

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

Fifteenth Congress
First Regular Session



COMMITTEE REPORT NO. 1215

Submitted by the Committees on Trade and Industry, Economic Affairs and Appropriations on
08 JUN 2011

Re : House Bill No. 4835

Recommending its approval in substitution of House Bill Nos. 549, 913, 1007, 1583, 1733, 1980, 3100, 3134, 3244, 3476, 3534 and 3985

Sponsors: Representatives Garcia A., Abaya, Durano, Ponce-Enrile, Yap S., Cari, Alvarez A., Apacible, Arroyo D., Macapagal-Arroyo G., Teodoro, Rodriguez R., Rodriguez M. Jr., Benitez, Aumentado, Umali R., Umali C., Tañada, Gullas, Belmonte F., Miraflores, Golez A., and Nograles

Mr. Speaker:

The Committees on Trade and Industry, Economic Affairs and Appropriations to which were referred House Bill No. 549, introduced by Rep. Juan C. Ponce Enrile Jr., entitled:

AN ACT
PROHIBITING MONOPOLIES, ATTEMPT TO MONOPOLIZE AN INDUSTRY OR LINE OF COMMERCE, MANIPULATION OF PRICES OF COMMODITIES, ASSET ACQUISITION AND INTERLOCKING MEMBERSHIPS IN THE BOARD OF DIRECTORS OF COMPETING CORPORATE BODIES AND PRICE DISCRIMINATION AMONG CUSTOMERS, PROVIDING PENALTIES THEREFORE, AND FOR OTHER PURPOSES

House Bill No. 913, introduced by Reps. Susan A. Yap and Jose Carlos L. Cari, entitled:

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

House Bill No. 1007, introduced by Reps. Antonio C. Alvarez, Tomas V. Apacible and Feliciano Belmonte Jr., entitled:

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

House Bill No. 1583, introduced by Reps. Diosdado Macapagal-Arroyo and Gloria Macapagal-Arroyo, entitled:

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

House Bill No. 1733, introduced by Rep. Marcelino R. Teodoro, entitled:

AN ACT

AMENDING ACT NO.3815, ALSO KNOWN AS THE REVISED PENAL CODE, AS AMENDED, ARTICLE 186 ON MONOPOLIES AND COMBINATIONS IN RESTRAINT OF TRADE

House Bill No. 1980, introduced by Reps. Rufus B. Rodriguez, Maximo B. Rodriguez Jr., Florencio T. Miraflores and Anthony Rolando T. Golez Jr. entitled:

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

House Bill No. 3100, introduced by Rep. Albert Raymond S. Garcia, entitled:

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

House Bill No. 3134, introduced by Reps. Alfredo Abelardo B. Benitez and Erico B. Aumentado, entitled:

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

House Bill No. 3244, introduced by Rep. Gloria Macapagal-Arroyo, entitled:

**AN ACT
CREATING THE FAIR TRADE COMMISSION OF THE PHILIPPINES**

House Bill No. 3476, introduced by Reps. Reynaldo V. Umali and Czarina D. Umali, entitled:

**AN ACT
PROHIBITING MONOPOLIES, ATTEMPT TO MONOPOLIZE AN INDUSTRY OR LINE OF COMMERCE, MANIPULATION OF PRICES OF COMMODITIES, ASSET ACQUISITION AND INTERLOCKING MEMBERSHIPS IN THE BOARD OF DIRECTORS OF COMPETING CORPORATE BODIES AND PRICE DISCRIMINATION AMONG CUSTOMERS, PROVIDING PENALTIES THEREFOR AND GRANTING ADDITIONAL POWERS AND FUNCTIONS TO THE NATIONAL CONSUMER AFFAIRS COUNCIL, AND FOR OTHER PURPOSES**

House Bill No. 3534, introduced by Reps. Lorenzo R. Tañada III and Eduardo R. Gullas, entitled:

**AN ACT
PRESCRIBING AN ANTITRUST LAW TO STRENGTHEN THE PROHIBITION AGAINST MONOPOLIES, CARTELS, COMBINATIONS IN RESTRAINT OF TRADE AND OTHER ANTICOMPETITIVE PRACTICES AND CONDUCT, AND FOR OTHER PURPOSES**

and House Bill No. 3985, introduced by Rep. Eduardo R. Gullas, Erico B. Aumentado and Karlo Alexie B. Nograles, entitled:

**AN ACT
PRESCRIBING AN ANTI-TRUST LAW TO STRENGTHEN THE PROHIBITION AGAINST MONOPOLIES, CARTELS, COMBINATIONS IN RESTRAINT OF TRADE AND OTHER ANTI COMPETITIVE PRACTICES AND CONDUCT AND FOR OTHER PURPOSES**

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have considered the same and recommend that the attached House Bill No. _____ entitled:

**AN ACT
PENALIZING ANTI-COMPETITIVE AGREEMENTS, ABUSE OF DOMINANT POSITION, AND ANTI-COMPETITIVE MERGERS, ESTABLISHING THE PHILIPPINE FAIR COMPETITION COMMISSION AND APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES**

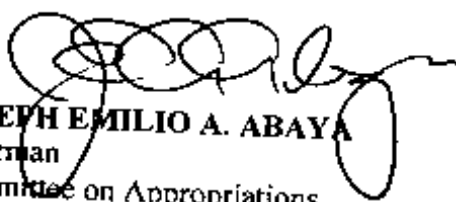
be approved in substitution of House Bill No. 549, 913, 1007, 1583, 1733, 1980, 3100, 3134, 3244, 3476, 3534 and 3985, with Representatives Ponce-Enrile, Yap S., Cari, Alvarez A., Apacible, Arroyo D., Macapagal-Arroyo G., Teodoro, Rodriguez R., Rodriguez M. Jr., Garcia A., Benitez, Aumentado, Umali R., Umali C., Tañada, Gullas, Belmonte F., Miraflores, Golez A., Nograles, Duavit, Biron, Defensor, Treñas, Casiño, Villarica, Mandanas, Fernandez, Garay, Del Rosario A.G., Sacdalan, Joson, Rodriguez L., Lacson-Noel,

Yu, Ferrer J., Sahidula, Lagdameo A., Bonoan-David, Mellana, Sakaluran, Quisumbing, Unabia, Batocabe, Colmenares, Haresco, Villar, Pancho, Cojuangco E., Enverga, Cajayon, Tugna, Ty, Romualdez, Gonzales A., Panotes, Bagasina, Durano, Cua, Garin S., Castelo, Javier, Evardone, Bulut-Begtang, Alvarez M., Plaza, Palmones, Magsaysay E., Almario, Bello, Tinio, Rivera, Datumanong, Pangandaman S., and Abaya as authors thereof.

Respectfully Submitted:


RAMON H. DURANO VI
Chairman
Committee on Economic Affairs


ALBERT S. GARCIA
Chairman
Committee on Trade and Industry


JOSEPH EMILIO A. ABAYA
Chairman
Committee on Appropriations

THE HONORABLE SPEAKER
HOUSE OF REPRESENTATIVES
QUEZON CITY

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FIFTEENTH (15th) CONGRESS
First Regular Session

HOUSE BILL NO. 4835

(In Substitution of House Bill Nos. 549, 913, 1007, 1583, 1733
1980, 3100, 3134, 3244, 3476, 3534 and 3985)

Introduced by Representatives Ponce-Enrile, Yap S., Cari, Alvarez A., Apacible, Arroyo D., Macapagal-Arroyo G., Teodoro, Rodriguez R., Rodriguez M. Jr., Garcia A., Benitez, Aumentado, Umali R., Umali C., Tañada, Gullas, Belmonte F., Miraflores, Golez A., Nograles, Duavit, Biron, Defensor, Treñas, Casiño, Villarica, Mandanas, Fernandez, Garay, Del Rosario A.G., Sacdalan, Joson, Rodriguez I., Lacson-Noel, Yu, Ferrer J., Sahidula, Lagdameo A., Bonoan-David, Mellana, Sakaluran, Quisumbing, Unabia, Batocabe, Colmenares, Haresco, Villar, Pancho, Cojuangco E., Enverga, Cajayon, Tugna, Ty, Romualdez, Gonzales A., Panotes, Bagasina, Durano, Cua, Garin S., Castelo, Javier, Evardone, Bulut-Begtang, Alvarez M., Plaza, Palmones, Magsaysay E., Almario, Bello, Tinio, Rivera, Datumanong, Pangandaman S., and Abaya

AN ACT
PENALIZING ANTI-COMPETITIVE AGREEMENTS, ABUSE OF DOMINANT POSITION, AND ANTI-COMPETITIVE MERGERS, ESTABLISHING THE PHILIPPINE FAIR COMPETITION COMMISSION AND APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES

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

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CHAPTER I
GENERAL PROVISIONS

1 **SECTION 1. Title.** – This Act shall be known and cited as the "Philippine
2 Fair Competition Act of 2011."

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

7 (a) promote and enhance economic efficiency and free, full and fair
8 competition in trade, industry and all commercial economic activities;

9 (b) prevent the concentration of economic power in a few persons who
10 threaten to control the production, trade, or industry in order to stifle
11 competition, distort, manipulate or constrict the discipline of free
12 markets, increase market prices in the Philippines; and

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

17 **SEC. 3. Scope and Application.** – This Act shall be enforceable within
18 the territory of the Republic of the Philippines and shall apply to all areas of trade,
19 industry and commercial economic activity. It shall likewise be applicable to
20 international trade having direct, substantial and reasonably foreseeable effects
21 in trade, industry or commerce in the Republic of the Philippines including those
22 that result from acts done outside the Republic of the Philippines.

23 The Act shall apply to: (a) all firms as defined hereunder and all their
24 commercial agreements, actions or transactions involving goods, services or
25 intellectual property; and, (b) all agents, officers, employees, partners, owners,
26 directors, consultants, stockholders, representatives, managers, supervisors, and
27 all other natural persons who, acting on behalf of juridical persons shall authorize,
28 engage or aid in the commission of restrictive practices prohibited under this Act.

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

33 **SEC. 4. Definition of Terms.** – As used in this Act, the following terms
34 shall be defined as:

- 1 (a) "Agreement" shall refer to any type or form of arrangement,
2 understanding, undertaking or concerted action, whether formal or
3 informal or tacit, written or oral;
- 4 (b) "Cartel" shall refer to a combination of firms, providing goods in
5 relevant markets, acting or joined together to obtain a shared monopoly
6 to control production, sale and price, or to obtain control in any
7 particular industry or commodity, or a group of firms that agree to
8 restrict trade. It shall also refer to firms or section of firms having
9 common interest designed to promote the exchange of knowledge
10 resulting from scientific and technical research, exchange of patent
11 rights and standardization of products among themselves with the
12 intent of preventing, restricting or distorting competition;
- 13 (c) "Commission" shall refer to the Philippine Fair Competition
14 Commission created under this Act;
- 15 (d) "Competition" shall refer to the process by which economic agents,
16 acting independently in a market, limit each other's ability to control the
17 prevailing conditions in the market;
- 18 (e) "Control" shall refer to at least twenty percent (20%) ownership, directly
19 or indirectly, of a firm or a group of firms by another firm;
- 20 (f) "Dominant Position" shall refer to a situation where a firm, either by
21 itself or acting in collusion with other firms, is in a position to control a
22 relevant market for the sale of a particular good or service by fixing its
23 prices, excluding competitor firm, or controlling the market in a specific
24 geographical area;
- 25 (g) "Firm" shall refer to any person, natural or juridical, partnership,
26 combination or association in any form, whether incorporated or not,
27 domestic or foreign, including those owned or controlled by the
28 government, engaged directly or indirectly in any economic activity:
29 *Provided, That, two firms, one of which is controlled by the other, shall*
30 *be treated as one firm: Provided, further, That two or more firms that*
31 *are controlled by a single firm shall be treated as one firm;*
- 32 (h) "Goods" and "Services": "Goods" shall refer to all types of tangible and
33 intangible property that could be bought and sold, and the possession

of which could be transferred in whole or in part, temporarily or permanently;

"Services" shall refer to the provision of things of value or articles or items that could be used by one person, whether natural or juridical through human interaction or through the use, without transfer of ownership, of the facilities of the provider by the client, or a combination of both. It shall include all non-tangible goods. It is the non-material equivalent of a good, consumed at the point of sale and does not result in ownership;

- (i) "Market" and "Relevant Market": "Market" shall refer to a place or venue for commercial activity, which may be a city, province, region, the whole area of the Philippines, or 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;

"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 competitors, to which consumers could turn if the restraint or abuse results in the significant increase in prices.

- (j) "Mergers" shall refer to two or more undertakings, previously independent of one another, join together. This definition includes transactions whereby two firms legally merge into one (mergers), one firm takes sole control of the whole or part of another (acquisitions or takeovers), two or more firms acquire joint control over another firm (joint ventures) and other transaction, whereby one or more undertakings acquire control over one or more undertakings, such as interlocking directorates; and

- (k) "Monopoly" shall refer to 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.

CHAPTER II

PHILIPPINE FAIR COMPETITION COMMISSION

SEC. 5. *Philippine Fair Competition Commission.* – To implement the national policy and attain the objectives and purposes of this Act, an independent Commission is hereby created, to be known as the Philippine Fair Competition Commission (PFCC), which shall hereinafter be referred to as the Commission, and shall be organized within one hundred eighty (180) days after the approval of this Act.

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

(a) *Composition.* – The Commission shall be composed of a Chairperson and four (4) Associate Commissioners. The Chairperson and Commissioners shall be citizens and residents of the Philippines, at least forty (40) but not more than sixty-five (65) years of age, of good moral character and of recognized probity and independence. The Chairperson 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 actively practiced 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 Chairperson and the Associate Commissioners shall be appointed by the President of the Philippines. The term of office of the Chairperson and the Associate Commissioners shall be six (6) years without reappointment. The Chairperson 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) *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 no former law, business, or professional partner or associate of any of the Commissioners, the Chairperson 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.

(d) *Compensation of Commissioners.* – The Chairperson of the Commission shall hold the rank of and shall have the privileges and compensation equivalent to that of a Department Secretary or Presiding Justice of the Court of Appeals, whichever is higher, while the Associate Commissioners shall each hold the rank of and shall have the privileges and compensation equivalent to that of a Department Undersecretary or Associate Justice of the Court of Appeals, whichever is higher.

(e) *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*.

(f) *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.

- (g) *Staff.* – The Commission shall appoint an adequate staff which shall be headed by an Executive Director, fix the compensation in accordance with the Revised Compensation and Position Classification Law and determine their status, qualifications and duties. The Executive Director shall be appointed by the President and shall have relevant experience in any of the fields of law, economics, commerce, management or finance for at least ten (10) years. *Provided, That* the Executive Director shall be a Career Executive Service Officer (CESO). The members of the technical staff, except those performing purely clerical functions, shall possess at least a Bachelor's Degree in the following lines of specialization: economics, preferably in industrial organization; law; finance; commerce; accounting; or management.

SEC. 6. Original and Exclusive Jurisdiction, Powers and Functions –

The Commission shall have original and exclusive jurisdiction to enforce and implement the administrative provisions of this Act, its implementing rules and regulations, and all other competition laws, and in particular:

- (a) *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 commence investigation, on its own initiative or upon the complaint of any person, any and all violations of this Act and other competition laws and cause the issuance of a cease and desist order prior to the commencement of a preliminary inquiry, and/or the institution of a civil or administrative action;
- (2) *Administrative Action.* – To attest and file all complaints for appropriate administrative relief from or against violations of this Act or other competition laws;
- (3) *Civil Action.* – To attest and file, on behalf of the State, civil complaints for damages to business or property of the State, arising from a violation of this Act and other competition laws;
- (4) *Deputization.* – To require any government agency to lend assistance and information necessary in the discharge of its responsibilities under

1 this Act, and examine, if necessary, pertinent records and documents
2 in the possession of such government agency;

3 (5) *Issuance of Subpoena.* – To issue *subpoena*, *subpoena duces tecum*
4 and *subpoena ad testificandum* in the exercise of its functions, powers
5 and duties under this Act, subject to the following standards:

- 6 i. No subpoena shall be issued to require the production or disclosure
7 of trade secrets as defined in paragraph (c)(2) hereof;
8 ii. A subpoena may be quashed only by means of a motion duly set
9 for hearing and on the grounds prescribed by the Rules of Court;
10 iii. A person appearing before the Commission in obedience to a
11 subpoena shall be advised, before he is required to testify or
12 produce any documentary or real evidence, of his right to be
13 assisted or represented by a counsel of his choice, and if he has
14 none, the Commission shall appoint a *de officio* counsel for him;
15 and of his right to avail of the privilege of immunity from
16 prosecution herein prescribed;

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

- 20 (1) *Binding Rules* – To issue binding rulings;
21 (2) *Show Cause Order and Decision* – To issue show cause orders, and
22 thereafter, render decision thereon;
23 (3) *Consent Judgment* – To approve, or disapprove, proposals for consent
24 judgment;
25 (4) *Preliminary Inquiry* – To conduct the required preliminary inquiry of
26 cases involving violations of this Act and other competition laws; and
27 thereafter, if appropriate, to sign and file the proper criminal complaint
28 before the Department of Justice; and
29 (5) *Administrative Fines, Penalties and Sanctions* – To impose the
30 appropriate administrative fines or penalties herein authorized to be
31 imposed.

32 (c) *Other Powers and Functions of the Commission:*

- 33 (1) *Industry Studies and Company Profile.* – To gather and compile
34 information and investigate from time to time, the way a given

1 industry is structured or organized whether as a monopoly,
2 oligopoly, or competitive; the way the firms within that industry act,
3 behave, or conduct themselves in such matters as setting prices,
4 determining output, and the resulting performance of the industry
5 as a whole; the organization, business, conduct, practices and
6 management of any person, partnership, or corporation engaged
7 in trade, commerce, or industry and its relation to individuals,
8 partnerships, associations, corporations, firms and other business
9 enterprises;

10 (2) *Annual and Special Reports.* - To require, by general or special
11 orders, firms engaged in trade, commerce, or industry to file with
12 the Commission in such form as the Commission may prescribe,
13 annual or special reports, or answers in writing to specific
14 questions, furnishing the Commission such information as it may
15 require as to the organization, business, conduct, practices,
16 management and relation to other persons of the respective
17 natural or juridical persons or entities filing such reports or answers
18 in writing except that the Commission shall not require, either by a
19 specific order or by a *subpoena*, the disclosure or production of
20 trade secrets such as a secret formula, pattern, device or
21 compilation of information, including names of customers, which is
22 used in one's business and which gives one an opportunity to
23 obtain advantage over competitors who do not know or use it.
24 Trade secrets shall include a plan or process, tool, mechanism, or
25 compound known only to the owner and his employees to whom it
26 is necessary to confide it;

27 (3) *Public Disclosure of Information.* - To make public, from time to
28 time, such portions of the information obtained by it under this Act,
29 except trade secrets and names of customers, as it shall deem
30 expedient in the public interest;

31 (4) *Reports and Recommendations to Congress.* - To submit annual
32 and special reports to Congress, through the Congressional
33 Oversight Committee on Fair Competition created under this Act,
34 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; and

(5) *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.

SEC. 7. Jurisdiction of Regional Trial Courts. – The Regional Trial Court shall have jurisdiction over cases arising from violations of the provisions of this Act.

With respect to personal actions arising from violations of the provisions of this Act, actions may be commenced and tried where the plaintiff or any of the principal plaintiff resides, or where the defendant or any of the principal defendants reside, or in the case of a non-resident defendant, where he may be found, at the election of the plaintiff.

