



THE PHILIPPINE COMPETITION ACT

(Republic Act No. 10667)

and its Implementing Rules and Regulations

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THE PHILIPPINE COMPETITION ACT

Republic Act No. 10667

CONGRESS OF THE PHILIPPINES SIXTEENTH CONGRESS

Second Regular Session

AN ACT PROVIDING FOR A NATIONAL COMPETITION POLICY PROHIBITING ANTI-COMPETITIVE AGREEMENTS, ABUSE OF DOMINANT POSITION AND ANTI-COMPETITIVE MERGERS AND ACQUISITIONS, ESTABLISHING THE PHILIPPINE COMPETITION COMMISSION AND APPROPRIATING FUNDS THEREFOR

CHAPTER I GENERAL PROVISIONS

SECTION 1. Short Title. – This Act shall be known as the “Philippine Competition Act”.

SEC. 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 need 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:

(a) Enhance economic efficiency and promote free and fair competition in trade, industry and all commercial economic activities, as well as establish a National Competition Policy to be implemented by the Government of the Republic of the Philippines and all of its political agencies as a whole;

(b) Prevent economic concentration which will control the production, distribution, trade, or industry that will unduly stifle competition, lessen, manipulate or constrict the discipline of free markets; and

(c) Penalize all forms of anti-competitive agreements, abuse of dominant position and anti-competitive mergers and acquisitions, with the objective of protecting consumer welfare and advancing domestic and international trade and economic development.

SEC. 3. Scope and Application. – This Act shall be enforceable against any person or entity engaged in any trade, industry and commerce in the Republic of the Philippines. It shall likewise be applicable to international trade having direct, substantial, and reasonably foreseeable effects in trade, industry, or commerce in the Republic of the Philippines, including those that result from acts done outside the Republic of the Philippines.

This Act shall not apply to the combinations or activities of workers or employees nor to agreements or arrangements with their employers when such combinations, activities, agreements, or arrangements are designed solely to facilitate collective bargaining in respect of conditions of employment.

SEC. 4. Definition of Terms. – As used in this Act:

(a) Acquisition refers to the purchase of securities or assets, through contract or other means, for the purpose of obtaining control by:

- (1) One (1) entity of the whole or part of another;
- (2) Two (2) or more entities over another; or
- (3) One (1) or more entities over one (1) or more entities;

(b) Agreement refers to any type or form of contract, arrangement, understanding, collective recommendation, or concerted action, whether formal or informal, explicit or tacit, written or oral;

(c) Conduct refers to any type or form of undertaking, collective recommendation, independent or concerted action or practice, whether formal or informal;

(d) Commission refers to the Philippine Competition Commission created under this Act;

(e) Confidential business information refers to information which concerns or relates to the operations, production, sales, shipments, purchases, transfers, identification of customers, inventories, or amount or source of any income, profits, losses, expenditures;

(f) Control refers to the ability to substantially influence or direct the actions or decisions of an entity, whether by contract, agency or otherwise;

(g) Dominant Position refers to a position of economic strength that an entity or entities hold which makes it capable of controlling the relevant market independently from any or a combination of the following: competitors, customers, suppliers, or consumers;

(h) Entity refers to any person, natural or juridical, sole proprietorship, partnership, combination or association in any form, whether incorporated or not, domestic or foreign, including those owned or controlled by the government, engaged directly or indirectly in any economic activity;

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

(j) Merger refers to the joining of two (2) or more entities into an existing entity or to form a new entity;

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

(1) A relevant product market comprises all those goods and/or services which are regarded as interchangeable or substitutable

by the consumer or the customer, by reason of the goods and/or services' characteristics, their prices and their intended use; and

(2) The relevant geographic market comprises the area in which the entity concerned is involved in the supply and

demand of goods and services, in which the conditions of competition are sufficiently homogenous and which can be distinguished from neighboring areas because the conditions of competition are different in those areas.

CHAPTER II

PHILIPPINE COMPETITION COMMISSION

SEC. 5. Philippine Competition Commission. – To implement the national competition policy and attain the objectives and purposes of this Act, an independent quasi-judicial body is hereby created, which shall be known as the Philippine Competition Commission (PCC), hereinafter referred to as the Commission, and which shall be organized within sixty (60) days after the effectivity of this Act. Upon establishment of the Commission, Executive Order No. 45 designating the Department of Justice as the Competition Authority is hereby amended. The Office for Competition (OFC) under the Office of the Secretary of Justice shall however be retained, with its powers and functions modified pursuant to Section 13 of this Chapter.

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

SEC. 6. Composition of the Commission. – The Commission shall be composed of a Chairperson and four (4) Commissioners. The Chairperson and Commissioners shall be citizens and residents of the Philippines, of good moral character, of recognized probity and independence and must have distinguished themselves professionally in public, civic or academic service in any of the following fields: economics, law, finance, commerce or engineering. They must have been in the active practice of their professions for at least ten (10) years, and must not have been candidates for any elective national or local office in the immediately preceding elections, whether regular or special: Provided, That at least one (1) shall be a member of the Philippine Bar with at least ten (10) years of experience in the active practice of law, and at least one (1) shall be an economist. The Chairperson and the Commissioners who shall have the rank equivalent of cabinet secretary and undersecretary, respectively, shall be appointed by the President.

SEC. 7. Term of Office. – The term of office of the Chairperson and

the Commissioners shall be seven (7) years without reappointment. Of the first set of appointees, the Chairperson shall hold office for seven (7) years and of the first four (4) Commissioners, two (2) shall hold office for a term of seven (7) years and two (2) for a term of five (5) years. In case a vacancy occurs before the expiration of the term of office, the appointment to such vacancy shall only be for the unexpired term of the predecessor.

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

SEC. 8. Prohibitions and Disqualifications. – The Commissioners shall not, during their tenure, hold any other office or employment. They shall not, during their tenure, directly or indirectly practice any profession, except in a teaching capacity, participate in any business, or be financially interested in any contract with, or any franchise, or special privileges granted by the government or any subdivision, agency, or instrumentality thereof, including government-owned and-controlled corporations or their subsidiaries. They shall strictly avoid conflict of interest in the conduct of their office. They shall not be qualified to run for any office in the election immediately succeeding their cessation from office. Provided, that the election mentioned hereof is not a Barangay election or a Sangguniang Kabataan election. Provided they shall not be allowed to personally appear or practice as counsel or agent on any matter pending before the Commission for two (2) years following their cessation from office.

No spouse or relative by consanguinity or affinity within the fourth civil degree of any of the Commissioners, the Chairperson and the Executive Director of the Commission may appear as counsel nor agent on any matter pending before the Commission or transact business directly or indirectly therein during incumbency and within two (2) years from cessation of office.

SEC. 9. Compensation and Other Emoluments for Members and Personnel of the Commission. – The compensation and other emoluments for the members and personnel of the Commission shall be exempted from the coverage of Republic Act No. 6758, otherwise known as the “Salary Standardization Act”. For this purpose, the salaries and other emoluments of the Chairperson, the Commissioners, and personnel of the Commission shall be set based on an objective classification system, taking into consideration the importance and responsibilities attached to the respective positions, and shall be

submitted to the President of the Philippines for his approval.

SEC. 10. Quorum. – Three (3) members of the Commission shall constitute a quorum and the affirmative vote of three (3) members shall be necessary for the adoption of any rule, ruling, order, resolution, decision or other acts of the Commission.

SEC. 11. Staff. – The Commission shall appoint, fix the compensation, and determine the status, qualifications, and duties of an adequate staff, which shall include an Executive Director of the Commission. The Executive Director shall be appointed by the Commission and shall have relevant experience in any of the fields of law, economics, commerce, management, finance or engineering for at least ten (10) years. The members of the technical staff, except those performing purely clerical functions, shall possess at least a Bachelor’s Degree in any of the following lines of specialization: economics, law, finance, commerce, engineering, accounting, or management.

SEC. 12. Powers and Functions. – The Commission shall have original and primary jurisdiction over the enforcement and implementation of the provisions of this Act, and its implementing rules and regulations. The Commission shall exercise the following powers and functions:

- (a) Conduct inquiry, investigate, and hear and decide on cases involving any violation of this Act and other existing competition laws *motu proprio* or upon receipt of a verified complaint from an interested party or upon referral by the concerned regulatory agency, and institute the appropriate civil or criminal proceedings;
- (b) Review proposed mergers and acquisitions, determine thresholds for notification, determine the requirements and procedures for notification, and upon exercise of its powers to review, prohibit mergers and acquisitions that will substantially prevent, restrict, or lessen competition in the relevant market;
- (c) Monitor and undertake consultation with stakeholders and affected agencies for the purpose of understanding market behavior;
- (d) Upon finding, based on substantial evidence, that an entity has entered into an anti-competitive agreement or has abused its dominant position after due notice and hearing, stop or redress the same, by applying remedies, such as, but not limited to, issuance of

injunctions, requirement of divestment, and disgorgement of excess profits under such reasonable parameters that shall be prescribed by the rules and regulations implementing this Act;

(e) Conduct administrative proceedings, impose sanctions, fines or penalties for any non-compliance with or breach of this Act and its implementing rules and regulations (IRR) and punish for contempt;

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

(g) Upon order of the court, undertake inspections of business premises and other offices, land and vehicles, as used by the entity, where it reasonably suspects that relevant books, tax records, or other documents which relate to any matter relevant to the investigation are kept, in order to prevent the removal, concealment, tampering with, or destruction of the books, records, or other documents;

(h) Issue adjustment or divestiture orders including orders for corporate reorganization or divestment in the manner and under such terms

and conditions as may be prescribed in the rules and regulations implementing this Act. Adjustment or divestiture orders, which are structural remedies, should only be imposed:

(1) Where there is no equally effective behavioral remedy; or

(2) Where any equally effective behavioral remedy would be more burdensome for the enterprise concerned than the structural remedy. Changes to the structure of an enterprise as it existed before the infringement was committed would only be proportionate to the substantial risk of a lasting or repeated infringement that derives from the very structure of the enterprise;

(i) Deputize any and all enforcement agencies of the government or enlist the aid and support of any private institution, corporation, entity or association, in the implementation of its powers and functions;

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

(k) Issue advisory opinions and guidelines on competition matters

for the effective enforcement of this Act and submit annual and special reports to Congress, including proposed legislation for the regulation of commerce, trade, or industry;

(l) Monitor and analyze the practice of competition in markets that affect the Philippine economy; implement and oversee measures to promote transparency and accountability; and ensure that prohibitions and requirements of competition laws are adhered to;

(m) Conduct, publish, and disseminate studies and reports on anti-competitive conduct and agreements to inform and guide the industry and consumers;

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

(o) Assist the National Economic and Development Authority, in consultation with relevant agencies and sectors, in the preparation and formulation of a national competition policy;

(p) Act as the official representative of the Philippine government in international competition matters;

(q) Promote capacity building and the sharing of best practices with other competition-related bodies;

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

(1) Reviewing economic and administrative regulations, *motu proprio* or upon request, as to whether or not they adversely affect relevant market competition, and advising the concerned agencies against such regulations; and

(2) Advising the Executive Branch on the competitive implications of government actions, policies and programs; and

(s) Charge reasonable fees to defray the administrative cost of the services rendered.

