a form of market structure in which one entity having earned a
18 privilege or obtained advantage over others, accounts for the total sales of a good or service; and

19 (n) "Relevant Market" refers to the market in which a particular good or service is sold and which
20 is a combination of the relevant product market and the relevant geographic market, defined as
21 follows:

1 (i) A relevant product market comprises all those goods and/or services which are
2 regarded as interchangeable or substitutable by the consumer, by reason of the goods and/or
3 services' characteristics, their prices and their intended use; and

4 (ii) The relevant geographic market comprises the area in which the entity concerned is
5 involved in the supply and demand of goods and services. in which the conditions of competition
6 are sufficiently homogenous and which can be distinguished from neighboring areas because the
7 conditions of competition are appreciably different in those areas.

8 CHAPTER II

9 FAIR COMPETITION COMMISSION

10 **SECTION 1. *Fair Competition Commission.*** - To implement the national policy and attain the
11 objectives and purposes of this Act, an independent quasi-judicial body is hereby created, which shall be
12 known as the Fair Competition Commission (FCC), hereinafter referred to as the Commission, and which
13 shall be organized within one year after the approval of this Act. Upon establishment of the Commission,
14 Executive Order No. 45 designating the Department of Justice as the Competition Authority is hereby
15 repealed. The Office for Competition (OFC) under the Office of the Secretary of Justice shall however be
16 retained, with its powers and functions modified pursuant to Section 9 of this Chapter.

17 The Commission shall be an attached agency to the Office of the President.

18 **SECTION 2. *Composition of the Commission.*** - The Commission shall be composed of a Chairperson
19 and four (4) Associate Commissioners. The Chairperson and Commissioners shall be citizens and
20 residents of the Philippines, of good moral character, of recognized probity and independence and must
21 have distinguished themselves professionally in public or academic service in any of the following fields:
22 economics, law, finance, commerce or engineering. They must have been in the active practice of their
23 professions for at least ten (10) years, and must not have been candidates for any elective national or local
24 office in the immediately preceding elections, whether regular or special. Provided, that at least one (1)
25 shall be a member of the Philippine Bar with at least ten (10) years of experience in the active practice of

1 law, and at least one (1) shall be an economist, preferably distinguished in the area of industrial
2 organization.

3 **SECTION 3. *Term of Office.*** – The Chairperson and the Associate Commissioners shall be appointed by
4 the President of the Philippines. The term of office of the Chairperson and the Associate Commissioners
5 shall be seven (7) years. Provided, that in no case shall any person be a member of the Commission for
6 more than two (2) terms.

7 The first Chairperson shall hold office for seven years and of the first four (4) Associate Commissioners,
8 two (2) shall hold office for a term of four (4) years and two (2) for a term of three (3) years. In case a
9 vacancy occurs before the expiration of the term of office, the appointment to such vacancy shall be only
10 for the unexpired term of the predecessor.

11 The Chairperson and the Associate Commissioners shall enjoy security of tenure and shall not be
12 suspended or removed from office except for just cause as provided by law.

13 **SECTION 4. *Prohibition and Disqualifications.*** – The Commissioners shall not, during their tenure,
14 hold any other office of employment. They shall not, during their tenure, directly or indirectly practice
15 any profession, except in a teaching capacity, participate in any business, or be financially interested in
16 any contract with, or any franchise, or special privileges granted by the government or any subdivision,
17 agency, or instrumentality thereof, including government-owned and controlled corporations of their
18 subsidiaries. They shall strictly avoid conflict of interest in the conduct of their office. They shall not be
19 qualified to run for any office in the election immediately succeeding their cessation from office. They
20 shall not be allowed to appear or practice before the Commission for two (2) years following their
21 cessation from office.

22 No spouse or relative by consanguinity or affinity within the fourth civil degree and no former law,
23 business, or professional partner or associate of any of the Commissioners, the Chairperson and the
24 Executive Director of the Commission may appear as counsel or agent on any matter pending before the
25 Commission or transact business directly or indirectly therein during incumbency and within one (1) year
26 from cessation of office.

1 **SECTION 5. *Compensation and Other Emoluments for Members and Personnel of the Commission.*** –

2 The compensation and other emoluments for the members and personnel of the Commission shall be
3 exempted from the coverage of Republic Act No. 6758, otherwise known as the “Salary Standardization
4 Act”. For this purpose, the schedule of compensation of the Commission personnel shall be submitted for
5 approval by the President of the Philippines.

6 **SECTION 6. *Quorum.*** – Three (3) members of the Commission shall constitute a quorum and the
7 affirmative vote of three members (3) shall be necessary for the adoption of any rule, ruling, order,
8 resolution, decision or other acts of the Commission en banc.

9 **SECTION 7. *Staff.*** – The Commission shall appoint, fix the compensation and determine the status,
10 qualifications and duties of its personnel, which shall include an Executive Director of the Commission.
11 The Executive Director shall be appointed by the President and shall have relevant experience in any of
12 the fields of law, economics, commerce, management or finance for at least ten (10) years. The members
13 of the technical staff, except those performing purely clerical functions, shall possess at least a Bachelor
14 Degree in the following areas of specialization: economics, law, finance, commerce, management and
15 engineering.

