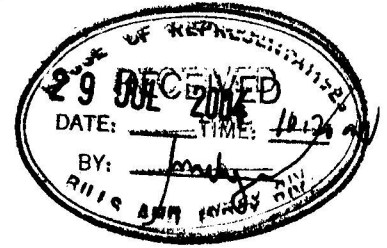


Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City



THIRTEENTH CONGRESS
First Regular Session

House Bill No. 1874

Introduced by **Honorable JOSE C. DE VENECIA, JR.**

Explanatory Note

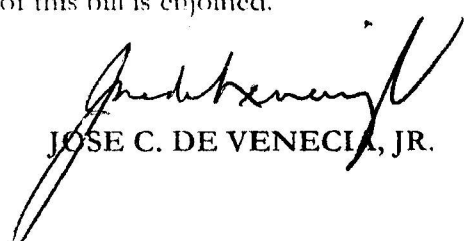
The 1987 Constitution expressly provides that the State shall regulate or prohibit monopolies when the public interest so requires. It also stipulates that no combinations in restraint of trade or unfair competition shall be allowed.

However, despite the constitutional guarantees and existence of laws that affect competition, such laws are inadequate and ineffective. The economy continues to be dominated by groups of businesses with substantial market power and political influence. Also, competition in the domestic market remains restricted in key sectors. Thus, there are perceived problems of regulatory capture in the airline industry and collusion among the Big Three Oil companies (despite the Oil Deregulation Law) and the two major mobile telecommunication carriers that are charging comparatively high call rates.

The lack of genuine competition in certain industries impairs public welfare and undermines the country's credibility to provide a business climate conducive to investment. Likewise, the absence of a comprehensive competition policy foregoes any chances for the nation's GDP to climb by nearly one percent, the real wages to improve, prices to drop, and regions to attain further economic growth. In addition, with the government's thrust to promote small and medium enterprises in the countryside, strong anti-trust laws are necessary to increase competition in the marketplace. In the end, competition policy will achieve higher economic growth through enhanced economic efficiency and community welfare.

The proposed bill aims to level the business playing field by strengthening the legal and institutional framework that would combat unfair trade practices. Among its key features are the creation of a Fair Trade Commission that shall investigate, gather evidence and initiate prosecution of those engaged in unfair trade practices, the description of monopoly power or market abuse, and the imposition of defined sanctions to key officials of companies that have violated fair competition.

In view of the foregoing, approval of this bill is enjoined.


JOSE C. DE VENECIA, JR.

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

THIRTEENTH CONGRESS
First Regular Session

House Bill No. 1874

Introduced by HON. JOSE C. DE VENECIA, JR.

AN ACT
PRESCRIBING A FAIR COMPETITION LAW, ITS ENFORCEMENT, THE
ESTABLISHMENT OF A FAIR TRADE COMMISSION, DELINEATING ITS
POWERS AND FUNCTIONS, AND FOR OTHER PURPOSES

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

1 SECTION 1. **Title** - This Act shall be known as "The Fair Competition Law of
2 the Philippines."

3 SECTION 2. **Declaration of Policy** - It is the policy of the State to nurture an
4 atmosphere of dynamic competition that would yield the best allocation of economic
5 resources, the lowest prices, the highest quality of product and the greatest material
6 progress within the framework of the need of a developing economy, to enhance domestic
7 and foreign investments in the orderly development of the national economy and at the
8 same time to protect consumers from the abuses of those exercising market power within
9 relevant markets.

10 SECTION 3. **Definition of Terms** - As used in and for purposes of this Act, the
11 following terms shall mean as follows: -

- 12 (1) "Antitrust Laws - refers to this Act, statutes for consumer protection and all
13 other statutes hereafter enacted by the Congress for the protection of
14 consumers and those relating to or governing monopolies, oligopolies, cartels,
15 combinations, contracts and/or agreements or arrangements in restraint of
16 trade, production, commerce and industry, or which make available to the
17 national or local governments, or any other private persons whose rights have
18 been or in danger of being impaired, any civil and/or criminal remedies or
19 administrative proceedings before the proper Regional Trial Court or
20 administrative agency with respect to: (a) any act, contract, agreement, rule,
21 course of conduct, or other activity by, between or among persons constituting
22 a restraint upon or monopolization of domestic or foreign trade, commerce or

- 1 industry; or (b) any unfair trade practices or methods of competition in or
2 affecting such trade, commerce or industry.
- 3 (2) "Person" - includes any natural person, firm, company, corporation, society,
4 association, partnership, joint-stock company, or any other legal entity,
5 including any person acting under color or authority of law.
- 6 (3) "Antitrust Violation" - any act or omission punishable under this Act of any
7 other statute hereafter enacted by Congress to supplement it.
- 8 (4) "Cartel" - a combination of producers of any product joined together to
9 control its production, sale and price and to obtain a monopoly to control its
10 production, sale and price, and to obtain in any particular industry or
11 commodity and a group of independent industrial corporations, usually on an
12 international scale, which agree to restrict trade to their mutual benefit. It could
13 also be an association by agreement of companies or sections of companies
14 having common interest designed to prevent extreme or unfair competition and
15 allocate markets, and to promote the interchange of knowledge resulting from
16 scientific and technical research exchange of patent rights and standardization
17 products.
- 18 (5) "Export Trade" - trade or commerce in goods, wares, merchandise or object of
19 trade, commerce or industry exported, or in the course of being exported from
20 the Philippines to any foreign country. It does not include the production,
21 manufacture, or selling for consumption or for resale, within the Philippines of
22 such goods, wares, or merchandise, or any act in the course of such production,
23 manufacture, or selling for consumption retail.
- 24 (6) "Industry" - any department or branch of art, occupation or business
25 conducted as a manner of livelihood or for profit, especially, one which employs
26 much labor and capital and is a distinct branch of trade.
- 27 (7) "Market" - a place of commercial activity where articles are bought, or sold, or
28 the region where any commodity can be sold; the geographical or economic
29 extent of commercial demand.
- 30 (8) "Geographic Market" - that geographic area in which product is sold and in
31 which there is or there is no competition.
- 32 (9) "Relevant Market" - the geographic area in which competitors agree to respect
33 the rights of others to sell a product, commodity article or object of trade,
34 commerce, or industry. It may also refer to product markets in which
35 competitors agree among themselves to limit the manufacture or sales of
36 products, merchandise, articles or objects of trade, commerce, or industry so as
37 to prevent or limit competition among themselves. In relation to a case
38 involving a violation of this Act, it consists of both a product market and a
39 geographical market composed of products that have reasonable