SEC. 13. Office for Competition (OFC), Powers and Functions.

– The OFC under the Department of Justice (DOJ-OFC) shall only conduct preliminary investigation and undertake prosecution of all criminal offenses arising under this act and other competition related laws in accordance with Section 31 of Chapter VI of this act. The OFC shall be reorganized and allocated resources as may be required therefor to

effectively pursue such mandate.

CHAPTER III PROHIBITED ACTS

SEC. 14. Anti-Competitive Agreements. –

(a) The following agreements, between or among competitors, are *per se* prohibited:

(1) Restricting competition as to price, or components thereof, or other terms of trade;

(2) Fixing price at an auction or in any form of bidding including cover bidding, bid suppression, bid rotation and market allocation and other analogous practices of bid manipulation;

(b) The following agreements, between or among competitors which have the object or effect of substantially preventing, restricting or lessening competition shall be prohibited:

(1) Setting, limiting, or controlling production, markets, technical development, or investment;

(2) Dividing or sharing the market, whether by volume of sales or purchases, territory, type of goods or services, buyers or sellers or any other means.

(c) Agreements other than those specified in (a) and (b) of this Section which have the object or effect of substantially preventing, restricting or lessening competition shall also be prohibited: Provided, Those which contribute to improving the production or distribution of goods and services or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefits, may not necessarily be deemed a violation of this Act.

An entity that controls, is controlled by, or is under common control with another entity or entities, have common economic interests, and are not otherwise able to decide or act independently of each other, shall not be considered competitors for purposes of this Section.

SEC. 15. Abuse of Dominant Position. – It shall be prohibited

for one or more entities to abuse their dominant position by engaging in conduct that would substantially prevent, restrict or lessen competition:

(a) Selling goods or services below cost with the object of driving competition out of the relevant market: Provided, That in the Commission's evaluation of this fact, it shall consider whether the entity or entities have no such object and the price established was in good faith to meet or compete with the lower price of a competitor in the same market selling the same or comparable product or service of like quality;

(b) Imposing barriers to entry or committing acts that prevent competitors from growing within the market in an anti-competitive manner except those that develop in the market as a result of or arising from a superior product or process, business acumen, or legal rights or laws;

(c) Making a transaction subject to acceptance by the other parties of other obligations which, by their nature or according to commercial usage, have no connection with the transaction;

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

(1) socialized pricing for the less fortunate sector of the economy;

(2) price differential which reasonably or approximately reflect differences in the cost of manufacture, sale, or delivery resulting from differing methods, technical conditions, or quantities in which the goods or services are sold or delivered to the buyers or sellers;

(3) price differential or terms of sale offered in response to the competitive price of payments, services or changes in the facilities furnished by a competitor; and

(4) price changes in response to changing market conditions, marketability of goods or services, or volume;

(e) Imposing restrictions on the lease or contract for sale or trade of goods or services concerning where, to whom, or in what forms goods or services may be sold or traded, such as fixing prices, giving preferential discounts or rebate upon such price, or imposing conditions not to deal with competing entities, where the object or

effect of the restrictions is to prevent, restrict or lessen competition substantially: Provided, That nothing contained in this Act shall prohibit or render unlawful:

(1) Permissible franchising, licensing, exclusive merchandising or exclusive distributorship agreements such as those which give each party the right to unilaterally terminate the agreement; or

(2) Agreements protecting intellectual property rights, confidential information, or trade secrets.

(f) Making supply of particular goods or services dependent upon the purchase of other goods or services from the supplier which have no direct connection with the main goods or services to be supplied;

(g) Directly or indirectly imposing unfairly low purchase prices for the goods or services of, among others, marginalized agricultural producers, fisherfolk, micro-, small-, medium-scale enterprises, and other marginalized service providers and producers;

(h) Directly or indirectly imposing unfair purchase or selling price on their competitors, customers, suppliers or consumers, Provided that prices that develop in the market as a result of or due to a superior product or process, business acumen or legal rights or laws shall not be considered unfair prices; and

(i) Limiting production, markets or technical development to the prejudice of consumers, provided that limitations that develop in the market as a result of or due to a superior product or process, business acumen or legal rights or laws shall not be a violation of this Act;

Provided, That nothing in this Act shall be construed or interpreted as a prohibition on having a dominant position in a relevant market or on acquiring, maintaining and increasing market share through legitimate means that do not substantially prevent, restrict or lessen competition.

Provided further, That any conduct which contributes to improving production or distribution of goods or services within the relevant market, or promoting technical and economic progress while allowing consumers a fair share of the resulting benefit may not necessarily be considered an abuse of dominant position.

Provided finally, That the foregoing shall not constrain the Commission or the relevant regulator from pursuing measures that would promote fair competition or more competition as provided in this Act.

CHAPTER IV

MERGERS AND ACQUISITIONS

SEC. 16. Review of Mergers and Acquisitions. – The Commission shall have the power to review Mergers and Acquisitions based on factors deemed relevant by the Commission.

SEC. 17. Compulsory Notification. – Parties to the merger or acquisition agreement referred to in the preceding section wherein the value of the transaction exceeds One Billion Pesos (P1,000,000,000.00) are prohibited from consummating their agreement until thirty (30) days after providing notification to the Commission in the form and containing the information specified in the regulations issued by the Commission: Provided, That the Commission shall promulgate other criteria, such as increased market share in the relevant market in excess of minimum thresholds, that may be applied specifically to a sector, or across some or all sectors, in determining whether parties to a merger or acquisition shall notify the Commission under this chapter.

An agreement consummated in violation of this requirement to notify the Commission shall be considered void and subject the parties to an administrative fine of one percent (1%) to five percent (5%) of the value of the transaction.

Should the Commission deem it necessary, it may request further information that are reasonably necessary and directly relevant to the prohibition under Section 20 hereof from the parties to the agreement before the expiration of the thirty (30)-day period referred. The issuance of such a request has the effect of extending the period within which the agreement may not be consummated for an additional sixty (60) days, beginning on the day after the request for information is received by the parties: Provided, That, in no case shall the total period for review by the Commission of the subject agreement exceed ninety (90) days from initial notification by the parties.

When the above periods have expired and no decision has been promulgated for whatever reason, the merger or acquisition shall be deemed approved and the parties may proceed to implement or consummate it. All notices, documents and information provided to or emanating from the Commission under this section shall be subject to confidentiality rule under Section 34 of this Act except when the release of information contained therein is with the consent of the notifying entity or is mandatorily required to be disclosed by law or by a valid order of a

court of competent jurisdiction, or of a government or regulatory agency, including an exchange.

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

A favorable recommendation by a governmental agency with a competition mandate shall give rise to a disputable presumption that the proposed merger or acquisition is not violative of this Act.

SEC. 18. Effect of Notification. – If within the relevant periods stipulated in the preceding Section, the Commission determines that such agreement is prohibited under Section 20 and does not qualify for exemption under Section 21 of this Chapter, the Commission may:

- (a) Prohibit the implementation of the agreement;
- (b) Prohibit the implementation of the agreement unless and until it is modified by changes specified by the Commission;
- (c) Prohibit the implementation of the agreement unless and until the pertinent party or parties enter into legally enforceable agreements specified by the Commission.

SEC. 19. Notification Threshold. – The Commission shall, from time to time, adopt and publish regulations stipulating:

- (a) The transaction value threshold and such other criteria subject to the notification requirement of Section 17 of this Act;
- (b) The information that must be supplied for notified mergers or acquisition;
- (c) Exceptions or exemptions from the notification requirement; and
- (d) Other rules relating to the notification procedures.

SEC. 20. Prohibited Mergers and Acquisitions. – Merger or acquisition agreements that substantially prevent, restrict or lessen competition in the relevant market or in the market for goods or services

as may be determined by the Commission shall be prohibited.

SEC. 21. Exemptions from Prohibited Mergers and Acquisitions. – Merger or acquisition agreement prohibited under Section 20 of this Chapter may, nonetheless, be exempt from prohibition by the Commission when the parties establish either of the following:

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

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

Provided, That an entity shall not be prohibited from continuing to own and hold the stock or other share capital or assets of another corporation which it acquired prior to the approval of this Act or acquiring or maintaining its market share in a relevant market through such means without violating the provisions of this Act.

Provided further, That the acquisition of the stock or other share capital of one or more corporations solely for investment and not used for voting or exercising control and not to otherwise bring about, or attempt to bring about the prevention, restriction, or lessening of competition in the relevant market shall not be prohibited.

SEC. 22. Burden of Proof. – The burden of proof under Section 21 lies with the parties seeking the exemption. A party seeking to rely on the exemption specified in Section 21(a) must demonstrate that if the agreement were not implemented, significant efficiency gains would not be realized.

SEC. 23. Finality of Rulings on Mergers and Acquisitions. – Merger or acquisition agreements that have received a favorable ruling from the Commission, except when such ruling was obtained on the basis of fraud or false material information, may not be challenged under this Act.