16 **SECTION 8. *Powers and Functions of the Commission.*** - The Commission shall promote competition,
17 ensure consumer welfare, and penalize abuses of market power. Towards this end, it shall have the
18 following quasi-judicial powers and functions:

19 (a) Conduct inquiry or investigation pursuant to this Act;

20 (b) Monitor and take measures in accordance with this Act to penalize abuse of market power,
21 collusion, and other anti-competitive behavior by any entity;

22 (c) Investigate any violation of this Act and other existing competition laws *motu proprio* or upon
23 receipt of a verified complaint from an interested party or upon referral by the concerned
24 regulatory agency, and conduct administrative proceedings;

1 (d) Upon finding that an entity has engaged in anti-competitive act or behavior, stop or redress
2 the same, by applying remedies, such as, but not limited to, imposition of price controls, issuance
3 of injunctions, requirement of divestment, and disgorgement of excess profits.

4 (e) Impose sanctions, fines or penalties for any non-compliance with or breach of this Act and its
5 implementing rules and regulations (IRR);

6 (f) Issue subpoena *duces tecum* and subpoena *ad testificandum* to require the production of books,
7 records, or other documents or data which relate to any matter relevant to the investigation and
8 personal appearance before the Commission; summon witnesses; administer oaths; and issue
9 interim orders such as show cause and cease and desist orders in accordance with the rules and
10 regulations implementing this Act:

11 (g) Undertake inspections of business premises and other premises including land and vehicles,
12 homes of entity directors, officers and employees during business hours, where it reasonably
13 suspects that relevant books, tax records, or other documents which relate to any matter relevant
14 to the investigation are kept, in order to prevent the removal, concealment, tampering with, or
15 destruction of the books, records, or other documents;

16 (h) Issue adjustment or divestiture orders including orders for corporate reorganization or
17 divestment in the manner and under such terms and conditions as may be prescribed in the rules
18 and regulations implementing of this Act;

19 (i) Deputize any government agency to provide information and lend in the discharge of its
20 responsibilities under this Act and require submission or examine records and documents in the
21 possession or control of such government agency;

22 (j) Monitor compliance by the person or entities concerned with the cease and desist order or
23 consent judgment;

1 (k) Issue advisory or legal opinions and guidelines for the effective enforcement of this Act;

2 (l) Intervene or participate in administrative and regulatory proceedings requiring consideration
3 of the provisions of this Act that are initiated by government agencies such as the Securities and
4 Exchange Commission, Energy Regulatory Commission and the National Telecommunications
5 Commission; and

6 (m) Advocate pro-competitive policies of the government by:

7 a. Developing legislative proposals related to competition laws and responding to
8 requests for advice and comments on such matters from Congress and other government
9 agencies;

10 b. Reviewing economic and administrative regulations, *motu proprio* or upon request, as
11 to whether or not they adversely affect relevant market competition, and advising the
12 concerned agencies against such regulations:

13 c. Advising the Executive Branch on the competitive implications of government actions,
14 policies and programs; and

15 d. Preparing reports requested by Congress or the President as to the impact of laws or
16 programs on relevant market competition.

17 **Section 9. Powers and Functions of the Office for Competition (OFC).** - The OFC, under the
18 Department of Justice (DOJ) shall have exclusive authority for the criminal enforcement of this Act,
19 including the investigation and prosecution of criminal cases filed hereunder, as well as the civil aspect of
20 such cases where the latter has not been instituted or reserved separately. It shall seek to advance the
21 antitrust jurisprudence in the country through its litigation and participation in the activities of the
22 Executive Branch and in regulatory and legislative processes. The powers and functions of OFC include:

1 (a) Investigation and prosecution, where warranted, of all criminal offenses arising under this Act
2 and other laws related to the protection of competition and prohibition of restraints of trade and
3 monopolization;

4 (b) Conduct of studies on anti-competitive conduct, the methods and techniques used in such
5 practices, the detection of such schemes and the effective ways of prosecuting and deterring
6 perpetrators of such offenses; and

7 (c) Monitoring and analysis of practices of individual and combination of foreign producers,
8 merchants or traders that affect the trade of the Philippines, and report to Congress its findings
9 and recommendations thereon as it may deem advisable.

10 The OFC shall be reorganized and allocated resources as may be required therefor to effectively pursue its
11 mandate.

12 CHAPTER III

13 PROHIBITED ACTS

14 **SECTION 1. *Anti-competitive Agreements.*** - It shall be a criminal offense for entities to enter into any
15 agreement with the object and effect of unreasonably and substantially preventing, restricting or lessening
16 competition:

17 (a) Directly or indirectly fix, control or maintain prices;

18 (b) Set, limit or control production, relevant markets, technical development or investment to the
19 prejudice of consumers;

20 (c) divide or share the relevant market, whether by volume of sales or purchases, territory, type of
21 goods or services, buyers or sellers or any other means;

22 (d) Apply dissimilar conditions to equivalent transactions with other parties, thereby placing them
23 at a competitive disadvantage; and

1 (e) Other similar conduct which is similar in nature, gravity, object and effect of the above
2 enumeration shall be deemed or considered by the Commission as covered by this section.

3 Provided, that any such agreement which contributes to improving the production or distribution of goods
4 and services or to promoting technical or economic progress, while allowing consumers a fair share of the
5 resulting benefits, shall not be deemed a violation of this Act.