interchangeability for purposes for which they are produced, considering their price, use or quality.

(10) "Open Market" - a market wherein supply and demand are expressed in terms of price.

(11) "Product Market" - a market in which competitors agree among themselves to limit production or manufacture or sale of products so as to prevent competition among themselves.

(12) "Monopoly" - a privilege or peculiar advantage vested in one or more persons, firms or companies, consisting in the exclusive right (or power) to carry on a particular business or trade, manufacture a particular product, article or object of trade, commerce or industry. It is a form of market structure in which one or only a few persons, firms or companies dominate the total sales of a product or service. As prohibited in this Act, it has two elements: (1) possession of monopoly power in relevant markets, and (2) willful acquisition or maintenance of that power to exclude competitors from any part of trade, commerce, or industry, as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident.

(13) "Monopoly Power" - the power to fix prices, to exclude competitors, or to control the market in a geographical area.

(14) "Oligopoly" - economic climate existing where a few sellers sell only a standard or identical product. It is an industry in which a few large sellers of substantially identical products or of differentiated products dominate the market.

(15) "Trade Secrets" - a covert formula, pattern, devise or compilation of information which is used in one's business and which gives one the opportunity to obtain advantage over competitor who do not know or use it. It could also refer to a plan or process, tool, mechanism, or compound, known only to its owner and those employees to whom it is necessary to confide it.

(16) "Trust" - an association or combination of persons or corporation having the intent and power, or the tendency, to create a monopoly, control production, interfere with the free course of trade or transportation, or to fix and regulate the supply and the price of commodities, or the supply of services. It refers to almost any form of combination of a monopolistic character or tendency.

(17) "Unfair Methods of Competition" - are methods of competition that do not leave each actual or potential competitor a fair opportunity for play of his contending force engendered by an honest desire for gain. Its scope cannot be precisely defined, and what constitutes "unfair methods of competition" must be determined in particular instances, upon evidence, in light of particular competitive conditions and what is found to be a specific and substantial public interest.

(18) "Merger" - the absorption of one company by another, the latter retaining its own name and identity and acquiring assets, liabilities, franchises, and powers of the former, and the absorbed company ceasing to exist as a separate business entity. By contrast, in consolidation, two or more corporations cease to exist. Mergers may either be vertical, horizontal or conglomerate.

A vertical merger is the union of two companies, one of which supplies what the other uses as inputs. For example, an automobile manufacturer who acquires a tire producer or a filmmaker who acquires a chain of movie houses is engaged in vertical merger.

A horizontal merger is the union of two companies, both of which carry out the same or similar economic activities. It is a merger between business competitors, such as manufacturers of the same type of products or distributors selling competing products in the same market area.

A conglomerate merger is a merger of corporations, which are political or actual customers, or suppliers of each other. It is a merger where the acquiring firm has no economic relationship with the firm it acquires.

SECTION 4. Monopolies and Cartels. - Any person who shall willfully monopolize, or knowingly attempt to monopolize any kind or service, merchandise, commodity, article or object of trade, or commerce shall be guilty of the crime of monopolization or attempt to monopolize and shall suffer the correctional penalties herein prescribed. As prohibited in this Act, the essential elements of the crime of monopolization are the possession of monopoly power, as comprehended in Section 5 hereof or willful maintenance of it by an abuse thereof.

It shall also be unlawful, for producers of any product, to join together to monopolize, or to control its production, sale and price, and to obtain control in any particular industry or commodity, or a group of independent industrial corporations, usually on an international scale, by agreeing to restrict trade to their mutual benefit. This shall include an association by agreement of companies or sections of companies having common interests designed to promote the interchange of knowledge resulting from scientific and technical research exchange of patent rights and standardization products.

The acquisition or maintenance of monopoly power in relevant markets, in the following and analogous situations, shall not be interpreted as violative of this Section:

A. Monopoly Authorized by Law. - when authorized and regulated by law, or duly promulgated rules and regulations;

B. Monopoly Attained or Maintained Through Superior Skill. - when acquired or maintained by reason of one's superior skill, foresight and industry and/or that of its officers and/or employees; business acumen; the economic character of the industry; superior product or service; historic accident; natural advantages, (including accessibility to raw materials); economic or technological efficiency

(including scientific research); low margins of profit maintained permanently and without discrimination, or other analogous methods of competition that are honestly industrial or commercial;

C. Intellectual Property Monopoly. – when acquired or maintained in exploitation of one's duly registered patent, copyright, trademark, trade name, musical works and compositions or other intellectual property.

