

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FIFTEENTH CONGRESS
First Regular Session

1007



Introduced by **REP. ANTONIO C. ALVAREZ**

EXPLANATORY NOTE

The proposed bill aims to encourage fair and free economic competition by prohibiting the abuse of market-dominant positions and the excessive concentration of economic power by regulating improper concerted acts and unfair business practices, thereby stimulating creative business activities, protecting consumers and promoting the balanced development of the national economy.

No less than the 1987 Constitution expressly provide that the State shall regulate or prohibit monopolies when the public interest so require. It also stipulates that no combinations in restraint of trade or unfair competition shall be allowed. However, despite the constitutional guarantees and the existence of laws that affect competition, such laws have proven to be inadequate. 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.

Doubtless, 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 chance for the nation's GDP to rise at par with our Asian counterparts, real wages to improve, prices to drop and our country to attain further economic growth.

The proposed bill aims to level the playing field by strengthening the legal and institutional framework that would combat unfair trade practices. Among the key features of the bill 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 and cartels and imposition of defined sanctions and penalties for violation of the fair competition.

It is our humble view that with this bill, unfair competition, monopolies and cartels shall be properly regulated if not totally eradicated which will ultimately protect the consumers from abuses of market powers.

With the foregoing premises, approval of this bill is highly and earnestly sought.


ANTONIO C. ALVAREZ

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FIFTEENTH (15TH) CONGRESS
First Regular Session
HOUSE BILL NO. 1007

Introduced by **HONORABLE ANTONIO C. ALVAREZ**

AN ACT
PENALIZING UNFAIR TRADE AND ANTI-COMPETITIVE PRACTICES
IN RESTRAINT OF TRADE, UNFAIR COMPETITION, ABUSE OF
DOMINANT POWER, STRENGTHENING THE POWERS OF
REGULATORY AUTHORITIES, ESTABLISHING THE FAIR TRADE
COMMISSION AND APPROPRIATING FUNDS THEREFOR, AND FOR
OTHER PURPOSES

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

CHAPTER 1
TITLE AND DECLARATION OF POLICY

SECTION 1. **Title.** – This Act shall be known and cited as the
“Competition Act of 2010.”

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

- (a) promote and enhance economic efficiency and free and full competition in trade, industry and all commercial economic activities;
- (b) prevent the concentration of economic power in a few persons who threaten to control the production, trade, or industry in order to unduly stifle competition, distort, manipulate or constrict the discipline of free markets, increase market prices in the Philippines; and
- (c) penalize all forms of unfair trade, anti-competitive conduct and combinations in restraint of trade, with the objective of

protecting consumer welfare and advancing domestic and international trade and economic development.

CHAPTER 2

SCOPE AND APPLICATION, DEFINITION OF TERMS

SEC. 3. ***Scope and Application.*** – This Act shall be enforceable within the territory of the Republic of the Philippines and shall apply to all areas of trade, industry and commercial economic activity. 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.

The Act shall apply to: (a) all firms as defined hereunder and all their commercial agreements, actions or transactions involving goods, services or intellectual property; and, (b) all natural persons who, acting in their capacity as owner, manager or employee of a firm, shall authorize, engage or aid in the commission of restrictive practices prohibited under this Act.

This Act shall apply neither 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, the following terms shall be defined as:

- (a) "Agreements" shall refer to any type or form of arrangement, understanding, undertaking or concerted action, whether formal or informal, written or oral;
- (b) "Cartel" shall mean a combination of firms, providing goods in relevant markets, acting or joined together to obtain a shared monopoly to control production, sale and price, or to obtain control in any particular industry or commodity, or a group of firms that agree to restrict trade to their mutual benefit, which may or may not be of an international scale. It shall also refer to firms or section of firms having common interest designed to promote the exchange of knowledge resulting from scientific and technical research, exchange of patent rights and standardization of products among themselves with the intent of preventing, restricting or distorting competition;
- (c) "Commission" shall mean the Fair Trade Commission created under this Act;

- (d) "Competition" shall mean the process by which economic agents, acting independently in a market, limit each other's ability to control the prevailing conditions in the market;
- (e) "Control" shall refer to at least twenty percent (20%) ownership, directly or indirectly, of a firm or a group of firms by another firm;
- (f) "Firms" shall include any person, natural or juridical, 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: *Provided*, That, two firms, one of which is controlled by the other, shall be treated as one firm: *Provided*, *further*, That two or more firms that are controlled by a single firm shall be treated as one firm;
- (g) "Goods" shall include all types of goods and property, tangible and intangible, and services;
- (h) "Market" shall refer to a place or venue for commercial activity, which may extend beyond the borders of the Republic of the Philippines, where articles are bought or sold. It shall also refer to the geographical or economic extent of commercial demand;
- (i) "Monopoly" shall mean a privilege or undue advantage of one or more firms, consisting in the exclusive right to carry on a particular business or trade, and/or 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 firms dominate the total sales of a product or service;
- (j) "Monopoly Power" or "Dominant Position" shall refer to a situation where a firm, either by itself or acting in collusion with other firms, is in a position to control a relevant market for the sale of a particular good or service by fixing its prices, excluding competitor firm, or controlling the market in a specific geographical area; and
- (k) "Relevant Market" shall refer to the line of commerce in which competition has been restrained. It shall also refer to the geographic area involved, including all reasonably substitutable goods, and all nearby competitors, to which consumers could turn if the restraint or abuse results in the significant increase in prices.