6 **SECTION 2. Abuse of Dominant Position.** - It shall be a criminal offense for one or more entities to
7 abuse their dominant position by engaging in conduct that would unreasonably and substantially prevent
8 or restrict competition. The abuse of dominant position contemplated by this Act includes:

9 (a) Predatory behavior towards competitors, including but not limited to selling goods or services
10 below cost with the intent of driving competition out of the relevant market or creating barriers to
11 entry;

12 (b) Imposing barriers to entry;

13 (c) Setting prices or other terms or conditions that differ or discriminate unreasonably between
14 customers or sellers of the same goods or services, where such customers or sellers are
15 contemporaneously trading on similar terms and conditions, where the effect may be to lessen
16 competition substantially. Provided, that the following shall be considered permissible price
17 differentials:

18 a. socialized pricing for the less fortunate sector of the economy;

19 b. price differential which reasonably or approximately reflect differences in the cost of
20 manufacture, sale, or delivery resulting from differing methods or quantities in which the
21 goods or services are sold or delivered to the buyers or sellers;

22 Any analogous price differentials shall be deemed covered in this section.

1 c. price differential or terms of sale offered in response to the competitive price of
2 payments, services or changes in the facilities furnished by competitor;

3
4 d. price changes in response to changing market conditions, marketability of goods or
5 services, or volume; and

6 (d) imposing restrictions on the lease or contract for sale or trade of goods or services concerning
7 where, to whom, or in what forms goods or services may be sold or traded, such as, but not
8 limited to, fixing prices, or giving preferential discounts, or rebate upon such price, or imposing
9 conditions not to deal with competing entities, where the object or effect of such restrictions is to
10 prevent, limit or lessen competition substantially; Provided, that nothing contained herein shall
11 prohibit or render unlawful permissible franchising, licensing or exclusive distributorship
12 agreements;

13 (e) making supply of particular goods or services dependent upon the purchase of other goods or
14 services from the supplier which have no direct connection with the main goods or services to be
15 supplied;

16 (f) Other similar conduct which is similar in nature, gravity, object and effect of the above
17 enumeration shall be deemed or considered by the Commission as covered by this section.

18 CHAPTER IV

19 MERGERS AND ACQUISITION

20 SECTION 1. *Review of Mergers and Acquisition.* - The following agreements are deemed to increase
21 relevant market concentration:

22 (a) two or more previously independent entities combine or amalgamate the whole or part of their
23 business; or

1 (b) one or more entities acquire, whether by purchase of securities or assets, by contract or by
2 other means, direct or indirect control of the whole or parts of one or more other entities.

3 **SECTION 2. *Compulsory Notification.*** - Parties to the merger or acquisition agreement referred to in
4 the preceding Section that will produce a relative market concentration greater than the threshold
5 determined by the Commission pursuant to Section 4 of this Chapter are prohibited from implementing
6 their agreement until thirty (30) calendar days have lapsed from notification to the Commission. An
7 agreement implemented in violation of this requirement shall be considered voidable and subject the
8 parties to the corresponding penalties therefor.

9 The Commission may, however, request further information from the parties to the agreement before the
10 expiration of the aforementioned thirty (30)-day period. The issuance of such a request has the effect of
11 extending the period within which the agreement may not be implemented for an additional thirty (30)
12 days, beginning on the day after substantially all of the requested information is supplied to the
13 Commission. When the period has expired and no decision has been handed down, it shall be understood
14 that the Commission has no objections to the proposed merger or acquisition.

15 In the case of the merger or acquisition of banks, banking institutions, building and loan associations,
16 trust companies, insurance companies, public utilities, educational institutions and other special
17 corporations governed by special laws, a favorable or no-objection ruling by the Commission shall not be
18 construed as dispensing of the requirement for a favorable recommendation by the appropriate
19 government agency under Section 79 of the Corporation Code of the Philippines.

20 **SECTION 3. *Effect of Notification.*** - If, within the relevant periods stipulated in Section above, the
21 Commission determines that such agreement is prohibited under Section 5 and does not qualify for
22 exemption under Section 6 of this Chapter, the Commission may:

23 (a) prohibit the implementation of the agreement;

24 (b) prohibit the *implementation of the agreement unless and until it is modified by changes*
25 *specified by the Commission; or*

1 (c) prohibit the implementation of the agreement unless and until the pertinent party or parties
2 enter into legally enforceable agreements specified by the Commission.

3 **SECTION 4. *Notification Threshold.*** – The Commission shall from time to time adopt and publish
4 regulations stipulating:

5 (a) the relevant market concentration threshold subject to the notification requirement of Section
6 2 of this Chapter;

7 (b) the information that must be supplied for notified mergers or acquisition;

8 (c) exceptions or exemptions from the notification requirement; and

9 (d) other rules relating to the notification procedures.

10 **SECTION 5. *Prohibited Merger and Acquisition.*** – Merger or acquisition agreements that will prevent
11 or substantially restrict competition in the relevant market or in the market for substantially related goods
12 or services as may be determined by the Commission shall be prohibited.

13 **SECTION 6. *Permissible Merger and Acquisition.*** – Merger or acquisition agreement prohibited under
14 Section 5 of this Chapter shall, nonetheless, be exempt from prohibition by the Commission when the
15 parties establish either of the following:

16 (a) The concentration has brought about or is likely to bring about gains in efficiencies that are
17 greater than the effects of any limitation on competition that result or likely to result from the
18 merger or acquisition agreement; or

19 (b) A party to the merger or acquisition agreement is faced with actual or imminent financial
20 failure, and the agreement represents the least anti-competitive arrangement among the known
21 alternative uses for the failing entity's assets.

1 **SECTION 7. *Burden of Proof.*** – The burden of proof under Section 6 lies with the parties seeking the
2 exemption. A party seeking to rely on the exemption specified in Section 6 (a) must demonstrate that if
3 the agreement were not implemented, significant efficiency gains would not be realized.