Provided, however, that nothing contained in this section shall be construed to permit or justify a restraint of trade unrelated to development of intellectual property or a cartel, among others, of competing intellectual properties, to suppress the creation and development of competing intellectual properties.

D. Monopoly by Reason of Contractual Rights. – when acquired or maintained in the exercise of one's contractual rights under:

(I) Patent, Copyright, Trademark, and Licensing. – A licensing agreement covering patent, copyright, trademark, or other intellectual property which may include restrictive provisions for the protection of the licensor or licensee such as, but not limited to:

- (a) A provision which imposes an obligation on the licensor not to exploit the licensed intellectual property in the licensed territory;
- (b) A provision which imposes an obligation on the licensee not to exploit the licensed intellectual property in territories within the Philippines which are reserved for the licensor;
- (c) A provision which imposes an obligation on the licensee not to manufacture or use the licensed product, or use the licensed process, in territories within the Philippines which are licensed to other licensees;
- (d) A provision which imposes an obligation on the licensee not to pursue an active policy or putting the licensed product on the market in the territories within the Philippine market which are licensed to other licensees, and in particular not to engage in advertising specifically aimed at those territories or to establish any branch or maintain any distribution depot therein;
- (e) A provision which imposes an obligation on the licensee not to put the licensed product on the market in the territories licensed to other licensees within the Philippine market;
- (f) A provision which imposes an obligation on the licensee to use only the licensor's trademark or the design or color scheme or packaging determined by the licensor to distinguish the licensed product during the term of the agreement. Provided, That the licensee is not prevented from identifying himself as the manufacturer of the license products; and
- (g) A provision which imposes an obligation on the licensee to limit his production of the licensed product to the quantities he requires in manufacturing his own products, and to sell the licensed product only as an integral part of, or a replacement part for his own products or

otherwise in connection with the sale of his own products. Provided,
That such quantities are freely determined by the licensee.

- (2) Exclusive Dealing Agreements. - Exclusive distributorship or service agreement which may include restrictive provisions for the protection of either party such as, but not limited to:
- (a) A provision whereby one party agrees with the other to supply only the other party certain goods for sale within a defined area;
 - (b) A provision whereby one party agrees with the other to purchase only from the other party certain goods for resale; and
 - (c) A provision whereby the contracting parties contracted, as in (a) and (b), in respect of exclusive supply and purchase for resale.
- (3) Joint Ventures. - Joint venture agreement, such as production and marketing joint ventures and research and development joint ventures; and
- (4) Franchises. - A franchising agreement covering industrial or intellectual property rights relating to trade marks, trade names, shop signs, utility models, designs, copyrights, know-how on patents, in the resale of goods or the provision of services to end-users which may include restrictive provisions such as, but not limited to:
- (a) A provision which imposes an obligation on the franchiser in the contract territory not to:
 - I. grant the right to exploit all or part of the franchise to third parties;
 - II. itself exploit the franchise, or itself market the goods or services covered by the franchise; and/or
 - III. itself supply the goods or services covered by the franchise;
 - (b) A provision which imposes an obligation on the master franchise not to conclude franchise agreements with third parties outside its contract territory;
 - (c) A provision which imposes an obligation on the franchisee to exploit the franchise only in his contract territory;
 - (d) A provision which imposes an obligation on the franchisee to refrain from seeking customers for the goods or services covered by the franchise outside the contract territory; and/or
 - (e) A provision which imposes an obligation on the franchisee not to manufacture, sell or use in the course of the provision of services, goods competing with the franchisers, goods which are covered by the franchise.

SECTION 5. Monopoly Power or Abuse of Market Power by One in a Dominant Position. - One or more persons of dominant position within relevant markets who shall abuse their market power, by engaging in unfair methods of competition; or engaging in unfair or deceptive trade practices; or entering into agreements, combinations in the form of trust or otherwise, or conspiracy, with the purpose and effect, to prevent,

1. ... or distort competition in the following manner, shall be guilty of the crime of unfair
2. competition, and shall suffer the corrective penalties herein prescribed:

3. A. Price Fixing - By entering into any agreement with one's competitor(s) to fix
4. purchase or selling prices of goods and commodities with the intent and effect of
5. forestalling competition.

6. B. Bid Rigging - By entering any agreement with one or more firms on the level of
7. their individual bids or an agreement not to bid against each other to supply
8. products or services to national government agencies.

9. In determining whether there is price fixing or bid rigging, the following
10. circumstances may be considered:

11. (1) generally, any considered evidence that two sellers of similar products have
12. agreed to price their products a certain way, to sell only a certain amount of
13. their product, or to sell only in certain amount or to certain customers;

14. (2) large price changes involving more than one seller of very similar products of
15. different brands, particularly if the price changes are in equal amount and
16. occur at the same time;

17. (3) a seller's statement that "We can't sell to you; According to our agreement,
18. so and-so (the sellers competitor) is the only firm that can sell";

19. (4) the same company repeatedly has been the low bidder who has been awarded
20. contracts for a certain service or a particular bidder seems to win bids on a
21. fixed-rotation;

22. (5) there is an unusual and unexplainable difference between the winning bid
23. and all other bids.

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

26. C. Limitation or Control of Production Markets - By entering into any agreement
27. with one or more persons to limit or control production, markets, technical
28. development, or investment with the intent and effect of creating a monopoly
29. cartel.

30. D. Arrangements to Share Markets or Sources of Supply - By entering into any
31. agreement with one or more persons to share markets or sources of supply of
32. raw materials, with the intent and effect of forestalling competition.