CHAPTER 3 PROHIBITED ACTS

SEC. 5. **Cartelization.** – It shall be unlawful for firms providing goods in relevant markets to join together to monopolize, or to control production in a particular industry or commodity, the sale and price of such good, and to agree to restrict trade for their mutual benefit, which may or may not be on an international scale. This shall also include an association by agreement of firms or sections of firms having common interests designed to promote the interchange of knowledge resulting from scientific and technical researches, exchange of patent rights and standardization of products among themselves with the intent of preventing, restricting or distorting competition.

Restrictive agreements resulting from cartel-like behavior of firms, in any form, are hereby *per se* deemed illegal. These shall include, but not limited to, the following:

- (a) Agreements to fix selling price of goods or other terms of sale;
- (b) Agreements to limit supply or output;
- (c) Agreements to divide the market, whether by volume of sales or purchase or by territory, by type of goods sold, by customers or sellers, or by any other means;
- (d) Agreements to exclude or limit dealings with particular suppliers or sellers from supplying or selling goods, or customers from acquiring or buying goods;
- (e) Agreements applying dissimilar conditions to equivalent transactions with other parties, thereby placing them at a competitive disadvantage; and
- (f) Agreements making the transactions in particular goods dependent upon other conditions which have no connection with the subject of the transaction.

There shall be a *prima facie* case for the existence of a cartel if and when the Department of Trade and Industry (DTI) or concerned regulatory agency finds that two or more persons or firms that are ostensibly competing for the same relevant market and actually perform uniform or complementary acts among themselves which tend to bring about artificial and unreasonable increase, decrease or fixing in the price of any goods or when they simultaneously and unreasonably increase, decrease or fix the prices of their seemingly competing goods thereby lessening competition in the relevant market among themselves.

SEC. 6. **Monopolization.** – It shall be unlawful for any firm to willfully or knowingly acquire and maintain its market power by excluding competitors from any part of trade, industry or commerce as distinguished from natural growth or development of a firm as a

consequence of a superior product, business acumen or historic accident: *Provided*, That, a firm that has at least fifty percent (50%) of the relevant market, or firms up to three (3) in number has at least seventy percent (70%) of the relevant market, as found and certified by the DTI or the concerned regulatory agency shall be deemed a monopoly or in a dominant position.

SEC. 7. Abuse of Monopoly Power or Dominant Position. – It shall be unlawful for one or more firms with monopoly power or in dominant position within relevant markets to abuse their dominant position, by engaging in unfair methods of competition, or in unfair or deceptive trade practices, or entering into combinations in the form of trust or otherwise, or conspiracy, with the purpose and effect to prevent, restrict, or distort competition. Abusive agreements such as, but not limited to, any of the following, shall be deemed to fall under the crime of abuse of monopoly power or market power by one in dominant position:

- (a) *Predatory Behavior Towards Competitors* – Any agreement, including, but not limited to, selling goods at a very low price with the intent of driving competitors out of the market, or creating barriers to entry;
- (b) *Price Fixing* – Any agreement among competitors to raise, suppress, fix or otherwise maintain the price at which their goods and services are sold such as, but not limited to, establishing or adhering to price discounts, holding prices firmly, eliminating or reducing discounts, adopting a standard or formula for computing prices, maintaining certain price differentials between different types, sizes or quantities of products, adhering to a minimum fee or schedule and other analogous schemes with the purpose and effect of creating a monopoly or cartel or lessening competition.
- (c) *Bid Rigging* – Any agreement to fix price at auctions or in any other form of bidding, with the purpose and effect of creating a monopoly or cartel, or lessening competition such as, but not limited, to cover bidding, bid suppression, bid rotation and market allocation and other analogous practices of bid manipulation.

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

- (1) generally, any considered evidence that two sellers of similar goods have agreed to set the price of their goods, to sell only a certain amount of their goods, or to sell only to a limited number of buyers or consumers;
- (2) a drastic change in prices of goods and services involving more than one seller of similar goods of different brands,