4 **SECTION 8. *Non-contestable Acts.*** – The following merger or acquisition agreements may not be
5 challenged under this Act:

6 (a) Merger or acquisition agreements that have received a favorable ruling from the Commission,
7 except when such ruling was obtained on the basis of false information; and

8 (b) In the case of merger or acquisition agreements that do not require prior notification, a year
9 after their establishment.

10 **CHAPTER V**

11 **DISPOSITION OF CASES**

12 **SECTION 1. *Determination of Anti-Competitive Conduct.*** – In determining whether anti-competitive
13 conduct has been committed, the Commission shall:

14 (a) Define the relevant market allegedly affected by the anti-competitive conduct, following the
15 principles laid out in Section 2 of this Chapter;

16 (b) Determine if there is actual or potential adverse impact on competition in the relevant market
17 caused by the alleged conduct, and if such impact is substantial and outweighs the actual or
18 potential efficiency gains that result from the conduct;

19 (c) Adopt a broad and forward-looking perspective, recognizing future market developments, but
20 also taking account of past behavior of the parties involved and prevailing market conditions;

21 (d) Balance the need to ensure that competition is not prevented or substantially restricted and the
22 risk that competition may be deterred by overzealous intervention; and

1 (e) Assess the totality of evidence on whether it is more likely than not that the entity has engaged
2 in anti-competitive conduct.

3 **SECTION 2. *Relevant Market.*** – For purposes of defining the relevant market, the following factors
4 affecting the substitutability among goods or services constituting such market and the geographic area
5 delineating the boundaries of the market shall be considered:

6 (a) The possibilities of substituting the goods or services in question, with others of domestic or
7 foreign origin, considering the technological possibilities, extent to which substitutes are
8 available to consumers and time required for such substitution;

9 (b) The cost of distribution of the good or service, its raw materials, its supplements and
10 substitutes from other areas and abroad, considering freight, insurance, import duties and non-
11 tariff restrictions; the restrictions imposed by economic agents or by their associations; and the
12 time required to supply the market from those areas;

13 (c) The cost and probability of users or consumers seeking other markets; and

14 (d) National, local or international restrictions which limit access by users or consumers to
15 alternate sources of supply or the access of suppliers to alternate consumers.

16 **SECTION 3. *Prima Facie Presumption.*** – If the conduct is among the acts referred to in Chapter III, a
17 prima facie presumption of violation of this Act will be deemed established if the entity committing such
18 act has market dominant position in the relevant market.

19 **SECTION 4. *Market Dominant Position.*** – In determining whether an entity has market dominant
20 position for purposes of this Act, the Commission shall consider the following:

21 (a) The share of the entity in the relevant market and whether it is able to fix prices unilaterally or
22 to restrict supply in the relevant market;

1 (b) The existence of barriers to entry and the elements which could foreseeably alter both said
2 barriers and the supply from competitors:

3 (c) The existence and power of its competitors:

4 (d) The possibility of access by its competitors or other entities to its sources of inputs:

5 (e) Its recent conducts; and

6 (f) Other criteria established by the regulations of this Act.

7 There shall be a rebuttable presumption of market dominant position if the share of an entity in the
8 relevant market is equal to or greater than the threshold for dominant position stipulated by the
9 Commission for that particular sector.

10 The Commission shall from time to time determine and publish the threshold for dominant position or
11 minimum level of share in the relevant market that could give rise to a presumption of dominant position.

12 In such determination, the Commission would consider the structure of the relevant market, access to end-
13 users, technology and financial resources, and other factors affecting the control of an entity, as provided
14 in sub-sections (a) to (f) of this Section.

15 **SECTION 5. Forbearance.** – Any entity may request to be exempted from the enforcement of this Act
16 by submitting a written request for forbearance to the Commission.

17 The Commission may forbear from applying the provisions of this Act, in whole or in part, in all or
18 specific cases, on an entity, if in its determination:

19 (a) Enforcement is not necessary to the attainment of the policy objectives of this Act; and

1 (b) Forbearance will not impede competition in the relevant market where the entity seeking
2 exemption operates nor in related markets

3 A public hearing may be held to assist the Commission in making a determination on the request for
4 forbearance.

5 The request for forbearance and the Commission's order exempting the relevant party or parties under
6 this Section shall be made public. Conditions may be attached to the forbearance if the Commission
7 deems it appropriate to ensure the long-term interest of consumers.

8 In the event that the basis for the issuance of the exemption order ceases to be valid, the order may be
9 withdrawn by the Commission.

10 CHAPTER VI

11 FINES AND PENALTIES

12 SECTION 1. *Penalties.* –

13
14 (a) Without prejudice to the violation of other laws, any entity found to have violated this Act
15 shall, for each and every violation, be punished by a fine of not less than Ten Million Pesos
16 (Php10,000,000.00) and not exceeding Fifty Million Pesos (Php50,000,000.00) if a natural
17 entity; by a fine of not less than Two Hundred Fifty Million Pesos (Php250,000,000.00) but not
18 exceeding Seven Hundred Fifty Million Pesos (Php750,000,000.00) if a juridical entity, at the
19 discretion of the Commission.

20 (b) Failure to Comply With An Order of the Commission. – Any entity which fails or neglects to
21 comply with any term or condition of a binding ruling, a cease and desist order or an order for
22 readjustment issued by the Commission, shall pay a fine of not less than Ten Million pesos
23 (Php10,000,000.00) for each violation. Each violation shall be deemed a separate offense:
24 Provided, that in the case of a violation through a continuing failure or neglect to comply, each
25 day of continuance of such failure or neglect shall be deemed a separate offense.