33. E. Price Discrimination - By prescribing or charging, directly or indirectly a price
34. discrimination between different purchases of goods of like grade and quality
35. with the purpose and effect of substantially lessening competition, or creating a
36. monopoly, or injuring, destroying, or preventing competition with any person.

and the purchaser or purchasers involved in such price discrimination are engaged in business or trade and the goods are bought for use, consumption or resale in their respective businesses within the Philippines. Any person who knowingly induces or receives prohibited price discrimination shall be punished as a principal.

F. Permissible Price Differentials - Unless with the effect of preventing, restricting or distorting competition, nothing herein contained shall be construed to prohibit:

(1) Socialized Pricing - Socialized pricing for the less fortunate sector of the economy.

(2) Volume Discounts - Price differentials which reflect an allowance for differences in the cost of manufacture, sale, or delivery resulting from differing methods or quantities in which the goods or commodities are sold or delivered to the purchases.

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

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

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

G. Exclusionary Arrangements - By selling, leasing goods, wares, merchandise, machinery supplies or other commodities whether patented or unpatented, for use, consumption or resale within the Philippines, or by fixing the price or rental therefor, or discount from or rebate upon, such price or rental, or condition that the purchaser or lessee thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies or other commodities of a competitor (s) of the seller or lessor, where the purpose and effect of such sale or lease or such condition is to substantially lessen competition or to create a monopoly in any line of commerce or business, except when the sale, lease or condition is an integral part of a permissible franchising, licensing or exclusive distributorship agreement.

H. Tie-In-Arrangements - By making the supply of particular goods or services dependent upon the purchase of other goods or services from the supplier or his consignee, where the purpose and effect of such sale or lease or such condition is

1 to substantially lessen competition or to create a monopoly in any line of
2 commerce or business.

3 I. Boycott - Any concerted refusal to sell or conspiracy not to sell or to stop doing
4 business on the part of suppliers of any merchandise, commodity, article or
5 object of trade, commerce or industry, unless for a legitimate purpose, such as:

6 (1) Defaulting Borrowers - refusal by one or more credit institutions to extend
7 loans to defaulting debtors;

8 (2) Defaulting Buyers - refusal by one or more manufacturers or sellers to sell on
9 credit to defaulting customers;

10 (3) Violators of Intellectual Rights - refusal by manufacturers or sellers to have
11 any commercial dealings with one or more persons who violate the property
12 rights of the owners of patents, copyrights, trademarks and other intellectual
13 property.

14 J. Interlocking Directors, Officers or Employees. - By interlocking directors,
15 officers or employees of two or more firms or companies whose lines of
16 business are in competition with each other whether one, some, or all of them
17 occupy a dominant position, except:

18 (1) Between parent and subsidiary companies;

19 (2) Between or among affiliates, defined to mean ownership by one of not less
20 than twenty percent (20%) but not more than fifty percent (50%) of the
21 shares of stock of the other;

22 (3) The co-venturers in joint venture companies; and

23 (4) Family corporations.

24 **SECTION 6. Merger, Consolidation, or Asset Acquisition.** - No corporation
25 engaged in commerce or trade shall acquire directly or indirectly the whole or any part of the
26 stock or other share capital, or the whole or any part of the assets, of one or more
27 corporations engaged in any line of commerce or trade where the effect of such acquisition
28 of such stocks, share capital, or assets, or of the use of such stock by voting or granting of
29 proxies or otherwise may be to substantially lessen competition, or tend to create a
30 monopoly.

31 A. Permissible Stock or Asset Acquisition or Ownership. - Nothing contained
32 herein, however, shall be construed to prohibit:

33 (1) An Investment.- A corporation from purchasing the stock or other share
34 capital of one or more corporations solely for investment and not using the
35 same by voting or otherwise to bring about, or in attempting to bring about,
36 the substantial lessening of competition;

37 (2) Organization or Ownership of Subsidiaries.- A corporation from causing the
38 formation of subsidiary corporations, or from owning and holding all or a

part of the stock of such subsidiary corporations, for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof; and

(b) Vested Rights.- A corporation 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.

B. Notification Prior to Stock Asset or Asset Acquisition. - No person shall acquire directly or indirectly, the shares of stocks or assets of any other person, if as a result of the acquisition, the acquiring person would own thirty percent (30%) or more of the shares of stock or assets of the acquired person, unless the acquiring and selling person notify, prior to the conclusion of the agreement for such acquisition, and in the prescribed form, the Fair Trade Commission of such proposed acquisition. Only the acquiring person is required to make the notification in a tender offer. The contemplated acquisition shall be deemed approved, unless the Commission, within thirty (30) calendar days from receipt of the notification, orders the acquiring person to show cause why the proposed acquisition shall not be declared as prohibited under this Act or any other competition law. The show cause order shall set forth the facts upon which it is based. The acquiring or selling person may contest the show cause order, in which case, the proposed acquisition shall be considered enjoined until the Commission shall have rendered a decision on the proposed acquisition after due notice and hearing, in accordance with the procedure prescribed herein for the disposition of a show cause order.