CHAPTER III

PROHIBITED ACTS

SEC. 8. Anti-competitive Agreements. – It shall be unlawful for firms to engage in horizontal and vertical agreements that prevent, distort or restrict competition, unless otherwise exempted.

i. "Horizontal agreement" means an agreement entered into between two or more enterprises operating at the same level in the market;

ii. "Vertical agreement" means an agreement entered into between two or more enterprises, each of which operates, for the purposes of the agreement, at different levels of the production or distribution chain, and relating to the conditions under which the parties may purchase, sell or resell certain goods or services;

There shall be a *prima facie* case for the existence of an anti-competitive agreement if and when the Commission finds that two or more 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

1 simultaneously and unreasonably increase, decrease or fix the prices of their
2 seemingly competing goods thereby lessening competition in the relevant market
3 among themselves.

4 (a) *Price Fixing* – Any agreement among competitors to raise, suppress,
5 fix or otherwise maintain the price at which their goods and services
6 are sold such as, but not limited to, establishing or adhering to price
7 discounts, holding prices firmly, eliminating or reducing discounts,
8 adopting a standard or formula for computing prices, maintaining
9 certain price differentials between different types, sizes or quantities of
10 products, adhering to a minimum fee or schedule and other analogous
11 schemes with the purpose and effect of creating a monopoly or cartel
12 or lessening competition.

13 (b) *Bid Rigging* – Any agreement to fix prices at auctions or in any other
14 form of bidding, with the purpose and effect of creating a monopoly or
15 cartel, or lessening competition such as, but not limited to, cover
16 bidding, bid suppression, bid rotation and market allocation and other
17 analogous practices of bid manipulation.

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

- 20 (1) generally, any considered evidence that two sellers of similar goods
21 have agreed to set the price of their goods, to sell only a certain
22 amount of their goods, or to sell only to a limited number of buyers
23 or consumers;
- 24 (2) a drastic change in prices of goods and services involving more
25 than one seller of similar goods of different brands, particularly if the
26 changes in prices take place in equal amount and about the same
27 time;
- 28 (3) a seller refusing to sell based on an agreement with a competitor,
- 29 (4) the same firm has repeatedly been the low bidder who has been
30 awarded contracts for a certain service or a particular bidder seems
31 to win bids on a fixed-rotation;
- 32 (5) there is an unusual and unexplainable difference between the
33 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 reason to explain the difference.

SEC. 9. Abuse of Dominant Position. – It shall be unlawful for one or more firms 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 dominant position:

(a) *Predatory Behavior Towards Competitors* – Any agreement, including, but not limited to, selling goods at below relevant cost with the intent of driving competitors out of the market, or creating barriers to entry;

(b) *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;

(c) *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;

(d) *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;

(e) *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;

- 1 (2) Volume Discounts – Price differentials which reflect an allowance
- 2 for differences in the cost of manufacture, sale, or delivery resulting
- 3 from differing methods or quantities in which the goods are sold or
- 4 delivered to the purchasers;
- 5 (3) Competitive Pricing – A price differential or other terms of sale in
- 6 response to the competitive price of payments, services or facilities
- 7 furnished by a competitor;
- 8 (4) *Bona fide* Selection of Customers – The selection of customers on
- 9 *bona fide* transaction; and
- 10 (5) Price Differentials Due to Changing Market Conditions or
- 11 Marketability of Goods – Price changes from time to time in
- 12 response to changing conditions affecting the market or the
- 13 marketability of the goods concerned such as, but not limited to,
- 14 actual or imminent deterioration of perishable goods, obsolescence
- 15 of seasonal goods, distress sales under court process, or sale on
- 16 good faith when a business is going to be discontinued.
- 17 (f) *Exclusivity Arrangement* – Any agreement imposing restrictions on the
- 18 lease or contract for sale or trade of goods concerning where, to whom, or
- 19 in what forms goods may be sold or traded, such as, but not limited to,
- 20 fixing prices, or giving preferential discounts, or rebate upon such price, or
- 21 imposing conditions not to deal with competing firms, where the purpose of
- 22 such agreement is to lessen competition: *Provided*, That nothing
- 23 contained herein shall prohibit or render unlawful permissible franchising,
- 24 licensing or exclusive distributorship agreements;
- 25 (g) *Tie-In Arrangements* – Any agreement making the supply of particular
- 26 goods dependent upon the purchase or lease of other goods from the
- 27 supplier or his consignee, where the purpose and effect of such sale or
- 28 lease or such condition is to substantially lessen competition or to create a
- 29 monopoly or cartel;
- 30 (h) *Boycott* – Any concerted refusal to sell or conspiracy not to sell or to stop
- 31 doing business on the part of the suppliers of any goods, unless for a
- 32 legitimate purpose.

33 **SEC. 10. Anti-competitive Mergers** – No firm engaged in commerce or

34 trade shall acquire, directly or indirectly, the whole or any part of the stock or

1 other share capital, or the whole or any part of the assets, of one or more firms
2 engaged in any line of commerce or trade where the effect of such acquisition of
3 such stocks, share capital, or assets, or of the use of such stock by voting or
4 granting of proxies or otherwise maybe to substantially lessen competition, or
5 tend to create a monopoly.

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

8 (1) A firm from purchasing the stock or other share capital of one
9 or more corporations solely for investment and not using the
10 same by voting or otherwise to bring about, or in attempting to
11 bring about, the substantial lessening of competition;

12 (2) A corporation from causing the formation of subsidiary
13 corporations, or from owning and holding all or part of the stock
14 of such subsidiary corporations, for the actual carrying on of
15 their immediate lawful business, or the natural and legitimate
16 branches or extensions thereof; and

17 (3) A firm from continuing to own and hold the stock or other share
18 capital or assets of another corporation which it acquired prior
19 to the approval of this Act.

20 (b) *Notification Prior to Stock or Asset Acquisition.* – No firm shall acquire,
21 directly or indirectly, the shares of stock or assets of any other firm, if
22 as a result of the acquisition, the acquiring firm would own twenty
23 percent (20%) or more of the shares of stock or assets of the acquired
24 firm, unless, the acquiring and selling firm notify, prior to the conclusion
25 of the agreement for such acquisition and in the prescribed form, the
26 Commission of such proposed acquisition. Only the acquiring firm is
27 required to make the notification in a tender offer. The contemplated
28 acquisition shall be deemed approved, unless the Commission, within
29 thirty (30) calendar days from receipt of the notification, orders the
30 acquiring firm to show cause why the proposed acquisition shall not be
31 declared as prohibited under this Act. The show cause order shall set
32 forth the facts upon which it is based. The acquiring or selling firm may
33 contest the show cause order, in which case, the proposed acquisition
34 shall be considered enjoined until the Commission shall have rendered

1 a decision on the proposed acquisition after due notice and hearing,
2 within further sixty (60) calendar days in accordance with the
3 procedure prescribed herein for the disposition of a show cause order.
4 If the Commission fails to make a decision within the prescribed 60
5 calendar day limit, the acquisition shall be deemed approved and the
6 parties may proceed to implement it.

7 (c) *Transactions Exempt from Prior Notice Requirement.* – The following
8 classes of transactions are exempt from the prior notice requirement
9 under this Section:

- 10 (1) Acquisition of goods or realty transferred in the ordinary course
11 of business;
- 12 (2) Acquisitions of bonds, mortgages, deeds of trust, or other
13 obligations which are not voting securities;
- 14 (3) Acquisitions of voting securities of an issuer at least fifty
15 percent (50%) of the voting securities of which are owned by
16 the acquiring firm prior to such acquisition;
- 17 (4) Transfers to, or from, government agencies or
18 instrumentalities, including government-owned or controlled
19 corporations;
- 20 (5) Transactions exempted from the provisions of this Act and
21 other proper and applicable laws;
- 22 (6) Transactions which require the approval of a specialized
23 agency which regulates the particular industry;
- 24 (7) Acquisitions, solely for the purpose of investment, of voting
25 securities, if as a result of such acquisition the securities
26 acquired or held do not exceed ten percent (10%) of the
27 outstanding voting securities of the issuer;
- 28 (8) Acquisitions of voting securities pursuant to the preemptive
29 rights of the acquiring firm or, if, as a result of such acquisition,
30 the voting securities acquired do not increase, directly or
31 indirectly, the acquiring firm's per centum share of outstanding
32 voting securities of the issuers; or

(9) Such other acquisitions, transfers, or transactions which the Commission may declare as not likely to violate the provisions of this Act or any other proper and applicable law.

CHAPTER IV

FINES AND PENALTIES

SEC. 11. *Administrative Penalties.*

(a) Without prejudice to the violation of other laws, any firm that shall be found to have violated Sections 8, 9 and 10 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, at the discretion of the Commission.

In addition, a fine shall be imposed in an amount double the gross proceeds gained by the violator/s or double the gross loss suffered by the plaintiffs.

(b) *Failure to Comply With An Order of the Commission.* - 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.*

(c) *Supply of Incorrect or Misleading Information.* - The Commission may likewise impose upon persons or entities fines of not less than Five thousand pesos (Php 5,000.00) 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. 12. Criminal Penalties. - Without prejudice to the violation of other laws, any firm that shall be found to have violated Sections 8, 9 and 10 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 (Php 50,000,000.00) 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.

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

CHAPTER V ENFORCEMENT

SEC. 13. Preliminary Inquiry. - The Commission shall *motu proprio*, or 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.

No criminal or civil case for violation of this Act shall be filed or instituted by a private party directly in court, unless there has been a preliminary inquiry conducted by the Commission and the same has been endorsed for filing by the Commission.

SEC. 14. Powers of Concerned Government Agencies. - Notwithstanding the provisions of the preceding section, the exercise of regulatory powers by different government agencies, including local government units, 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. The Commission can seek technical assistance from sectoral regulators.

1 The Commission shall have primary and sole jurisdiction over competition
2 issues, while the regulatory body shall continue to exercise jurisdiction over all
3 matters with regard to the firms' operation and existence.

4 **SEC. 15. Power to Investigate and Enforce Orders and Resolutions.** -

5 The Commission shall conduct preliminary inquiries by administering oaths,
6 issuing *subpoena duces tecum* and summoning witnesses, and commissioning
7 consultants or experts. It shall determine if any provision of this Act has been
8 violated, enforce its orders and carry out its resolutions by making use of any
9 available means, provisional or otherwise, under existing laws and procedures
10 including the power to punish for contempt and to impose fines.

11 **SEC. 16. Self-incrimination.** - Pursuant to the preceding section, a person
12 who is the subject of any preliminary inquiry or investigation by the Commission
13 shall produce the specified document or information when so required by written
14 notice: *Provided*, That no person shall be excused from disclosing any document
15 or information to the inquiring officer on the ground that the disclosure of the
16 information or document may be incriminating: *Provided, further*, That such
17 document or information produced by the person who is the subject of
18 investigation shall not be admissible as evidence against the person in criminal
19 proceedings: *Provided, finally*, That such document or information shall be
20 admissible in evidence in civil proceedings including those arising from or in
21 connection to the implementation of this Act.

22 **SEC. 17. Privileged Communication Exclusion.** - Nothing in the
23 preceding section shall compel the disclosure of privileged communication:
24 *Provided*, That the person who refuses to disclose the information or produce the
25 document or other material required by the inquiring officer in relation to the
26 preliminary inquiry being conducted shall nevertheless be obliged to give the
27 name and address of the firm to whom, or by whom, or on whose behalf, such
28 privileged communication was made.

29 **SEC. 18. Confidentiality of Information.** - Any document or information
30 submitted by firms, as determined and marked confidential by the Commission,
31 relevant to any investigation being conducted pursuant to this Act shall not, in any
32 manner, be directly or indirectly disclosed, published, transferred, copied, or
33 disseminated. The identity of persons who provide information to the
34 Commission and who need confidentiality to protect themselves against

1 economic retaliation, and any Commission deliberations in regard to current or
2 still uncompleted matters shall remain confidential.

3 Any violation of this provision shall be imposed a fine of not less than One
4 hundred thousand pesos (Php100,000.00) but not more than Five hundred
5 thousand pesos (Php500,000.00).

6 **SEC. 19. Leniency.** - Any person or firm which cooperates or furnishes
7 any information, document or data to the Commission before or during the
8 conduct of the preliminary inquiry that constitutes material evidence as
9 determined by the Commission under this Act shall be immune from any suit or
10 charge including from affected parties and third parties: *Provided*, That the
11 person or firm is not the most guilty. *Provided, further*, That any person or firm
12 which cooperates or furnishes information, document or data to the Commission
13 in connection to an investigation being conducted shall not be subjected to any
14 form of reprisal or discrimination: *Provided, furthermore*, That such reprisal or
15 discrimination shall be considered a violation of this Act and subjected to the
16 penalties provided for under Section 11 hereof.

17 Nothing in this section shall preclude prosecution for persons and firms
18 who reported to the Commission with malicious information, data and falsified
19 documents which is damaging to the business and integrity of the persons and
20 firms under inquiry. Such act shall likewise be considered as an unfair trade
21 practice punishable under this Act.

22 **SEC. 20. Termination and Action on Preliminary Inquiry.** - The
23 Commission, after considering the statements made, or documents or articles
24 produced, in the course of an inquiry conducted by it, shall terminate the
25 preliminary inquiry by issuing a resolution ordering its closure if no violation or
26 infringement of this Act is found; or by issuing a *nolo contendere* resolution; or
27 issuing a resolution to, singly or cumulatively, (a) impose penalties in the range
28 provided under Section 11 hereof, (b) order the rectification of certain acts or
29 omissions; or (c) order the restitution of the affected parties.

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

1 If the evidence so warrants, the Commission shall file criminal cases for
2 violation of this Act or relevant laws before the Department of Justice pursuant to
3 Section 12 of this Act.

4 **SEC. 21. *Nolo Contendere Resolution.*** — Any firm under inquiry for
5 violation of the provisions of this Act may submit to a *nolo contendere* resolution
6 at any time before the termination of the preliminary inquiry by: a) the payment of
7 an amount within the range of penalties provided for under Section 11 b) hereof
8 by entering into an undertaking to effectively stop and rectify the acts complained
9 against, make restitution to the affected parties, whether or not the parties are
10 plaintiffs or witnesses; and, c) by submitting regular compliance reports as may
11 be directed: *Provided*, That ten percent (10%) of the amount paid under this
12 section shall equitably accrue to the Commission: *Provided, further*, That a *nolo*
13 *contendere* resolution shall not bar any inquiry for the same or similar acts if
14 continued or repeated.

15 **SEC. 22. *Implementing Policy; Non-Adversarial Administrative***
16 ***Remedies.*** — As an implementing and enforcement policy, the Commission shall,
17 under such rules and regulations it may prescribe, encourage voluntary
18 compliance with this Act and other competition laws by making available to the
19 parties concerned the following and other analogous non-adversarial and non-
20 adjudicatory administrative remedies, before the institution of administrative, civil
21 or criminal action:

22 (a) *Request for Binding Ruling.* — Any person who is in doubt as to whether
23 the contemplated or existing act, course of conduct, agreement,
24 decision or practice is in compliance with, is exempt from, or in
25 violation of any of the provisions of this Act, other competition laws, or
26 implementing rules and regulations thereof, may request the
27 Commission, in writing, to render a binding ruling thereon;

28 (b) *Show Cause Order.* — Upon preliminary findings *motu proprio* or on
29 written complaint under oath by an interested party, that any person is
30 conducting his business, in whole or in part in a manner that may not
31 be in accord with the provisions of this Act or other competition laws,
32 and it finds that the issuance of a show cause order would be in the
33 interest of the public, the Commission shall issue and serve upon such
34 person or persons a written description of its business conduct

1 complained of, a statement of the facts, data, and information together
2 with a summary of the evidence thereof, with an order requiring the
3 said person or persons to show cause, within the period therein fixed,
4 why no order shall issue requiring such person or persons to cease
5 and desist from continuing with ties identified business conduct, or pay
6 the administrative fine therein specified, or readjust its business
7 conduct or practices;

8 (c) *Proposal for Consent Judgment.* — At any time prior to the issuance of
9 a binding ruling, the promulgation of a cease and desist judgment
10 under a show cause order or the promulgation of a decision of
11 judgment in any administrative, civil, or criminal case, the person or
12 persons, whose business conduct is under inquiry in the particular
13 proceedings may, without in any manner admitting a violation of this
14 Act or any other competition laws, submit to the Commission a written
15 proposal for the entry of a consent judgment, specifying therein the
16 terms and conditions of the proposed consent judgment.

17 (d) *Consultations.* — Prior to the fitting of a request for a binding ruling or
18 the submission of a proposal for consent judgment, the person or
19 persons concerned may communicate, in writing, with the Commission
20 on matters that should be included or excluded in such request or
21 proposal, which the Commission may consider necessary for the
22 effective enforcement of this Act or other competition laws.

23 (e) *Binding Ruling, Cease and Desist Order, and Consent Judgment.* —
24 Based upon the facts, data, and information disclosed or supplied by
25 the persons concerned, or established by substantial evidence during
26 the hearing, the Commission shall issue a binding ruling, a cease and
27 desist order or an approval of the proposal for a consent judgment, as
28 the case may be, with or without conditions, to the effect that the
29 particular act, course of conduct, agreement, decision or practice is in
30 accord with this Act or other competition laws, or is exempt therefrom,
31 or constitutes a violation thereof. If the Commission finds that there is
32 substantial evidence tending to show that the act, course of conduct,
33 agreement, decision or practice of the person or persons concerned is

1 prohibited, it shall include in its decision the appropriate order requiring
2 the person or persons concerned to perform certain acts:

3 (1) *Cease and Desist Order.* – To cease and desist from
4 continuing with the identified act, course or conduct,
5 agreement, decision, or practice found to be in violation of the
6 provisions of this Act;

7 (2) *Administrative Penalty or Fine.* – To pay the fine therein fixed;
8 and

9 (3) *Readjustment of Business Methods.* – To readjust, within a
10 reasonable period therein fixed, its method of doing business,
11 including a corporate reorganization or divestment in the
12 manner and under the terms and conditions prescribed by the
13 Commission, as it may deem proper for the protection of the
14 public interest.

15 (f) *Suspension of Administrative, Civil or Criminal Proceedings.* – No
16 pending administrative, civil or criminal proceedings or those filed
17 thereafter, against any person, corporation or any other juridical entity
18 or its officers and employees, shall be suspended, except upon order
19 of the Commission on proper motion, on the ground of the filing of a
20 request for binding ruling, the issuance of a show cause order or the
21 filing of a proposal for a consent judgment based, in whole or in part,
22 on the same set of facts and issues as that of the proceedings sought
23 to be suspended;

24 (g) *Monitoring of Compliance.* – The Commission shall monitor the
25 compliance by the person or persons concerned, their officers, and
26 employees, with the final and executory binding ruling, cease and
27 desist order, or approval of a consent judgment. Upon motion of an
28 interested party, the Commission shall issue a certification to the effect
29 that the person or persons concerned have, or have not, as the case
30 may be, complied with a final and executory ruling, order, or approval;

31 (h) *Inadmissibility in Evidence.* – The request for a binding ruling, the show
32 cause order, or the proposal for consent judgment; the facts, data, and
33 information therein contained or subsequently supplied by the person
34 or persons concerned; admissions, oral or written, made by them

1 against their interest, all other documents filed by them including their
2 evidence presented in the proceedings before the Commission; and
3 the judgment rendered thereon, shall not be admissible as evidence in
4 any administrative, civil or criminal proceedings against such person or
5 persons, their officers, employees, and agents nor constitute a basis
6 for the introduction of the binding ruling, the cease and desist order, or
7 the consent judgment as *prima facie* evidence against such persons in
8 any such action of proceeding;

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

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

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

31 **SEC. 23. Standards.** - In the exercise of its powers or in the discharge of
32 its duties under this act, the Commission shall consider the following:

- 33 (a) the way a given industry is structured or organized whether
34 monopolistic, oligopolistic, or competitive;

- 1 (b) the ways the persons engaged in business within a given industry act,
- 2 behave or conduct themselves in such matters as setting prices,
- 3 determining output, and other relevant factors and the resulting
- 4 performance of the industry as a whole;
- 5 (c) the supply and demand situation for the relevant goods or services;
- 6 (d) the appreciable impact of the particular market conduct on market
- 7 conditions, if any;
- 8 (e) the need to bring together complimentary skills to avoid duplication and
- 9 promote efficiency in the industry;
- 10 (f) the need to determine whether or not the anticompetitive effect of a
- 11 particular market conduct may be offset by increased efficiency and
- 12 reduction of excessive or unnecessary expenses;
- 13 (g) the cost and profit levels of the industry;
- 14 (h) the need to increase productivity in the particular industry involved;
- 15 (i) the state of the industry, including the need to develop it or to save it
- 16 from its distressed state;
- 17 (j) the need of the industry to work more rationally and increase their
- 18 productivity and competitiveness on a larger market;
- 19 (k) the need to respond to international competition and other
- 20 developments in the international market;
- 21 (l) the need to encourage or develop small and medium-sized industries;
- 22 (m) the impact of the market conduct on the economy and on the
- 23 consuming public, particularly low income groups;
- 24 (n) the need to pool capital resources;
- 25 (o) the extent to which the consumers have a possibility of choice of the
- 26 product or service involved;
- 27 (p) the economic and financial power of the parties concerned;
- 28 (q) the attainment of the objectives which are given priority interest in the
- 29 general interest of the country, including the need for accelerated
- 30 industrialization; and
- 31 (r) the extent to which less restrictive practices are available.