1 (c) Supply of Incorrect or Misleading Information. - The Commission may likewise impose upon
2 any entity fines of not less than Ten Million Pesos (Php10,000,000.00) where, intentionally or
3 negligently, they supply incorrect or misleading information in any document, application or
4 other paper filed with or submitted to the Commission or supply incorrect or misleading
5 information in an application for a binding ruling, a proposal for a consent judgment, proceedings
6 relating to a show cause order, or application for modification of the Commission's ruling, order
7 or approval, as the case may be. Provided, that in the case of a violation through a continuing
8 failure or neglect to supply the correct information, each day of continuance of such failure or
9 neglect shall be deemed a separate offense.

10 **SECTION 2. Criminal Penalties** – Without prejudice to the violation of other laws, any entity that shall
11 be found to have violated this Act shall, for each and every violation, be punished by a fine of not less
12 than Ten Million Pesos (Php10,000,000.00) and not exceeding Fifty Million Pesos (Php 50,000,000.00)
13 if a natural entity; by a fine of not less than Two Hundred Fifty Million Pesos (Php250,000,000.00) but
14 not exceeding Seven Hundred Fifty Million Pesos (Php750,000,000.00) if a juridical entity, and by
15 imprisonment not exceeding ten (10) years, or both, at the discretion of the court.

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

19 **CHAPTER VII**

20 **ENFORCEMENT**

21 **SECTION 1. Inquiry into Anti-competitive Cases.** – The Commission shall *motu proprio*, or upon the
22 filing of a verified complaint by an interested party or upon referral by the concerned regulatory agency,
23 initiate an inquiry for the enforcement of this Act.

1 Provided, that without prejudice to Sections 1 and 2, Chapter III of this Act, a criminal case for violation
2 of this Act shall be filed or instituted by a private party directly in court, unless there has been an inquiry
3 conducted by the Commission and the same has been endorsed for filing by the Commission.

4 **SECTION 2. *Relationship with Regulatory and Other Government Agencies.*** – The Commission shall
5 have primary jurisdiction over competition issues. The exercise of functions and powers by the
6 Commission shall be cumulative to the power and authority of the different government agencies over an
7 industry or a sector of an industry and shall not in any way derogate the power and authority of the
8 concerned agency. The relevant regulators or government agencies shall exercise their authority,
9 particularly on competition-related issues, in a manner consistent with the principles embodied in this Act.

10 The Commission shall enter into agreement with any sector regulator or government agency to coordinate
11 and harmonize the exercise of jurisdiction over competition issues in the relevant industry or sector to
12 ensure consistent application of the principles embodied in this Act. Such an agreement shall, among
13 others, identify and establish procedures for the coordination and management of issues of concurrent
14 jurisdiction and provide for exchange of information; Provided, that, in the absence of an agreement, if a
15 regulator or other government agency is mandated under its charter or other specific provisions of law to
16 exercise jurisdiction over a competition-related case, it shall inform the Commission of its intention to
17 exercise the prescribed functions in relation to that case. Should the Commission deem that it is better-
18 equipped to adjudicate or otherwise resolve the case, it shall issue a counter-notification to the relevant
19 regulator or government agency stating the Commission's assumption and exercise of its jurisdiction and
20 request the cooperation and advise of the regulator or government agency, particularly on technical issues
21 on which the latter has more knowledge and competence. In case of dispute between the Commission and
22 the regulator or other government agency on jurisdiction over a case, it shall be resolved pursuant to
23 Chapter 14 of the Administrative Code of 1987.

24 The Commission shall enlist the assistance of any branch, department, bureau, office, agency or
25 instrumentality of the government in undertaking any and all mandated functions under this Act, which
26 may include the use of its personnel, facilities and resources for the more resolute prevention of anti-
27 competitive conduct, detection of such violations and prosecution of offenders.

1 **SECTION 3. *Power to Investigate and Enforce Orders and Resolutions.*** – The Commission shall
2 conduct inquiries by administering oaths, issuing subpoena *duces tecum* and summoning witnesses, and
3 commissioning consultants or experts. It shall determine if any provision of this Act has been violated,
4 enforce its orders and carry out its resolutions by making use of any available means, provisional or
5 otherwise, under existing laws and procedures including the power to punish for contempt and to impose
6 fines; Provided, that, this provision shall be without prejudice to the specific powers vested in the OFC by
7 virtue of its jurisdiction under Section 9 of Chapter II to investigate and prosecute criminal cases arising
8 from violations of this Act.

9 **SECTION 4. *Self-incrimination.*** – Pursuant to the preceding section, an entity subject of any
10 preliminary inquiry or investigation by the Commission or the OFC shall produce the specified document
11 or information when so required by written notice subject only to the limitations provided for in Article
12 III, Section 17 of the 1987 Philippine Constitution.

13 **SECTION 5. *Privileged Communication Exclusion.*** – Nothing in the preceding section shall compel the
14 disclosure of privileged communication: Provided, that the entity who refuses to disclose the information
15 or produce the document or other material required by the inquiring officer in relation to the preliminary
16 inquiry being conducted shall nevertheless be obliged to give the name and address of the entity to whom,
17 or by whom, or on whose behalf, such privileged communication was made.

18 **SECTION 6. *Confidentiality of Information.*** – Any document or information submitted by entities, as
19 determined and marked confidential by the Commission, relevant to any investigation being conducted
20 pursuant to this Act shall not, in any manner, be directly or indirectly disclosed, published, transferred,
21 copied, or disseminated. The identity of persons or entities who provide information to the Commission
22 and who need confidentiality to protect themselves against economic retaliation, and any Commission
23 deliberations in regard to current or still uncompleted matters shall remain confidential.