CHAPTER V

DISPOSITION OF CASES

SEC. 24. Relevant Market. – For purposes of determining the relevant market, the following factors, among others, affecting the substitutability among goods or services constituting such market and the geographic area delineating the boundaries of the market shall be considered:

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

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

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

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

SEC. 25. Control of an Entity. – In determining the control of an entity, the Commission may consider the following:

Control is presumed to exist when the parent owns directly or indirectly, through subsidiaries, more than one half (1/2) of the voting power of an entity, unless in exceptional circumstances, it can clearly be demonstrated that such ownership does not constitute control. Control also exists even when an entity owns one half (1/2) or less of the voting power of another entity when:

(a) There is power over more than one half (1/2) of the voting rights by virtue of an agreement with investors;

(b) There is power to direct or govern the financial and operating policies of the entity under a statute or agreement;

(c) There is power to appoint or remove the majority of the members of the board of directors or equivalent governing body;

- (d) There is power to cast the majority votes at meetings of the board of directors or equivalent governing body;
- (e) There exists ownership over or the right to use all or a significant part of the assets of the entity;
- (f) There exist rights or contracts which confer decisive influence on the decisions of the entity.

SEC. 26. Determination of Anti-Competitive Agreement or Conduct. – In determining whether anti-competitive agreement or conduct has been committed, the Commission shall:

- (a) Define the relevant market allegedly affected by the anti-competitive agreement or conduct, following the principles laid out in Section 24 of this Chapter;
- (b) Determine if there is actual or potential adverse impact on competition in the relevant market caused by the alleged agreement or conduct, and if such impact is substantial and outweighs the actual or potential efficiency gains that result from the agreement or conduct;
- (c) Adopt a broad and forward-looking perspective, recognizing future market developments, any overriding need to make the goods or services available to consumers, the requirements of large investments in infrastructure, the requirements of law, and the need of our economy to respond to international competition, but also taking account of past behavior of the parties involved and prevailing market conditions;
- (d) Balance the need to ensure that competition is not prevented or substantially restricted and the risk that competition efficiency, productivity, innovation, or development of priority areas or industries in the general interest of the country may be deterred by overzealous or undue intervention; and
- (e) Assess the totality of evidence on whether it is more likely than not that the entity has engaged in anti-competitive agreement or conduct including whether the entity's conduct was done with a reasonable commercial purpose such as but not limited to phasing out of a product or closure of a business, or as a reasonable commercial response to the market entry or conduct of a competitor.

SEC. 27. Market Dominant Position. – In determining whether

an entity has market dominant position for purposes of this Act, the Commission shall consider the following:

- (a) The share of the entity in the relevant market and whether it is able to fix prices unilaterally or to restrict supply in the relevant market;
- (b) The existence of barriers to entry and the elements which could foreseeably alter both said barriers and the supply from competitors;
- (c) The existence and power of its competitors;
- (d) The possibility of access by its competitors or other entities to its sources of inputs;
- (e) The power of its customers to switch to other goods or services; (f) Its recent conducts; and
- (g) Other criteria established by the regulations of this Act.

There shall be a rebuttable presumption of market dominant position if the market share of an entity in the relevant market is at least fifty percent (50%), unless a new market share threshold is determined by the Commission for that particular sector.

The Commission shall from time to time determine and publish the threshold for dominant position or minimum level of share in the relevant market that could give rise to a presumption of dominant position. In such determination, the Commission would consider the structure of the relevant market, degree of integration, access to end-users, technology and financial resources, and other factors affecting the control of a market, as provided in sub-sections (a) to (g) of this Section.

The Commission shall not consider the acquiring, maintaining and increasing of market share through legitimate means not substantially preventing, restricting, or lessening competition in the market such as but not limited to having superior skills, rendering superior service, producing or distributing quality products, having business acumen, and the enjoyment and use of protected intellectual property rights as violative of this Act.

SEC. 28. Forbearance. – The Commission may forbear from applying the provisions of this Act, for a limited time, in whole or in part, in all or specific cases, on an entity or group of entities, if in its determination:

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

(b) Forbearance will neither impede competition in the market where the entity or group of entities seeking exemption operates nor in related markets; and

(c) Forbearance is consistent with public interest and the benefit and welfare of the consumers.

A public hearing shall be held to assist the Commission in making this determination.

The Commission's order exempting the relevant entity or group of entities under this Section shall be made public. Conditions may be attached to the forbearance if the Commission deems it appropriate to ensure the long-term interest of consumers.

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

CHAPTER VI FINES AND PENALTIES

SEC. 29. Administrative Penalties. –

(a) **Administrative Fines.** – In any investigation under Chapter III, Sections 14 and 15, and Chapter IV, Sections 17 and 20 of this Act, after due notice and hearing, the Commission may impose the following schedule of administrative fines on any entity found to have violated the said Sections:

First offense: Fine of up to One Hundred Million Pesos (P100,000,000.00);

Second offense: Fine of not less than One Hundred Million Pesos (P100,000,000.00) but not more than Two Hundred Fifty Million Pesos (P250,000,000.00).

In fixing the amount of the fine, the Commission shall have regard to both the gravity and the duration of the violation.

(b) **Failure to Comply With An Order of the Commission.** – An entity which fails or refuses to comply with a ruling, order or decision issued by the commission shall pay a penalty of not less than Fifty Thousand Pesos (P50,000.00) up to Two Million Pesos (P2,000,000.00) for each violation and a similar amount of penalty for each day thereafter until the said entity fully complies. Provided that these fines shall only accrue daily beginning forty five (45) days

from the time that the said decision, order or ruling was received.

(c) Supply of Incorrect or Misleading Information. – The Commission may likewise impose upon any entity fines of up to One million pesos (P1,000,000.00) where, intentionally or negligently, they supply incorrect or misleading information in any document, application or other paper filed with or submitted to the Commission or supply incorrect or misleading information in an application for a binding ruling, a proposal for a consent judgment, proceedings relating to a show cause order, or application for modification of the Commission's ruling, order or approval, as the case may be.

(d) Any other violations not specifically penalized under the relevant provisions of this Act shall be penalized by a fine of not less than Fifty Thousand Pesos (P50,000.00) up to Two Million Pesos (P2,000,000.00).

Provided that the schedule of fines indicated in this Section shall be increased by the Commission every five (5) years to maintain their real value from the time it was set.

SEC. 30. Criminal Penalties. An entity that enters into any anti-competitive agreement as covered by Chapter III, Section 14(a) and 14(b) under this Act shall, for each and every violation, be penalized by imprisonment from two (2) to seven (7) years, and a fine of not less than Fifty Million Pesos (P50,000,000.00) but not more than Two Hundred Fifty Million Pesos (P250,000,000.00). The penalty of imprisonment shall be imposed upon the responsible officers, and directors of the entity.

When the entities involved are juridical persons, the penalty of imprisonment shall be imposed on its officers, directors, or employees holding managerial positions, who are knowingly and willfully responsible for such violation.

CHAPTER VII ENFORCEMENT

SEC. 31. Fact Finding; Preliminary Inquiry. – The Commission, motu proprio, or upon the filing of a verified complaint by an interested party or upon referral by a regulatory agency, shall have the sole and exclusive authority to initiate and conduct a fact-finding or preliminary inquiry for the enforcement of this Act based on reasonable grounds.

The Commission, after considering the statements made, or documents or articles produced in the course of the fact-finding or preliminary inquiry, shall terminate the same by:

(a) Issuing a resolution ordering its closure if no violation or infringement of this Act is found; or

(b) Issuing a resolution to proceed, on the basis of reasonable grounds, to the conduct of a full administrative investigation.

The Commission, after due notice and hearing, and on the basis of facts and evidence presented, may issue an order for the temporary cessation or desistance from the performance of certain acts by the respondent entity, the continued performance of which would result in a material and adverse effect on consumers or competition in the relevant market.

If the evidence so warrants, the Commission may file before the DOJ criminal complaints for violations of this Act or relevant laws for preliminary investigation and prosecution before the proper court. The DOJ shall conduct such preliminary investigation in accordance with the revised rules of criminal procedure.

The preliminary inquiry shall, in all cases, be completed by the Commission within ninety (90) days from submission of the verified complaint, referral, or date of initiation by the Commission, *motu proprio*, of the same.

Except as provided in Section 12 (i) of Chapter II of this Act, no law enforcement agency shall conduct any kind of fact-finding, inquiry or investigation into any competition related matters.

SEC. 32. Relationship With Sector Regulators. The Commission shall have original and primary jurisdiction in the enforcement and regulation of all competition-related issues.

The Commission shall still have jurisdiction if the issue involves both competition and noncompetition issues, but the concerned sector regulator shall be consulted and afforded reasonable opportunity to submit its own opinion and recommendation on the matter before the Commission makes a decision on any case.

Where appropriate, the Commission and the sector regulators shall work together to issue rules and regulations to promote competition, protect consumers, and prevent abuse of market power by dominant players within their respective sectors.

SEC. 33. Power to Investigate and Enforce Orders and Resolutions. – The Commission shall conduct inquiries by administering oaths, issuing subpoena *duces tecum* and summoning witnesses, and commissioning consultants or experts. It shall determine if any provision of this Act has been violated, enforce its orders and carry out its resolutions by making use of any available means, provisional or otherwise, under existing laws and procedures including the power to punish for contempt and to impose fines.

SEC. 34. Confidentiality of Information. – Confidential business information submitted by entities, relevant to any inquiry or investigation being conducted pursuant to this Act as well as any deliberation in relation thereto, shall not, in any manner, be directly or indirectly disclosed, published, transferred, copied, or disseminated. Likewise, the Commission shall, to the extent possible, subject such information to the confidentiality rule provided under this section when it issues notices, bulletins, rulings and other documents: Provided, That the confidentiality rule shall not apply if the notifying entity consents to the disclosure, or the document or information is mandatorily required to be disclosed by law or by a valid order of a court of competent jurisdiction or of a government or regulatory agency, including an exchange. The identity of the persons who provide information to the Commission under condition of anonymity, shall remain confidential, unless such confidentiality is expressly waived by these persons.