32 **SEC. 24. Contempt.** — The Commission or any of its Divisions may
33 summarily punish for contempt by imprisonment not exceeding thirty (30) days or
34 by fine, or both, any person guilty of such misconduct in the presence of the

1 Commission or any of its Divisions in its vicinity as to seriously interrupt any
2 hearing, session or any proceedings before it, including cases in which a person
3 willfully fails or refuses, without just cause, to comply with a summon, *subpoena*
4 or *subpoena duces tecum* legally issued by the Commission or any of its Division,
5 being present at a hearing, proceeding, session or investigation, refused to be
6 sworn as a witness or to answer questions or to furnish information when lawfully
7 required to do so.

8 **SEC. 25. Decisions of the Commission.** – Decisions of the Commission
9 *en banc* shall be appealable to the Court of Appeals as hereinafter provided. The
10 appeal shall not stay the order, ruling or decision sought to be reviewed, unless
11 the Court of Appeals shall direct otherwise upon such terms and conditions it may
12 deem just.

13 **SEC. 26. Appeal to the Court of Appeals.** – Any party who has actively
14 participated in the proceedings before the Commission and is adversely affected
15 by a binding ruling, order, or resolution, decision, judgment, rule or regulation
16 promulgation after notice and hearing by the Commission sitting *en banc*, may
17 appeal, by means of a notice of appeal and a verified petition for review served
18 upon the Commission and other parties who actively participated in the
19 proceedings, to the Court of Appeals within thirty (30) days from receipt thereof,
20 on the ground that the appealed action of the Commission:

- 21 (a) is arbitrary to constitutional rights, power, privilege, or immunity;
- 22 (b) is contrary to constitutional rights, power, privilege, or immunity;
- 23 (c) is in excess of statutory jurisdiction, authority, or limitations, or is
24 contrary to law;
- 25 (d) is without observance of the procedure required by law; and
- 26 (e) is not supported by substantial evidence.

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

29 **SEC. 27. Appeal to the Supreme Court.** – A decision of the Court of
30 Appeals may be appealed to the Supreme Court in the manner and on the
31 grounds prescribed by the Rules of Court.

32 **SEC. 28. Reception of Additional Evidence.** – Any party in the
33 appellate proceedings may apply for leave to the Court of Appeals or the
34 Supreme Court, to adduce additional evidence before the Commission. The

1 Court may, under such terms and conditions as it may prescribe, order the
2 Commission to receive such additional evidence upon showing that it is material
3 and there are reasonable grounds for the failure to present said evidence in the
4 proceedings before the Commission. The Commission, sitting *en banc*, may
5 modify its findings as to the facts, or make new findings, by reason of the
6 additional evidence taken, and it shall file with the appellate court such modified
7 or new findings and its recommendations for the affirmation, modification, or
8 setting aside of the appealed binding ruling, order, resolution, decision, judgment,
9 rule or regulation.

10 **SEC. 29. Writ of Execution.** – Upon the finality of its binding ruling,
11 order, resolution, decision, judgment, or rule or regulation, (collectively,
12 "Decision"), the Commission may issue a writ of execution to enforce its
13 decision and the payment of the administrative fines provided in the preceding
14 sections.

15 **SEC. 30. Violation by Corporation, Partnership, Association, and**
16 **Other Entity.** – Whenever a corporation, partnership, association, firm or other
17 entity, whether domestic or foreign, shall commit any of the acts declared to be
18 unlawful under this Act, the Chairperson of the Board of Directors, the President,
19 the General Manager of the corporation, the general partners of a partnership,
20 and the officers and employees directly responsible, shall be jointly and severally
21 liable with the firm for the fine imposed therein.

22 Should the offense be committed by a foreign corporation licensed to do
23 business in the Philippines, the person or persons directly responsible in the
24 Philippines for the management and operation thereof, shall be liable. In
25 addition, its license to do business in the Philippines shall be cancelled.

26 It shall not be a defense for the Chairperson of the Board of Directors, the
27 President or the General Manager of a corporation or the general partners of a
28 partnership, or the persons responsible for the management and operation of a
29 foreign corporation licensed to do business in the Philippines, that the person
30 was unaware of the violation, unless, it can be established to the satisfaction of
31 the court that even with the exercise of due diligence and proper supervision, the
32 person could not have avoided or prevented the violation.

33 Any agreement between an officer, partner or any other officer and a
34 corporation or partnership whereby the latter directly or indirectly agrees to

1 assume, satisfy or indemnify, in whole or in part, the fine of civil obligation
2 imposed under this Act of such corporate officer, partner, manager or other
3 officer found guilty of violating this Act, shall be void.

4 **SEC. 31. Alien Violators.** – If the person violating any provision of this
5 Act is a foreigner, said person shall, in addition to the other penalties imposed
6 herein, be deported after service of sentence without need of any further
7 proceedings.

8 **SEC. 32. Essential Commodities.** – If the violation involves the trade or
9 movement of prime commodities such as rice, corn, sugar, chicken, pork, beef,
10 fish, vegetables, and other articles or commodities of prime or basic necessity as
11 declared by the appropriate government agency, through publication, the fine
12 imposed by the Commission or the courts, as the case may be, shall
13 automatically be tripled and the offender shall pay such threefold fine.

14 **SEC. 33. Private Action.** – Regardless of the status or pendency of any
15 proceedings, any firm that suffers injury by reason of any violation of this Act may
16 institute a separate and independent civil action, irrespective of the amount
17 involved in the controversy against the defendant or defendants and shall recover
18 treble damages sustained, the costs of suit and reasonable attorney's fees:
19 *Provided, however,* That no filing fees shall be collected: *Provided, further,* That
20 filing fees shall constitute a first lien in the award of damages.

21 **SEC. 34. Effect of Final Judgment.** – Any final judgment in a civil or
22 criminal action brought by the Commission on behalf of the people of the
23 Philippines under this Act to the effect that a defendant has violated any or all of
24 the provisions of this Act shall be *res judicata* as to any claim by any person on
25 whose behalf such action was brought: *Provided,* That such person notifies the
26 court having jurisdiction of the case within the period given by the court:
27 *Provided, further,* That such period shall not be less than ninety (90) days.

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

31 **SEC. 35. Distribution of Damages Recovered.** – The damages
32 recovered in a civil action under Section 20 of this Act shall be distributed in the
33 following manner: (1) as determined and to be authorized by the Court having
34 jurisdiction of the case; (2) ten percent (10%) of the total amount of damages

1 shall accrue to the Commission and/or regulatory agency to be used exclusively
2 in the enforcement of this Act, and, (3) the remainder of which total amount of
3 damages shall be deemed a civil penalty by the Court and shall be deposited to
4 the National Treasury as part of the general fund of the government: *Provided,*
5 That any distribution procedure adopted by the Court shall give preference to
6 individual consumers and afford each interested person a reasonable opportunity
7 to secure his appropriate portion of the net damages obtained.

8 **SEC. 36. Measurement of Damages.** – Damages may be proved and
9 assessed in the aggregate by statistical or sampling methods, by the computation
10 of illegal overcharges, or by such other reasonable system of estimating
11 aggregate damages as the court in its discretion may permit without the necessity
12 of separately proving the individual claim, of, or amount of damage to, persons on
13 whose behalf the suit was brought.

14 **SEC. 37. Immunity from Suit.** – The Commissioners and the Staff of the
15 Commission shall not be subject to any action, claim or demand in connection
16 with any act done or omitted by them in the performance of their duties and
17 exercise of their powers, except for those acts and omissions done in evident bad
18 faith or gross negligence.

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

25 CHAPTER VI

26 OTHER PROVISIONS

27 **SEC. 38. Statute of Limitations.** – Any civil or criminal action to enforce
28 any cause of action arising from a violation of any provision of this Act shall be
29 forever barred unless commenced within five (5) years after the cause of action
30 accrues. The running of the statute of limitation shall be suspended during the
31 pendency of any proceeding.

32 The cause of action begins to run when the plaintiff suffers injury to its
33 business or property: *Provided,* That when the damage suffered by the plaintiff is
34 too speculative to prove, the cause of action does not accrue until the damage

1 becomes probable: *Provided, however,* That if the plaintiff's injury is the result of
2 the continuing violations of this Act, each independent anti-competitive act may
3 restart the limitation period or when a plaintiff reasonably fails to uncover a cause
4 or action that was fraudulently concealed by a defendant.

5 **SEC. 39. Prohibition on the Issuance of Temporary Restraining**
6 **Orders, Preliminary Injunctions and Preliminary Mandatory Injunctions. –**

7 Except for the Supreme Court, no other court shall issue any temporary
8 restraining order, preliminary injunction or preliminary mandatory injunction
9 against the regulatory agency in the exercise of its duties or functions: *Provided,*
10 That, this prohibition shall apply in all cases, disputes or controversies instituted
11 by a private party, including, but not limited to, cases filed by regulated firms or
12 those claiming to have rights through such firms: *Provided, however,* That, this
13 prohibition shall not apply when the matter is of extreme urgency involving a
14 constitutional issue, such that the non-issuance of a temporary restraining order
15 will result in grave injustice and irreparable injury to the public: *Provided, further,*
16 That, the applicant shall file a bond, in an amount to be fixed by the Court, but in
17 no case shall it be less than half of the imposable fines provided for under
18 Section 11 of this Act: *Provided, finally,* That in the event that the court finally
19 decides that the applicant was not entitled to the relief applied for, the bond shall
20 accrue in favor of the regulatory agency.

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

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

31 **SEC. 40. Intellectual Property Rights. –** The implementation of the
32 provisions of this Act shall be without prejudice to the rights, liabilities and
33 remedies under Republic Act No. 8293, otherwise known as the Intellectual

1 Property Code of the Philippines: *Provided, That, the exercise of intellectual*
 2 *property rights shall not in any way be used to justify violations of this Act.*

3 **SEC. 41. Trade Associations.** – Nothing contained in this Act shall be
 4 construed to prohibit the existence and operation of trade associations organized
 5 to promote quality standards and safety issues: *Provided, That, these*
 6 *associations shall not in any way be used to justify any violation of this Act.*

7 **SEC. 42. Congressional Oversight Committee.** - To oversee the
 8 implementation of this Act, there shall be created a Congressional Oversight
 9 Committee on Fair Competition (COCFC) to be composed of the Chairpersons of
 10 the Senate Committees on Trade and Commerce, Economic Affairs, and
 11 Finance; the Chairpersons of the House of Representatives Committees on
 12 Trade and Industry, Economic Affairs and Appropriations; and two members each
 13 from the Senate and the House of Representatives who shall be designated by
 14 the Senate President and the Speaker of the House of Representatives:
 15 *Provided, That one of the two Senators and one of the two House Members shall*
 16 *be nominated by the respective Minority Leaders of the Senate and the House of*
 17 *Representatives. The Congressional Oversight Committee shall be jointly chaired*
 18 *by the Chairpersons of the Senate Committee on Trade and Commerce and the*
 19 *House of Representatives Committee on Trade and Industry. The Vice-Chair of*
 20 *the Congressional Oversight Committee shall be jointly held by the Chairpersons*
 21 *of the Senate Committee on Economic Affairs and the House of Representatives*
 22 *Committee on Economic Affairs.*

23 The Secretariat of the Congressional Oversight Committee on Fair
 24 Competition shall be drawn from the existing personnel of the Senate and House
 25 of Representatives committees comprising the Congressional Oversight
 26 Committee.

27 CHAPTER VII

28 FINAL PROVISIONS

29 **SEC. 43. Implementing Rules and Regulations.** – The Commission
 30 shall prepare the necessary rules and regulations within one hundred twenty
 31 (120) days from the effectivity of this Act: *Provided, That, where the same would*
 32 *apply to an industry or a sub-sector of industry that is subject to the jurisdiction of*
 33 *a regulatory agency, the Commission shall, in preparing the guidelines, consult*
 34 *with the concerned regulatory agency and stakeholders: Provided, further, That*

1 the Commission may revise such guidelines as it deems necessary: *Provided,*
 2 *however,* That such revised guidelines shall only take effect following its
 3 publication in two newspapers of general circulation.

4 **SEC. 44. Appropriations.** - The amount necessary to implement the
 5 provisions of this Act shall be included in the annual General Appropriations Act.
 6 However, for the initial budgetary requirements of the Commission, the amount of
 7 One hundred million pesos (P100,000,000.00) is hereby appropriated: *Provided,*
 8 That all moneys recovered or charges or composition sums collected under this
 9 Act, other than financial penalties, shall be paid into and form part of the moneys
 10 of the Commission.

11 **SEC. 45. Transitory Provision.** - For the purpose of ensuring that the
 12 Commission is organized within the mandated period of one hundred eighty (180)
 13 days after the approval of this Act, an Inter-Agency Task Force shall be created
 14 and composed of the following agencies:

- 15 a) Agencies which will provide administrative support to the Commission:
 - 16 i. Office of the President, to be represented by the Executive
 17 Secretary with the Deputy Executive Secretary for Legal Affairs as
 18 alternate;
 - 19 ii. Department of Budget and Management, to be represented by the
 20 Secretary with the Undersecretary in charge of organization of new
 21 offices and position classifications as alternate;
- 22 b) Agencies which currently perform functions germane or are related to
 23 the purposes of the Commission:
 - 24 i. Tariff Commission, to be represented by the Chairperson and with
 25 an Associate Commissioner permanently designated as alternate;
 - 26 ii. Department of Trade and Industry, to be represented by the
 27 Secretary with the Director of the Bureau of Trade Regulation and
 28 Consumer Protection as alternate representative;
 - 29 iii. Department of Justice, to be represented by the Secretary with an
 30 officer holding at least an Assistant Secretary rank as alternate.

31 The Task Force shall also meet in Executive Session with all the agency
 32 heads to deliberate on possible appointees for the position of Chairperson and
 33 Associate Commissioners of the Commission for submission to and consideration
 34 of the President of the Philippines.

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

SEC. 46. 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. 47. 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. 48. Repealing Clause. – The following laws, insofar as they are inconsistent with any of the provisions of this Act, are hereby repealed, amended or otherwise modified accordingly:

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

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

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

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

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

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

Provided, 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* and in at least two (2) national newspapers of general circulation: *Provided, however*, That in order to allow

1 affected parties time to renegotiate agreements or restructure their business to
2 comply with the new competition law, the penal provisions under Section 12 of
3 this Act, except for those already prohibited under the Revised Penal Code, shall
4 be imposed one (1) year after the effectivity of the Implementing Rules and
5 Regulations of this Act.

6 Approved,

FACT SHEET

House Bill No. **4835**

(In substitution of House Bill Nos. 549, 913, 1007, 1583, 1733
1980, 3100, 3134, 3244, 3476, 3534 and 3985)

AN ACT PENALIZING ANTI-COMPETITIVE AGREEMENTS, ABUSE OF DOMINANT POSITION, AND ANTI-COMPETITIVE MERGERS, ESTABLISHING THE PHILIPPINE FAIR COMPETITION COMMISSION AND APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES

Introduced by: Representatives Ponce-Enrile, Yap, Alvarez A., Apacible, Arroyo D., Macapagal-Arroyo G., Teodoro, Rodriguez R., Rodriguez M. Jr., Garcia A., Benitez, Aumentado, Umali R., Umali C., Tañada, Gullas, Belmonte F., Miraflores, Nograles, Durano, Duavit, Biron, Defensor, Treñas, Casiño, Villarica, Mandanas, Fernandez, Garay, Del Rosario A.G., Sacedalan, Osmeña, Joson, Rodriguez I., Lacson-Noel, Yu, Ferrer J., Sahidula, Lagdameo A., Bonoan-David, Mellana, Sakaluran, Quisumbing, Unabia, Singson R., Batocabe, Colmenares, Haresco, Villar, Pancho, Enverga, Cojuangco E., Cajayon, Tugna, Ty, Romualdez, Gonzales A., Panotes, Bagasina, Cua, Garin S., Castelo, Javier, Evardone, Bulut-Begtang, Alvarez M., Plaza, Palmones, Magsaysay E., Almario, Bello, Tinio, Rivera, Datumanong and Pangandaman S.

Primary Committee Referral: **COMMITTEE ON TRADE & INDUSTRY**

Committee Chairperson: **REP. ALBERT RAYMOND S. GARCIA**

Secondary Committee Referral: **COMMITTEE ON ECONOMIC AFFAIRS**

Committee Chairperson: **REP. RAMON DURANO IV**

OBJECTIVES:

- To promote and enhance economic efficiency and full competition in trade, industry and all commercial economic activities.
- To prevent the concentration of economic power in a few 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.

- To penalize all forms of unfair trade, anti-competitive conduct and combinations in restraint of trade, with the objective of protecting and advancing consumer welfare.

KEY PROVISIONS:

- Mandates that 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
- Provides that the Act shall apply to: (a) all firms as defined and all their commercial agreements, actions or transactions involving goods, services or intellectual property; and, (b) all agents, officers, employees, partners, owners, directors, consultants, stockholders, representatives, managers, supervisors, and all other natural persons who, acting on behalf of juridical persons shall authorize, engage or aid in the commission of restrictive practices prohibited under this Act;
- Identifies and defines prohibited acts such as anti-competitive agreements, and abuse of dominant position *(such as, but not limited to, predatory behaviour towards competitors, price fixing, bid rigging, limitation and control of markets, market allocation, arrangements to share markets or sources of supply, price discrimination [except those that are considered permissible], exclusivity arrangement, tie-in arrangement, and boycott)*;
- Prohibits mergers, consolidations or asset acquisition where the effect of such maybe to substantially lessen competition, or tend to create a monopoly. Nevertheless, it also identifies instances where stock or asset acquisition or ownership shall be permissible and the bill sets down requirements thereon. As such, it requires notification prior to stock or asset acquisition if as a result of the acquisition, the acquiring firm would own twenty percent (20%) or more of the shares of stock or assets of the acquired firm.
- Imposes 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, at the discretion of the Commission, for violations.