C. Exempt Transactions.- The following classes of transactions are exempt from the prior notice requirement of this Section:

- (1) Acquisition of goods or realty transferred in the ordinary course of business;
- (2) Acquisition of bonds, mortgages, deeds of trust, or other obligations which are not voting securities;
- (3) Acquisition of voting securities of an issuer at least fifty (50%) percent of the voting securities of which are owned by the acquiring person prior to such acquisition;
- (4) Transfers to, or from, government agencies or instrumentalities including government owned or controlled corporations;
- (5) Transactions exempted from the provisions of this Act and other proper and applicable laws;
- (6) Transactions which require the approval of a specialized agency which regulates the particular agency;
- (7) Acquisitions, solely for the purpose of investment of voting securities if as a result of such acquisition the securities acquired or held do not exceed ten (10%) per centum of the outstanding voting securities of the issuer;
- (8) Acquisition of voting securities pursuant to the preemptive rights of the acquiring person; or, if, as a result of such acquisition, the voting securities acquired do not increase, directly or indirectly, the acquiring person's per centum share of outstanding voting securities of the issuer; or

such other acquisitions, transfers, or transactions which the Commission may declare as are not likely to violate the provisions of this Act or any other proper and applicable law

D. Mergers and Acquisitions in Regulated Industries - Nothing contained in this section shall apply to mergers, consolidations and stock or asset acquisitions duly approved by the specialized government agency that, by law, is duly empowered to regulate a specific sector of the economy such as, but not limited to, the Bangko Sentral ng Pilipinas in respect of banks and other financial institutions, the Insurance Commission in respect of insurance companies, the National Telecommunications Commission in respect of Regulatory Board in respect of public land transportation and the Civil Aeronautics Board in respect of air transportation. The exemption herein prescribed shall not apply to the approval of a merger or consolidation by the Securities and Exchange in the exercise of its general regulatory powers over corporations.

E. Acquisition of the Shares of Stock of a Corporation Organized to Engage in the Export Trade.- The acquisition or ownership by any corporation of the whole or any part of the stock or other capital of any corporation organized solely for the purpose of engaging in export trade and is actually engaged in such export trade, unless, the effect of such acquisition or ownership shall be to restrain trade or substantially lessen competition within the Philippines.

F. Pooling of Resources by Filipino Entrepreneurs. - Pooling of resources by Filipino entrepreneurs in the form of joint venture or other consortia to enable them to exploit a capital-intensive industry, or to participate in domestic or international bidding for contracts that require substantial capital investment.

G. Specialized Agreement.- Agreements, acts, course of conduct, or concerted activities whereby, with the object of specialization, persons mutually bind themselves for a period of time not to manufacture certain products or cause them to be manufactured by other persons and agreements for joint research and development, including joint exploitation of the results of such research. Provided, That the agreements, acts, course of conduct or concerted activities or the effect of such agreements, acts, course of conduct or concerted activities do not substantially lessen, restrict or distort competition, or tend to create a monopoly or illegal combination in any line of commerce and, provided, further, That consumers are substantially and directly benefited thereby in the form of goods of better quality at lower prices.

H. Distressed Industries.- Agreements to enable the parties thereto to meet distressing exigencies and avoid losses that frequently accompany the competitive pursuit of gain.

I. Voluntary Price Stabilization During Calamities and Emergencies.- Agreements to stabilize the prices of basic commodities as defined by the government agency duly empowered to make such determination, during natural calamities and other emergencies.

1 SECTION 7. **The Fair Trade Commission.** To implement the national policy
2 and attain the objectives and purposes of this Act, an independent Commission is hereby
3 created, which shall be known as the Fair Trade Commission and which shall be organized
4 within sixty (60) days after the approval of this Act.

5 For administrative purposes, the Commission shall be under the Office of the
6 President.

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

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

26 C. **Statement of Assets and Liabilities.** The Chairman and the Associate
27 Commissioners shall, upon assumption of office, and within the month of
28 January of every other year thereafter, as well as upon the expiration of their
29 respective terms of office or upon their resignation or separation from office, file
30 with the Office of the President, the President of the Senate and the Speaker of
31 the House of Representatives a true, accurate, complete, detailed and sworn
32 statement of assets and liabilities, including a statement of amounts and sources
33 of income, personal and family expenses, and income taxes paid for the
34 immediately preceding calendar year: Provide, That the first statement may be
35 filed within the month of January next following if the Chairman or the
36 Associate Commissioner concerned assumes office at any time before the end of
37 the calendar year.

38 D. **Prohibitions and Disqualification.** The Commissioners shall not, during their
39 tenure, hold any other office or employment. They shall not during their tenure,
40 directly or indirectly practice any profession, participate in any business, or be
41 financially interested in any contract with, or any franchise, or special privilege
42 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. They shall not be allowed to appear or practice before the Fair Trade Commission for two (2) years following their cessation from office.

F. Compensation of Commissioners. The Chairman of the Commission shall hold the rank and privileges, and shall receive a compensation equivalent to that received by the Presiding Justice of the Court of Appeals plus a monthly commutable allowance of Five Thousand Pesos (P5,000.00), while the Associate Commissioners shall each hold the rank of and privileges, and shall receive an annual compensation equivalent to that received by an Associate Justice of the Court of Appeals and a monthly commutable allowance of Three Thousand Pesos (P3,000.00).

F. Quorum. Three members of the Commission shall constitute a quorum and the affirmative vote of three members shall be necessary for the adoption of any rule, ruling, order, resolution, decision or other acts of the Commission, en banc.

G. Principal Office, Branch, and Venue.- The Commission shall hold its principal office in Metro Manila but it may, outside of Metro Manila, conduct hearings required to be made on prior notice, inquiries, subsidies or any other proceeding required for the proper and efficient exercise of its powers and the discharge of its duties. It may establish branch offices outside of Metro Manila as may be necessary for the effective discharge of its functions.