Any violation of this provision shall be imposed a fine of not less than One Million Pesos (P1,000,000.00) but not more than Five Million Pesos (P5,000,000.00).

SEC. 35. Leniency Program. – The Commission shall develop a Leniency Program to be granted to any entity in the form of immunity from suit or reduction of any fine which would otherwise be imposed on a participant in an anti-competitive agreement as provided in Section 14(a) and 14(b) of this Act in exchange for the voluntary disclosure of information regarding such an agreement which satisfies specific criteria prior to or during the fact finding or preliminary inquiry stage of the case.

Immunity from suit will be granted to an entity reporting illegal anti-competitive activity before a fact finding or preliminary inquiry has begun if the following conditions are met:

- (a) At the time the entity comes forward, the Commission has not received information about the activity from any other source;

(b) Upon the entity's discovery of illegal activity, it took prompt and effective action to terminate its participation therein;

(c) The entity reports the wrongdoing with candor and completeness and provides full, continuing, and complete cooperation throughout the investigation; and

(d) The entity did not coerce another party to participate in the activity and clearly was not the leader in, or the originator of, the activity.

Even after the Commission has received information about the illegal activity after a fact finding or preliminary inquiry has commenced, the reporting entity will be granted leniency, provided preceding conditions (b) and (c) and the following additional requirements are complied with:

(1) The entity is the first to come forward and qualify for leniency;

(2) At the time the entity comes forward, the Commission does not have evidence against the entity that is likely to result in a sustainable conviction; and

(3) The Commission determines that granting leniency would not be unfair to others.

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

Nothing in this Section shall preclude prosecution for entities that report to the Commission false, misleading, or malicious information, data or documents damaging to the business or integrity of the entities under inquiry as a violation of said Section. An entity found to have reported false, misleading or malicious information, data, or document may be penalized by a fine not less than the penalty imposed in the Section reported to have been violated by the entity complained of.

The DOJ-OFC may likewise grant leniency or immunity as provided in this Section in the event that there is already a preliminary investigation pending before it.

SEC. 36. Nolo Contendere. – An entity charged in a criminal proceeding pursuant to Section 14(a) and 14(b) of this Act may enter a plea of *Nolo Contendere*, in which he does not accept nor deny responsibility for the charges but agrees to accept punishment as if he had pleaded guilty. The plea cannot be used against the defendant entity to prove liability in a civil suit arising from the criminal action nor in another cause of action: Provided, That a plea of Nolo Contendere may be entered only up to arraignment and subsequently, only with the permission of the court which shall accept it only after weighing its effect on the parties, the public and the administration of justice.

SEC. 37. Non-Adversarial Remedies. – As an implementing and enforcement policy, the Commission shall, under such rules and regulations it may prescribe, encourage voluntary compliance with this Act and other competition laws by making available to the parties concerned the following and other analogous non-adversarial administrative remedies, before the institution of administrative, civil or criminal action:

(a) Binding Ruling. – Where no prior complaint or investigation has been initiated, any entity that is in doubt as to whether a contemplated act, course of conduct, agreement, or decision, is in compliance with, is exempt from, or is in violation of any of the provisions of this Act, other competition laws, or implementing rules and regulations thereof, may request the Commission, in writing, to render a binding ruling thereon; Provided that the ruling is for a specified period, subject to extension as may be determined by the commission, and based on substantial evidence.

In the event of an adverse binding ruling on an act, course or conduct, agreement, or decision, the applicant shall be provided with a reasonable period, which in no case shall be more than ninety (90) days, to abide by the ruling of the Commission and shall not be subject to administrative, civil, or criminal action unless the applicant fails to comply with the provisions of this Act;

(b) Show Cause Order.- Upon preliminary findings *motu proprio* or on written complaint under oath by an interested party that any entity is conducting its business, in whole or in part in a manner that may not be in accord with the provisions of this Act or other competition laws, and it finds that the issuance of a show cause order would be in the interest of the public, the commission shall issue and serve upon such entity or entities a written description of its business conduct complained of, a statement of the facts, data, and information together with a summary of the evidence thereof,

with an order requiring the said entity or entities to show cause, within the period therein fixed, why no order shall issue requiring such person or persons to cease and desist from continuing with its identified business conduct, or pay the administrative fine therein specified, or readjust its business conduct or practices;

(c) Consent Order. – At any time prior to the conclusion by the commission of its inquiry, any entity under inquiry may, without in any manner admitting a violation of this Act or any other competition laws, submit to the commission a written proposal for the entry of a consent order, specifying therein the terms and conditions of the proposed consent order which shall include among others the following:

(1) The payment of an amount within the range of fines provided for under this Act;

(2) The required compliance report as well as an entity to submit regular compliance reports;

(3) Payment of damages to any private party/parties who may have suffered injury; and

(4) Other terms and conditions that the Commission deems appropriate and necessary for the effective enforcement of this Act or other Competition Laws.

Provided, That a consent order shall not bar any inquiry for the same or similar acts if continued or repeated;

(d) Monitoring of Compliance. – The Commission shall monitor the compliance by the entity or entities concerned, their officers, and employees, with the final and executory binding ruling, cease and desist order, or approval of a consent judgment. upon motion of an interested party/parties, the commission shall issue a certification or resolution to the effect that the entity or entities concerned have, or have not, as the case may be, complied with a final and executory ruling, order, or approval.

(e) Inadmissibility of Evidence in Criminal Proceedings. – The request for a binding ruling, the show cause order, or the proposal for consent order; the facts, data, and information therein contained or subsequently supplied by the entity or entities concerned; admissions, oral or written, made by them against their interest; all other documents filed by them, including their evidence presented in the proceedings before the Commission; and the judgment or order rendered thereon; shall not be admissible as evidence in any criminal proceedings arising from the same act subject of the

binding ruling, show cause order or consent order against such entity or entities, their officers, employees, and agents.

SEC. 38. Contempt. – The Commission may summarily punish for contempt by imprisonment not exceeding thirty (30) days or by a fine not exceeding one hundred thousand pesos (P100,000.00), or both, any entity guilty of such misconduct in the presence of the Commission in its vicinity as to seriously interrupt any hearing, session or any proceedings before it, including cases in which an entity willfully fails or refuses, without just cause, to comply with a summons, subpoena or subpoena *duces tecum* legally issued by the commission being present at a hearing, proceeding, session or investigation, refused to be sworn as a witness or to answer questions or to furnish information when lawfully required to do so.

SEC. 39. Appeals of the Decisions of the Commission. – Decisions of the Commission shall be appealable to the Court of Appeals in accordance with the Rules of Court. The appeal shall not stay the order, ruling or decision sought to be reviewed, unless the Court of Appeals shall direct otherwise upon such terms and conditions it may deem just. In the appeal, the Commission shall be included as a party respondent to the case.

SEC. 40. Writ of Execution. – Upon the finality of its binding ruling, order, resolution, decision, judgment, or rule or regulation, collectively, the Commission may issue a writ of execution to enforce its decision and the payment of the administrative fines provided in the preceding sections.

SEC. 41. Basic Necessities and Prime Commodities. – If the violation involves the trade or movement of basic necessities and prime commodities as defined by RA 7581, as amended, the fine imposed by the Commission or the courts, as the case may be, shall be tripled.

SEC. 42. Immunity from Suit. – The Chairperson, the Commissioners, officers, employees and agents of the Commission shall not be subject to any action, claim or demand in connection with any act done or omitted by them in the performance of their duties and exercise of their powers except for those actions and omissions done in evident bad faith or gross negligence.

SEC. 43. Indemnity. – Unless the actions of the Commission or its Chairperson, any of its Commissioners, officers, employees and agents are found to be in willful violation of this Act, performed with evident bad faith or gross negligence, the Commission, its Chairperson, Commissioners, officers, employees and agents are held free and harmless to the fullest extent permitted by law from any liability, and they shall be indemnified for any and all liabilities, losses, claims, demands, damages, deficiencies, costs and expenses of whatsoever kind and nature that may arise in connection with the exercise of their powers and performance of their duties and functions.

The Commission shall underwrite or advance litigation costs and expenses, including legal fees and other expenses of external counsel, or provide legal assistance to its Chairperson, Commissioners, officers, employees, or agents in connection with any civil, criminal, administrative or any other action or proceeding, to which they are made a party by reason of, or in connection with, the exercise of authority or performance of duties and functions under this Act: Provided, That such legal protection shall not apply to any civil, criminal, administrative, or any action or proceeding that may be initiated by the Commission, against such Chairperson, Commissioners, officers, employees, or agents: Provided, further, That the Chairperson, Commissioners, officers, employees, or agents who shall resign, retire, transfer to another agency or be separated from the service, shall continue to be provided with such legal protection in connection with any act done or omitted to be done by them in good faith during their tenure or employment with the Commission: Provided, finally, That in the event of a settlement or compromise, indemnification shall be provided only in connection with such matters covered by the settlement as to which the Commission is advised by counsel that the persons to be indemnified did not commit any negligence or misconduct.

The costs and expenses incurred in defending the aforementioned action, suit or proceeding may be paid by the Commission in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the Chairperson, Commissioner, officer, employee or agent to repay the amount advanced should it ultimately be determined by the Commission that one is not entitled to be indemnified as provided in this section.

SEC. 44. Jurisdiction of the Regional Trial Court. – The Regional Trial Court of the city or province where the entity or any of the entities whose business act or conduct constitutes the subject matter of a case, conducts its principal place of business, shall have original

and exclusive jurisdiction, regardless of the penalties and fines herein imposed, of all criminal and civil cases involving violations of this Act and other competition related laws.

If the defendant or anyone is charged in the capacity of a director, officer, shareholder, employee, or agent of a corporation or other juridical entity who knowingly and willfully authorized the commission of the offense charged, the Regional Trial Court of the city or province where such corporation or juridical entity conducts its principal place of business, shall have jurisdiction.

SEC. 45. Private Action. – Any person who suffers direct injury by reason of any violation of this Act may institute a separate and independent civil action after the Commission has completed the preliminary inquiry provided under Section 31.