- Establishes the Philippine Fair Competition Commission (PFCC), an independent body which shall have original and exclusive jurisdiction to enforce and implement the administrative provisions of this Act. The Commission shall be composed of a Chairperson and four (4) Associate Commissioners. The Chairperson and the Associate Commissioners shall be appointed by the President of the Philippines. The term of office of the Chairperson and the Associate Commissioners shall be six (6) years without reappointment.
- Mandates that upon prior notice and hearing, the Commission shall have the power to, among others, issue binding rulings, show cause orders, and thereafter, render decision thereon, approve, or disapprove, proposals for consent judgment, conduct the required preliminary inquiry of cases involving violations of this Act and other competition laws; and thereafter, if appropriate, sign and file the proper criminal complaint before the Department of Justice, and impose the appropriate administrative fines or penalties;
- Provides that the Commission, without hearing, shall have the power to, commence investigation, on its own initiative or upon the complaint of any person, any and all violations of this Act, cause the issuance of a cease and desist order prior to the commencement of a preliminary inquiry, and/or the institution of a civil or administrative action, require any government agency to lend 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, and to issue *subpoena*, *subpoena duces tecum* and *subpoena ad testificandum* in the exercise of its functions, powers and duties;
- Mandates that the exercise of regulatory powers by different government agencies, including local government units, 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. The Commission can seek technical assistance from sectoral regulators.
- Provides that the Commission shall have primary and sole jurisdiction over competition issues, while the regulatory body shall continue to exercise jurisdiction over all matters with regard to the firms' operation and existence.
- Provides for a whistleblower mechanism whereby 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 shall be immune from any suit or charge including from affected parties and third parties: *Provided*, That the person or firm is not the most guilty.

- Provides for leniency via *Nolo Contendere* Resolution whereby any firm under inquiry 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; 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.
- Provides for an initial fund of One Hundred Million Pesos (P100,000,000.00) for its implementation. Thereafter, such amounts as may be necessary shall be for the continuous implementation of the Act shall be included in the Annual General Appropriations Act. All moneys recovered or charges or composition sums collected under this Act, other than financial penalties, shall be paid into and form part of the moneys of the Commission.

RELATED LAWS:

- Sec. 5 (3) of Republic Act No. 7581 or The Price Act;
- Sec. 5 (f) of Republic Act No. 7925 or The Public Telecommunications Policy Act;
- Sec. 11 (a) and (b) of Republic Act No. 8479 or The Downstream Oil Industry Deregulation Act;
- Sec. 45 of Republic Act No. 9136 or The Electric Power Industry Reform Act;
- Sec. 13 of Republic Act No. 9295 or The Domestic Shipping Development Act;
- Sec. 24 and 25 of Republic Act No. 9502 or The Universally-Accessible Cheaper and Quality Medicines Act.

**Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City**

**FIFTEENTH (15TH) CONGRESS
First Regular Session**

**MINUTES OF THE MEETING OF THE COMMITTEE ON TRADE AND INDUSTRY JOINT WITH
COMMITTEE ON ECONOMIC AFFAIRS HELD ON FEBRUARY 22, 2011 AT ROLANDO ANDAYA
HALL, HOUSE OF REPRESENTATIVES COMPLEX, BATASAN HILLS, QUEZON CITY**

I. CALL TO ORDER

Rep. Albert Raymond S. Garcia, Trade and Industry Committee Chairman and Co-Presiding Officer, called the meeting to order at 3:31 p.m..

II. ACKNOWLEDGMENT OF RESOURCE PERSONS AND GUESTS

Upon order of the Rep. Garcia, Committee Secretary Valentino Palanca acknowledged the following guests: Atty. Francis Lim of ACCRA Law Office; Director Victor Mario Dimagiba, Bureau of Trade Regulation and Consumer Protection under the Department of Trade and Industry; Commissioner Edgar Abon of the Tariff Commission; Atty. Tony Salvador, representing the Office of Deputy Speaker Tanada and IDEALS; and Mr. Melf Kuehl of Gesellschaft fur Internationale Zusammenarbeit/Konrad Adenauer Stiftung (GIZ/KAS).

**III. REVIEW OF HIGHLIGHTS OF PREVIOUS HEARING AND OPENING REMARKS OF THE
CHAIRMAN DURANO OF THE COMMITTEE ON ECONOMIC AFFAIRS**

Rep. Garcia thanked the resource persons present for responding favorably to the Committee's invitation to the meeting. Thereafter, he reported the highlights of the previous hearing (February 8, 2011) for everyone's benefit. It included the observation of Rep. Yu regarding the imposition of penalties in case the violator was a juridical person. There was a subsequent discussion on the need to identify categorically who and up to what level in the corporation's management or board should be jailed in case a firm was found to be criminally liable.

He then turned over the floor to Rep. Durano for his opening remarks. In turn, Rep. Durano mentioned his observations on the current form of the draft bill, viz: identification of liable persons in case the violator is a corporation; jurisdiction of the competition commission vis-a-vis the existing regulatory agencies; grant of immunity from suit of commission members; and lastly, review of the threshold figure (percentage) for purposes of defining "control" in a corporation.

**IV. DISCUSSION PROPER OF DRAFT BILL UNDER REP. TOMAS APACIBLE, CHAIR OF THE
TECHNICAL WORKING GROUP (TWG)**

Rep. Apacible narrated the conduct of several hearings by the Technical Working Group and how it has come up with the current output. First to be highlighted is the creation of the Philippine Fair Competition Commission under Section 5. Section 6 covers original and exclusive jurisdiction of the Commission to enforce and implement the administrative provisions of this Act. In section 7, there was discussion as regards venue and jurisdiction.

CRIMINAL LIABILITY

As regards criminal liability, Rep. Tomas D. Osmena commented that the criminal provisions be left out of the bill as it creates problems in terms of implementation. He suggested that the Commission concentrate on the administrative aspect and observe if it will achieve the objective of a level playing field. Atty. Francis Lim of ACCRA Law agreed and opined that before civil or criminal cases are filed, the SEC should conduct a preliminary inquiry as it has competence to determine if there really was a violation.

SUNRISE PROVISION

On the issue of the sunrise provision whereby the criminal penalties shall be in effect after a year, it was reckoned that the formation of the infrastructure (180 days), the formulation of the implementing rules and regulation (120 days) and the advocacy period will amount to one (1) year and 300 days. Atty. Lim suggested to extend the sunrise provision to 3 years. However, his subsequent request for a 2 year extension was objected to by Rep. Rufus Rodriguez as being too long. Nevertheless, the body adopted the earlier suggestion of Atty. Lim that both the civil and criminal penalties shall be held in abeyance for the duration of the sunrise period.

POWERS OF CONCERNED REGULATORY AGENCIES

A lengthy discussion ensued on Section 14 regarding the powers of concerned regulatory agencies and the bill's provision for its cumulative nature, to wit; The PFCC shall primary and sole jurisdiction over competition issues, while the regulatory body shall continue to exercise jurisdiction over all matters with regard to the firms' operations and existence. Director Dimagiba correlated this provision with the one in Section 45 or the Repealing Clause as it listed specific provisions of other laws. Further, Rep. Osmena mentioned a case in Davao where the franchise-holder (PLDT) did not put up telephone service in a particular area and the local government allowed another entity to provide the service. In the ensuing court case filed by PLDT, the court upheld the power of the local government under its general welfare clause to grant the right to the new entity. He clarified that along with concerned regulatory agencies, the local governments should also be mentioned as another entity which shall retain its powers over similar matters.

WHISTLEBLOWER PROVISION

Mr. Mel Kuehl from GIZ/KAS observed that under Section 19 on immunity of whistleblowers, if there were a series of accusations that walked uphill in a certain firm, then maybe there should be a reduction of punishment rather than grant of immunity. Rep. Rodriguez opined however that this matter can be left to the sound discretion of the Commission if the need ever arises.

V. ACTION BY THE JOINT COMMITTEE

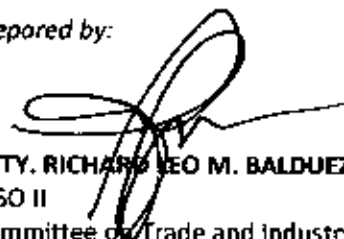
The body established that all discussions and agreements should be reflected on the draft bill subject to style. Forthwith, upon motion of Rep. Rodriguez, seconded by Reps. Apacible and Sharon Garin, the draft bill was approved by the Joint Committee, subject to style.

VI. ADJOURNMENT

There being no other matter on the agenda, the meeting was adjourned at 4:39 p.m..

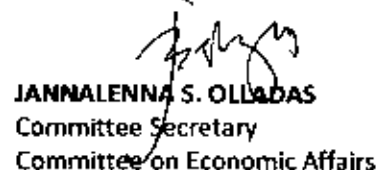
Certified true and correct to the best of our knowledge and ability.

Prepared by:

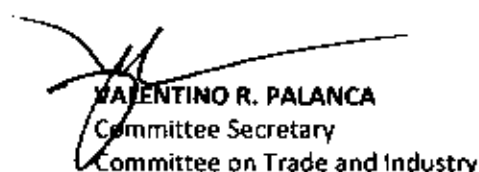


ATTY. RICHARD LEO M. BALDUEZA
SLSO II
Committee on Trade and Industry

Reviewed by:

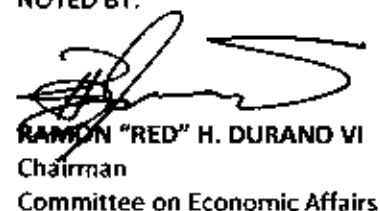


JANNALENNAS. OLLADAS
Committee Secretary
Committee on Economic Affairs

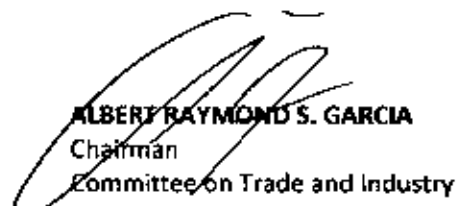


VALENTINO R. PALANCA
Committee Secretary
Committee on Trade and Industry

NOTED BY:



RAMON "RED" H. DURANO VI
Chairman
Committee on Economic Affairs



ALBERT RAYMOND S. GARCIA
Chairman
Committee on Trade and Industry

**Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City**

**FIFTEENTH CONGRESS
First Regular Session**

HOUSE BILL NO. 549

Introduced by Congressman JUAN C. PONCE ENRILE, JR.

EXPLANATORY NOTE

Article XII, Section 19, of the 1987 Philippine Constitution 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."

Section 22 of the same Article encourages the promulgation of legislation that would impose civil and criminal sanctions against those who circumvent or negate this principle. Hence, Section 22 of the Constitution provides

"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"

Amidst the difficult economic conditions we are presently laboring under, it is not very difficult to imagine how artificial prices in one or two commodities are able to directly or indirectly raise the prices of related goods and services. It is imperative that our people be protected against exploitative price manipulators.

Admittedly, numerous legislations have been passed pursuant to the above-quoted Constitutional mandate. However, the increased deviousness and complexity of schemes in perpetuating monopolies in the free market necessitates an equally sophisticated legislation that would effectively address this concern.

This Bill proposes to penalize combinations or conspiracies in restraint of trade and all forms of artificial machinations that will injure, destroy or prevent free market competition.

For these reasons, the passage of this Bill is earnestly sought.


JUAN C. PONCE ENRILE, JR.

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FIFTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 549

Introduce by Congressman JUAN C. PONCE ENRILE, JR.

AN ACT
PROHIBITING MONOPOLIES, ATTEMPT TO MONOPOLIZE AN INDUSTRY OR
LINE OF COMMERCE, MANIPULATION OF PRICES OF COMMODITIES, ASSET
ACQUISITION AND INTERLOCKING MEMBERSHIPS IN THE BOARD OF
DIRECTORS OF COMPETING CORPORATE BODIES AND PRICE
DISCRIMINATION AMONG CUSTOMERS, PROVIDING PENALTIES
THEREFORE, AND FOR OTHER PURPOSES

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

Section 1. Title. – This Act shall be known and cited as the “Philippine Anti-Trust Act.”

Section 2. Definition of “Person” or “Persons”. The word “person” or “persons”, whenever used in this Act, shall be deemed to include not only individual or individuals but also corporations, partnerships, and associations existing under or authorized by the laws of the Philippines or by the laws of any foreign country.

Section 3. Agreements, Contracts, Combinations, or Conspiracies in Restraint of Trade and Price Manipulation. – Every agreement or contract, combination in the form of trust or otherwise, or conspiracy, expressed or implied, in restraint of trade or commerce inside the country or with foreign nations or foreign territories, are hereby declared illegal and, therefore, it shall be unlawful for any person to enter in, or to make, or to be a party to any such contract or combination or conspiracy, and any such shall be deemed guilty of an offense. *Provided,* That nothing herein contained shall render illegal, any agreement or contract prescribing minimum prices for the resale of a commodity which bears or the label or container of which bears, the trademark, brand, or name of the producer or distributor of such

commodity and which is in free and open competition with commodities of the same general class produced or distributed by others: *Provided, further,* That the preceding proviso shall not make lawful any agreement or contract, combination or conspiracy providing for the establishment or maintenance of minimum resale prices on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailer, or between persons, firms, or corporations in competition with each other.

Section 4. *Monopoly or Attempt to Monopolize.* – It shall be unlawful for any person to monopolize, or attempt to monopolize, or to combine or conspire, expressly or impliedly, with any other person or persons, to monopolize any part of the trade or commerce within the country, or with any foreign country or territory, and any such person shall be guilty of an offense. *Provided,* That nothing contained in this Act shall render unlawful the right of a patent holder or a copyright holder to enjoy the benefit of his or its patent or copyright duly registered in the Philippines or in any foreign country with which the Philippines is a co-signatory to any treaty or convention that protects rights to an invention patent or to a copyright, as the case may be.

Section 5. *Price Discrimination* – (A) It shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchasers involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the Philippines, and where the effect of such discrimination may be substantially to lessen competition or trend to create a monopoly in any line of commerce, or to injure, destroy, or to prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided,* That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing method or quantities in which such commodities are to such purchasers sold or delivered: *Provided, however,* That the Secretary of the Department of Trade and Industry in the case of non-agricultural commodities and the Secretary of the Department of Agriculture in the case of agricultural commodities may, after due notice, investigation and hearing to all interested parties, fix and establish quantity limits, and revise the same as the Secretary concerned finds necessary, as to particular commodities or classes of commodities, where such Secretary finds that available purchasers in greater quantities are so few as to render differentials on account thereof unjustly discriminatory or promotive of monopoly in any line of commerce within the jurisdiction of his Department; and the

foregoing shall not be construed to permit differentials based on differences in quantities greater than those so fixed and established: *Provided, further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade: And *Provided, finally*, That nothing herein contained shall prevent price changes from time to time in response to changing conditions affecting the market for or the marketability of the goods concerned, such as but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(B) It shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(C) It shall be unlawful for any person engaged in commerce to pay or contract for the payment of anything of value to or for the benefit of a customer of such person in the course of such as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such person, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(D) It shall be unlawful for any person to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(E) It shall be unlawful for any person engaged in commerce, in the course of such commerce, knowingly to induce or receive discrimination in price which is prohibited by this Section.

(F) Upon proof being made, at any hearing on a complaint under this Section, that there has been discrimination in price or service or facilities furnished, the burden of rebutting the

prima-facie case thus made by showing justification shall be upon the person charged with a violation of this Section, and unless justification shall be affirmatively shown, the Secretary concerned is authorized to issue an order terminating the discrimination: *Provided, however,* That nothing herein contained shall prevent a seller rebutting the prima-facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.

Section 6. *Prohibited Stipulations in Lease or Sales Contracts.* – It shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make or make a sale or contract for the sale of goods, wares, merchandise, machinery, supplies, or other commodities, whether patented or unpatented, for use, consumption, or resale within the Philippines, or fix a price charged therefore, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lease or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities of a competitor of the lessor or seller, where the effect of such lease sale or contract for sale or such condition, agreement, or understanding may be to lessen competition or tend to create a monopoly in any line of commerce.

Section 7. *Prohibited Stock or Asset Acquisition.* – No person engaged in commerce or in any activity affecting commerce 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 another person engaged also in commerce or in any activity affecting commerce, where in any line of commerce in any activity affecting commerce in the country or in any part of the country, the effect of such acquisition may be substantially to lessen competition or tend to create a monopoly.

Section 8. *Prohibited Grant or Proxies or voting Rights.* – No person shall acquire, directly or indirectly, the whole or any part of the stock or other share capital, nor shall any person acquire the whole or any part of the assets of one or more persons engaged in commerce or in any activity affecting commerce, where in any line of commerce in any activity affecting commerce in the country or in any part of the country, the effect of acquisition of such assets, or of the use of such stock by the voting or granting of proxies or otherwise, may be substantially to lessen competition, or tend to create a monopoly. This Section shall not apply to persons purchasing such stock solely for investment and not using the same voting of otherwise to bring about, or in attempting to bring about, the substantial lessening

competition. Nor shall anything contained in the Section prevent a corporation engaged in commerce or in any activity affecting commerce from causing the formation of subsidiary corporations for the actual carrying on their immediate lawful business, or the natural and legitimate branches or extension thereof, or from owning and holding all or part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Nothing contained in this Section shall be held to affect impair any right heretofore legally acquired: *Provided*, That nothing this Section 8 shall held or construed to authorize or make anything heretofore prohibited or made illegal by any anti-trust law of the Philippines, particularly Article 186 of the Revised Penal Code of the Philippines, nor exempt any person from the penal provisions thereof or the civil remedies provided therefore, if any.

Section 9. *Prohibited Board Memberships in Two or More Corporations.* – No person shall be a director in any two or more corporations engaged in whole or in part in commerce in the Philippines at the same time, other than banks, banking associations, investment companies, and trust companies, if such corporations are or shall have been therefore, by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any provisions of this Act or any anti-trust law of the Philippines, particularly Article 186 of the Revised Penal Code of the Philippines.

Section 10. *Exemption of Labor, Agricultural or Horticultural Organizations.* – The labor of a human being is not a commodity or Article of commerce. Nothing contained in this Act, therefore, shall be construed to forbid the existence and operation of any, labor, agricultural or horticultural organizations, instituted for purposes of mutual help, and not having capital stock or conducted for profit, or to forbid restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof, nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under this Act.

Section 11. *Penalties for Violations of Section 3 and Section 4.* – Any person that shall be found to have violated Section 3 or Section 4 of this Act shall, for each and every such violation, be punished by a fine not exceeding ten million pesos (P10,000,000.00) if a corporation or association, or, one million pesos (P1,000,000.00) if a natural person or by

imprisonment not exceeding five (5) years, or both fine and imprisonment, in the discretion of the court.

Section 12. *Penalties for Violations for Section 5, 6, 7, 8 and/or 9.* - Any person that shall be bound to have violated Sections 5,6,7,8 or 9 or any combination of such sections of this Act shall, for each and every violation, be punished by a fine not exceeding five million pesos (P 5,000,000.00), or by imprisonment not exceeding two and one half (2 ½) years, or both fine and imprisonment in the discretion of the court.

Section 13. *Imposition of a Higher Penalty.* - If the same Act or Acts are chargeable and punishable under Article 186 the Revised Penal Code and under the provisions of this Act, the penalties imposed under the provisions of the Revised Penal Code or under the provisions of this Act, whichever is the heavier, shall imposed.

Section 14. *Exclusion of Civil Action from Criminal Action.* - The institution of a criminal action under this Act against a defendant shall not be deemed to include any claim for damages in favor of any person that may have suffered any monetary injury because of any violation of this Act.

Section 15. *Civil Action of Private Parties for Monetary Injury.* In addition to the penalties provided in Sections 11 and 12 of this Act, any person that shall be injured in his business or property and thereby suffers monetary injury by reason of anything forbidden under Sections 3, 4, 5,6, 7, 8 or 9 of this Act may institute a separate and independent civil action, irrespective of the amount involved in the monetary injury by him or by it sustained, and the cost of suit, including a reasonable attorney's fee.