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

1 **SECTION 7. *Leniency Program.*** – The Commission shall, in coordination with the OFC, develop a
2 Leniency Program to be granted to any entity in the form of immunity from suit or reduction of any fine
3 which would otherwise be imposed on a participant in a cartel, in exchange for the voluntary disclosure of
4 information regarding the cartel which satisfies specific criteria prior to or during the investigative stage
5 of the case.

6 Immunity from suit will be granted to an entity reporting illegal anti-competitive activity before an
7 investigation has begun if the following conditions are met: (a) at the time the entity comes forward, the
8 Commission or the OFC has not received information about the activity from any other source; (b) upon
9 the entity's discovery of illegal activity, it took prompt and effective action to terminate its participation
10 therein; (c) the entity reports the wrongdoing with candor and completeness and provides full, continuing,
11 and complete cooperation throughout the investigation; and (d) the entity did not coerce another party to
12 participate in the activity and clearly was not the leader in, or the originator of, the activity.

13 Even after the Commission or the OFC has received information about the illegal activity after an
14 investigation is commenced, the reporting entity will be granted leniency, provided preceding conditions
15 (b) and (c) and the following additional requirements are complied with: (i) the entity is the first to come
16 forward and qualify for leniency; (ii) at the time the entity comes forward, the Commission or the OFC
17 does not have evidence against the entity that is likely to result in a sustainable conviction; and (iii) the
18 Commission or the OFC, as appropriate, determines that granting leniency would not be unfair to others.

19 Such program shall include the immunity from any suit or charge of affected parties and third parties,
20 exemption, waiver, or gradation of fines and/or penalties giving precedence to the entity submitting such
21 evidence. An entity cooperating or furnishing information, document or data to the Commission or the
22 OFC in connection to an investigation being conducted shall not be subjected to any form of reprisal or
23 discrimination. Such reprisal or discrimination shall be considered a violation of this Act subject to the
24 sanctions provided in this Act.

25 Nothing in this section shall preclude prosecution for entities that report to the Commission or the OFC
26 false, misleading, or malicious information, data or documents damaging to the business or integrity of
27 the entities under inquiry as a violation of said Section. An entity found to have reported false,

1 misleading or malicious information, data, or document may be penalized by a fine not less than the
2 penalty imposed in the Section reported to have been violated by the entity complained of.

3 **SECTION 8. *Termination and Action on Preliminary Inquiry.*** – The Commission, after considering
4 the statements made, or documents or articles produced, in the course of an inquiry conducted by it, shall
5 terminate the preliminary inquiry by issuing a resolution ordering its closure if no violation or
6 infringement of this Act is found; or by issuing a nolo contendere resolution; or issuing a resolution to,
7 singly or cumulatively, (a) impose penalties in the range provided under Chapter VI, Section 1 hereof; (b)
8 order the rectification of certain acts or omissions; or (c) order the restitution to the affected parties.
9 When determined by the facts and circumstances, the Commission shall institute a civil action by class
10 suit in the name of the Republic of the Philippines, as *parens patriae*, on behalf of persons residing in the
11 Philippines and injured or otherwise affected by the violation or infringement, to secure treble damages
12 for any injury sustained by such persons by reason of any violation of this Act, plus the cost of suit and
13 reasonable attorney's fee. If the evidence so warrants, and without prejudice to Section 1, Chapter VII, the
14 Commission may file criminal cases for violation of this Act or relevant laws before the Department of
15 Justice pursuant to Section 9, Chapter II and Section 2, Chapter VI of this Act.

16 **SECTION 9. *Nolo Contendere Resolution.*** – Any entity whose business conduct is under inquiry
17 pursuant to this Act may submit to a nolo contendere resolution at any time before the termination of the
18 preliminary inquiry by: a) paying an amount within the range of penalties provided for under Section 2,
19 Chapter VI; b) entering into an undertaking to effectively stop and rectify the acts complained against,
20 make restitution to the affected parties, whether or not the parties are plaintiffs or witnesses; and, c)
21 submitting regular compliance reports as may be directed: Provided, that, ten percent (10%) of the
22 amounts paid under this Section shall equitably accrue to the Commission: Provided, further, that a nolo
23 contendere resolution shall not bar any inquiry for the same or similar acts if continued or repeated.

24 **SECTION 10. *Non-Adversaria Administrative Remedies.*** – As an implementing and enforcement
25 policy, the Commission shall, under such rules and regulations it may prescribe, encourage voluntary
26 compliance with this Act and other competition laws by making available to the parties concerned the
27 following and other analogous non-adversarial and non-adjudicatory administrative remedies, before the
28 institution of administrative, civil or criminal action:

1 (a) **Request for Binding Ruling.** Any entity who is in doubt as to whether his contemplated or
2 existing act, course of conduct, agreement, decision or practice is in compliance with, is exempt
3 from, or in violation of any of the provisions of this Act, other competition laws, or implementing
4 rules and regulations thereof, may request the Commission, in writing, to render a binding ruling
5 thereon.

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

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

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

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

11 a. cease and desist from continuing with the identified act, course or conduct, agreement,
12 decision, or practice found to be in contravention to the provisions of this Act;

13 b. pay the fine therein fixed; and

14 c. readjust, within a reasonable period therein fixed, its method of doing business,
15 including a corporate reorganization or divestment in the manner and under the terms and
16 conditions prescribed by the Commission, as it may deem proper for the protection of the
17 public interest.

