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Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FIFTEENTH CONGRESS
First Regular Session

House Bill No. 3100

Introduced by Rep. Albert S. Garcia

EXPLANATORY NOTE

The Constitution, Article XII, Section 19, provides:

"Section 19. The State shall regulate or prohibit monopolies when the public interest so requires. No combinations in restraint of trade or unfair competition shall be allowed."

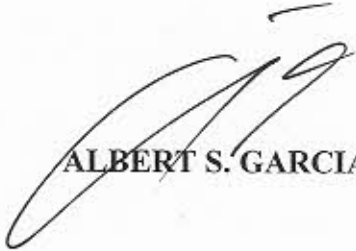
The Constitution provides further:

"Section 22. Acts which circumvent or negate any of the provisions of this Article shall be considered inimical to the national interest and subject to criminal and civil sanctions, as may be provided by law."

No less than the Constitution itself mandates the government to regulate or prohibit monopolies. Protection against price manipulators is an effective way by which the government can provide people better access to various goods and commodities in the market. By providing an equal playing field in the business sector, consumers will have an improved access to affordable and at the same time quality goods.

The Philippine business sector has time and again witnessed how artificial prices in one or two commodities resulted in the increased prices of primary goods.

This bill aims to regulate trade manipulations and other forms of activities which restrain free market competition.


ALBERT S. GARCIA

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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 AND
APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES

*Be it enacted by the Senate and 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 called the "*Competition Act of 2010.*"

SECTION 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 persons who threaten to control the production, trade, or industry in order to stifle competition, distort, manipulate or constrict the discipline of free markets, increase market prices in the Philippines; and
- (c) penalize all forms of unfair trade, anti-competitive conduct and combinations in restraint of trade, with the objective of protecting and advancing consumer welfare.

CHAPTER 2
SCOPE AND APPLICATION, DEFINITION OF TERMS

SECTION 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.

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The Act shall apply to:

(a) all firms as defined in this Act 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.

SECTION. 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 sections 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) 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;

(d) CONTROL shall refer to at least twenty percent (20%) ownership, directly or indirectly, of a firm or a group of firms by another firm;

(e) 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;

(f) GOODS shall include all types of goods and services;

(g) 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;

(h) 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;

(i) 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

(j) 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

SECTION 5. *Cartel* - 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.

I. *Activities constituting cartel* – Activities considered as constituting cartel include, but are 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.

II. *Prima facie evidence of cartel* - 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.

SECTION 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 Department of Trade and Industry or the concerned regulatory agency shall be deemed a monopoly or in a dominant position.

SECTION 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) *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 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.

SECTION 8. *Other Unfair Competition Activities*. - 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.

CHAPTER 4 FINES AND PENALTIES

SECTION 9. *Penalties.* - Without prejudice to the violation of other laws, any firm that shall be found to have violated Sections 5, 6, 7 and 8 of this Act, or any combination thereof, shall, for each and every violation, be punished by a fine of not less than Five Million pesos (Php 5,000,000.00) and not exceeding Twenty-Five Million pesos (Php25,000,000.00) if a natural person; by a fine of not less than One Hundred Million pesos (Php100,000,000.00) but not exceeding Two Hundred Fifty Million pesos (Php250,000,000.00) if a firm, and by imprisonment not exceeding ten (10) years, or both, at the discretion of the court.

CHAPTER 5 ENFORCEMENT

SECTION 10. *Preliminary Inquiry.* - The Department of Justice (DOJ), in coordination with the Department of Trade and Industry (DTI), 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.

SECTION 11. *Power to Investigate and Enforce Orders and Resolutions.* - The DOJ 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.

SECTION 12. *Self-incrimination and Exclusionary Rules.* - Pursuant to the preceding section, a person subject of any preliminary inquiry or investigation by the DOJ 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.

Nothing in this 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.

Any document or information submitted by firms, as determined and marked confidential by the DOJ, 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.

SECTION 13. *Immunity From Suit.* - Any person or firm which cooperates or furnishes any information, document or data to the DOJ before or during the conduct of the preliminary inquiry that constitutes material evidence as determined by the DOJ 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 DOJ 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.

Nothing in this section shall preclude prosecution for persons and firms who reported to the DOJ 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.

SECTION 14. *Termination of Preliminary Inquiry.* - The DOJ, 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 9

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 DOJ 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 DOJ 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.

SECTION 15. *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 9; 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 a *nolo contendere* resolution shall not bar any inquiry for the same or similar acts if continued or repeated.

SECTION 16. *Independent Civil 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.

SECTION 17. *Effect of Final Judgement*. - Any final judgment in a civil or criminal action brought by the DOJ 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.

SECTION 18. *Distribution of Damages Recovered.* - The damages recovered in a civil action under Section 15 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 DOJ 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.

SECTION 19. *Proof and Assessment 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 6 OTHER PROVISIONS

SECTION 20. *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 or action that was fraudulently concealed by a defendant.

SECTION 21. *Prohibition in the Issuance of Temporary Restraining Orders, Preliminary Injunctions and Other 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 9 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.

SECTION 22. *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.

SECTION 23. *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.

SECTION 24. *Guidelines*. - The DOJ, in consultation with the DTI, 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 DOJ shall, in preparing the guidelines, consult with the concerned regulatory agency: *Provided, further*, That the DOJ 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.

SECTION 25. *Appropriations.* - The funding necessary for the implementation of this Act shall be included in the Annual General Appropriations Act (GAA).

SECTION 26. *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.

SECTION 27. *Suppletory Application.* - For purposes of this Act, the Revised Penal Code, as amended, and other applicable laws shall be applied in a suppletory character.

SECTION 28. *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.

SECTION 29. *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,