The complaint for the civil action may be filed or instituted in the Regional Trial Court where the defendant or any of the defendants, if more than one, resides or is found or has an agent, or in the Regional Trial Court where the plaintiff resides. Any complaint for civil action that may be filed or instituted against a defendant to recover monetary injury suffered as a consequence of a violation of this Act shall be exempted from payment of any filing fee.

Section 17. *Determination of Monetary Relief to be Awarded in A suit of the Republic of the Philippines.* - In the event of such a civil action brought by the Secretary of Justice

becoming successful, the Regional Trial Court having jurisdiction over the case shall exclude from the amount of the monetary relief awarded in such action, the amount: (1) which duplicates amounts of monetary relief that have been awarded for the same injury, or (2) which is properly allocable (A) to natural persons who have excluded their claims from the civil action instituted by the Secretary of Justice in the name of the Republic of the Philippines, and (B) to any business entity.

Section 18. *Requirement of Notice by Publication in a Suit of the Republic of the Philippines.* - In any civil action brought by the Secretary of Justice under this Act in the name of the Republic of the Philippines, as *parens patriae*, the Secretary of Justice shall, at times and in such manner, and with such content as the Regional Trial Court having jurisdiction may direct, cause notice thereof to be given by publication. However, if such Regional Trial Court finds that notice given solely by publication would deny due process of law to any person or persons, that court may direct further notice to such persons according to the circumstances of the case.

Section 19. *Exclusion from Suit of the Republic of the Philippines.* - Any person on whose behalf a civil action has been brought by the Secretary of Justice under this Act in the name of the Republic of the Philippines, as *parens patriae*, may elect to exclude from adjudication the portion of the claim of the Republic of the Philippines for monetary relief attributable to him by filing notice of such election with the Regional Trial Court having jurisdiction over the civil action within such time as specified in the notice given pursuant to the immediately preceding Section 16 hereof.

Section 20. *Effect of Final Judgment in a Suit of the Republic of the Philippines.* - The final judgment in an action brought by the Secretary of Justice under this Act in the name of the Republic of the Philippines, as *parens patriae*, shall be *res judicata* as to claim by any person on behalf of whom such action was brought and who fails to give the notice of election under Section 17 hereof within the period directed and specified by the Regional Trial Court having jurisdiction of the case in accordance with Section 16 of this Act.

Section 21. *Suit of the Republic of the Philippines to Recover its Own Damages.* - Whenever the Republic of the Philippines is hereafter injured in its business or property by reason of anything forbidden or rendered unlawful in this Act, it may sue thereon in the Regional Trial Court in which the defendant or any of the defendants, if there are more than

one defendant resides or is found or has an agent, without respect to the amount in controversy and shall recover actual damages by it sustained and the cost of suit.

Section 22. *Approval of the Court Required to Dismiss or Compromise a Civil Action.* - Any Civil action filed under this Act shall not be dismissed or compromised without the approval of the court having jurisdiction of the case, and notice of any proposed dismissal or compromise shall be given to the public and to the parties in such manner as the court directs.

Section 23. *Attorney's Fee for the Prevailing Defendants.* - In any civil action filed against a defendant under this Act, the court having jurisdiction of the case may award a reasonable attorney's fee in favor of a prevailing defendant upon a finding that the Secretary of Justice or the plaintiff has acted in bad faith, vexatiously, wantonly, or for oppressive reasons

Section 24. *Use of Statistical or Sampling Methods to Prove and Assess Damages.* - In any civil action under this Act which there has been a determination that a defendant agreed to fix prices in violation of the provisions of this Act, 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 having jurisdiction of the case in its discretion may permit without necessarily proving the individual claim of or the amount of damage to, persons on whose behalf the suit was brought

Section 25. *Distribution of Monetary Relief Recovered in Suit of the Republic of the Philippines.* - The monetary relief in a civil action filed by the Secretary of Justice in the name of the Republic of the Philippines, as *parens patriae*, in accordance with the provisions of Section 16 hereof shall (1) be distributed in such manner as the Regional Trial Court having jurisdiction of the case in its discretion may authorize; or (2) be deemed a civil penalty by the Regional Trial Court and deposited with the National Treasury as part of the general fund of the government, subject in either case to the requirement that any distribution procedure adopted by the Regional Trial Court shall afford each person having an interest in the monetary relief a reasonable opportunity to secure his appropriate portion of the net monetary relief obtained.

Section 26. *Evidential Effect of a Final Judgment Rendered in a Criminal Action Against a Defendant.* - Any final judgment or decree heretofore or hereafter rendered in any criminal

action brought by or on behalf of the People of the Philippines as well as any final judgment or decree heretofore or hereafter rendered in any civil action brought by or on behalf of the Republic 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 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 or decree would be an estoppel as between the parties thereto *Provided*, That this Section shall not apply to consent judgment or decree, as hereinafter provided in Section 27 hereof, entered before any testimony has been taken

Section 27. *Proposal for a Consent Judgment.* At any time in the course of a civil action brought by or on behalf of the Republic of the Philippines under this Act, the Republic of the Philippines through the Secretary of Justice, may propose in a proper pleading to the defendant or defendants a consent judgment by the latter based on the facts alleged by the parties in their respective pleadings.

Any such proposal for a consent judgment for entry in such civil action shall be filed with the Regional Trial Court having jurisdiction of the case. A summary of the terms of the proposal for the consent judgment with a competitive impact statement which shall recite (1) the nature and purpose of the proceeding; (2) a description of the practices or events giving rise to the alleged violation of this Act; (3) an explanation of the proposal for a consent judgment, including an explanation of any unusual circumstances giving rise to such proposal or any provision contained therein, relief to be obtained thereby, and the anticipated effects on competition of such relief; (4) the remedies available to potential private plaintiffs damaged by the violation in the event that such proposal for the consent judgment entered in such proceeding; (5) a description of the alternatives to such proposal actually considered by the Republic of the Philippines; and (7) a list of the materials and documents which the Republic of the Philippines shall make available for purposes of meaningful public comment, and the place where such materials and documents are available for public inspection, shall be published at least sixty (60) days prior to the effective date of such consent judgment for seven (7) days over a period of three (3) weeks in at least two (2) newspapers of general circulation.

Copies of the proposal for a consent judgment or any other materials and documents which the Republic of the Philippines considered determinative in formulating its proposal for a consent judgment shall be made available to the public at the Regional Trial Court having jurisdiction of the case.

Section 28. *Public Comments Relating to the Proposal for a Consent Judgment.* - During the sixty (60) day period mentioned in Section 27 hereof, and such additional time as the Republic of the Philippines may request and the Regional Trial Court may grant, the Republic of the Philippines shall receive and consider any written comments relating to the proposal of the consent judgment filed with the Regional Trial Court having jurisdiction of the case in accordance with Section 27 of this Act. At the close of the period during which such comments may be received, the Republic of the Philippines shall file with the Regional Trial Court having jurisdiction of the case, not later than (30) days from the date the last comment was filed with the Regional Trial Court, a response to such comments

Section 29. *Duty of the Regional Trial Court Before Entering Any Consent Judgment.* - Before entering any consent judgment proposed by the Republic of the Philippines under Section 27 of this Act, the Regional Trial Court having jurisdiction of the case shall determine that the entry of such judgment is in the public interest.

For purposes of determining that the entry of such judgment is in the public interest, the Regional Trial Court may consider: (1) the competitive impact of such judgment, including termination of alleged violations, provisions, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment; and (2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint, including consideration of the public benefit, if any, to be derived from the determination of the issues at the trial.

Section 30. *Powers of the Regional Trial Court in Making the Determination under Section 29.* - In making its determination under Section 29 of this Act, the Regional Trial Court may; (1) take the testimony of government officials or experts or such expert witnesses, as the Regional Trial Court may deem appropriate; (2) appoint such outside consultants or experts witnesses as the Regional Trial Court may deem appropriate; (3) request and obtain the views, evaluations, or advice of any individual, group, or agency of the government with respect to any aspects of the proposed consent judgment or the effect of such consent judgment, in such manner as the Regional Trial Court having jurisdiction of the case deems appropriate; (4) authorize full or limited participation in the civil proceedings before the Regional Trial Court having jurisdiction of the case by interested persons or agencies of the government, including appearance amicus curiae, intervention as a party pursuant to the provisions of the Rules of Court, examination of witnesses or documentary materials, or

participation in any other manner and extent which serves the public interest as the Regional Trial Court having jurisdiction of the case may deem appropriate; (5) review any comments including any objections filed with the Republic of the Philippines concerning the proposed consent judgment and the responses of the Republic of the Philippines to such comments and objections, in accordance with the provisions of Section 28 of this Act, and (6) take such other action in the public interest as the Regional Trial Court may deem appropriate.

Section 31. *Certifications of the Defendants.* - Not later than fifteen (15) days following the date of the filing of any proposal for a consent judgment under Section 27 of this Act, each defendant shall file with the Regional Trial Court having jurisdiction on the case a description of any and all written or oral communications by or on behalf of such defendants, including any and all written or oral communications on behalf of such defendants, or other person, with any officer or employee of the Republic of the Philippines or relevant to such proposal, except that any such communications made by counsel of record with the Secretary of Justice or the employees of the Department of Justice shall be excluded from the requirements of this Section. Prior to the entry of any consent judgment pursuant to this Act, each defendant shall certify under oath to the Regional Trial Court having jurisdiction of the case that the requirements of this Section have been complied with and that such filing is a true and complete description of such communications known to the defendant or which the defendant reasonably should have known.

Section 32. *Evidential Value of Proceedings in a Proposal for a Consent Judgment.* - Proceedings before the Regional Trial Court having jurisdiction of the case under Section 29 and Section 30 of this Act, shall not be admissible against any defendants in any action or proceedings brought by any other party against such defendant nor constitute a basis for the introduction of the consent judgment as a prima facie evidence against such defendants in any such action or proceeding.

Section 33. *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 accrued. Whenever any civil or criminal proceeding is instituted by the Republic of the Philippines in case of a civil action or by the People of the Philippines in case of a criminal action to prevent, restrain, or punish any violation of any provision of this Act, the running of the statute of limitation provided in the immediately preceding sentence in respect of every private or sovereign right of action arising under this Act and based in whole or in part on any matter complained of in said proceeding shall be suspended during the pendency thereof and for one year thereafter.

Section 34. *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 35. *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.

Section 36. *Effectivity Clause.* - This Act shall take effect fifteen (15) days following its publication in the Official Gazette or at least two (2) national newspapers of general circulation

Approved,

FIFTEENTH CONGRESS
OF THE REPUBLIC OF THE PHILIPPINES
First Regular Session

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HOUSE OF REPRESENTATIVES

House Bill No. **913**

Introduced by Representative Susan A. Yap

EXPLANATORY NOTE

In economic parlance, efficiency is best achieved if there is competition as the tension of the different interests of the agents will ultimately result in an equilibrium, provided that they are in the same level playing field. In a competitive regime, there are incentives to improve and perceived fairness because in the end, the choice will be determined by welfare-maximizing consumers.

Such beliefs are not new to the Philippines; Section 19, Article XII of the 1987 Philippine Constitution explicitly prohibits certain anti-competitive policies such as monopolies (unless public interest so requires) and restraint of trade. Article 186 of the Revised Penal Code, meanwhile, provides for the sanctions in the for those who engage in such practices while the Civil Code allows the collection of damages arising from unfair competition. Numerous special laws and statutes were likewise enacted to address this problem such as the Corporation Code of the Philippines (BP 68), The Revised Securities Act (BP 178), the Price Act (RA 7581), the Consumer Act of the Philippines (RA 7394), the Intellectual Property Code of the Philippines (RA 8293), the Downstream Oil Deregulation Act (RA 8479), the Anti-dumping Act (RA 8752) and the Electric Power Industry Reform Act (RA 9136), among others. Despite these, however, enforcement remains lacking because of hindrances such as the lack of transparency, constraints of regulatory bodies, and a unified legal framework for the enforcement of such laws.

This bill, thus, seeks to put in place a comprehensive competition law that not only provides the sanctions to the acts that constitute unfair trade practices, but also addresses the stumbling blocks inherent in implementing a competitive regime. Applicable to all areas of trade, industry and commercial economic activity, the proposed measure specifies cartels, monopolies and abuse of power by virtue of the their dominance in the market as prohibited acts that shall be accorded penalties of a fine of not less One million pesos (Php1,000,000.00) and not exceeding Ten million pesos (Php10,000,000.00) if a natural person; by a fine of not less than Ten million pesos (Php10,000,000.00) but not exceeding One hundred million pesos (Php100,000,000.00) if a firm, and by imprisonment not exceeding ten (10) years, or both, at the discretion of the court.

Further, it mandates the conduct of a preliminary inquiry by the Department of Justice, in coordination with the Department of Trade and Industry and or any other appropriate government agencies, notwithstanding the incumbent powers of the different regulatory agencies. Any person or firm, which cooperates and furnishes any information, document or data that constitutes as material evidence to the DOJ before or during the preliminary inquiry shall be immune from any suit or charge including from affected parties and third parties.

The Philippine economy is without a doubt characterized by a structure that lends a few businessmen and their families substantial power in controlling the market. This makes entry more difficult, pressing down the development of micro, small and medium enterprises that wish to participate in the field. Therefore, an effective competition policy will ensure a

regime that will spell efficiency and help the country move to a higher growth path, ultimately redounding to general public welfare - for businesses and consumers alike.

In view of the foregoing, the immediate passage of this bill is earnestly sought.


SUSANA A. YAP
Representative, 2nd District of Tarlac

FIFTEENTH CONGRESS
OF THE REPUBLIC OF THE PHILIPPINES
First Regular Session

HOUSE OF REPRESENTATIVES

House Bill No. 913

Introduced by Representative Susan A. Yap

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 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 2019*."

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 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, stifle competition, distort, manipulate or constrict the discipline of free markets, or tamper with the free play of the market forces and eventually destroy free and open markets; 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

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 substantial effects 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.

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

2 (a) Cartel shall mean a combination of firms, providing goods in relevant markets, acting or
3 joined together to obtain a shared monopoly to control production, sale and price, or to obtain
4 control in any particular industry or commodity, or a group of firms that agree to restrict trade to
5 their mutual benefit, which may or may not be of an international scale.

6 It shall also refer to firms or section of firms having common interest designed to prevent
7 extreme or unfair competition and allocate markets, and to promote the exchange of knowledge
8 resulting from scientific and technical research, exchange of patent rights and standardization of
9 products;

10 (b) Competition shall mean the process by which economic agents, acting independently in a
11 market, limit each other's ability to control the prevailing conditions in the market;

12 (c) Control refer to at least twenty percent (20%) ownership, directly or indirectly, of a firm
13 or a group of firms by another firm;

14 (d) Firm shall include any person, partnership, combination or association in any form,
15 engaged directly or indirectly in any economic activity: *Provided, That*, two firms, one of which is
16 controlled by the other, shall be treated as one firm: *Provided, further*, That two or more firms that are
17 controlled by a single firm shall be treated as one firm;

18 (e) Goods shall include all types of goods and services;

19 (f) Market shall refer to a place or venue for commercial activity, which may extend beyond
20 the borders of the Republic of the Philippines, where articles are bought or sold. It shall also refer to
21 the geographical or economic extent of commercial demand;

22 (g) Monopoly shall mean a privilege or undue advantage of one or more firms, consisting in
23 the exclusive right to carry on a particular business or trade, and/or manufacture a particular
24 product, article or object of trade, commerce or industry. It is a form of market structure in which
25 one or only a few firms dominate the total sales of a product or service;

26 (h) Monopoly Power shall refer to a situation where a firm, either by itself or acting in
27 collusion with other firms, is in a position to control a relevant market for the sale of a particular
28 good or service by fixing its prices, excluding competitor firm, or controlling the market in a specific
29 geographical area; and,

30 (i) Relevant Market shall refer to the line of commerce in which competition has been
31 restrained. It shall also refer to the geographic area involved, including all reasonably substitutable
32 goods, and all nearby competitors, to which consumers could turn if the restraint or abuse results in
33 the significant increase in prices.

34 35 CHAPTER 3 36 PROHIBITED ACTS

37
38 SEC. 5. *Cartels.* It shall be unlawful for firms providing goods in relevant markets to join
39 together to monopolize, or to control production in a particular industry or commodity, the sale and
40 price of such good, and to agree to restrict trade for their mutual benefit, which may or may not be
41 on an international scale. This shall also include an association by agreement of firms or sections of
42 firms having common interests designed to promote the interchange of knowledge resulting from
43 scientific and technical researches, exchange of patent rights and standardization of products.

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

46 (a) Agreements to fix selling price of goods or other terms of sale;

47 (b) Agreements to limit supply or output;

48 (c) Agreements to divide the market, whether by volume of sales or purchase or by territory,
49 by type of goods sold, by customers or sellers, or by any other means;

50 (d) Agreements exclude or limit dealings with particular suppliers or sellers from supplying
51 or selling goods, or customers from acquiring or buying goods; and,

52 (e) Agreements to fix setting price at auctions or in any other form of bidding. There shall be
53 a *prima facie* case for the existence of a cartel if and when the Department of Trade and Industry
54 (DTI) or concerned regulatory agency finds that two or more persons or firms competing for the

1 same relevant market perform uniform or complementary acts among themselves which tend to
2 bring about artificial and unreasonable increase in the price of any goods or when they
3 simultaneously and unreasonably increase the prices of their competing goods thereby lessening
4 competition among themselves.

5
6 SEC. 6. *Monopolies.* - It shall be unlawful for any firm to willfully monopolize, or knowingly
7 attempt to monopolize, the trade of goods or any part of the trade or commerce within the Republic
8 of the Philippines or with any foreign country or territory. As prohibited in this Act, the essential
9 elements of the crime of monopolization are the possession of monopoly power and its willful
10 acquisition, maintenance or abuse to exclude competitors from any part of trade, commerce or
11 industry as distinguished from natural growth or development of a firm as a consequence of a
12 superior product, business acumen or historic accident: *Provided, That,* a firm that has at least fifty
13 percent (50%) of the relevant market as found and certified by the Department of Trade and
14 Industry or the Concerned regulatory agency shall be deemed a monopoly or in dominant position.

15
16 SEC. 7. *Monopoly Power or Abuse of Market Power by One in Dominant Position.* - It shall be
17 unlawful for one or more firms with market power within relevant markets to abuse their monopoly
18 power or dominant position, by engaging in unfair methods of competition, or engaging in unfair or
19 deceptive trade practices, or entering into agreements, combinations in the form of trust or
20 otherwise, or conspiracy, with the purpose and effect to prevent, restrict, or distort competition.
21 Abusive agreements such as, but not limited to, any of the following, shall be deemed to fall under
22 the crime of abuse of monopoly power or market power by one in dominant position:

23 A. Price Fixing - Any agreement to fix the selling price of goods or other terms of sale, with
24 the purpose and effect of creating a monopoly or cartel, or lessening competition.

25 B. Bid Rigging - Any agreement to fix price at auctions or in any other form of bidding, with
26 the purpose and effect of creating a monopoly or cartel, or lessening competition. In determining
27 whether there is price fixing or bid rigging, the following circumstances may be considered:

28 (1) generally, any considered evidence that two sellers of similar goods have agreed to set the
29 price of their goods, to sell only a certain amount of their goods, or to sell only to a limited number
30 of buyers or consumers;

31 (2) a drastic change in prices of goods and services involving more than one seller of similar
32 goods of different brands, particularly if the changes in prices take place in equal amount and about
33 the same time;

34 (3) a seller refusing to sell based on an agreement with a competitor;

35 (4) the same firm has repeatedly been the low bidder who has been awarded contracts for a
36 certain service or a particular bidder seems to win bids on a fixed-rotation;

37 (5) there is an unusual and unexplainable difference between the winning bid and all other
38 bids; and,

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

41 C. Limitation and Control of Markets - Any agreement to limit or control production,
42 markets, technical development, or investment with the purpose and effect of creating a monopoly
43 or cartel, or lessening competition.