CHAPTER VIII OTHER PROVISIONS

SEC. 46. Statute of Limitations. – Any action arising from a violation of any provision of this Act shall be forever barred unless commenced within five (5) years from:

- (a) For criminal actions the time, the violation is discovered by the offended party, the authorities, or their agents; and
- (b) For administrative and civil actions, the time the cause of action accrues.

SEC. 47. Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Injunctions and Preliminary Mandatory Injunctions. – Except for the Court of Appeals and the Supreme Court, no other court shall issue any temporary restraining order, preliminary injunction or preliminary mandatory injunction against the Commission in the exercise of its duties or functions: Provided, That, this prohibition shall apply in all cases, disputes or controversies instituted by a private party, including, but not limited to, cases filed by entities or those claiming to have rights through such entities: Provided, however, That, this prohibition shall not apply when the matter is of extreme urgency involving a constitutional issue, such that the non- issuance of a temporary restraining order will result in grave

injustice and irreparable injury to the public: Provided, further, That, the applicant shall file a bond, in an amount to be fixed by the Court, but in no case shall it exceed twenty percent (20%) of the imposable fines provided for under Chapter VI, Section 29 of this Act: Provided, finally, That in the event that the court finally decides that the applicant was not entitled to the relief applied for, the bond shall accrue in favor of the Commission.

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

SEC. 48. Trade Associations. – Nothing contained in this Act shall be construed to prohibit the existence and operation of trade associations organized to promote quality standards and safety issues: Provided, That, these associations shall not in any way be used to justify any violation of this Act; Provided, however, That it shall not be illegal to use the association as a forum to discuss or promote quality standards, efficiency, safety, security, productivity, competitiveness and other matters of common interest involving the industry; Provided, further, That such is done without any anti-competitive intent or effect.

SEC. 49. Congressional Oversight Committee. – To oversee the implementation of this Act, there shall be created a Congressional Oversight Committee on Competition (COCC) to be composed of the Chairpersons of the Senate Committees on Trade and Commerce, Economic Affairs, and Finance, the Chairpersons of the House of Representatives Committees on Economic Affairs, Trade and Industry, and Appropriations and two (2) members each from the Senate and the House of Representatives who shall be designated by the Senate President and the Speaker of the House of Representatives: Provided, That one (1) of the two (2) Senators and one (1) of the two (2) House Members shall be nominated by the respective Minority Leaders of the Senate and the House of Representatives. The Congressional Oversight Committee shall be jointly chaired by the Chairpersons of the Senate Committee on Trade and Commerce and the House of Representatives Committee on Economic Affairs. The Vice Chairperson of the Congressional Oversight Committee shall be jointly held by the Chairpersons of the Senate Committee on Economic Affairs and the House of Representatives Committee on Trade and Industry.

The Secretariat of the COCC shall be drawn from the existing personnel

of the Senate and House of Representatives committees comprising the Congressional Oversight Committee.

CHAPTER IX FINAL PROVISIONS

SEC. 50. Implementing Rules and Regulations. – Within one hundred eighty (180) days from the effectivity of this Act, the Commission, in consultation with the DOJ-OFC and concerned sector regulators shall promulgate the necessary implementing rules and regulations for the implementation of this Act: Provided, That, the Commission may revise such implementing rules and regulations as it deems necessary: Provided, however, That such revised implementing rules and regulations shall only take effect fifteen (15) days following its publication in two (2) newspapers of general circulation.

SEC. 51. Appropriations and Use of Fees, Charges and Penalties. – The initial budgetary requirements of the Commission of Three Hundred Million Pesos (P300,000,000.00) is hereby appropriated.

All fees, fines, penalties collected by the Commission shall not be retained by the Commission, but will be remitted to the National Treasury and shall accrue to the general funds.

Such funds necessary for the continuous and effective operation of the Commission shall be included in the Annual General Appropriations Act.

SEC. 52. Transparency Clause. – Final decisions, orders and rulings of the commission shall be published on the official website subject to Section 34 of this Act.

Records of public proceedings shall be made available to the public subject to Section 34 of this Act.

SEC. 53. Transitional Clause. – In order to allow affected parties time to renegotiate agreements or restructure their business to comply with the provisions of this Act, an existing business structure, conduct, practice or any act that may be in violation of this Act shall be subject to the administrative, civil and criminal penalties prescribed herein only if it is not cured or is continuing upon the expiration of two (2) years after

the effectivity of this Act: Provided, That this section shall not apply to administrative, civil and criminal proceedings against anti-competitive agreement or conduct, abuse of dominant position, and anti-competitive mergers and acquisitions, initiated prior to the entry into force of this Act: Provided, further, That during the said two (2)-year period, the government shall undertake an advocacy program to inform the general public of the provisions of this Act.

SEC. 54. Separability Clause. – If any clause, sentence, section or part of this Act shall be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this Act, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy.

SEC. 55. Repealing Clause. – The following laws, and all other laws, decrees, executive orders and regulations, or part or parts thereof inconsistent with any provision of this Act, are hereby repealed, amended or otherwise modified accordingly:

(a) Article 186 of Act No. 3815, otherwise known as the Revised Penal Code: Provided, that violations of Article 186 of the Revised Penal Code committed before the effectivity of this Act may continue to be prosecuted unless the same have been barred by prescription, and subject to the procedure under Section 31 of this Act;

(b) Section 4 of Commonwealth Act No. 138;

(c) Section 43(u) on Functions of the ERC of Republic Act No. 9136, entitled “An Act Ordaining Reforms in the Electric Power Industry, Amending for the Purpose Certain Laws and for Other Purposes”, otherwise known as the “Electric Power Industry Reform Act of 2001”, insofar as the provision thereof is inconsistent with this Act;

(d) Section 24 on Illegal Acts of Price Manipulation and Section 25 on Penalty for Illegal Acts of Price Manipulation of Republic Act No. 9502, entitled “An Act Providing for Cheaper and Quality Medicines, Amending for the Purpose Republic Act No. 8293 or the Intellectual Property Code, Republic Act No. 6675 or the Generics Act of 1988, and Republic Act No. 5921 or the Pharmacy Law, and for Other Purposes”, otherwise known as the “Universally Accessible Cheaper and Quality Medicines Act of 2008”, insofar as the

provisions thereof are inconsistent with this Act; and

(e) Executive Order No. 45, Series of 2011, Designating the Department of Justice as the Competition Authority, Department of Justice Circular 005 Series of 2015, and other related issuances, insofar as they are inconsistent with the provisions of this Act.

SEC. 56. Effectivity Clause. – This Act shall take effect fifteen (15) days following its publication in the Official Gazette or at least two (2) national newspapers of general circulation. Notwithstanding any provision herein, this Act shall have no retroactive effect.



IMPLEMENTING RULES AND REGULATIONS

RULES AND REGULATIONS TO IMPLEMENT THE PROVISIONS OF REPUBLIC ACT NO. 10667

To effectively carry out the provisions of Republic Act No. 10667, or the Philippine Competition Act (Act), the Philippine Competition Commission, pursuant to the powers vested in it under said Act, hereby issues, adopts and promulgates the following rules and regulations. The Commission may revise and supplement these rules and regulations and issue related guidelines, circulars and other subsidiary issuances as it deems necessary for the effective implementation of the various provisions of this Act.

RULE 1. TITLE AND SCOPE

SECTION 1. Title.

These rules and regulations shall be referred to as the “Implementing Rules and Regulations of Republic Act No. 10667” (Rules).

SECTION 2. Scope.

(a) These Rules shall apply to any entity engaged in trade, industry or commerce in the Republic of the Philippines or in international trade, industry or commerce having direct, substantial and reasonably foreseeable effects in the Philippines, including those that result from acts done outside the territory of the Philippines.

(b) These Rules shall not apply to the combinations or activities of workers or employees nor to agreements or arrangements with their employers when such combinations, activities, agreements, or arrangements are designed solely to facilitate collective bargaining in respect of conditions of employment.

RULE 2.

DEFINITION OF TERMS

The following definition of terms shall apply for purposes of these Rules:

(a) “Acquisition” refers to the purchase or transfer of securities or assets, through contract or other means, for the purpose of obtaining control by:

- (1) One (1) entity of the whole or part of another;
- (2) Two (2) or more entities over another; or
- (3) One (1) or more entities over one (1) or more entities;

(b) “Agreement” refers to any type or form of contract, arrangement, understanding, collective recommendation, or concerted action, whether formal or informal, explicit or tacit, written, or oral;

(c) “Conduct” refers to any type or form of undertaking, collective recommendation, independent or concerted action or practice, whether formal or informal;

(d) “Commission” refers to the Philippine Competition Commission created under the Act;

(e) “Confidential business information” refers to information, which concerns or relates to the operations, production, sales, shipments, purchases, transfers, identification of customers, inventories, or amount or source of any income, profits, losses, expenditures, which are not generally known to the public or to other persons who can obtain economic value from its disclosure or use, or is liable to cause serious harm to the person who provided it, or from whom it originates, and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy;

(f) “Control” refers to the ability to substantially influence or direct

the actions or decisions of an entity, whether by contract, agency or otherwise;

(g) “Dominant position” refers to a position of economic strength that an entity or entities hold which makes it capable of controlling the relevant market independently from any or a combination of the following: competitors, customers, suppliers, or consumers;

(h) “Entity” refers to any person, natural or juridical, sole proprietorship, partnership, combination or association in any form, whether incorporated or not, domestic or foreign, including those owned or controlled by the government, engaged directly or indirectly in any economic activity;

(i) “Joint venture” refers to a business arrangement whereby an entity or group of entities contribute capital, services, assets, or a combination of any or all of the foregoing, to undertake an investment activity or a specific project, where each entity shall have the right to direct and govern the policies in connection therewith, with the intention to share both profits and risks and losses subject to agreement by the entities;

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

(k) “Merger” refers to the joining of two (2) or more entities into an existing entity or to form a new entity, including joint ventures;

(l) “Relevant market” refers to the market in which a particular good or service is sold and which is a combination of the relevant product market and the relevant geographic market, defined as follows:

(1) a relevant product market comprises all those goods and/or services which are regarded as interchangeable or substitutable by the consumer or the customer, by reason of the goods and/or

services' characteristics, their prices, and their intended use; and
(2) the relevant geographic market comprises the area in which the entity concerned is involved in the supply and demand of goods and services, in which the conditions of competition are sufficiently homogenous and which can be distinguished from neighboring areas because the conditions of competition are different in those area;

(m) "Ultimate parent entity" is the juridical entity that, directly or indirectly, controls a party to the transaction, and is not controlled by any other entity.