- particularly if the changes in prices take place in equal amount and about the same time;
- (3) a seller refusing to sell based on an agreement with a competitor;
 - (4) the same firm has repeatedly been the low bidder who has been awarded contracts for a certain service or a particular bidder seems to win bids on a fixed-rotation;
 - (5) there is an unusual and unexplainable difference between the winning bid and all other bids; and
 - (6) the same bidder bids substantially higher on some bids than on others, and there is no logical cost reason to explain the difference.
- (d) *Limitation and Control of Markets* – Any agreement to limit or control production, markets, technical development, or investment with the purpose and effect of creating a monopoly or cartel, or lessening competition.
- (e) *Market Allocation* – Any agreement to divide the market, whether by volume of sales or purchase or by territory, by type of goods sold, by customers or sellers or by any other means, with the purpose and effect of creating a monopoly or cartel, or lessening competition.
- (f) *Arrangements to Share Markets or Sources of Supply* – Any agreement to share markets or sources of supply of raw materials, with the purpose and effect of creating a monopoly or cartel, or lessening competition.
- (g) *Price Discrimination* – Any agreement prescribing or charging, directly or indirectly, discriminatory pricing terms or conditions in the supply or purchase of goods of like grade and quality with the purpose and effect of creating a monopoly or cartel, or substantially lessening competition: *Provided*, That nothing contained herein shall be construed to prohibit permissible price differentials unless the same shall have the effect of preventing, restricting or distorting competition: *Provided, further*, That for the purpose of this section, the following shall be considered permissible price differentials:
- (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 are sold or delivered to the purchasers;
 - (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) *Bonafide 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 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.
- (h) *Exclusivity Arrangement* – Any agreement imposing restrictions on the lease or contract for sale or trade of goods concerning where, to whom, or in what forms goods may be sold or traded, such as, but not limited to, fixing prices, or giving preferential discounts, or rebate upon such price, or imposing conditions not to deal with competing firms, where the purpose of such agreement is to lessen competition: *Provided*, That nothing contained herein shall prohibit or render unlawful permissible franchising, licensing or exclusive distributorship agreements.
- (i) *Tie-In Arrangements* – Any agreement making the supply of particular goods dependent upon the purchase or lease of other goods from the supplier or his consignee, where the purpose and effect of such sale or lease or such condition is to substantially lessen competition or to create a monopoly or cartel.
- (j) *Boycott* – Any concerted refusal to sell or conspiracy not to sell or to stop doing business on the part of the suppliers of any goods, unless for a legitimate purpose, such as, but not limited to:
 - (1) *Defaulting Borrowers* – refusal by one or more credit institutions to extend loans to defaulting debtors;
 - (2) *Defaulting Buyers* – refusal by one or more manufacturers or sellers to sell on credit to defaulting customers; and
 - (3) *Violators of Intellectual Property Rights* – refusal by manufacturers or sellers to have any commercial dealings with one or more firms who violate the intellectual property rights of the owners of patents, copyrights, trademarks and other intellectual property.

SEC. 8. ***Other Unfair Competition Practices.*** – The following acts shall be unlawful acts of unfair competition and shall be punishable under this Act:

- (a) Distribution of false or misleading information which is capable of harming the business interests of another firm;
- (b) Distribution of false or misleading information to consumers, including the distribution of information lacking a reasonable

basis related to price, character, method or place of production, properties, suitability for use, or of quality goods; and

- (c) Unauthorized receipt, use, or dissemination of confidential scientific, technical, production, business or trade information.

SEC. 9. ***Merger, Consolidation, or Asset Acquisition.*** – No firm engaged in commerce or trade shall acquire, directly or indirectly, the whole or any part of the stock or other share capital, or the whole or any part of the assets, of one or more firms engaged in any line of commerce or trade where the effect of such acquisition of such stocks, share capital, or assets, or of the use of such stock by voting or granting of proxies or otherwise maybe to substantially lessen competition, or tend to create a monopoly.

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

- (1) A firm from purchasing the stock or other share capital of one or more corporations solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition;
- (2) A corporation from causing the formation of subsidiary corporations, or from owning and holding all or 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
- (3) A firm from continuing to own and hold the stock or other share capital or assets of another corporation which it acquires prior to the approval of this Act.

- (b) *Notification Prior to Stock or Asset Acquisition.* – No firm shall acquire, directly or indirectly, the shares of stock or assets of any other firm, if as a result of the acquisition, the acquiring firm would own fifteen percent (15%) or more of the shares of stock or assets of the acquired firm, unless, the acquiring and selling firm notify, prior to the conclusion of the agreement for such acquisition and in the prescribed form, the Commission of such proposed acquisition. Only the acquiring firm 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 firm 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 firm 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) *Transactions Exempt from Prior Notice Requirement.* – The following classes of transactions are exempt from the prior notice requirement under this Section:

- (1) Acquisition of goods or realty transferred in the ordinary course of business;
- (2) Acquisitions of bonds, mortgages, deeds of trust, or other obligations which are not voting securities;
- (3) Acquisitions of voting securities of an issuer at least fifty percent (50%) of the voting securities of which are owned by the acquiring firm 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 industry;
- (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 percent (10%) of the outstanding voting securities of the issuer;
- (8) Acquisitions of voting securities pursuant to the preemptive rights of the acquiring firm; or, if, as a result of such acquisition, the voting securities acquired do not increase, directly or indirectly, the acquiring firm's per centum share of outstanding voting securities of the issuers; or
- (9) 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 telecommunications companies, the Land Transportation Franchising and 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 Commission in the exercise of its general regulatory powers over corporations.

CHAPTER 4 FINES AND PENALTIES

SEC. 10. **Penalties.** – Without prejudice to the violation of other laws, any firm that shall be found to have violated Sections 5, 6, 7, 8 and 9 of this Act, or any combination thereof, shall, for each and every violation, be punished by a fine of not less than Ten million pesos (Php10,000,000.00) and not exceeding Fifty million pesos (Php50,000,000.00) if a natural person; by a fine of not less than Two hundred fifty million pesos (Php250,000,000.00) but not exceeding Seven hundred fifty million pesos (Php750,000,000.00) if a firm, and by imprisonment not exceeding ten (10) years, or both, at the discretion of the court. In the alternative, a fine shall be imposed in the amount double the gross proceeds gained by the violator or double the gross loss suffered by the plaintiffs.