H. Staff.- The Commission shall appoint, fix the compensation, determine the status, qualifications, and duties of an adequate staff, which shall include a Secretary who shall also be the Executive Director of the Commission. He shall be a member of the Philippine Bar with at least ten (10) years experience in the active practice of law in the Philippines, or in the discharge of functions of an office requiring as an indispensable requisite, admission to the practice of law in the Philippines. The members of the technical staff, except those performing purely clerical functions shall possess at least Bachelors Degree in the following lines of specialization: economics, preferably in industrial organization economics, law, finance, commerce, accounting or management. Except as to positions which are highly technical or primarily confidential as determined by the Commission, all other positions in the Commission are subject to the provisions of the Civil Service Law, rules and regulations.

SECTION 8. Powers and Functions. - Subject to the power vested in the courts and administrative agencies under this Act, the Commission shall enforce and administer laws and regulations governing monopolies, combinations in restraint of trade and unfair competition, including laws on consumer protection.

In addition, the Commission shall perform and exercise the following specific powers and functions:

1. Investigate on its own initiative, or upon the complaint of any person, any and all violations of this Act and other antitrust laws and laws on consumer protection and, upon prima facie showing that the violations complained of having committed, institute or file before the proper Regional Trial Court or administrative agency as the appropriate information and prosecute the same to its final conclusion;
- (2) Institute and prosecute the proper action or proceeding before the proper court or administrative agency to prevent or dismantle any and all combinations of capital, organized in trust or otherwise, which are designed to control arbitrarily the condition of productions, trade, commerce, or industry in any part of the Philippines, stifle competition, distort, manipulate or constrict the discipline of the market, or tamper with the free play of market forces to prevent or penalize any unfair method of competition in trade, commerce, or industry and unfair deceptive act or practice in trade, commerce, or industry; and
- (3) Subject to the relevant limitations imposed by the Bill of Rights enshrined in the Constitution, the Commission shall have power to compel the production of documents at the investigative process of a proceeding before a complaint is filed: Provided, That the demand cannot be used to obtain personal documents from a natural person.
- (4) Gather and compile information concerning and to investigate from time to time the organization, business, conduct practices and management of any cultural or juridical person or entity engaged in trade, commerce or industry and his its relation to individuals, partnerships, associations, corporations, firms and other business enterprises.
- (5) Upon the request of any government office or complaint of any person, investigate and make recommendations for the readjustment of the business of any natural or juridical person or entity whose violation of this Act or any law for the protection of consumers, in order that such person may thereafter maintain his/its organization, management and conduct of business accordance with the requirements of this Act or the law for the protection of consumers.
- (6) For the purpose of this Act, the Commission or its duly authorized agents, shall at all times have access to, for the purpose of examination, and the right to copy any documentary evidence of any person being investigated or proceeded against, and the Commission shall have the power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. The Antitrust Commissioner and his deputies, investigators, prosecutors, or special counsel shall have the authority to administer oaths, to issue subpoena duces tecum, to summon and compel witnesses to appear and testify under oath before them and /or to bring books, documents and other things under their control, and to secure the attendance or presence of any absent or recalcitrant witness.

- (7) Request any government agency for assistance and information necessary, pertinent records and documents in the possession of such government agency. The government agency concerned shall, when requested, furnish the Commission all records, papers and information in its possession relating to the matter requested.
- (8) Conduct regular economic studies and analysis on the market structure of the different industries of the Philippine economy in order to determine if markets are too concentrated, or if there are barriers and determine if the firm enjoying the greater share of the concentrated market are in any way responsible for the placement of these barriers.
- (9) Submit annual and special reports to the Congress including therewith recommendations for additional legislation for the regulation of trade, commerce or industry, and provide for the publication of its reports and resolutions in such form and manner as may be best adopted for public information and use.
- (10) Monitor periodically and conduct a methodical survey of prices of basic commodities, and whenever it shall determine that the price of an article or essential commodity has risen by twenty percent (20%) or more over its price on a determination date fixed by the appropriate administrative agency of the government, or when such agency deems that the prevailing prices should be reduced because the increase is due to monopoly, hoarding, injurious speculation, manipulation and profiteering, initiate and prosecute before the proper regional trial court and/or administrative agency such criminal, civil and/or administrative actions or proceedings against any person who may have committed a violation of this act or any law, rule or regulation for the protection of consumers.
- (11) Issue a binding ruling upon the written request of a person who is in doubt as to whether his contemplated or existing act, course of conduct, agreement, decision or practice is in compliance with is exempt from or in violation of any of the provisions of this Act, other competition laws, or implementing rules and regulations thereof.
- (12) Generally, exercise all the powers necessary or incidental to attain the purposes of this law and other laws vesting additional functions of the Commission.

SECTION 9. Jurisdiction - The various Regional Trial Courts in the Philippines shall have original jurisdiction to try and decide all criminal and civil cases involving violations of this Act. Any administrative agent that is vested by law with jurisdiction to grant administrative relief in specific cases shall continue to exercise such jurisdiction. Provided, however, That availing of a particular remedy by the Fair Trade Commission before the Court of Administrative Agency, as the case maybe, shall not preclude him from availing other remedies that are available under this Act of other laws, if he finds them more convenient, adequate and expeditious for the enforcement of the provisions of the Act or any law for the protection of consumers.