RULE 3. PROHIBITED ACTS

SECTION 1. Anti-Competitive Agreements.

(a) The following agreements, between or among competitors, are *per se* prohibited:

- (1) Restricting competition as to price, or components thereof, or other terms of trade;
- (2) Fixing the price at an auction or in any form of bidding, including cover bidding, bid suppression, bid rotation and market allocation, and other analogous practices of bid manipulation.

(b) The following agreements, between or among competitors, which have the object or effect of substantially preventing, restricting, or lessening competition shall be prohibited:

- (1) Setting, limiting, or controlling production, markets, technical development, or investment;
- (2) Dividing or sharing the market, whether by volume of sales or purchases, territory, type of goods or services, buyers or sellers, or any other means.

(c) Agreements other than those specified in (a) and (b) of this Section, which have the object or effect of substantially preventing, restricting, or lessening competition shall also be prohibited. Provided, that those which contribute to improving the production or distribution of goods and services or to promoting technical or

economic progress, while allowing consumers a fair share of the resulting benefits, may not necessarily be deemed a violation of the Act.

(d) For purposes of this Section, entities that control, are controlled by, or are under common control with another entity or entities, have common economic interests, and are not otherwise able to decide or act independently of each other, shall not be considered competitors.

SECTION 2. Abuse of Dominant Position.

(a) It shall be prohibited for one or more entities to abuse their dominant position by engaging in conduct that would substantially prevent, restrict, or lessen competition, including:

(1) Selling goods or services below cost with the object of driving competition out of the relevant market. Provided, that in the Commission's evaluation of this fact, it shall consider whether such entity or entities had no such object and that the price established was in good faith to meet or compete with the lower price of a competitor in the same market selling the same or comparable product or service of like quality.

(2) Imposing barriers to entry or committing acts that prevent competitors from growing within the market in an anti-competitive manner, except those that develop in the market as a result of or arising from a superior product or process, business acumen, or legal rights or laws;

(3) Making a transaction subject to acceptance by the other parties of other obligations which, by their nature or according to commercial usage, have no connection with the transaction;

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

i. Socialized pricing for the less fortunate sector of the economy;

ii. Price differentials which reasonably or approximately reflect differences in the cost of manufacture, sale, or

delivery resulting from differing methods, technical conditions, or quantities in which the goods or services are sold or delivered to the buyers or sellers;

iii. Price differential or terms of sale offered in response to the competitive price of payments, services, or changes in the facilities furnished by a competitor; and

iv. Price changes in response to changing market conditions, marketability of goods or services, or volume.

(5) Imposing restrictions on the lease or contract for sale or trade of goods or services concerning where, to whom, or in what forms goods or services may be sold or traded, such as:

i. fixing prices, or

ii. giving preferential discounts or rebate upon such price, or

iii. imposing conditions not to deal with competing entities, where the object or effect of the restrictions is to prevent, restrict or lessen competition substantially: Provided, that nothing contained in the Act shall prohibit or render unlawful:

1) Permissible franchising, licensing, exclusive merchandising, or exclusive distributorship agreements, such as those which give each party the right to unilaterally terminate the agreement, unless found by the Commission to have substantial anti-competitive effect;

2) Agreements protecting intellectual property rights, confidential information, or trade secrets;

(6) Making supply of particular goods or services dependent upon the purchase of other goods or services from the supplier which have no direct connection with the main goods or services to be supplied;

(7) Directly or indirectly imposing unfairly low purchase prices for the goods or services of, among others, marginalized agricultural producers, fisherfolk, micro-, small-, medium-scaled enterprises, and other marginalized service providers and producers;

(8) Directly or indirectly imposing unfair purchase or selling price on their competitors, customers, suppliers, or consumers, Provided that prices that develop in the market as a result of or

due to a superior product or process, business acumen or legal rights or laws shall not be considered unfair prices; and

(9) Limiting production, markets, or technical development to the prejudice of consumers, Provided, that limitations that develop in the market as a result of or due to a superior product or process, business acumen, or legal rights or laws shall not be a violation of this Act.

(b) Nothing in the Act or these Rules shall be construed or interpreted as a prohibition on having a dominant position in a relevant market, or on acquiring, maintaining, and increasing market share through legitimate means that do not substantially prevent, restrict, or lessen competition.

(c) Any conduct which contributes to improving production or distribution of goods or services within the relevant market, or promoting technical and economic progress, while allowing consumers a fair share of the resulting benefit may not necessarily be considered an abuse of dominant position. (d) The foregoing shall not constrain the Commission or the relevant regulator from pursuing measures that would promote fair competition or more competition as provided in the Act.

SECTION 3. Determination of exceptions.

In Section 2, par. (a) (2), (8) and (9), the concerned entity or entities invoking the exception shall clearly establish to the Commission's satisfaction, that the barrier to entry or anti-competitive act is an indispensable and natural result of the superior product or process, business acumen, or legal rights or laws.

RULE 4. MERGERS AND ACQUISITIONS

SECTION 1. Review of mergers and acquisitions.

The Commission, *motu proprio* or upon notification as provided under these Rules, shall have the power to review mergers and acquisitions having a direct, substantial and reasonably foreseeable effect on trade, industry, or commerce in the Philippines, based on factors deemed relevant by the Commission.

(a) In conducting this review, the Commission shall:

(1) Assess whether a proposed merger or acquisition is likely to substantially prevent, restrict, or lessen competition in the relevant market or in the market for goods and services as may be determined by the Commission; and

(2) Take into account any substantiated efficiencies put forward by the parties to the proposed merger or acquisition, which are likely to arise from the transaction.

(b) In evaluating the competitive effects of a merger or acquisition, the Commission shall endeavor to compare the competitive conditions that would likely result from the merger or acquisition with the conditions that would likely have prevailed without the merger or acquisition.

(c) In its evaluation, the Commission may consider, on a case-to-case basis, the broad range of possible factual contexts and the specific competitive effects that may arise in different transactions, such as:

(1) the structure of the relevant markets concerned;

(2) the market position of the entities concerned;

(3) the actual or potential competition from entities within or outside of the relevant market;

(4) the alternatives available to suppliers and users, and their access to supplies or markets;

(5) any legal or other barriers to entry.

SECTION 2. Notifying entities.

(a) Parties to a merger or acquisition that satisfy the thresholds in Section 3 of this Rule are required to notify the Commission before the execution of the definitive agreements relating to the transaction.

(b) If notice to the Commission is required for a merger or acquisition, then all acquiring and acquired pre-acquisition ultimate parent entities or any entity authorized by the ultimate parent entity to file notification on its behalf must each submit a Notification Form (the "Form") and comply with the procedure set forth in Section 5 of this Rule. The parties shall not consummate the transaction before the expiration of the relevant periods provided in this Rule.

(c) In the formation of a joint venture (other than in connection with a merger or consolidation), the contributing entities shall be deemed acquiring entities, and the joint venture shall be deemed

the acquired entity.

SECTION 3. Thresholds for compulsory notification.

Parties to a merger or acquisition are required to provide notification when:

(a) The aggregate annual gross revenues in, into or from the Philippines, or value of the assets in the Philippines of the ultimate parent entity of at least one of the acquiring or acquired entities, including that of all entities that the ultimate parent entity controls, directly or indirectly, exceeds One Billion Pesos (PhP1,000,000,000.00).

and

(b) The value of the transaction exceeds One Billion Pesos (PhP1,000,000,000.00), as determined in subsections (1), (2), (3) or (4), as the case may be.

(1) With respect to a proposed merger or acquisition of assets in the Philippines if either

i. the aggregate value of the assets in the Philippines being acquired in the proposed transaction exceeds One Billion Pesos (PhP1,000,000,000.00); or

ii. the gross revenues generated in the Philippines by assets acquired in the Philippines exceed One Billion Pesos (PhP1,000,000,000.00).

(2) With respect to a proposed merger or acquisition of assets outside the Philippines, if

i. the aggregate value of the assets in the Philippines of the acquiring entity exceeds One Billion Pesos (PhP1,000,000,000.00); and

ii. the gross revenues generated in or into the Philippines by those assets acquired outside the Philippines exceed One Billion Pesos (PhP1,000,000,000.00).

(3) With respect to a proposed merger or acquisition of assets inside and outside the Philippines, if

i. the aggregate value of the assets in the Philippines of the acquiring entity exceeds One Billion Pesos (PhP1,000,000,000.00); and

ii. the aggregate gross revenues generated in or into the Philippines by assets acquired in the Philippines and any assets acquired outside the Philippines collectively exceed One Billion Pesos (PhP1,000,000,000.00).

(4) With respect to a proposed acquisition of (i) voting shares of a corporation or of (ii) an interest in a non-corporate entity

i. If the aggregate value of the assets in the Philippines that are owned by the corporation or non-corporate entity or by entities it controls, other than assets that are shares of any of those corporations, exceed One Billion Pesos (PhP1,000,000,000.00); or

ii. The gross revenues from sales in, into, or from the Philippines of the corporation or non-corporate entity or by entities it controls, other than assets that are shares of any of those corporations, exceed One Billion Pesos (PhP1,000,000,000.00);

and

iii. If

A. as a result of the proposed acquisition of the voting shares of a corporation, the entity or entities acquiring

the shares, together with their affiliates, would own voting shares of the corporation that, in the aggregate, carry more than the following percentages of the votes attached to all the corporation's outstanding voting shares:

- I. Thirty-five percent (35%), or
- II. Fifty percent (50%), if the entity or entities already own more than the percentage set out in subsection I above, as the case may be, before the proposed acquisition;

or

B. as a result of the proposed acquisition of an interest in a non-corporate entity, the entity or entities acquiring the interest, together with their affiliates, would hold an aggregate interest in the non-corporate entity that entitles the entity or entities to receive more than the following percentages of the profits of the noncorporate entity or assets of that non-corporate entity on its dissolution:

- I. Thirty-five percent (35%), or
- II. Fifty percent (50%), if the entity or entities acquiring the interest are already entitled to receive more than the percentage set out in subsection I immediately above before the proposed acquisition.