SEC. 11. **Imposition of Fines by Regulatory Agency.** – Notwithstanding any provisions of law, regulatory agencies shall, in the conduct of their functions or duties, have the power to impose fines in the amount not less than One hundred thousand pesos (Php100,000.00) and not exceeding Five million pesos (Php5,000,000.00), if a natural person; and not less than Five million pesos (Php5,000,000.00) and not exceeding Fifty million pesos (Php50,000,000.00) if a firm for each violation of or non-compliance with an order or notice of the regulatory agency. Ten percent (10%) of such fines shall accrue to the budget of the regulatory agency for the exclusive use in the enforcement of this Act.

CHAPTER 5 FAIR TRADE COMMISSION

SEC. 12. **Fair Trade Commission.** – To implement the national policy and attain the objectives and purposes of this Act, an independent Commission is hereby created, which shall be known as the Fair Trade Commission, and which shall be organized within sixty (60) days after the approval of this Act.

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

- (a) **Composition.** – The Commission shall be composed of a Chairman and four (4) Associate Commissioners. The Commissioners shall be citizens and residents of the Philippines, at least forty (40) years of age, of good moral character and of recognized probity and independence. The

Chairman and two (2) of the Associate Commissioners shall be members of the Philippine Bar and the remaining two (2) shall be of recognized competence in the field of economics preferably in industrial organization economics, or finance, commerce, accounting or management. They must have been in the active practice of their professions for at least ten (10) years, but must not have been candidates for any elective national or local office in the immediately preceding elections, whether regular or special.

- (b) *Term of Office.* – The Chairman and the Associate Commissioners shall be appointed by the President of the Philippines. The term of office of the Chairman and the Associate Commissioners shall be six (6) years without reappointment. The Chairman shall hold office for six years and of the first four (4) Associate Commissioners, two (2) shall hold office for a term of four (4) years and two (2) for a term of two (2) years. In case a vacancy occurs before the expiration of the term of office, the appointment to such vacancy shall be only for the unexpired term of the predecessor.
- (c) *Statement of Assets and Liabilities.* – The Chairman and the Associate Commissioners shall, upon assumption of office and within the month of January of every years thereafter, as well as upon the expiration of their respective terms of office, or upon their resignation or separation from office, file with the Office of the President, the President of the Senate and the Speaker of the House of Representatives a true, accurate, complete, detailed and sworn statement of assets and liabilities, including a statement of amounts and sources of income, personal and family expenses, and income taxes paid for the immediately preceding calendar year: *Provided*, That the first statement may be filed within the month of January next following if the Chairman or the Associate Commissioner concerned assumes office at any time before the end of the calendar year.
- (d) *Prohibition and Disqualifications.* – The Commissioners shall not, during their tenure, hold any other office of employment. They shall not, during their tenure, directly or indirectly practice any profession, 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 of 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 Commission for two (2) years following their cessation from office.

No spouse or relative by consanguinity or affinity within the fourth civil degree and nor former law, business, or professional partner or associate of any of the Commissioners, the Chairman and the Secretary of the Commission may appear as counsel or agent on any matter pending before the Commission or transact business directly or indirectly therein during his/her incumbency and within one (1) year from his/her cessation of office.

- (e) *Compensation of Commissioners.* – The Chairman of the Commission shall hold the rank of and shall have the privileges and compensation equivalent to that of a Department Secretary, while the Associate Commissioners shall each hold the rank of and shall have the privileges and compensation equivalent to that of a Department Undersecretary.
- (f) *Quorum.* – Three (3) members of the Commission shall constitute a quorum and the affirmative vote of three members (3) 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, conduct hearings outside of Metro Manila upon prior notice for inquiries, studies or any other proceedings required for the proper and efficient exercise of its power 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 in accordance with the Revised Compensation and Position Classification Law, determine the status, qualifications, and duties of an adequate staff, which shall include an Executive Director of the Commission. The Executive Director 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 a Bachelor Degree in the following lines of specialization: economics, preferably in industrial organization; law; finance; commerce; accounting; or management.

SEC. 13. *Original and Exclusive Jurisdiction.* – The Commission shall have original and exclusive jurisdiction to enforce, implement and administer the provisions of this Act, its implementing rules and regulations, and all other competition laws, and in particular:

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

- (1) *Binding Rules* – To issue binding rulings;
- (2) *Show Cause Order and Decision* – To issue show cause orders, and thereafter, render decision thereon;
- (3) *Consent Judgment* – To approve, or disapprove, proposals for consent judgment;
- (4) *Preliminary Investigation* – To conduct the required preliminary investigation of all criminal cases involving violations of this Act and other competition laws in accordance with the procedure prescribed by the Rules of Court and other laws and rules on the conduct of preliminary investigations; and thereafter, if appropriate, to sign, file, and prosecute the proper criminal information before the Regional Trial Court that has territorial jurisdiction thereof: *Provided*, That a civil case filed by the Commission based in whole or part, upon the same set of facts and issues as that of a pending criminal proceeding, whether in the judicial or preliminary investigation stage, shall constitute a prejudicial question and suspend such criminal proceeding;
- (5) *Administrative Fines and Penalties* – To impose the appropriate administrative fines or penalties herein authorized to be imposed;
- (6) *Delegation of Power Which Require Notice and Hearing.* – The Commission sitting *en banc* may delegate, on a case to case basis, its power to hear and decide any case or matter which require prior notice and hearing, to a Division of one (1) Commissioner. The resolution of the Commission sitting *en banc* making such a delegation shall be made part of the records of the case or matter and the assignment of a case or matter to a particular Division shall be made by means of a raffle conducted in public; and
- (7) *Appeal to the Commission En Banc.* – Final orders, resolutions, judgments, or decisions of a Division may be appealed to the Commission sitting *en banc*, by any party adversely affected thereby, within a period of fifteen (15) days from receipt of such order, resolution, judgment, or decision on all issues of fact and law. The Commissioner whose order, resolution, judgment, or decision is the subject of the appeal is disqualified from participating, nor shall he be present, in the deliberations and decision of the Commission *en banc*. In case of a tie, the appealed order, resolution, judgment, or decision is deemed affirmed. The Commission, on its own, or upon motion of a party who has actively participated in the proceedings, order the presentation of

additional material evidence as part of the appellate proceedings.