44 D. Market Allocation - Any agreement to divide the market, whether by volume of sales or
45 purchase or by territory, by type of goods sold, by customers or sellers or by any other means, with
46 the purpose and effect of creating a monopoly or cartel, or lessening competition.

47 E. Arrangements to Share Markets or Sources of Supply - Any agreement to share markets
48 or sources of supply of raw materials, with the purpose and effect of creating a monopoly or cartel,
49 or lessening competition.

50 F. Price Discrimination - Any agreement prescribing or charging, directly or indirectly,
51 discriminatory pricing terms or conditions in the supply or purchase of goods of like grade and
52 quality with the purpose and effect of creating a monopoly or cartel, or substantially lessening
53 competition: *Provided, That* nothing contained herein shall be construed to prohibit permissible price
54 differentials unless the same shall have the effect of preventing, restricting or distorting competition:

1 *Provided, further,* That for the purpose of this section, the following shall be considered permissible
2 price differentials:

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

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

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

9 (4) *Bona fide* Selection of Customers - The selection of customers on *bona fide* transaction;
10 and,

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

16 G. Exclusivity Arrangement - Any agreement imposing restrictions on the lease or contract
17 for sale or trade of goods concerning where, to whom, or in what forms goods may be sold or
18 traded, such as, but not limited to fixing prices, or giving preferential discounts, or rebate upon such
19 price, or imposing conditions not to deal with competing firms, where the purpose of such
20 agreement is to lessen competition: *Provided,* That nothing contained herein shall prohibit or render
21 unlawful permissible franchising, licensing or exclusive distributorship agreements.

22 H. Tie-In Arrangements - Any agreement making the supply of particular goods dependent
23 upon the purchase or lease of other goods from the supplier or his consignee, where the purpose
24 and effect of such sale or lease or such condition is to substantially lessen competition or to create a
25 monopoly or cartel.

26 I. Boycott - Any concerted refusal to sell or conspiracy not to sell or to stop doing business
27 on the part of the suppliers of any goods, unless for a legitimate purpose, such as but not limited to:

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

30 (2) Defaulting Buyers - refusal by one or more manufacturers or sellers to sell on credit to
31 defaulting customers; and,

32 (3) Violators of Intellectual Property Rights - refusal by manufacturers or sellers to have any
33 commercial dealings with one or more firms who violate the intellectual property rights of the
34 owners of patents, copyrights, trademarks and other intellectual property.

35 36 CHAPTER 4 37 PENALTIES 38

39 SEC. 8. *Penalties.* - Without prejudice to the violation of other laws, any firm that shall be
40 found to have violated Sections 5, 6 and 7 of this Act, or any combination thereof, shall, for each
41 and every violation, be punished by a fine of not less One million pesos (Php1,000,000.00) and not
42 exceeding Ten million pesos (Php10,000,000.00) if a natural person; by a fine of not less than Ten
43 million pesos (Php10,000,000.00) but not exceeding One hundred million pesos
44 (Php100,000,000.00) if a firm, and by imprisonment not exceeding ten (10) years, or both, at the
45 discretion of the court.

46 47 CHAPTER 5 48 ENFORCEMENT 49

50 SEC. 9. *Preliminary Inquiry* - The Department of Justice (DOJ), in coordination with the
51 Department of Trade and Industry (DTI), other regulatory and/or appropriate government agency,
52 shall *motu proprio*, upon the filing of a verified complaint by an interested party or upon referral by the
53 concerned regulatory agency, initiate a preliminary inquiry for the enforcement of this Act based on
54 reasonable grounds.

1
2 SEC. 10. *Powers of Concerned Regulatory Agencies.* - Notwithstanding the provisions of the
3 preceding section, the exercise of regulatory powers by different government agencies over an
4 industry or a sub-sector of an industry shall be cumulative and shall not be construed in any way as
5 derogating from the power and authority of the concerned agency. The government agencies shall
6 cooperate and coordinate with one another in the exercise of their powers in order to prevent
7 overlap, to share confidential information, or for other effective measures.
8

9 SEC. 11. *Power to Investigate.* - The DOJ may, through its duly authorized inquiring officer, by
10 written notice, require a firm or natural person to produce a specified document, or to provide
11 specified information which the DOJ considers as relevant its investigation. The inquiring officer,
12 upon the authority granted by the Secretary of Justice, shall engage the services of consultants or
13 experts to aid in the inquiry. He shall also make use of any available or analogous means under
14 existing laws and procedures to determine if any provision of this Act has been violated. For this
15 purpose, he shall have the power to punish for contempt any firm which does not comply with the
16 notice or order for document, information or such other relevant matters and to impose a fine not
17 exceeding One hundred thousand pesos (Php100,000.00) for non-compliance with each notice or
18 order.
19

20 SEC. 12. *Self-incrimination and Privileged Communication Exclusion.* - Pursuant to the preceding
21 section, a person subject of any investigation by the DOJ shall produce the specified document or
22 information when so required by written notice: *Provided,* That no person shall be excused from
23 disclosing any document or information to the inquiring officer on the ground that the disclosure of
24 the information or document may be incrimination: *Provided, however,* That such document or
25 information produced by the person subject of investigation shall not be admissible as evidence
26 against him in criminal proceedings: *Provided, finally,* That such document or information shall be
27 admissible in evidence in civil proceedings including those arising from or in connection to the
28 implementation of this Act.
29

30 Nothing in this section shall compel the disclosure of privileged communication: *Provided,*
31 That the person who refuses to disclose the information or produce the document or other material
32 required by the inquiring officer in relation to the preliminary inquiry being conducted shall
33 nevertheless be obliged to give the name and address of the firm to whom, or by whom, or on
34 whose behalf, such privileged communication was made.
35

36 SEC. 13. *Immunity from Suit.* - Any person or firm which cooperates or furnishes any
37 information, document or data to the DOJ before or during the conduct of the preliminary inquiry
38 that constitutes material evidence as determined by the DOJ under this Act shall be immune from
39 any suit or charge including from affected parties and third parties: *Provided, further,* That any person
40 or firm which cooperates or furnishes information, document or data to the DOJ in connection to
41 an investigation being conducted shall not be subjected to any form of reprisal or discrimination:
42 *Provided, furthermore,* That such reprisal or discrimination shall be considered a violation of this Act
43 and subjected to the penalties provided for under Section 8: *Provided, finally,* That, notwithstanding
44 the provisions of Section 17 hereof, the firm which cooperates with the DOJ in its investigation
45 shall be entitled to a reward equivalent to twenty percent (20%) of any monies paid by the firm
46 subject of the inquiry, or the monetary relief recovered from court action.
47

48 SEC. 14. *Termination of Preliminary Inquiry.* The Department of Justice, after considering the
49 statements made, or documents or articles produced, in the course of an inquiry conducted by it,
50 shall terminate the preliminary inquiry by issuing a resolution ordering its closure if no violation or
51 infringement of this Act is found; or by issuing a *nolo contendere* resolution; or to, singly or
52 cumulatively, (a) endorse the findings to the regulatory agency for the imposition of administrative
53 fines; (b) institute a civil case for damages; or (c) file a criminal case for violation of this Act or other
54 relevant laws: *Provided,* That, for purposes of this Act, the preliminary inquiry referred to in Section 9

1 of this Act shall fulfill the requirements of a preliminary investigation: *Provided, further*, That the
2 resolution shall not be subjected to any petition for review.
3

4 SEC. 15. *Nolo Contendere Resolution*. - Any firm under inquiry under the provisions of this Act
5 may submit to a *nolo contendere* resolution at any time before the termination of the preliminary
6 inquiry by: a) the payment of an amount within the range of penalties provided for under Section 8;
7 b) by entering into an undertaking to effectively stop and rectify the acts complained against, make
8 restitution to the affected parties, whether or not the parties are complainants or witnesses; and, c)
9 by submitting regular compliance reports as may be directed: *Provided*, That, five percent (5%) of the
10 amounts paid under this section shall equitably accrue to the government agencies involved in the
11 inquiry: *Provided, further*, That a *nolo contendere* resolution shall not bar any inquiry for the same or
12 similar acts if continued or repeated.
13

14 SEC. 16. *Court Action*. - In addition to any criminal action, the DOJ, when instituting the civil
15 action, shall bring it in the name of the Republic of the Philippines, as *parens patriae*, on behalf of
16 persons residing in the Philippines, to secure treble damages for any monetary injury sustained by
17 such natural persons by reason of any violation of this Act plus the cost of suit and a reasonable
18 attorney's fee.
19

20 SEC. 17. *Effect of Final Judgment*. - The final judgment in an action brought under the
21 preceding section shall be *res judicata* as to any claim by any person on whose behalf such action was
22 brought: *Provided*, That such person notifies the court having jurisdiction of the case within the
23 period given by the court: *Provided, further*, That such period shall not be less than ninety (90) days.
24

25 SEC. 18. *Distribution of Monetary Relief Recovered*. - The monetary relief recovered in a civil
26 action under Section 15 of this Act shall be distributed in the following manner: (1) as determined
27 and to be authorized by the Regional Trial Court having jurisdiction of the case; (2) ten percent
28 (10%) of the total amount of monetary relief shall accrue to the DOJ to be used in the enforcement
29 of this Act; and, (3) the remainder of which total amount of monetary relief shall be deemed a civil
30 penalty by the Regional Trial Court and shall be deposited to the National Treasury as part of the
31 general fund of the government: *Provided*, That any distribution procedure adapted by the Regional
32 Trial Court shall afford each person having an interest in the monetary relief a reasonable
33 opportunity to secure his appropriate portion of the net monetary relief obtained.
34

35 SEC. 19. *Evidential Effect of a Final Judgment*. - Any final judgment rendered in any civil or
36 criminal action brought by the DOJ on behalf of the People of the Philippines under this Act to the
37 effect that a defendant has violated any or all of the provisions of this Act shall be *prima facie*
38 evidence against such defendant in any civil action brought by any other party against such
39 defendant under this Act as to all matters respecting which said judgment would be an estoppel as
40 between the parties concerned.
41

42 CHAPTER 6 43 OTHER PROVISIONS 44

45 SEC. 20. *Statute of limitations*. - Any civil or criminal action to enforce any cause of action
46 arising from a violation of any provision of this Act shall be forever barred unless commenced
47 within ten years (10) years after the cause of action accrues. The running of the statute of limitation
48 shall be suspended during the pendency of any proceeding.
49

50 SEC. 21. *Imposition of Fines by Regulatory Agency*. - Notwithstanding any provisions of law,
51 regulatory agencies shall, in the conduct of their functions or duties, have the power to impose fines
52 in the amount not less than One hundred thousand pesos (Php100,000.00) and not exceeding
53 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.

SEC. 22. *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 21 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. 23. *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. 24. *Guidelines.* -- The DOJ, in consultation with the DIT, 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.

SEC. 25. *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. 26. *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.

SEC. 27. *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

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 impossible 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,

**Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City**

**FIFTEENTH CONGRESS
First Regular Session**

House Bill No. 1583

**Introduced by Representatives
DIOSDADO MACAPAGAL ARROYO and GLORIA MACAPAGAL ARROYO**

**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**

EXPLANATORY NOTE

For far too long, our people have stood at the mercy of huge industries. Due to lack of regulation and safeguards, unscrupulous businessmen have found ingenious ways to artificially control prices and manipulate the free market system. It thus behooves both Houses of Congress to establish a system that can adequately provide protection to our people against price manipulators.

Article XII, Section 19, of the Constitution 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."

As proof of the importance of this Constitutional mandate, Section 22 of the same article encourages the promulgation of legislation that would impose civil and criminal sanctions against those who circumvent or negate this principle. Hence, Section 22 of the Constitution states:

"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."

Although previous legislations have been passed pursuant to this Constitutional mandate, the pressing demands of our time require us to introduce new legislation that can effectively address these pressing concerns.

We are therefore encouraging our colleagues to support the passage of this bill that aims to provide stricter penalties against combinations or conspiracies in restraint of trade and all forms of artificial machinations that will injure, destroy or prevent free market competition.

For these reasons, the passage of this bill is earnestly recommended.


DIOSDADO MACAPAGAL ARROYO
Second District, Camarines Sur


GLORIA MACAPAGAL ARROYO
Second District, Pampanga

**Republic of the Philippines
HOUSE OF REPRESENTATIVES
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*Be it enacted by the Senate and the House of Representatives of the
Philippines in Congress assembled:*

**ARTICLE I
TITLE AND DECLARATION OF POLICY**

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

SECTION 2. *Declaration of Policy.* – In line with the constitutional mandate to regulate or prohibit monopolies when the public interest so requires and prevent combinations in restraint of trade or unfair competition, the State endeavors to:

- a. Promote and enhance 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, stifle competition, distort, manipulate or constrict the discipline of free markets, or tamper with the free play of the market forces and eventually destroy free and open markets; 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.

ARTICLE II

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 substantial effects 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.

SECTION 4. *Definition of Terms.* – As used in this Act, the following terms shall be construed to mean as follows:

a. **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 prevent extreme or unfair competition and allocate markets, and to promote the exchange of knowledge resulting from scientific and technical research, exchange of patent rights and standardization of products;

b. **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;

c. **Control** refers to at least twenty percent (20%) ownership, directly or indirectly, of a firm or a group of firms by another firm;

d. **Firm** shall include any person, partnership, combination or association in any form, 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;

e. **Goods** shall include all types of goods and services;

f. **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;

g. **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, commodity or service;

h. **Monopoly Power** 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,

i. **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.

ARTICLE III PROHIBITED ACTS

SECTION 5. Cartels – 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.

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; and
- e. Agreements to fix setting price at auctions or in any other form of bidding.

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 competing for the same relevant market perform uniform or complementary acts among themselves which tend to bring about artificial and unreasonable increase in the price of any goods or when they simultaneously and unreasonably increase the prices of their competing goods thereby lessening competition among themselves.

SECTION 6. Monopolies. – It shall be unlawful for any firm to willfully monopolize, or knowingly attempt to monopolize, the trade of goods or any part of the trade or commerce within the Republic of the Philippines or with any foreign country or territory. As prohibited in this Act, the essential elements of the crime of monopolization are the possession of monopoly power and its willful acquisition, maintenance or abuse to exclude competitors from any part of trade, commerce or industry as distinguished from the 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 as found and certified by the Department of Trade and Industry or the concerned regulatory agency shall be deemed *prima facie* a monopoly or in dominant position.

SECTION 7. Monopoly Power or Abuse of Market Power by One in Dominant Position. – It shall be unlawful for one or more firms with market power within relevant markets to abuse their monopoly power or dominant position by engaging in unfair methods of competition or engaging in unfair or deceptive trade practices, or entering into agreements, combinations in the form of trust or otherwise, or conspiracy, with the purpose and effect to prevent, 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. **Price Fixing** – Any agreement to fix the selling price of goods or other terms of sale, with the purpose and effect of creating a monopoly or cartel, or lessening competition;

b. **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, *Provided that*, nothing herein shall bar another prosecution against the erring party for violation of applicable laws on procurement and public biddings;

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

i. 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;

ii. 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;

iii. a seller refusing to sell based on an agreement with a competitor;

iv. 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;

v. there is an unusual and unexplainable difference between the winning bid and all other bids; and

vi. the same bidder bids substantially higher on some bids than on others, and there is no logical cost reason to explain the difference.

c. **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;

d. **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;

e. **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;

f. **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:

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

ii. **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;

iii. **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;

iv. **Bona fide Selection of Customers** – The selection of customers on *bona fide* transaction; and,

v. **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.

g. **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.

h. **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.

i. **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:

i. **Defaulting Borrowers** – refusal by one or more credit institutions to extend loans to defaulting debtors;

ii. **Defaulting Buyers** – refusal by one or more manufacturers or sellers to sell on credit to defaulting customers; and,

iii. **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.

ARTICLE IV PENALTIES

SECTION 8. *Penalties.* – Without prejudice to the violation of other laws, any firm that shall be found to have violated Sections 5, 6 and 7 of this Act, or any combination thereof, shall, for each and every violation, be punished by a fine of not less One Million Pesos (Php1,000,000.00) and not exceeding Ten Million Pesos (Php10,000,000.00) if a natural person; by a fine of not less than Ten Million Pesos (Php10,000,000.00) but not exceeding One Hundred Million Pesos (Php100,000,000.00) if a firm, and by imprisonment not exceeding ten (10) years, or both, at the discretion of the court.

ARTICLE V ENFORCEMENT

SECTION 9. *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 10. *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.

SECTION 11. *Power to Investigate.* – The DOJ may, through its duly authorized inquiring officer, by written notice, require a firm or natural person to produce a specified document, or to provide specified information which the DOJ considers as relevant its investigation. The inquiring officer, upon the authority granted by the Secretary of Justice, may engage the services of consultants or experts to aid in the inquiry. He may also make use of any available or analogous means under existing laws and procedures to determine if any provision of this Act has been violated. For this purpose, he shall have the power to punish for contempt any firm which does not comply with the notice or order for document, information or such other relevant matters and to impose a fine not exceeding One Hundred Thousand Pesos (Php100,000.00) for non-compliance with each notice or order.

SECTION 12. *Self-incrimination and Privileged Communication Exclusion.*

– Pursuant to the preceding section, a person subject of any 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 incrimination: *Provided, however*, 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 or trade secrets: *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.

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 and subjected to the penalties provided for under Section 8: *Provided, finally*, That, notwithstanding the provisions of Section 17 hereof, the firm which cooperates with the DOJ 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.

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 to, singly or cumulatively: (a) endorse the findings to the regulatory agency for the imposition of administrative fines; (b) institute a civil case for damages; or (c) file a criminal case for violation of this Act or other relevant laws: *Provided that*, for purposes of this Act, the preliminary inquiry referred to in Section 9 of this Act shall fulfill the requirements of a preliminary investigation: *Provided, further*, That no appeal can be taken from the said resolution unless issued with grave abuse of discretion.

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 8; 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 complainants or witnesses; and, c) by submitting regular compliance reports as may be directed: *Provided that*, five percent (5%) of the amounts paid under this section shall equitably accrue to the 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.

SECTION 16. *Court Action.* – In addition to any criminal action, the DOJ, when instituting the civil action, shall bring it 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 monetary injury sustained by such natural persons by reason of any violation of this Act plus the cost of suit and a reasonable attorney's fee.

SECTION 17. *Effect of Final Judgment.* – The final judgment in an action brought under the preceding section 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.

SECTION 18. *Distribution of Monetary Relief Recovered.* – The monetary relief 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 Regional Trial Court having jurisdiction of the case; (2) ten percent (10%) of the total amount of monetary relief shall accrue to the DOJ to be used in the enforcement of this Act; and, (3) the remainder of which total amount of monetary relief shall be deemed a civil penalty by the Regional Trial Court and shall be deposited to the National Treasury as part of the general fund of the government: *Provided that*, any distribution procedure adapted by the Regional Trial Court shall afford each person having an interest in the monetary relief a reasonable opportunity to secure his appropriate portion of the net monetary relief obtained.

SECTION 19. *Evidential Effect of a Final Judgment.* – Any final judgment rendered in any 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 *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.

ARTICLE VI 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 ten years (10) years after the cause of action accrues. The running of the statute of limitation shall be suspended during the pendency of any proceeding.

SECTION 21. *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.