SECTION 10. Jurisdiction of Specialized Agencies - The exclusive and original jurisdiction herein conferred upon the Commission shall not extend to the enforcement of the Act and other competition laws to industries that, by law, are regulated by specialized administrative agencies in which the function of enforcement shall be discharged by the specialized agency concerned. Except as hereinabove provided, no other person or entity may claim exemption from the original and exclusive jurisdiction of the commission for the reason that it is subject to the rules and regulations promulgated by the Securities and Exchange Commission, the Board of Investments or other government board, agency or instrumentality.

SECTION 11. Suspension of Administrative, Civil or Criminal Proceedings - No pending administrative, civil or criminal proceedings or those filed thereafter, against any person, corporation or any other juridical entity and/or its officers and employees, shall be suspended, except upon order of the Commission on proper motion, due to the filing of a request for a binding ruling, the issuance of a show cause order or the filing of a proposal for consent judgment based, in whole or in part, on the same set of facts and issued as that of the proceedings sought to be suspended.

SECTION 12. Voluntary Compliance: Dismissal of Pending Administrative Proceeding, Civil or Criminal Case, and Bar to Future Cases. - Compliance by the person(s) concerned with the terms and conditions of a final and executory binding ruling, a cease and desist order, or an approved consent judgment, shall constitute a bar to, and a ground for the dismissal of any pending or future administrative proceeding or civil case instituted by the State of Government, or criminal case against the person or persons concerned, their officers, employees, and agents for all acts, omissions, or conduct done or omitted to be done prior to the finality of the said binding ruling, cease and desist order, or approval of consent judgment.

SECTION 13. Standards - In the exercise of its powers, duties and functions, the commission may consider:

- (1) The way a given industry is structured or organized, whether monopolistic, oligopolistic, or competitive;
- (2) The ways the persons engaged in business within a given industry act, behave or conduct themselves in such matters as setting prices, determining output and other relevant factors and the resulting performance of the industry as a whole;
- (3) The supply and demand situation for the relevant goods or services; Whether or not the particular manner or conduct had an appreciable impact on market conditions;
- (4) The need to bring together complementary skills to avoid duplication and promote efficiency in the industry;
- (5) Whether or not, the anti-competitive effect or a particular market conduct may be offset by increased efficiency and reduction of excessive or unnecessary expenses;
- (6) The cost and profit levels of the industry;

- (7) The need to increase productivity in the particular industry involved; The state of the industry, including the need to develop it or to save it from its distressed state;
- (8) The need of the industry to work more rationally and increase their productivity and competitiveness on a larger market;
- (9) The need to respond to international competition and other developments in the international market;
- (10) The need to encourage or develop small and medium sized industries. The impact of the market conduct on the economy and on the consuming public, particularly low income groups;
- (11) The need to pool capital resources;
- (12) The extent to which the consumers have a possibility of choice of the product or service involved;
- (13) The economic and financial power of the parties concerned;
- (14) The attainment of the objectives which are given priority interest in the general interest of the country, including the need for accelerated industrialization; and
- (15) The extent to which less restrictive practices are available.

SECTION 14. Contempt - The Commission, or any of its Divisions, may summarily punish for contempt, by a fine not exceeding Five Thousand Pesos (P5,000.00) or by imprisonment not exceeding thirty (30) days, or both, any person guilty of such misconduct in the presence of the Commission or any of its Division in its vicinity as to seriously interrupt any hearing, session of any proceedings before it, including cases in which a person willfully fails or refuses, without just cause, to comply with a summons, subpoena duces tecum legally issued by the Commission or any of its Divisions, 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.

SECTION 15. Decisions of the Commission - Decisions of the Commission en banc shall be appealable to the Court of Appeals as hereinafter provided. The appeal shall not stay to 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.

SECTION 16. Appeal to the Court of Appeals - Any party who has actively participated in the proceedings before the Commission and is adversely affected by a binding ruling, resolution, Decision, judgment, rule or regulation promulgated after notice and hearing by the Commission and the other parties who actively participated in the proceedings, to the Court of Appeals, within thirty (30) days from receipt thereof, on the ground that the appealed action of the Commission:

- (1) Is arbitrary, capricious,, and constitutive of abuse or discretion or not in accordance with law;
- (2) Is contrary to constitutional rights, power, privilege, or immunity;
- (3) Is in excess of statutory jurisdiction, authority, or limitations, or is contrary to law;
- (4) Is without observance of the procedure required by law; or
- (5) Is not supported by substantial evidence.

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

SECTION 17. Special Courts - To ensure the effective adjudication of controversies under this Act and other fair trade laws, the Supreme Court shall designate such Regional Trial Courts that will have exclusive jurisdiction over fair trade cases. The uniform trial procedures to be prescribed for such cases shall be strictly observed and expediting shall be discouraged. Decisions in such cases shall be rendered within sixty days from the termination of the case.

SECTION 18. Reception of Additional Evidence - Any party in the appellate proceedings may apply to the Court of Appeals or the Supreme court, as the case may be, to leave to adduce additional evidence before the Commission. The Court may, under such terms and conditions as it may prescribe, order the Commission to receive such additional evidence upon showing that it is material and there are reasonable ground for the failure to adduce said evidence in the proceedings before the Commission. The Commission, sitting en banc, may modify its findings as the facts, or make new findings, by reason of the additional evidence taken, and it shall file with the appellate court such modified or new findings and its recommendation for the affirmance modification, or setting aside of the appealed binding ruling, order, resolution, decision, judgment, rule or regulation.