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

- (1) *Motu Proprio Investigation or Upon Complaint.* – To investigate, on its own initiative or upon the complaint of any person, any and all violations of this Act and other competition laws prior to the commencement of a preliminary investigation, or the issuance of a show cause order, or the institution of a civil or administrative action;
- (2) *Civil Action.* – To attest and file on behalf of the State, all civil complaints for damages to business or property of the State, arising from a violation of this Act and other competition laws;
- (3) *Administrative Action.* – To attest and file all complaints before the proper administrative bodies or agencies for appropriate administrative relief from, or against, violations of this Act or other trade competition laws;
- (4) *Request for Assistance.* – To request any government agency for assistance and information necessary in the discharge of its responsibilities under this Act, and examine if necessary, pertinent records and documents in the possession of such government agency;
- (5) *Industry Studies and Company Profile.* – To gather and compile information and investigate from time to time, the way a given industry is structured or organized whether as a monopoly, oligopoly, or competitive; the way the firms within that industry act, behave, or conduct themselves in such matters as setting prices, determining output, and the resulting performance of the industry as a whole; the organization, business, conduct, practices and management of any person, partnership, or corporation engaged in trade, commerce, or industry and its relation to individuals, partnerships, associations, corporations, firms and other business enterprises;
- (6) *Issuance of Subpoena.* – To issue subpoena, subpoena duces tecum and subpoena ad testificandum in all hearings, inquiries, and proceedings being conducted by the Commission or any of its Division in the exercise of its functions, powers and duties under this Act, subject to the following standards:
 - i. No subpoena shall be issued to require the production or disclosure of trade secrets as defined in subparagraph (7) hereof;

- ii. A *subpoena* may be quashed only by means of a motion duly set for hearing and on the grounds prescribed by the Rules of Court;
 - iii. A person appearing before the Commission, or any of its Divisions, in obedience to a *subpoena* shall be advised, before he is required to testify or produce any documentary or real evidence, of his right to be assisted or represented by a counsel of his choice, or if he has none, the Commission shall appoint a *de officio* counsel for him; and of his rights to avail of the immunity from prosecution privilege herein prescribed;
- (7) *Annual and Special Reports, etc.* – To require, by general or special orders, firms engaged in trade, commerce, or industry to file with the Commission in such form as the Commission may prescribe, annual or special reports, or answers in writing to specific questions, furnishing the Commission such information as it may require as to the organization, business, conduct, practices, management and relation to other persons of the respective natural or juridical persons or entities filing such reports or answers in writing except that the Commission shall not require, either by a specific order or by a *subpoena*, the disclosure or production of trade secrets such as a secret formula, pattern, device or compilation of information, including names of customers, which is used in one's business and which gives one an opportunity to obtain advantage over competitors who do not know or use it. Trade secrets shall include a plan or process, tool, mechanism, or compound known only to the owner and his employees to whom it is necessary to confide it;
 - (8) *Public Disclosure of Information.* – To make public, from time to time, such portions of the information obtained by it under this Act, except trade secrets and names of customers, as it shall deem expedient in the public interest;
 - (9) *Reports and Recommendations to Congress.* – To submit annual and special reports to Congress, including proposed 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 transparency;
 - (10) *Trade Conditions, Domestic and Foreign.* – To study, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the

- Philippines, and report to Congress its findings and recommendations thereon as it may deem advisable; and
- (11) *Internal Rules and Regulations.* – To promulgate rules and regulations for its internal operation.

Sec. 14. ***Jurisdiction of Regional Trial Courts.*** – The Regional Trial Court of the province or city, where the firm or any of the firms whose business acts 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 trade competition laws. If the defendant, or anyone of them is charged in his capacity as an officer, employee, or agent of a corporation or other juridical entity who knowingly authorize the commission of the offense charged, the Regional Trial Court of the province or city where such corporation or juridical entity conducts its principal place of business, shall have jurisdiction.

CHAPTER 6 ENFORCEMENT

SEC. 15. ***Preliminary Inquiry.*** – The Commission, in coordination with other regulatory and/or appropriate government agency, shall *motu proprio*, upon the filing of a verified complaint by an interested party or upon referral by the concerned regulatory agency, initiate a preliminary inquiry for the enforcement of this Act based on reasonable grounds.

Sec 16. ***Powers of Concerned Regulatory Agencies.*** – Notwithstanding the provisions of the preceding section, the exercise of regulatory powers by different government agencies over an industry or a sub-sector of an industry shall be cumulative and shall not be construed in any way as derogating from the power and authority of the concerned agency. The government agencies shall cooperate and coordinate with one another in the exercise of their powers in order to prevent overlap, to share confidential information, or for other effective measures.