(c) Where an entity has already exceeded the 35% threshold for an acquisition of voting shares, or the 35% threshold for an acquisition of an interest in a non-corporate entity, another notification will be required if the same entity will exceed 50% threshold after making a further acquisition of either voting shares or an interest in a non-corporate entity.

(d) In a notifiable joint venture transaction, an acquiring entity shall be subject to the notification requirements if either (i) the aggregate value of the assets that will be combined in the Philippines or

contributed into the proposed joint venture exceeds One Billion Pesos (PhP1,000,000,000.00) or (ii) the gross revenues generated in the Philippines by assets to be combined in the Philippines or contributed into the proposed joint venture exceed One Billion Pesos (PhP1,000,000,000.00). In determining the assets of the joint venture, the following shall be included:

1) All assets which any entity contributing to the formation of the joint venture has agreed to transfer, or for which agreements have been secured for the joint venture to obtain at any time, whether or not such entity is subject to the requirements of the act; and

2) Any amount of credit or any obligations of the joint venture which any entity contributing to the formation has agreed to extend or guarantee, at any time.

(e) A merger or acquisition consisting of successive transactions, or acquisition of parts of one or more entities, which shall take place within a one-year period between the same parties, or any entity they control or are controlled by or are under common control with another entity or entities, shall be treated as one transaction. If a binding preliminary agreement provides for such successive transactions or acquisition of parts, the entities shall provide notification on the basis of such preliminary agreement. If there is no binding preliminary agreement, notification shall be made when the parties execute the agreement relating to the last transaction which, when taken together with the preceding transactions, satisfies the thresholds under this Section.

(f) For purposes of calculating notification thresholds:

(1) The aggregate value of assets in the Philippines shall be as stated on the last regularly prepared balance sheet or the most recent audited financial statements in which those assets are accounted for.

(2) The gross revenues from sales of an entity shall be the amount stated on the last regularly prepared annual statement of income and expense of that entity.

(g) A transaction that meets the thresholds and does not comply with the notification requirements and waiting periods set out in

Section 5 shall be considered void and will subject the parties to an administrative fine of one percent (1%) to five percent (5%) of the value of the transaction.

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

(i) A favorable recommendation by a governmental agency with a competition mandate shall give rise to a disputable presumption that the proposed merger or acquisition is not violative of the Act or these Rules, Provided, that the recommendation must arise directly from the exercise of the agency's mandate to determine any anti-competitive effect of the proposed merger or acquisition.

SECTION 4. Consultations preceding the submission of notification.

(a) Prior to filing a notification pursuant to this Rule, parties to a proposed merger or acquisition that are required to notify may inform the Commission of their proposed merger or acquisition and request a pre-notification consultation with the staff of the Commission.

To request a meeting, the parties must provide the following information in writing:

- (1) the names and business contact information of the entities concerned;
- (2) the type of transaction; and
- (3) the markets covered or lines of businesses by the proposed merger or acquisition.

(b) During such pre-notification consultations, the parties may seek nonbinding advice on the specific information that is required to be in the notification.

SECTION 5. Procedure for notification and review.

(a) Each party to a merger or acquisition required to give notification to the Commission shall submit the Notification Form and pay such applicable fees as may be determined by the Commission. An electronic copy of the Form and a scanned copy of the certification referred to in subparagraph (b) of this Section, contained in a secure electronic storage device, shall likewise be submitted to the Commission, simultaneous with the filing of the aforementioned hard copy.

(b) The Form must be signed by a general partner of a partnership, an officer or director of a corporation, or in the case of a natural person, the natural person or his/her legal representative, and certified that the contents of the Form are true and accurate of their own personal knowledge and/or based on authentic records. In all cases, the certifying individual must possess actual authority to make the certification on behalf of the entity filing the notification.

(c) The parties may notify, on the basis of a binding preliminary agreement in any form, such as a memorandum of agreement, term sheet, or letter of intent. Each of the acquired and acquiring entities must submit an affidavit with their Forms, attesting to the fact that a binding preliminary agreement has been executed and that each party has an intention of completing the proposed transaction in good faith.

(d) Both the certification and the affidavit must be notarized or otherwise authenticated.

(e) Except as described below, the waiting period begins after all notifying entities have filed their respective Forms, together with the corresponding certifications and affidavits, and have been notified

by the Commission that the Forms are complete.

(1) In voting securities acquisitions, such as tender offers, third party and open market transactions, in which the acquiring entity proposes to buy voting securities from shareholders of the acquired entity, rather than from the entity itself:

i. the acquiring entity is required to serve notice on the issuer of those shares to ensure the acquired entity is aware of its reporting obligation;

ii. only the acquiring entity must submit an affidavit. The acquiring entity must state in the affidavit that it has an intention of completing the proposed transaction in good faith, and that it has served notice on the acquired entity as to its potential reporting obligations (and in tender offers, the acquiring entity also must affirm that the intention to make the tender offer has been publicly announced); and

iii. the waiting period begins after the acquiring entity files a complete Form.

(f) Upon submission of the Form, the Commission shall determine within fifteen (15) days whether the Form and other relevant requirements have been completed in accordance with applicable rules or guidelines, and shall inform the parties of other information and/or documents it may have failed to supply, or issue a notice to the parties that the notification is sufficient for purposes of commencing Phase I review of the merger or acquisition.

(g) The waiting period under this Section shall commence only upon the Commission's determination that the notification has been completed in accordance with applicable rules and guidelines.

(h) Within thirty (30) days from commencing Phase I review, the Commission shall, if necessary, inform the parties of the need for a more comprehensive and detailed analysis of the merger or acquisition under a Phase II review, and request other information and/or documents that are relevant to its review.

(i) The issuance of the request under the immediately preceding paragraph has the effect of extending the period within which the agreement may not be consummated for an additional sixty (60) days. The additional sixty (60) day period shall begin on the day after the request for information is received by the parties; Provided, that, in no case shall the total period for review by the Commission of the subject agreement exceed ninety (90) days from the time the initial notification by the parties is deemed complete as provided under paragraph (f) of this Section; Provided further, that should the parties fail to provide the requested information within fifteen (15) days from receipt of the said request, the notification shall be deemed expired and the parties must refile their notification. Alternatively, should the parties wish to submit the requested information beyond the fifteen (15) day period, the parties may request for an extension of time within which to comply with the request for additional information, in which case, the period for review shall be correspondingly extended.

(j) Parties to a proposed transaction under review shall inform the Commission of any substantial modifications to the transaction. On the basis of the information provided, the Commission shall determine if a new notification is required.

(k) Where notification of a transaction is not required, then the periods provided above for the Commission to conclude its review shall not apply.

(l) The Commission, in its discretion, may terminate a waiting period prior to its expiration.

(m) When either waiting period set out ends on a Saturday, Sunday or holiday, the waiting period is extended until the next business day.

(n) When the above periods have expired and no decision has been promulgated for whatever reason, the merger or acquisition shall be deemed approved and the parties may proceed to implement or consummate it.

(o) All notices, documents, and information provided to or emanating from the Commission under Sections 4 and 5 of this Rule shall be subject to the confidentiality rule under Section 34 of the Act and Section 13 of this Rule, except for the purpose of enforcing the Act or these Rules, or when the release of information contained therein is with the consent of the notifying entity or is mandatorily required to be disclosed by law or by a valid order of a court of competent jurisdiction, or of a government or regulatory agency, including an exchange.

SECTION 6. Effect of notification.

If within the relevant periods stipulated in the preceding section, the Commission determines that the merger or acquisition agreement is prohibited under Section 20 of the Act and Section 9 of this Rule, and does not qualify for exemption under Section 21 of the Act and Section 10 of this Rule, the Commission may:

- (a) Prohibit the implementation of the agreement;
- (b) Prohibit the implementation of the agreement unless and until it is modified by changes specified by the Commission; or
- (c) Prohibit the implementation of the agreement unless and until the pertinent party or parties enter into legally enforceable agreements specified by the Commission.

SECTION 7. Publication of notification summary.

(a) When additional information or documents requested by the Commission for the purpose of a Phase II review of a notified merger or acquisition has been submitted by the parties, the Commission shall publish on its website the following information related to the notification on the basis of the Form submitted by the parties:

- (1) the name of the involved entities;
- (2) the type of the transaction;
- (3) the markets covered or lines of businesses by the proposed merger or acquisition; and
- (4) the date when the complete notification was received.

(b) When publishing this information, the Commission shall take into account the legitimate interest of the entities regarding the

protection of their trade secrets and other confidential information.

SECTION 8. Modifications to thresholds on compulsory notification.

The Commission shall publish, from time to time, regulations adopting, modifying, rescinding or otherwise changing:

- (a) The transaction value threshold and such other criteria subject to compulsory notification;
- (b) The information that must be supplied for notified mergers or acquisitions;
- (c) Exceptions or exemptions from the notification requirement; and
- (d) Other rules relating to the notification procedures.

SECTION 9. Prohibited mergers and acquisitions.

Merger or acquisition agreements that substantially prevent, restrict, or lessen competition in the Philippines in the relevant market or in the market for goods or services, as may be determined by the Commission, shall be prohibited.

SECTION 10. Exemptions from prohibited mergers and acquisitions.

Merger or acquisition agreements prohibited under Section 20 of the Act and Section 9 of this Rule may, nonetheless, be exempt from prohibition by the Commission when the parties establish either of the following:

- (a) The concentration has brought about or is likely to bring about gains in efficiencies that are greater than the effects of any limitation on competition that result or are likely to result from the merger or acquisition agreement; or
- (b) A party to the merger or acquisition agreement is faced with actual or imminent financial failure, and the agreement represents the least anti-competitive arrangement among the known

alternative uses for the failing entity's assets.