SECTION 22. *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 21 of this Act: *Provided, finally*, That in the event that the court finally decides that the applicant was not entitled to the relief applied for, the bond shall accrue in favor of the 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 23. *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 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. *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 26. *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.

SECTION 27. *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,

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

FIFTEENTH CONGRESS
First Regular Session

House Bill No. 1733



INTRODUCED BY HON. MARCELINO "MARCY" R. TEODORO

EXPLANATORY NOTE

The Constitution, Article XII, Section 1, provides that:

"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."

This constitutional provision not only recognizes the danger that monopolies pose on the public interest, but also contemplates that monopolies emerging, through restraint of trade or unfair competition, must be struck down in the incipency.

This bill is a reaction to observation of industries being cartelized when few suppliers of a vital product conspire to fix prices to the detriment of the public. In very sensitive public utilities, small operators, who collectively may be able to provide better and geographically farther-reaching service, are unable to do so because of undue restraints imposed by the giants of the sector. In protecting their turf, the giants and the virtual monopolies place public interest below the objective of protecting market share and profitability.

The bill provides for treble-damage action. The fear of treble-damage actions is one of the potent influences in securing compliance with antitrust. Private suits are one of the important supplementary enforcement device. Beyond the scope of the bill, it must also be recognized that there is an urgent need to strengthen the administrative machinery to be tasked with implementing this Anti-Trust Law: the Department of Trade and Industry, through possibly a Trade Commission to monitor the business sector; and the Department of Justice, for the prosecution of antitrust violators.

In view of the foregoing, approval of this bill is earnestly sought.

A handwritten signature in black ink, which appears to read "Marcelino Teodoro".

MARCELINO "MARCY" R. TEODORO
Representative, 1st District
City of Marikina

**Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila**

**FIFTEENTH CONGRESS
First Regular Session**

House Bill No. 1733

INTRODUCED BY HON. MARCELINO "MARCY" R. TEODORO

**AN ACT
AMENDING ACT NO.3815, ALSO KNOWN AS THE REVISED PENAL CODE,
AS AMENDED, ARTICLE 186 ON MONOPOLIES AND COMBINATIONS IN
RESTRAINT OF TRADE**

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

SECTION 1. Republic Act No.3815, also known as the "Revised Penal Code", Article 186 on Monopolies and Combinations in Restraint of Trade is hereby amended to read as follows:

Article 186. Monopolies and Combinations in Restraint of Trade. - The penalty of PRISION MAYOR or a fine not exceeding ONE MILLION pesos (PhP1,000,000.00) if a corporation, or, if any person, FIVE HUNDRED THOUSAND pesos (PhP500,000.00), or both shall be imposed upon:

- (1) Any person who shall enter into any contract or agreement or shall take part in any conspiracy or combination in the form of a trust or otherwise, in restraint of trade or commerce or to prevent by artificial means free competition in the market;
- (2) Any person who shall monopolize any merchandise or object of trade or commerce, or shall combine with any other or persons to monopolize and merchandise or object in order to alter the price thereof by spreading, false rumors or making use of any other article to restrain free competition in the market;

Any person who, being a manufacturer, producer, or processor of any merchandise or object of commerce or object of commerce or an importer of any merchandise or object of commerce from any foreign country, either as principal or agent, wholesaler or retailer, shall combine, conspire or agree in any manner with any merchandise or object of commerce from any foreign country, either as principal or agent, wholesaler or retailer,

shall combine, conspire or agree in any manner with any person likewise engaged in the manufacture, production, processing, assembling or importation of such merchandise or object of commerce or with any other persons not so similarly engaged for the purpose of making transactions prejudicial to lawful commerce, or of increasing the market price in any part of the Philippines, of any such merchandise or object of commerce manufactured, produced, processed, assembled in or imported into the Philippines, or of any article in the manufacture of which such manufactures, produced, or imported merchandise or object of commerce is used.

SECTION 2. Repealing Clause. - Any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule or regulation contrary to or inconsistent with the provisions of this Act is hereby repealed, modified or amended accordingly.

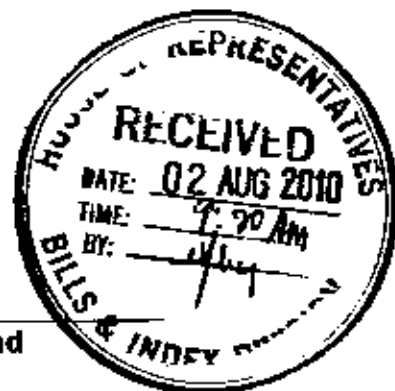
SECTION 3. Effectivity Clause. - This Act shall take effect *fifteen* (15) days after its publication in at least two(2) newspapers of general circulation.

Approved,

FIFTEENTH CONGRESS
REPUBLIC OF THE PHILIPPINES
FIRST REGULAR SESSION

HOUSE OF REPRESENTATIVES

Introduced by Representative Rufus B. Rodriguez and
Representative Maximo B. Rodriguez, Jr.



1980

House Bill No. _____

EXPLANATORY NOTE

This bill seeks to penalize monopolies and unfair competition and establish the Fair Trade Commission, defining its powers and functions.

The 1987 Constitution expressly provides that the State shall regulate or prohibit monopolies when the public interest so requires. It also stipulates that no combinations in restraint of trade or unfair competition shall be allowed. However, despite the constitutional guarantees and the existence of laws that affect competition, such laws are 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.

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.

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. 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 the imposition of defined sanctions and penalties for violation of the fair competition.

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,

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. 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.

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.

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.

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,

(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

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 or proceeding.

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

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,

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

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.

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 sub-paragraph (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

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

- (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 of

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.

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

- (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

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 its acquire 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;

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

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

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

- (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.

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;

FIFTEENTH CONGRESS)
REPUBLIC OF THE PHILIPPINES)
FIRST REGULAR SESSION)

HOUSE OF REPRESENTATIVES

Introduced by Representative Rufus B. Rodriguez and
Representative Maximo B. Rodriguez, Jr.

1980
House Bill No. _____

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 Senate and 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

With this bill, it is believed that unfair competitions, monopolies and cartels shall be properly regulated if not totally eradicated which will ultimately protect the consumers from abuses of market powers.

In view of the foregoing, approval of this bill is highly and earnestly recommended.



RUFUS B. RODRIGUEZ



MAXIMO B. RODRIGUEZ, JR.

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

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FIFTEENTH CONGRESS
First Regular Session

House Bill No. 3100

Introduced by Rep. Albert S. Garcia

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

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SECTION 1. *Title.* - This Act shall be known and called the "*Competition Act of 2010.*"

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- (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
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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) *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.

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 of 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,

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Constitution Hills, Quezon City

FIFTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 3134

Introduced by **REP. ALFREDO "ALBEE" B. BENITEZ**

EXPLANATORY NOTE

The adoption of the GATT in mid-90's and the entry of the Philippines to the World Trade Organization raised the need to scrutinize the dynamism between corporations on one side and the government on the other. With the coming of age of corporations having a profound influence on market forces and on government action, the issue of fair trade vis-a-vis fair competition has taken on a life of its own. As it stands, the country's current laws on competition are antiquated at the least and inadequate at best. There is therefore a need not only to revisit such laws but to put in place a statute that addresses not only the dynamism between corporate action and government regulation but also to ensure that start-up enterprises and other small corporate entities have a level playing field in the Philippine market environment.

This representation is thus fortunate to be given the opportunity to file the counterpart bill to an anti-trust measure filed in the Senate - The Competition Law of 2010 - by the Honorable Senate President, Juan Ponce Enrile. The proposed legislative measure aims to put in place a law that, in the words of Senator President's Explanatory Note - "penalizes combinations or conspiracies in restraint of trade and all forms of artificial machinations that will injure, destroy or prevent free market competition."

It is this Representation's singular honor and privilege to file this counterpart bill in the House of Representatives with the end in view of facilitating the speedy deliberation of this piece of proposed legislation and its eventual passage into law that will benefit every consumer and protect them from unscrupulous practices of big business in the country.

For these reasons, the passage of this measure is earnestly sought.


ALFREDO "ALBEE" B. BENITEZ
3rd District, Negros Occidental

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Constitution Hills, Quezon City

FIFTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 3134

Introduced by **REP. ALFREDO "ALBEE" B. BENITEZ**

**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 the House of Representatives of the Philippines in Congress
assembled:*

CHAPTER I

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 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

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.

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) 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

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 Department of Trade and Industry 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

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.

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.

CHAPTER 4

FINES AND PENALTIES

SEC. 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 Ten million pesos (Php 10,000,000.00) 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. 10. *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

ENFORCEMENT

SEC. 11. *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.

SEC. 12. *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. 13. *Power to Investigate and to 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 means, provisional or otherwise, under existing laws and procedures including the power to punish for contempt and to impose fines.

SEC. 14. *Self-incrimination.* - 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.

SEC. 15. *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. 16. *Confidentiality of Information*. - 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.

Any violation of this section 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. 17. *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 and subjected to the penalties provided for under Section 9: *Provided, finally*, That, notwithstanding the provisions of Section 21 hereof, the firm which cooperates with the DOJ 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 Department of Justice 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. 18. *Termination and Action on Preliminary Inquiry*. - The Department of Justice, 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.

SEC. 19. *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*, ten percent (10%) of the amounts paid under this section shall equitably accrue to the DOJ 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. 20. *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. 21. *Effect of Final Judgment*. - 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.

SEC. 22. *Distribution of Damages Recovered*. - The damages recovered in a civil action under Section 19 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.

SEC. 23. *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 6

OTHER PROVISIONS

SEC. 24. *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 plaintiffs 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. 25. *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 10 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. 26. *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. 27. *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. 28. *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.

SEC. 29. *Appropriations.* - The sum of One hundred million pesos (Php 100,000,000.00) for the initial year of implementation of this Act is hereby appropriated. Thereafter such amounts as may be necessary for the continuous implementation of this Act shall be included in the Annual General Appropriations Act (GAA).

SEC. 30. *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. 31. *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. 32. *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. 33. *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,

FC

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FIFTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 3244

Introduced by **HON. GLORIA MACAPAGAL ARROYO**

EXPLANATORY NOTE

Section 19 of Article XII of the 1987 Constitution mandates the State to "regulate or prohibit monopolies when the public interest so requires." Article 186 of the Revised Penal Code penalizes monopolies in restraint of trade.

In our quest for national development, an open economy that is free and fosters competition is a necessary prerequisite. A closer examination of our history would reveal that our underdevelopment was caused by lack of competition in our economy. Given this past experience and the direction in the international economy towards liberalization and globalization, various administrations have introduced reforms to promote competition in the form of lowering of trade and investment barriers, deregulation of certain industries to attract investments from more players, privatization of certain industries, among others.

Admittedly, while these measures achieved positive results, the country has yet to adopt a legislation that would institutionalize a responsive and comprehensive framework for anti-trust policy. As early as the Ninth Congress, this Representation fully aware and cognizant of the ill-effects in the economy of restrained and curtailed competition filed a legislative measure that would restore competition where it has disappeared, preserve it where it still exists and institutionalize it as a system for controlling and regulating the economy of the country pursuant to the mandate of the Constitution.

To sustain the momentum we have gained over the past nine (9) years and to ensure a healthy, open and competitive economy, the passage of this bill is urgently and earnestly requested.


GLORIA MACAPAGAL ARROYO

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FIFTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 3244

Introduced by HON. GLORIA MACAPAGAL ARROYO

AN ACT
CREATING THE FAIR TRADE COMMISSION OF THE PHILIPPINES

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

SECTION 1. Objectives. - It is the declared policy of the State that all sectors of the economy and all regions of the country shall be given optimum opportunity to develop; that a trade policy be pursued that serves the general welfare; that when public interest so requires, the State shall regulate or prohibit monopolies; that no combinations in restraint of trade or unfair competition shall be allowed and that consumers shall be protected from trade malpractices and Filipino enterprises against unfair foreign competition and trade practices.

SEC. 2. Scope of Application. - This Act shall apply to all persons, whether natural or juridical, such as, firms, partnerships, corporations, companies, associations, or any combination thereof, irrespective of the mode of creation, or control of ownership including their branches, subsidiaries, affiliates, or other entities directly or indirectly controlled by them, which are engaged in all commercial transactions or activities, involving goods and services.

SEC. 3. Definition of Terms.- For purposes of this Act, the following definition of terms shall be adopted:

- a. Entrepreneur - means, a person, juridical or natural, who carries on a commercial, industrial, financial or any other business activity. Any officer or duly authorized employee, agent, or person, who acts for the benefit of any entrepreneur, shall also be deemed covered by this Act.
- b. Competition - means a situation in which two or more entrepreneurs, do, or may within the scope of their business activities, and without undertaking any significant change in their business activities, engage in any of the following acts:
 1. Supplying the same or similar goods or services to the same consumers or customers;
 2. Getting supplies of the same or similar goods or services from the same supplier.
- c. Unreasonable Restraint of Trade - means, such business activities, by which entrepreneurs by contract, agreement, or any other concerted activities mutually restrict or conduct their business activities in such a manner as to fix, maintain or enhance prices, or to limit production, technology, products, facilities, or customers and suppliers, thereby causing, contrary to public interest, a substantial restraint of competition in a particular field of trade.

- d. **Unfair Business Practices** - means any act which tends to impede fair competition and which is hereinafter designated as such by the Fair Trade Commission.

SEC. 4. Unfair Business Practices. - It shall be unlawful for any person to engage in unfair business practices. For purposes of this Act, unfair business practices shall be divided into two groups: a) general which are applicable to all fields of business, and; b) specific which are applicable to a particular field of activity.

A. General Business Practices.- The following are considered general unfair business:

1. Unreasonable refusal to deal, such as, refusing or limiting supply of commodities or services from or to an entrepreneur without any justifiable reason;
2. Discriminator business terms, such as, without justifiable reason, favorable or unfavorable treatment with respect to terms or execution of transactions on the basis of the region of the customer;
3. Group boycott, joint discrimination, such as, performing jointly without justifiable reason such acts as refusal to deal, or having trade partners perform acts rendering disadvantage to them;
4. Discriminatory Prices, such as supplying or receiving commodities/services at prices which unreasonably discriminate on the basis of region or customer;
5. Unreasonably low or high prices, such as supplying commodities or services for an unreasonably high consideration to exclude competitors;
6. Unjustifiably luring of customers from competitors such as, inducing customers to transact business with oneself by offering unfair or excessive advantages in light of normal business practices;
7. Undue representation such as, deceptively or exaggeratedly representing the items such as price size, origin, packing or deceptively stating that one's products are better than those of the competitor;
8. Undue Coercion, such as, coercing customers to transact business by threatening undue disadvantages in light of normal business practices;
9. Abuse of one's superior position, such as business, with a customer on unreasonably unfavorable terms by using the fact that one's position is superior than the customer's;
10. Transactions with exclusive terms, such as, without justifiable reason, requiring as a condition of transacting business with third parties, that they do not transact business with one's competitors;
11. Transaction with restrictive terms, such as, without justifiable reason, entering into transactions with customers on such terms as restricting the sales territory or trade partner;
12. False exaggerated advertisement, such as, inducing consumers by false or exaggerated advertisement of trade specifications.

SEC. 5 Monopolistic Practices. - Every person who shall monopolize, or attempt to monopolize or combine or conspire with any other person, monopolize any part of the trade or commerce within the Philippines or with foreign countries, shall be deemed guilty under this Act and shall be punished by a fine of at least P150,000 or by imprisonment of a maximum period of six years or both.

The following are considered monopolistic and are illegal:

1. Where a person either by himself or acting together with a few enterprises is in a position to control the relevant market for a particular good or service or groups of goods or services through the following abusive acts:

- f. Acts tending monopoly; and,
- g. All other acts which restrain or suppress competition.

SEC. 7. Consumers' Protection. - Manufacturers, producers, importers, wholesalers and retailers are prohibited from engaging in the following acts:

- a. Hoarding or destroying or consumer goods or rendering them unserviceable, or destroying the means or production or distribution, whether directly or indirectly or through third parties, with the purpose of bringing about a price increase;
- b. When engaged in the manufacture or importation of products, failing to ensure an adequate supply of spare parts and replacements, or failing to maintain an adequate after-sales service for consumers, except for reasons outside their control;
- c. Declining liability for defective products or services rendered not meeting the supplier's description of such goods and services.
- d. In connection with the supply of product or services, making any warranty:
 - i. limited to a particular geographic area or sales point;
 - ii. falsely representing that product are of a particular style or model;
 - iii. falsely representing that the goods are new or of a specified age;
 - iv. representing that products or services have any sponsorship, approval, performance and quality characteristics, components, materials, accessories, uses or benefits which they do not have.
- e. Engaging in conduct that is liable to mislead the public as to the nature, price, availability, characteristics, suitability for a given purpose, or quality of any products or services;
- f. Engaging in the offering of gifts and prizes with the intention of not providing them and offering price reductions for products available in unreasonably limited quantities; and
- g. Supplying any product which is liable to cause injury to health or physical harm to consumers, when properly used, or which does not comply with a consumer safety standard which has been prescribed. Any person who is guilty of any of the acts hereunder enumerated shall be punished by a fine of not less than P150,000 or by imprisonment of a maximum period of six years or both in the discretion of the court.

SEC. 8. Implementing Agency.- The Department of Trade and Industry (DTI) shall be the administrative implementing body of the provisions and intent of this Act. Where a claim is cognizable in the first instance by the DTI alone, judicial interference shall be withheld until the administrative process has run its course.

To enable the Department to effectively implement the provisions and intent of this Act and its implementing rules and regulations it is hereby authorized to:

1. Prescribe and promulgate within six (6) months such rules and regulations, as it may deem necessary to effectively implement the provisions and intent of this Act, and said rules and regulations shall take fifteen (15) days following their publication in a newspaper of general circulation or in the Official Gazette;
2. Conduct investigation, hearing and inquiry, as it may deem necessary for the following purposes, *inter alia*:
 - a. determine if this Act needs amendments;
 - b. determine the appropriate rules and regulations, policies and programs for this Act;
 - c. determine the nature, organization, and resources of any person, firm, entity or association doing business in the Philippines;
 - d. determine the practices, acts, methods, schemes, and arrangements used in the trade, industry, and business; and.

- e. determine if a certain person, firm, entity or association has violated or is about to violate any provisions of this Act or its rules and regulations.

The officials and employees authorized to conduct the investigation, hearing and inquiry referred to in this subsection shall have the power to administer oath, issue *subpoena* and *subpoena duces tecum* to compel the attendance of witnesses and the production of the necessary papers and documents, take data, testimony, and evidence, and to punish direct and indirect contempt as granted to superior courts under Rule 71 of the Rules of Court.

3. Require any person, firm, entity or association to submit to it periodically or whenever necessary, such report, data, information, paper or document it may deem necessary;
4. Administratively adjudicate violations of this Act and its rules and regulations in accordance with executive Order No. 913, Series of 1983 and its implementing rules;
5. Inspect, periodically or whenever necessary
 - a. Any pertinent factory, shop, laboratory, establishment, store, warehouse, any means of transportation, and the like;
 - b. Any pertinent equipment, finished or unfinished products, raw materials, containers, labellings, and other pertinent properties found therein;
 - c. Any pertinent papers, documents and records found therein; and,
 - d. Any pertinent work/activity being undertaken in said place.

The officials/employees authorized to conduct such inspection may obtain reasonable quantity of samples of the properties (except equipment) mentioned in the preceding paragraph; to take pictures or video tape of the places and things mentioned in paragraphs (a) and (b); and secure copies of the papers mentioned in paragraph (c). All acts authorized under this subsection shall be conducted at reasonable hours, with reasonable promptness, in a professional manner, and without undue disturbance to any legitimate work/activity being undertaken inside said places. Receipts shall be issued for samples so obtained; and,

6. Perform such other functions as may be necessary to effectively implement the provisions and intent of this Act. And regulations or to determine compliance therewith.