SEC. 17. ***Power to Investigate and to Enforce Orders and Resolutions.*** – The Commission shall conduct preliminary 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. 18. ***Self-incrimination.*** Pursuant to the preceding section, a person subject of any preliminary inquiry or investigation by the Commission shall produce the specified document or information when so required by written notice: *Provided*, That no person shall be excused

from disclosing any *document* or information to the inquiring officer on the ground that the disclosure of the information or document may be incriminating: *Provided, further,* That such document or information produced by the person subject of investigation shall not be admissible as evidence against him in criminal proceedings: *Provided, finally,* That such document or information shall be admissible in evidence in civil proceedings including those arising from or in connection to the implementation of this Act.

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

Sec. 20. ***Confidentiality of Information.*** Any document or information submitted by firms, as determined and marked confidential by the Commission, relevant to any investigation being conducted pursuant to this Act shall not, in any manner, be directly or indirectly disclosed, published, transferred, copied, or disseminated.

Any violation of this provision shall be imposed the penalty of imprisonment ranging from three (3) to six (6) years and a fine of not less than One hundred thousand pesos (Php100,000.00) but not more than Five hundred thousand pesos (Php500,000.00).

Sec. 21. ***Immunity from Suit.*** Any person or firm which cooperates or furnishes any information, document or data to the Commission before or during the conduct of the preliminary inquiry that constitutes material evidence as determined by the under this Act shall be immune from any suit or charge including from affected parties and third parties: *Provided, further,* That any person or firm which cooperates or furnishes 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: *Provided, furthermore,* That such reprisal or discrimination shall be considered a violation of this Act and subjected to the penalties provided for under Section 10: *Provided, finally,* That, notwithstanding the provisions of Section 37 hereof, the firm which cooperates with the Commission in its investigation shall be entitled to a reward equivalent to twenty percent (20%) of any monies paid by the firm subject of the inquiry, or the monetary relief recovered from court action.

Nothing in this section shall preclude prosecution for persons and firms who reported to the Commission with malicious information, data and falsified documents which is damaging to the business and integrity

of the persons and firms under inquiry. Such act shall likewise be considered as an unfair trade practice punishable under this Act.

SEC. 22. Termination and Action on Preliminary Inquiry. -The Commission, after considering the statements made, or documents or articles produced, in the course of an inquiry conducted by it, shall terminate the preliminary inquiry by issuing a resolution ordering its closure if no violation or infringement of this Act is found; or by issuing a *nolo contendere* resolution; or issuing a resolution to, singly or cumulatively, (a) impose penalties in the range provided under Section 10 hereof; (b) order sanctions which may be imposed by the regulatory and/or appropriate government agency; (c) order the rectification of certain acts or omissions; or (d) order the restitution to the affected parties.

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

If the evidence so warrants, the Commission shall institute criminal cases for violation of this Act or relevant laws: *Provided*, That, for criminal prosecution of violations of this Act, no preliminary investigation shall be required, neither shall a petition for review be made: *Provided*, further, That any appeal shall be instituted to a division of the Court of Appeals exclusively handling competition and consumer protection laws.

SEC. 23. Nolo Contendere Resolution. - Any firm under inquiry under the provisions of this Act may submit to a *nolo contendere* resolution at any time before the termination of the preliminary inquiry by: a) the payment of an amount within the range of penalties provided for under Section 10; b) by entering into an undertaking to effectively stop and rectify the acts complained against, make restitution to the affected parties, whether or not the parties are plaintiffs or witnesses; and, c) by submitting regular compliance reports as may be directed: *Provided*, That, ten percent (10%) of the amounts paid under this section shall equitably accrue to the Commission and/or regulatory government agencies involved in the inquiry: *Provided*, further, That a *nolo contendere* resolution shall not bar any inquiry for the same or similar acts if continued or repeated.

SEC. 24. Implementing Policy; Non-Adversarial Administrative 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 and non-adjudicatory administrative remedies, before the institution of civil or criminal action:

- (a) *Request for Binding Ruling.* – Any 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 trade competition laws, or implementing rules and regulations thereof, may request the Commission, in writing, to render a binding ruling thereon;
- (b) *Show Cause Order.* – Upon preliminary findings *motu proprio* or on written complaint under oath by an interested party, that any person is conducting his business, in whole or in part, that any person is conducting his business, in whole or in part, in a manner that may not be in accord with the provisions of this Act or other trade 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 person or persons 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 person or persons 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 ties identified business conduct, or pay the administrative fine therein specified, or readjust its business conduct or practices;
- (c) *Proposal for Consent Judgment.* – At any time prior to the issuance of a binding ruling, the promulgation of a cease and desist judgment under a show cause order or the promulgation of a decision of judgment in any administrative, civil, or criminal case, the person or persons, whose business conduct is under inquiry in the particular proceedings may, without in any manner admitting a violation of this Act or any other trade competition laws, submit to the Commission a written proposal for the entry of a consent judgment, specifying therein the terms and conditions of the proposed consent judgment.
- (d) *Consultations.* – Prior to the fitting of a request for a binding ruling or the submission of a proposal for consent judgment, the person or persons concerned may communicate, in writing, with the Commission on matters that should be included or excluded in such request or proposal, which the Commission may consider necessary for the effective enforcement of this Act or other trade competition laws.
- (e) *Binding Ruling, Cease and Desist Order, and Consent Judgment.* – Based upon the facts, data, and information disclosed or supplied by the persons concerned, or established by substantial evidence during the hearing, the Commission shall

issue a binding ruling, a cease and desist order or an approval of the proposal for a consent judgment, as the case may be, with or without conditions, to the effect that the particular act, course of conduct, agreement, decision or practice is in accord with this Act or other trade competition laws, or is exempt therefrom, or is constitutive of a violation thereof. If the Commission finds that there is substantial evidence tending to show that the act, course of conduct, agreement, decision or practice of the person or persons concerned is prohibited, it shall include in its decision an order requiring the person or persons concerned:

- (1) *Cease and Desist Order.* – To cease and desist from continuing with the identified act, course or conduct, agreement, decision, or practice found to be violative of the provisions of this Act;
 - (2) *Administrative Penalty or Fine.* – To pay the fine therein fixed; and
 - (3) *Readjustment of Business Methods.* – To readjust, within a reasonable period therein fixed, its method of doing business, including a corporate reorganization or divestment in the manner and under the terms and conditions prescribed by the Commission, as it may deem proper for the protection of the public interest.
- (f) *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 or its officers and employees, shall be suspended, except upon order of the Commission on proper motion, on the ground of the filing of a request for binding ruling, the issuance of a show cause order or the filing of a proposal for a consent judgment based, in whole or in part, on the same set of facts and issues as that of the proceedings sought to be suspended.
- (g) *Monitoring of Compliance.* – The Commission shall monitor the compliance by the person or persons 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, the Commission shall issue a certification to the effect that the person or persons concerned have, or have not, as the case may be, complied with a final and executory ruling, order, or approval.
- (h) *Inadmissibility in Evidence.* – The request for a binding ruling, the show cause order, or the proposal for consent judgment; the facts, data, and information therein contained or subsequently supplied by the person or persons 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 rendered thereon, shall not be admissible as evidence in any administrative, civil or criminal proceedings against such person or persons, their officers, employees, and agents nor constitute a basis for the introduction of the binding ruling, the cease and desist order, or the consent judgment as *prima facie* evidence against such persons in any such action of proceeding.

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

- (1) Whenever conditions of material fact or law have so changed as to require such action;
- (2) When the concerned person or persons fail or refuse, without justifiable cause therefore, to comply with any condition attached to such ruling, order, or approval, including an order to readjust their method of doing business; or
- (3) When the ruling, order, or approval was based on deliberately falsified material fact, data, or information supplied by an interested party benefited by such ruling, order, or approval.

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

SEC. 25. **Contempt.** – The Commission, or any of its Divisions, may summarily punish for contempt, or by a fine not exceeding thirty (30) days, or both, any person guilty of such misconduct in the presence of the Commission or any of its Divisions in its vicinity as to seriously interrupt any hearing, session or any proceedings before it, including cases in which a person willfully fails or refuses, without just cause, to comply with a summons, *subpoena* or *subpoena duces tecum* legally issued by the Commission or any of its Division, 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. 26. **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 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.

SEC. 27. **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, order, or resolution, decision, judgment, rule or regulation promulgation after notice and hearing by the Commission sitting *en banc*, may appeal, by means of a notice of appeal and a verified petition for review served upon the Commission and 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:

- (a) is arbitrary to constitutional rights, power, privilege, or immunity;
- (b) is contrary to constitutional rights, power, privilege, or immunity;
- (c) is in excess of statutory jurisdiction, authority, or limitations, or is contrary to law;
- (d) is without observance of the procedure required by law; and
- (e) 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.

SEC. 28. **Appeal to the Supreme Court.** – A decision of the Court of Appeals may be appealed to the Supreme Court in the manner and on the grounds prescribed by the Rules of Court.

SEC. 29. **Special Courts.** – To ensure the effective adjudication of controversies under this Act and other trade competition laws, the Supreme Court shall designate such Regional Trial Courts that will have exclusive jurisdiction over unfair competition cases. The uniform trial procedures to be prescribed for such cases shall be strictly observed and postponements shall be discouraged. Decisions in such cases shall be rendered within sixty (60) days from the termination of the case.

SEC. 30. **Reception of Additional Evidence.** – Any party in the appellate proceedings may apply for leave to the Court of Appeals or the Supreme Court, 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 grounds for the failure to present said evidence in the proceedings before the Commission. The Commission, sitting *en banc*, may modify its findings as to 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 recommendations for the affirmance, modification, or setting aside of the appealed binding ruling, order, resolution, decision, judgment, rule or regulation.

SEC. 31. **Administrative Fines 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 readjustment issued by the Commission, shall pay a fine of not less than Fifty Thousand Pesos (Php50,000.00) for each violation. Each violation shall be deemed a separate offense: *Provided*, That in the case of a violation through a continuing failure or neglect to comply, each day of continuance of such failure or neglect shall be deemed a separate offense.

The Commission may likewise impose upon persons or entities fines of not less than Five Thousand Pesos (Php5,000.00) to not more than One Hundred Thousand Pesos (Php100,000.00) where, intentionally or negligently, they supply incorrect or misleading information in any document, application or other paper filed with or submitted to the Commission or supply incorrect or misleading information in an application or other paper filed with or submitted to the Commission or supply incorrect or misleading information in an application for a binding ruling, a proposal for a consent judgment, proceedings relating to a show cause order, or application for modification of the Commission's ruling, order or approval, as the case may be.