18 (f) **Suspension of Administrative, Civil or Criminal Proceedings.** Any pending
19 administrative, civil or criminal proceedings or those filed thereafter, against any person,
20 corporation or any other juridical entity or its officers and employees, may be suspended, upon
21 order of the Commission on proper motion, on the ground of the filing of a request for binding
22 ruling, the issuance of a show cause order or the filing of a proposal for a consent judgment
23 based, in whole or in part, on the same set of facts and issues as that of the proceedings sought to
24 be suspended;

1 (g) **Monitoring of Compliance.** The Commission shall monitor the compliance by the entity or
2 entities concerned, their officers, and employees, with the final and executory binding ruling,
3 cease and desist order, or approval of a consent judgment. Upon motion of an interested party, the
4 Commission shall issue a certification to the effect that the entity or entities concerned have, or
5 have not, as the case may be, complied with a final and executory ruling, order, or approval:

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

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

19 a. whenever conditions of material fact or law have so changed as to require such action;

20 b. when the concerned entity or entities fail or refuse, without justifiable cause therefore,
21 to comply with any condition attached to such ruling, order, or approval, including an
22 order to readjust their method of doing business; or

23 c. when the ruling, order, or approval was based on deliberately falsified material fact,
24 data, or information supplied by an interested party benefited by such ruling, order, or
25 approval.

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

7 **SECTION 11. Contempt.** – The Commission or any of its Divisions may summarily punish for contempt
8 by imprisonment not exceeding thirty (30) days or by fine, or both, any entity guilty of such misconduct
9 in the presence of the Commission or any of its Divisions in its vicinity as to seriously interrupt any
10 hearing, session or any proceedings before it, including cases in which an entity willfully fails or refuses,
11 without just cause, to comply with a summons, subpoena or subpoena duces tecum legally issued by the
12 Commission or any of 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 when lawfully required
14 to do so.

15 **SECTION 12. Decisions of the Commission.** – Decisions of the Commission en banc shall be appealable
16 to the Court of Appeals as hereinafter provided. The appeal shall not stay the order, ruling or decision
17 sought to be reviewed, unless the Court of Appeals shall direct otherwise upon such terms and conditions
18 it may deem just.

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

25 (a) Arbitrary to constitutional rights, power, privilege, or immunity;

26 (b) Contrary to constitutional rights, power, privilege, or immunity;

1 (c) In excess of statutory jurisdiction, authority, or limitations, or is contrary to law;

2 (d) Without observance of the procedure required by law; and

3 (e) not supported by substantial evidence.

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

6 **SECTION 14. *Appeal to the Supreme Court.*** – A decision of the Court of Appeals may be appealed to
7 the Supreme Court in the manner and on the grounds prescribed by the Rules of Court.

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

17 **SECTION 16. *Writ of Execution.*** – Upon the finality of its binding ruling, order, resolution, decision,
18 judgment, or rule or regulation, (collectively, “Decision”), the Commission may issue a writ of execution
19 to enforce its decision and the payment of the administrative fines provided in the preceding sections.

20 **SECTION 17. *Violation by Corporation, Partnership, Association, and Other Entity.*** – Whenever a
21 corporation, partnership, association, entity or other entity, whether domestic or foreign, shall commit any
22 of the acts declared to be unlawful under this Act, the chairperson of the board of directors, president,

1 general manager of the corporation, general partners of a partnership, and officers and employees directly
2 responsible, shall be jointly and severally liable with the entity for the fine imposed therein.

3 Should the offense be committed by a foreign corporation licensed to do business in the Philippines, the
4 entity or entities directly responsible in the Philippines for the management and operation thereof, shall be
5 liable. In addition, its license to do business in the Philippines shall be cancelled.

6 Lack of information about or ignorance of the violation may not be offered as a defense by the
7 Chairperson of the Board of Directors, the President or the General Manager of the corporation or the
8 general partners of a partnership, or the persons responsible for the management and operation of a
9 foreign corporation licensed to do business in the Philippines, unless the same can establish to the
10 satisfaction of the court that even with the exercise of due diligence and proper supervision, the violation
11 could not have been avoided or prevented.

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

16 **SECTION 18. *Offenses by Foreign Nationals.*** – A foreign entity found violating any provision of this
17 Act shall, in addition to the other penalties imposed herein, be deported after service of sentence without
18 need of any further proceedings.

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

24 **SECTION 20. *Private Action.*** – Regardless of the status or pendency of any proceedings, any entity that
25 suffers injury by reason of any violation of this Act may institute a separate and independent civil action,

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

5 **SECTION 21. *Effect of Final Judgment.*** – Any final judgment in a civil or criminal action brought by
6 the Commission on behalf of the people of the Philippines under this Act to the effect that a defendant has
7 violated any or all of the provisions of this Act shall be res judicata as to any claim by any entity on
8 whose behalf such action was brought: Provided, that such entity notifies the court having jurisdiction of
9 the case within the period given by the court: Provided, further, that such period shall not be less than
10 ninety (90) days.

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

14 **SECTION 22. *Distribution of Damages Recovered.*** – The damages recovered in a civil action under
15 Section 8 of this Chapter shall be distributed in the following manner: (1) as determined and to be
16 authorized by the Court having jurisdiction of the case; (2) ten percent (10%) of the total amount of
17 damages shall accrue to the Commission and/or regulatory agency to be used exclusively in the
18 enforcement of this Act; and, (3) the remainder of the total amount of damages shall be deemed a civil
19 penalty by the Court and shall be deposited to the National Treasury as part of the general fund of the
20 government: Provided, that any distribution procedure adopted by the Court shall give preference to
21 individual consumers and afford each person having an interest a reasonable opportunity to secure his
22 appropriate portion of the net damages obtained.