SECTION 19. Administrative Fines and/or Penalties - Any person who fails or neglects to comply with any term or condition of a binding ruling, a cease and desist order or an order for the readjustment of business policy or practice, or a consent judgment of the Commission, shall pay a fine of not less than Fifty Thousand Pesos (P50,000.00) for each violation. Each violation shall be deemed a separate offenses: Provided, That in the case of a violation through a continuing failure or neglect to comply, each day of continuance of such failure or neglect shall be deemed a separate offense.

The Commission may likewise impose upon person(s) or entity(ies) fines of not less than Five Thousand Pesos (P5,000.00) 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.

SECTION 20. Payment of Administrative Fines, when It precludes Filing of Separate Civil and Criminal Actions - The offender's full, prompt and voluntary payment of administrative penalties and his voluntary compliance with any decision or order issued by the Commission, within the period prescribed therein, shall be a bar to the filing of a separate civil action by the State or a criminal action against the offender for the same violation.

Nothing herein contained shall prejudice the right of a person injured by a violation of any provision of the Act from instituting a civil action for damages.

The commencement of an administrative proceeding shall not bar the institution of a civil or criminal action for the same violation nor shall it be a ground for suspension of any civil or criminal action already instituted. The payment of the administrative penalties and compliance with an order or decision of the Commission, shall not be ground for the court to dismiss a civil or criminal action already instituted, unless the dismissal is expressly conformed to by the Commission.

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

SECTION 22. Penalty of Violation - Any person found guilty of committing any of this acts declared to be unlawful under this Act shall, upon conviction of each violation, be sentenced to serve a term of imprisonment of not less than five (5) years. In addition, he shall be ordered to pay a fine of not less than Five Million Pesos (P5,000,000.00) or more than Twenty Million Pesos (P20,000,000.00), in the discretion of the court, taking into account the gravity of the offense committed.

SECTION 23. Violation by Corporation, Partnership, Association, and Other Entity - Whenever a corporation, partnership, association, form or other entity, whether domestic or foreign, shall commit any of the acts declared to be unlawful under this Act, the Chairman of the Board of Directors, the President, the General Manager of the corporation, the general partners of a partnership, and the officers and employees directly responsible thereof, shall suffer the imprisonment penalty provided in Section 20 hereof, with such juridical entity being jointly and severally liable with the offended for the fine impose therein.

Should the offense be committed by a foreign corporation licensed to do business in the Philippines, the person(s) directly responsible in the Philippine for the management and operation thereof shall be liable. In addition, its license to do business in the Philippines shall be revoked.

It shall not be a defense for the Chairman of the Board of Directors, the President or the General Manager of the corporation or the general partners of a partnership, or the person(s) responsible for the management and operation of a foreign corporation licensed to do business in the Philippines, that he was unaware of the violation unless, he shall have established, to the satisfaction of the Court, that even with the exercise of due diligence and proper supervision, he could not have avoided or prevented the violation.

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

SECTION 24. Alien Violators - If the person violating any provision of this Act is a foreigner, he shall, in addition to the other penalties imposed herein, be deported after service of sentence without need of any further proceedings.

SECTION 25. **Essential Commodities** - If the violation involves the trade or movement of prime commodities such as rice, corn, sugar, chicken, pork, beef, fish, vegetables, and other articles or commodities or prime or basic necessity as declared by the appropriate government agency, through publication, the fine imposed by the Commission or the Courts, as the case may be, shall automatically be tripled and the offender shall pay such threefold fine.

SECTION 26. **Private Suits** - Any person who may be injured in his business or property by reason of the violation of any provision of this Act or its implementing rules and regulations, may sue therefor in the Regional Trial Court in the principal place of business of the defendant/s, regardless of the amount in controversy. He shall be entitled to recover not more than threefold the damages sustained by him, plus the costs of suit, including reasonable attorney's fees at the discretion of the Court. Any private suit herein authorized to be instituted, shall be suspended during the pendency of any civil or criminal proceeding instituted by the Commission to prevent, restrain, or punish violations of this Act and other competition laws

SECTION 27. **Prescription** - Any criminal, civil action or administrative proceeding by the Commission under this Act, or any private suit shall be barred unless commenced within five (5) years from the discovery of the crime or of the act or agreement giving rise to a private cause of action, or which would be a valid basis for the commencement of an administrative proceeding.

SECTION 28. **Franking Privilege** - All official mail matters and telegrams of the Commission and its Secretariat addressed for delivery within the Philippines shall be received, transmitted and delivered free of charge: Provided, however, that such mail matter when addressed to private persons or non-government offices shall not exceed one hundred twenty (120) grams.

SECTION 29. **Report to the President and Congress** - The Commission shall report to the President and both Houses of Congress on or before January 31st of each year the progress of its operations for the preceding year and its recommendations designed to enhance the effective implementation of this Act as an instrument of national economic growth.

SECTION 30. **Appropriations** - The sum of thirty Million Pesos (P30,000,000.00) or so much thereof as may be necessary for the proper implementation of this Act for the initial year, and such necessary amount as may be needed for its subsequent implementation shall be included in the annual General Appropriations Act.

SECTION 31. **Separability Clause** - If any provision of this Act shall be held invalid, the remaining provisions thereof not affected thereby, shall remain in full force and effect.

SECTION 32. **Repealing Clause** - The provisions of Article 186 of the Revised Penal code, as amended, Section 6 of Public Act No. 3274, and all other laws. Letters of instructions, executive orders, rules and regulations and other issuances or parts thereof

which are inconsistent with any provision of this Act, are hereby repealed modified or amended accordingly.

SECTION 33. Publication - This Act shall be published once in two newspapers of general circulation in the Philippines.

SECTION 34. Effective Date - This Act shall take effect upon approval.

Approved.