SEC. 32. **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 the payment of the administrative fines provided in the preceding sections.

SEC. 33. **Violation by Corporation, Partnership, Association, and Other Entity.** – Whenever a corporation, partnership, association, firm 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 therefore, shall be imposed the penalty of imprisonment provided in Section 21 hereof, with such juridical entity being jointly and severally liable with the offended for the fine imposed therein.

Should the offense be committed by a foreign corporation licensed to do business in the Philippines, the person or persons directly responsible in the Philippines for the management and operation thereof,

shall be liable. In addition, its license to do business in the Philippines shall be cancelled.

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 persons 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 of civil obligation imposed under this Act of such corporate officer, partner, manager or other officer found guilty of violating this Act, shall be void.

SEC. 34. **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.

SEC. 35. **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 of 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.

SEC. 36. **Private Action.** – Regardless of the status or pendency of any proceedings, any firm that suffers injury by reason of any violation of this Act may institute a separate and independent civil action, irrespective of the amount involved in the controversy against the defendant or defendants and shall recover treble damages sustained, the costs of suit and reasonable attorney's fees: *Provided, however,* That no filing fees shall be collected: *Provided, further,* That filing fees shall constitute a first lien in the award of damages.

SEC. 37. **Effect of Final Judgment.** – Any final judgment in a civil or criminal action brought by the Commission on behalf of the people of the Philippines under this Act to the effect that a defendant has violated any or all of the provisions of this Act shall be *res judicata* as to any claim by any person on whose behalf such action was brought: *Provided,* That such person notifies the court having jurisdiction of the case within the period given by the court: *Provided, further,* That such period shall not be less than ninety (90) days.

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

SEC. 38. ***Distribution of Damages Recovered.*** – The damages recovered in a civil action under Section 23 of this Act shall be distributed in the following manner: (1) as determined and to be authorized by the Court having jurisdiction of the case; (2) ten percent (10%) of the total amount of damages shall accrue to the Commission and/or regulatory agency to be used exclusively in the enforcement of this Act; and, (3) the remainder of which total amount of damages shall be deemed a civil penalty by the Court and shall be deposited to the National Treasury as part of the general fund of the government: *Provided*, That any distribution procedure adopted by the Court shall give preference to individual consumers and afford each person having an interest a reasonable opportunity to secure his appropriate portion of the net damages obtained.

SEC. 39. ***Measurement of Damages.*** – Damages may be proved and assessed in the aggregate by statistical or sampling methods, by the computation of illegal overcharges, or by such other reasonable system of estimating aggregate damages as the court in its discretion may permit without the necessity of separately proving the individual claim, of, or amount of damage to, persons on whose behalf the suit was brought.

CHAPTER 7 OTHER PROVISIONS

SEC. 40. ***Statute of Limitations.*** – Any civil or criminal action to enforce any cause of action arising from a violation of any provision of this Act shall be forever barred unless commenced within five (5) years after the cause of action accrues. The running of the statute of limitation shall be suspended during the pendency of any proceeding.

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

SEC. 41. ***Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Injunctions and Preliminary Mandatory Injunctions.*** – Except for the Supreme Court, no other court shall issue any temporary restraining order, preliminary injunction or preliminary mandatory injunction against the regulatory agency 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 regulated firms or those claiming to have rights through such firms: *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 be less than half of the imposable fines provided for under Section 11 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 favour of the regulatory agency.

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.

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

SEC. 42. **Intellectual Property Rights.** – The implementation of the provisions of this Act shall be without prejudice to the rights, liabilities and remedies under Republic Act No. 8293, otherwise known as the Intellectual Property Code of the Philippines: *Provided*, That, the exercise of intellectual property rights shall not in any way be used to justify violations of this Act.

SEC. 43. **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.

SEC. 44. **Guidelines.** – The Commission shall prepare the necessary guidelines for the implementation of this Act: *Provided*, That, where the guidelines would apply to an industry or a sub-sector of industry that is subject to the jurisdiction of a regulatory agency, the Commission shall, in preparing the guidelines, consult with the concerned regulatory agency: *Provided, further*, That the Commission may revise such guidelines it deems necessary: *Provided, however*, That such revised guidelines shall only take effect following its publication in two newspapers of general circulation.

SEC. 45. **Appropriations.** – The amount necessary to implement the provisions of this Act shall be included in the annual General Appropriations Act.

SEC. 46. **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. 47. **Suppletory Application.** – For purposes of this Act, the Revised Penal Code, as amended, and other applicable laws shall be applied in a suppletory character.

SEC. 48. **Repealing Clause.** – All provisions of law, orders, decrees, executive orders, including rules and regulations or parts thereof, which are contrary to or inconsistent with the provisions of this Act are hereby repealed or modified accordingly: *Provided, however,* That all existing competition laws and regulations shall remain in full force and in effect: *Provided, further,* That in case of conflict between this Act and such provisions of existing competition laws and regulations, the provisions of this Act shall prevail.

SEC. 49. **Effectivity Clause.** – This Act shall take effect fifteen (15) days following its publication in the *Official Gazette* or in at least two (2) national newspapers of general circulation.

Approved,