23 **SECTION 23. *Measurement of Damages.*** – Damages may be proved and assessed in the aggregate by
24 statistical or sampling methods, by the computation of illegal overcharges, or by such other reasonable
25 system of estimating aggregate damages as the court in its discretion may permit without the necessity of
26 separately proving the individual claim, of, or amount of damage to, persons on whose behalf the suit was
27 brought.

1 **SECTION 24. *Immunity from Suit.*** - The Commissioners and the Staff of the Commission shall not be
2 subject to any action, claim or demand in connection with any act done or omitted by them in the
3 performance of their duties and exercise of their powers except for those actions and omissions done in
4 evident bad faith or gross negligence.

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

10 **CHAPTER VIII**

11 **OTHER PROVISIONS**

12 **SECTION 1. *Statute of Limitations.*** - Any civil or criminal action to enforce any cause of action arising
13 from a violation of any provision of this Act shall be forever barred unless commenced within five (5)
14 years after the cause of action accrues. The running of the statute of limitation shall be suspended during
15 the pendency of any proceeding.

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

22 **SECTION 2. *Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Injunctions***
23 ***and Preliminary Mandatory Injunctions.*** - Except for the Supreme Court, no other court shall issue any
24 temporary restraining order, preliminary injunction or preliminary mandatory injunction against the
25 Commission in the exercise of its duties or functions: Provided, that, this prohibition shall apply in all

1 cases, disputes or controversies instituted by a private party, including, but not limited to, cases filed by
2 entities or those claiming to have rights through such entities:

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

6 Provided, further, that, the applicant shall file a bond, in an amount to be fixed by the Court, but in no
7 case shall it be less than half of the imposable fines provided for under Chapter VI, Section 1 of this Act:

8 Provided, finally, that in the event that the court finally decides that the applicant was not entitled to the
9 relief applied for, the bond shall accrue in favour of the Commission.

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

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

18 **SECTION 3. *Intellectual Property Rights.*** - The implementation of the provisions of this Act shall be
19 without prejudice to the rights, liabilities and remedies under Republic Act No. 8293, otherwise known as
20 the Intellectual Property Code of the Philippines: Provided, that, the exercise of intellectual property
21 rights shall not in any way be used to justify violations of this Act.

22 **SECTION 4. *Trade Associations.*** - Nothing contained in this Act shall be construed to prohibit the
23 existence and operation of trade associations organized to promote quality standards and safety issues:
24 Provided, that, these associations shall not in any way be used to justify any violation of this Act.

1 **SECTION 3. *Transitory Provision.*** – For the purpose of ensuring that the Commission is organized
2 within the mandated period of one hundred eighty (180) days after the approval of this Act, an Inter-
3 Agency Task Force shall be created and composed of the following agencies:

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

5 i. Office of the President, to be represented by the Executive Secretary with the Deputy
6 Executive Secretary for Legal Affairs as alternate; and

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

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

12 i. Department of Trade and Industry, to be represented by the Secretary with an officer
13 holding at least an Assistant Secretary rank as alternate;

14 ii. Department of Justice, to be represented by the Secretary with an officer holding at
15 least an Assistant Secretary rank as alternate;

16 iii. Department of Transport and Communications, to be represented by the Secretary
17 with an officer holding at least an Assistant Secretary rank as alternate;

18 iv. Department of Energy, to be represented by the Secretary with an officer holding at
19 least an Assistant Secretary rank as alternate; and

20 v. Bangko Sentral ng Pilipinas, to be represented by the Governor and with a Deputy
21 Governor permanently designated as alternate.

1 The Task Force shall also meet at an Executive Session with all agency heads to deliberate on
2 possible appointees for the position of Chairperson and Associate Commissioners of the
3 Commission for submission to and consideration of the President of the Philippines.

4 The Task Force shall also commence the coordinated advocacy for this Act within ninety (90)
5 days from the effectivity thereof. It shall also implement a broad-based consultation on inputs for
6 the IRR of this Act which must be completed within one hundred twenty (120) days from the
7 effectivity of this Act. The report consultations shall be submitted to the Commission within
8 fifteen (15) days from its establishment a copy of which will be furnished to the Congressional
9 Oversight Committee on Competition.

10 **SECTION 4. *Suppletory Application.*** – For purposes of this Act, the Revised Penal Code, as amended,
11 and other applicable laws shall be applied in a suppletory character.

12 **SECTION 5. *Separability Clause.*** – If any clause, sentence, section or part of this Act shall be adjudged
13 by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the
14 remainder of this Act, but shall be confined in its operation to the clause, sentence, paragraph, section, or
15 part thereof directly involved in the controversy.

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

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

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

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

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

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

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

4 Provided, that in case of conflict between this Act and such provisions of existing competition laws and
5 regulations, the provisions of this Act shall prevail.

6 **SECTION 7. Effectivity Clause** – This Act shall take effect fifteen (15) days following its publication in
7 the Official Gazette and in at least two (2) national newspapers of general circulation. Provided, however,
8 that in order to allow affected parties time to renegotiate agreement or restructure their business to comply
9 with the new competition law, the penal provisions under Chapter VI, Section 2 of this Act, except for
10 those already prohibited under the Revised Penal Code, shall be imposed one (1) year after the effectivity
11 of the IRR of this Act.

12 Approved,