Provided, that an entity shall not be prohibited from continuing to own and hold the stock or other share capital or assets of another corporation, which it acquired prior to the approval of the Act, or from acquiring or maintaining its market share in a relevant market through such means without violating the provisions of the Act and these Rules;

Provided, further, that the acquisition of the stock or other share capital of one or more corporations solely for investment and not used for voting or exercising control and not to otherwise bring about, or attempt to bring about the prevention, restriction or lessening of competition in the relevant market shall not be prohibited.

SECTION 11. Burden of proof.

The burden of proof under Section 10 of this Rule lies with the parties seeking the exemption. A party seeking to rely on the exemption specified in Section 21(a) of the Act or Section 10(a) of this Rule must demonstrate that if the agreement were not implemented, significant efficiency gains would not be realized.

SECTION 12. Finality of rulings on mergers and acquisitions.

Merger or acquisition agreements that have received a favorable ruling from the Commission, except when such ruling was obtained on the basis of fraud or false material information, may not be challenged under the Act or these Rules.

SECTION 13. Treatment of confidential information.

(a) Information, including documents, shall not be communicated or made accessible by the Commission, insofar as it contains trade secrets or other confidential information, the disclosure of which is not considered necessary by the Commission for the purpose of the review.

(b) Any entity or party that supplies information, including documents, to the Commission, shall clearly identify any material that it considers to be confidential, provide a justification for the

request of confidential treatment of the information supplied and the time period within which confidentiality is requested, and provide a separate non-confidential version by the date set by the Commission.

(c) The Commission may require the parties to the merger or acquisition and other interested parties to identify any part of a decision or case summary adopted by the Commission, if any, which in their view contains trade secrets or other confidential information. Where trade secrets or other confidential information are identified, the parties to the merger or acquisition and other interested parties shall provide a justification for the request of confidential treatment and provide a separate non-confidential version by the date set by the Commission.

(d) Whenever the Commission, pursuant to Section 13(c) of this Rule, deems that the justification for confidential treatment provided by the party is insufficient or not grounded, it shall inform the interested party of its decision to make the information accessible.

e) If a merger or acquisition is under review in multiple jurisdictions, parties to the transaction may waive the confidentiality protections contained in this Rule, so as to allow the Commission to exchange otherwise protected information with competition authorities in other countries.

RULE 5.

DETERMINATION OF THE RELEVANT MARKET

SECTION 1. For purposes of determining the relevant market, the following factors, among others, affecting the substitutability among goods or services constituting such market, and the geographic area delineating the boundaries of the market shall be considered:

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

(b) The cost of distribution of the good or service, its raw materials, its supplements and substitutes from other areas and abroad, considering freight, insurance, import duties, and non-tariff restrictions; the restrictions imposed by economic agents or by their

associations; and the time required to supply the market from those areas;

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

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

RULE 6.

DETERMINATION OF CONTROL

SECTION 1. What constitutes control of an entity.

Control refers to the ability to substantially influence or direct the actions or decisions of an entity, whether by contract, agency or otherwise.

In determining the control of an entity, the Commission may consider the following:

(a) Control is presumed to exist when the parent owns directly or indirectly, through subsidiaries, more than one half (1/2) of the voting power of an entity, unless in exceptional circumstances, it can clearly be demonstrated that such ownership does not constitute control.

(b) Control also exists even when an entity owns one half (1/2) or less of the voting power of another entity when:

(1) There is power over more than one half (1/2) of the voting rights by virtue of an agreement with investors;

(2) There is power to direct or govern the financial and operating policies of the entity under a statute or agreement;

(3) There is power to appoint or remove the majority of the members of the board of directors or equivalent governing body;

- (4) There is power to cast the majority votes at meetings of the board of directors or equivalent governing body;
- (5) There exists ownership over or the right to use all or a significant part of the assets of the entity; or
- (6) There exist rights or contracts which confer decisive influence on the decisions of the entity.

RULE 7.

DETERMINATION OF ANTI-COMPETITIVE AGREEMENT OR CONDUCT

SECTION 1. Determination of an anti-competitive agreement or conduct.

In determining whether an anti-competitive agreement or conduct substantially prevents, restricts, or lessens competition, the Commission, in appropriate cases, shall, *inter alia*:

- (a) Define the relevant market allegedly affected by the anti-competitive agreement or conduct, following the principles laid out in Section 24 of the Act and Rule 5 of these Rules;
- (b) Determine if there is actual or potential adverse impact on competition in the relevant market caused by the alleged agreement or conduct, and if such impact is substantial and outweighs the actual or potential efficiency gains that result from the agreement or conduct;
- (c) Adopt a broad and forward-looking perspective, recognizing future market developments, any overriding need to make the goods or services available to consumers, the requirements of large investments in infrastructure, the requirements of law, and the need of our economy to respond to international competition, but also taking account of past behavior of the parties involved and prevailing market conditions;
- (d) Balance the need to ensure that competition is not prevented

or substantially restricted and the risk that competition efficiency, productivity, innovation, or development of priority areas or industries in the general interest of the country may be deterred by overzealous or undue intervention; and

(e) Assess the totality of evidence on whether it is more likely than not that the entity has engaged in anti-competitive agreement or conduct, including whether the entity's conduct was done with a reasonable commercial purpose, such as but not limited to, phasing out of a product or closure of a business, or as a reasonable commercial response to the market entry or conduct of a competitor.

RULE 8.

DETERMINATION OF DOMINANCE

SECTION 1. Existence of dominance.

Dominance can exist on the part of one entity (single dominance) or of two or more entities (collective dominance).

SECTION 2. Assessment of dominance.

In determining whether an entity has a market dominant position for purposes of this Act and these Rules, the Commission shall consider the following illustrative and non-exhaustive criteria, as may be appropriate:

- (a) The share of the entity in the relevant market and the ability of the entity to fix prices unilaterally or to restrict supply in the relevant market;
- (b) The share of other market participants in the relevant market;
- (c) The existence of barriers to entry and the elements which could foreseeably alter both the said barriers and the supply from competitors;
- (d) The existence and power of its competitors;
- (e) The credible threat of future expansion by its actual competitors or entry by potential competitors (expansion and entry);

- (f) Market exit of actual competitors;
- (g) The bargaining strength of its customers (countervailing power);
- (h) The possibility of access by its competitors or other entities to its sources of inputs;
- (i) The power of its customers to switch to other goods or services;
- (j) Its recent conduct;
- (k) Its ownership, possession or control of infrastructure which are not easily duplicated;
- (l) Its technological advantages or superiority, compared to other competitors;
- (m) Its easy or privileged access to capital markets or financial resources;
- (n) Its economies of scale and of scope;
- (o) Its vertical integration; and
- (p) The existence of a highly developed distribution and sales network.

SECTION 3. Presumption of dominance.

There shall be a rebuttable presumption of market dominant position if the market share of an entity in the relevant market is at least fifty percent (50%), unless a new market share threshold is determined by the Commission for that particular sector.

SECTION 4. Setting the thresholds for dominance.

The Commission shall, from time to time, determine and publish the threshold for dominant position or the minimum level of share in the relevant market that could give rise to a presumption of dominant position. In such a determination, the Commission would consider:

- (a) The structure of the relevant market;
- (b) The degree of integration;
- (c) Access to end-users;
- (d) Technology and financial resources; and

(e) Other factors affecting the control of a market, as provided in Section 2 of this Rule.

SECTION 5. Exceptions. The Commission shall not consider the acquisition, maintenance and increase of market share through legitimate means that does not substantially prevent, restrict, or lessen competition in the market, such as but not limited to, having superior skills, rendering superior service, producing or distributing quality products, having business acumen, and enjoying the use of protected intellectual property rights as violative of the Act and these Rules, Provided, that the concerned entity or entities invoking the exception shall clearly establish to the Commission's satisfaction, that the barrier to entry or anti-competitive act is an indispensable and natural result of the superior product or process, business acumen, or legal rights or laws.

RULE 9. FORBEARANCE

SECTION 1. Forbearance of the Commission.

The Commission, *motu proprio* or upon application, prior to its initiation of an inquiry, may forbear from applying the provisions of the Act or these Rules, for a limited time, in whole or in part, in all or specific cases, on an entity or group of entities, if in its determination:

- (a) Enforcement is not necessary to the attainment of the policy objectives of this Act;
- (b) Forbearance will neither impede competition in the market where the entity or group of entities seeking exemption operates nor in related markets;
- (c) Forbearance is consistent with public interest and the benefit and welfare of the consumers; and
- (d) Forbearance is justified in economic terms;

Provided, that forbearance will be granted for a maximum period of one year. Any extension to the period will have to be expressly approved by the Commission. Any extension of the duration of an exemption shall not be longer than one year.

SECTION 2. Public hearing.

(a) A public hearing shall be held to assist the Commission in making its determination under Section 1 of this Rule.

(b) The Commission's order exempting the relevant entity, or group of entities under this Rule shall be made public. Conditions may be attached to the forbearance if the Commission deems it appropriate to ensure the long-term interests of consumers.

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

RULE 10. FINAL PROVISIONS

SECTION 1. Revisions of these Rules.

The Commission may revise these Rules whenever it deems necessary and after due consultation with affected stakeholders.

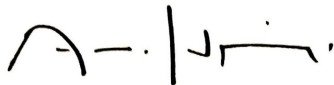
SECTION 2. Separability clause.

Should any provision herein be subsequently declared unconstitutional, the same shall not affect the validity or legality of the other provisions.

SECTION 3. Effectivity.

These Rules shall take effect fifteen (15) days after the date of its publication in at least two (2) newspapers of general circulation.

Approved, this 31st day of May 2016.



ARSENIO M. BALISACAN
Chairman



JOHANNES BENJAMIN R. BERNABE
Commissioner



STELLA LUZ A. QUIMBO
Commissioner



MENARDO T. GUEVARRA
Commissioner



EL CID R. BUTUYAN
Commissioner



You are PCC's partner in its mandate to promote competition in markets. If you have information to provide on possible breaches of PCA, you may get in touch with the PCC at the following contact details:

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