Whenever any violation of the provisions of this Act is committed by a corporation/association, the officer or employees immediately responsible, the President, as well as, the Directors and manager of said corporation/ association, or the agent representative in the Philippines in case of a foreign corporation/association, who shall have knowingly permitted or failed to prevent the commission of such violations, shall be held as principals thereof.

Any property used in the commission of said violation shall be forfeited in favor of government.

SEC. 9 Repealing Clause. - Articles 186, 187, and 188 of the Revised Penal Code are hereby repealed. All laws and rules inconsistent with the provisions herein are hereby repealed, amended or modified accordingly.

SEC. 10 Affectivity Clause- This Act shall take effect upon its approval.

Approved,

Fifteenth Congress
First Regular Session

HOUSE BILL NO. **3476**

**Introduced by Honorable Reynaldo V. Umali
and Honorable Czarina D. Umali**

EXPLANATORY NOTE

Section 19, Article XII of the 1987 Constitution provides:

"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."

As proof of the importance of this Constitutional mandate, Section 22, Article XII encourages the promulgation of legislation that would impose civil and criminal sanctions against those who circumvent or negate this principle.

"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."

Although previous legislations have been passed pursuant to this Constitutional mandate, the increased deviousness and complexity of schemes in perpetuating monopolies, unfair competition, and price manipulation in the free market necessitates an equally sophisticated legislation that would effectively address these concerns.

Developed countries use anti-trust regulations to maintain competition that ensures efficient working market economy and modern democracy. The competition regulator is a government agency, usually a statutory authority, sometimes called the economic regulator, which oversees and enforces competition laws, and may sometimes also enforce consumer protection laws. Many nations implement competition laws, and there is general agreement on acceptable standards of behavior. The degree to which countries enforce their competition policy does vary substantially, with the United States generally regarded as having the most strict competition laws and enforcement.

Philippine competition law must be a law of general application, addressing all sectors of the economy. Exemptions from its application may be allowed if they do not limit competition or are based on sound economic

principles, and are aimed at facilitating legitimate economic activity. Competition law should contain provisions explicitly prohibiting business practices that are clearly against economic efficiency and consumer welfare.

Competition regulators may also regulate certain aspects of mergers and acquisitions and business alliances and regulate or prohibit cartels and monopolies. Competition, through its distributive, allocative and incentive functions, can stop undue concentration of economic power and the consequent concentration of political power in the economic elite who use their economic and political powers to have their inefficiencies subsidized by the majority of the population. The current laws for fostering competition in the Philippines are inadequate to stop the deleterious effects of anti-competitive structures and behavior in the market. Despite the large number of laws and their varied nature, competition has not been fully established in all sectors of the economy, nor has existing competition in other sectors of the market been enhanced. These laws have been hardly used or implemented as may be seen in the lack of cases litigated in court or if ever a case is filed, in the successful prosecution of the culprit. Given the large number of enforcement agencies, responsibility is too diffused and accountability for implementation of the laws is hard to pinpoint. There is also a lack of expertise in the appreciation and implementation of competition laws that rely heavily on economic thought, techniques of analysis, and value preferences as tools of enforcement. Identifying a single specialized agency under a specific competition law, with the necessary expertise and authority to oversee the enforcement of competition laws is a crucial first step.

This bill therefore proposes to penalize combinations or conspiracies in restraint of trade and all forms of artificial machinations that will injure, destroy or prevent free market competition. It also seeks to strengthen and give more powers to the National Consumer Affairs Council created under Republic Act No. 7394 or the "*Consumer Act of the Philippine.*"

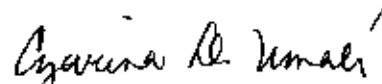
In view thereof, early consideration and approval of this bill is most earnestly sought.



REYNALDO V. UMALI

Representative

Second District, Province of Oriental Mindoro



CZARINA D. UMALI

Representative

Third District, Nueva Ecija

Fifteenth Congress
First Regular Session

HOUSE BILL NO. 3476

Introduced by Honorable Reynaldo V. Umali
and Honorable Czarina D. Umali

AN ACT

PROHIBITING MONOPOLIES, ATTEMPT TO MONOPOLIZE AN INDUSTRY OR LINE OF COMMERCE, MANIPULATION OF PRICES OF COMMODITIES, ASSET ACQUISITION AND INTERLOCKING MEMBERSHIPS IN THE BOARD OF DIRECTORS OF COMPETING CORPORATE BODIES AND PRICE DISCRIMINATION AMONG CUSTOMERS, PROVIDING PENALTIES THEREFOR AND GRANTING ADDITIONAL POWERS AND FUNCTIONS TO THE NATIONAL CONSUMER AFFAIRS COUNCIL AND FOR OTHER PURPOSES

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

SECTION 1. *Short Title.* – This Act shall be known as the “*Philippine Anti-Trust Act.*”

SEC. 2. *Declaration of Policy.* – It is the policy of the State to maintain and enhance free and full competition in trade, industry and all commercial economic activity and to penalize all forms of unfair trade, anti-competitive conduct and combinations in restraint of trade in order to improve consumer welfare.

SEC. 3. *Scope and Limitations.* – This Act shall apply to all areas of trade, industry and commercial economic activity and the use of intellectual property in such manner as to cause the anti-competitive effects prohibited herein. This Act shall not derogate the direct enjoyment of the privileges and protections conferred by Republic Act No. 8293, otherwise known as the “*Intellectual Property Code of the Philippines,*” and other laws protecting intellectual property, including inventions, industrial models, trademarks and copyrights. Neither shall this Act apply to the combinations or activities of

workers or employees, nor to agreements or arrangements between two or more employers, when such combinations, activities, agreements or arrangements are designed solely to facilitate collective bargaining in respect of conditions of employment.

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

a) “*Competition*” refers to the process by which economic agents, acting independently in a market, limit each other’s ability to control the conditions prevailing in that market;

b) “*Council*” refers to the National Consumer Affairs Council created under Republic Act No. 7394, otherwise known as the “*Consumer Act of the Philippines*,”

c) “*Goods*” refer to all property, tangible and intangible, and services;

d) “*Market*” means a collection of goods that are capable of being substituted for each other and that buyers are or would be willing to substitute, and a specific territory, which may extend beyond the borders of the Republic of the Philippines, in which are located sellers among whom buyers are or would be willing to substitute from whom they would buy; and

e) “*Person*” includes not only individual but also corporations, partnerships, associations and other juridical persons existing under or authorized by the laws of the Philippines or by the laws of any foreign country.

SEC. 5. *Dominant Position.* - A firm shall be deemed to have a dominant position if, acting on its own, it can profitably and materially restrain or reduce competition in a market for a significant period of time.

For purposes of this Act, “*firm*” shall refer to any natural or legal person, governmental body, partnership or association in any form, engaged directly or indirectly in economic activity. Two firms, one of which is controlled by the other, shall be treated as one firm. Two or more firms that are controlled by a single firm shall be treated as one firm. The Council shall, from time to time, adopt a regular setting of what constitutes control.

SEC. 6. *Safe Harbor.* – A firm shall not be deemed to have a dominant position unless its share of the relevant market exceeds the percentage set by law. A firm having a market share exceeding a percentage set by law, may or

may not be found to be dominant, depending on the economic situation in that market.

SEC. 7. *Balancing Efficiencies.* – A prohibited agreement under this Act may nevertheless be permissible and allowed by the Council if said agreement has brought about, or is likely to bring about gains in real, as opposed to merely pecuniary, efficiencies that are greater than or more than offset the effects of any limitation on competition that result or are likely to result from the agreement; or (b) the well-being of the consumer is expected to be enhanced as a result of the agreement.

SEC. 8. *Concentrations.* – A concentration shall be deemed to arise when: (a) two or more previously independent firms merge, amalgamate or combine the whole or a part of their business; or (b) one or more natural or legal persons already controlling at least one firm, acquire, whether by purchase of securities or assets, by contract or by other means, direct or indirect control of the whole or parts of one or more firms.

SEC. 9. *Prohibited Concentrations.* – Concentrations that will significantly limit competition as may be determined by the Council are prohibited.

SEC. 10. *Permissible Concentrations.* – Concentrations shall be allowed by the Council where the parties establish that: (a) the concentration has brought about or is likely to bring about gains in real, as opposed to merely pecuniary, efficiencies that are greater than or more than offset the effects of any limitation on competition that result or are likely to result from the concentration; or (b) a party to the concentration is faced with actual or imminent financial failure, and the concentration represents the least anti-competitive arrangement among the known alternative uses for the failing firm's assets.

SEC. 11. *Burden of Proof.* – The burden of proof under Section 10 lies with the parties seeking the exemption.

A party seeking to rely on the exemption specified in Section 10 must demonstrate that if the concentration were not consummated, it is not likely that the relevant real efficiency gains would be realized by means that will limit competition to a lesser degree than the concentration.

A party seeking to rely on the exemption must: (a) demonstrate that reasonable steps have been taken within the recent past to identify alternative purchasers for the failing firm's assets; and (b) fully describe the results of that search.

SEC. 12. *Compulsory Notification.* – Parties to an agreement that will produce a concentration larger than the minimum size as may be provided in the implementing rules and regulations that will be issued by the Council are prohibited from consummating such concentration until thirty (30) days after providing notification to the Council, in the form containing the information specified under the rules and regulations issued pursuant to Section 16 of this Act. An agreement consummated in violation of this requirement shall be considered void and shall subject the parties to the corresponding penalties.

SEC. 13. *Additional Information.* – The Council may, in writing, request the parties to the agreement for additional information before the expiration of the thirty (30) day period referred to in Section 12 of this Act. The issuance of such a request has the effect of extending the period within which the concentration may not be consummated for an additional thirty (30) days, beginning on the day after substantially all of the requested information is supplied to the Council

SEC. 14. *Voluntary Notification.* – Parties to an agreement who are not subject to the notification requirement in Section 12 of this Act may voluntarily notify and, if they do so, be subjected to the same procedure, restrictions and rights as are applied to cases of compulsory notification.

SEC. 15. *Effect of Notification.* – If, before consummation of a concentration, the Council determines that such concentration is prohibited and does not qualify for exemption under this Act, the Council may:

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

SEC. 16. *Anti-Trust Powers and Functions of the National Consumer Affairs Council.* – The Council shall:

- a) Adopt and publish regulations stipulating:
 - 1) The minimum size of concentrations subject to the notification requirement of Section 12;
 - 2) The information that must be supplied for notified concentrations;
 - 3) Exceptions or exemptions from the notification requirements of Section 12 for specified types of concentrations; and
 - 4) Other rules relating to the notification procedures in Sections 12, 13 and 14 hereof.
- b) Determine within three (3) years after consummation that either a notified concentration or a notified concentration in which the provisions of Sections 12 to 14 are not fully complied with has led or will probably lead to a significant limitation of competition and does not qualify for exemption set out in Section 10 of this Act. If it so determines, the Council may:
 - 1) Undo the concentration by dissolving it into its individual elements;
 - 2) Require other modifications of the concentration, including sale of a portion of its operations or assets; or
 - 3) Require the surviving firm or firms to enter into legally enforceable agreements specified by the Council and designed to reduce or eliminate the competition limiting effects of the concentration.
- c) Enforce and effectively administer the provisions of this Act and other fair trade laws, subject to the powers vested in the courts and other administrative agencies under this Act;
- d) Undertake and prepare industry studies to determine industry structures, and the state of competition and competitiveness of Philippine industries, and collate, compile, distribute and disseminate resource materials on competition policy, with the end in view of creating a national database on competition;
- e) Conduct workshops and seminars, information campaigns for the public and train or develop a pool of experts on competition;

f) Extend technical assistance to the Philippine delegations to international bodies and meetings in regard to trade and competition law and policy;

g) Draft and recommend proposed administrative and legislative measures for respective consideration and adoption by the executive or legislative branch of government;

h) Make submissions to the government authorities engaged in designing or administering legislations or regulations which could affect competition in any market in the Philippines, intervene in hearings and proceedings held with regard to the adoption or administration of such laws or regulations, and publish such submissions and interventions without divulging confidential information;

i) Administratively adjudicate violations of this Act and rules and regulations issued pursuant thereto, by conducting a formal investigation, independent of the corresponding criminal and civil action for said violations;

j) Conduct its own administrative investigations;

k) Initiate or institute the appropriate civil action or proceeding before the proper court or administrative agency in the implementation of the provisions of this Act and other fair trade laws or restrain any threatened violations thereof;

l) Institute the appropriate information and prosecute criminal cases for any and all violations of this Act and other fair trade laws after conducting a preliminary investigation *motu proprio* or upon complaint of any person, when there is sufficient ground to engender a well founded belief that the violation complained of is being or has been committed, and institute the appropriate action for the recovery of civil liability in accordance with the Rules of Court;

m) Recommend the amendment of existing franchises when, based on its own evaluation, the same has adversely affected the growth of the relevant market or industry;

n) Require any person, firm, entity or association to submit to it periodically or whenever necessary, such report, data, information, paper or document in such form as may be prescribed by the Council;

o) Request the different government agencies for assistance in obtaining information necessary for the proper discharge of its responsibilities under this

Act, and examine, if necessary, the pertinent records and documents in the possession of such government agency;

p) Promulgate such rules and regulations as may be necessary to implement the provisions and intent of this Act which shall take effect fifteen (15) days following their publication in at least two (2) newspapers of general circulation or in the Official Gazette; and

q) Perform such other functions as it may deem appropriate for the proper enforcement of this Act.

SEC. 17. *Administrative Adjudication.* – As soon as a formal charge is filed with the Council and even prior to the commencement of the formal investigation, the Council may *motu proprio* or upon verified application of any person, issue preliminary order prohibiting firms from carrying on the anti-competitive or unfair practices referred to in this Act and, if necessary, require such firms to take other specified actions to eliminate the harmful effects of such practices and to ensure against recurrence of such practices. Before issuing any order, the Council shall be satisfied that the proposed measures are urgently required to avoid serious, imminent and irreparable harm to the economic interests of the Philippines, as expressed in this Act. Where the effectiveness of the order will not thereby be prejudiced, the Council may permit the firms to present their views regarding the proposed order. The Council shall provide by rules and regulations the procedures and restrictions for the issuance of such preliminary orders.

All preliminary orders may, under this Section, lose effect twenty one (21) days after they are issued, unless renewed by express decision of the Council.

Upon its decision becoming final and executory, the Council shall, on its own initiative or upon motion of the winning party, issue a writ of execution. The Council shall deputize the Philippine National Police, National Bureau of Investigation or Armed Forces of the Philippines in the enforcement of any of its decisions and orders. Orders and decisions issued under this Section may be appealed to the pertinent appellate court but do not lose their effect pending the outcome of the appeal.

The imposition of administrative penalties in the formal investigation is without prejudice to the imposition of penalties in the criminal action or judgment in the civil action.

SEC. 18. *Administrative Investigation.* – The Council shall conduct its own administrative investigation for the purpose of obtaining information relative to any activity that constitutes any past or present violation of this Act and other fair trade laws. Administrative investigation may also be conducted for the purpose of gathering and compiling trade information relative to the nature, organization and resources of any person, firm, entity or association doing business in or with the Philippines or a Philippine firm by determining and evaluating the practices, acts, methods, schemes, arrangements and other trade conditions prevailing in an industry.

The officials authorized to conduct the preliminary or administrative investigation, including formal investigation for purposes of administrative adjudication shall have the power to administer oaths, issue *subpoena duces tecum* to compel the attendance of witnesses and the production of necessary papers and documents, and to punish direct and indirect contempt as provided under the Rules of Court.

SEC. 19. *Periodic Inspection.* – The Council shall periodically conduct an inspection of any of the following:

- a) Factory, shop, laboratory, establishment, store, warehouse, any means of transportation, and the like;
- b) Papers, documents and records found in such factory, shop, laboratory, establishment, store, warehouse, any means of transportation, and the like;
- c) Equipment, finished or unfinished products, raw materials, containers, labeling and other pertinent properties found in such factory, shop, laboratory, establishment, store, warehouse, any means of transportation, and the like; and
- d) Activity being undertaken in such factory, shop, laboratory, establishment, store, warehouse, any means of transportation, and the like, which may be necessary to determine violation or which may aid in the

enforcement of this Act, other fair trade laws, or rules and regulations issued pursuant thereto.

The officials authorized to conduct said inspection may obtain a reasonable quantity of samples of the properties, except equipment, mentioned in paragraph (c), to take pictures or video tapes of the places or things mentioned in paragraphs (a) and (c) and secure copies of the papers mentioned in paragraph (b).

All acts authorized under this Section shall be conducted at reasonable promptness, in a professional manner and without undue disturbance to any legitimate work or activity being undertaken inside the premises. Receipts shall be issued for samples which may thereafter be so obtained.

SEC. 20. *Advance Ruling.* – Parties may apply to the Council for advance ruling, binding on that office, regarding eligibility for exemption. If it chooses to grant an advance ruling, the Council may include specified conditions and requirements in its ruling. The advance ruling shall by its terms exist for a specified period of time.

Advance rulings may be renewed upon application by the parties. An advance ruling may be revoked or modified if:

- a) A significant change in circumstances has occurred since the ruling;
- b) The applicant infringed a condition or a requirement specified in the ruling;
- c) The decision to grant the ruling was materially influenced by inaccurate, fraudulent or misleading data; or
- d) The applicant abused the exemption granted to it.

The Council shall arrange for the publication of its advance ruling without divulging any confidential information.

SEC. 21. *Rules on Confidentiality and Conflict of Interest.* – Officials of the Council, as well as their agents and consultants, shall maintain the confidentiality of all business, commercial or official information of which they become aware during the course of their official activities, except that which is otherwise public. Disclosure of such confidential information may occur in the course of administrative or judicial proceedings arising under this Act, or otherwise as permitted by a court of competent jurisdiction.

All members of the Council shall inform the Office of the Chairman of the Council of any position held or activity carried out in an economic field by the member, including all agents thereof. The Chairman shall take all necessary steps to ensure that there is no conflict of interest arising from such positions or activities, including requiring that such positions are resigned or activities cease.

SEC. 22. *Control.* – For the purpose of this Act, control is defined as the ability to materially influence a firm, in particular, through: (a) ownership or the right to use all or part of the assets of an undertaking; or (b) rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of a firm.

SEC. 23. *Unfair Competition.* – Unfair competition is prohibited, including:

- 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 the price, character, method or place of production, properties, suitability for use or quality of goods;
- c) False or misleading comparison of goods in the process of advertising;
- d) Fraudulent use of another's trademark, firm name, or product labeling or packaging;
- e) Unauthorized receipt, use or dissemination of confidential scientific, technical, production, business or trade information; or
- f) Collusion in business practices that are clearly against economic efficiency and consumer welfare, such as price fixing, bid rigging, restriction of output and market shares and allocation of geographic markets and customers.

SEC. 24. *Restraint of Trade and Price Manipulation.* – Every agreement or contract, combination in the form of trust or otherwise, or conspiracy, expressed or implied, in restraint of trade or commerce inside the country or with foreign nations or foreign territories, are hereby declared illegal.

It shall be unlawful for any person to enter into, or to make, or to be a party to any such contract or combination or conspiracy, and any such person

shall be deemed guilty of an offense: *Provided*, That nothing in this Act shall render illegal, any agreement or contract prescribing minimum price for the resale of a commodity which bears or the label or container of which bears, the trademark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others: *Provided, further*, That the preceding proviso shall not make lawful any agreement or contract, combination or conspiracy providing for the establishment or maintenance of minimum resale price on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factories, or between retailers, or between persons, firms or corporations in competition with each other .

SEC. 25. *Monopoly or Attempt to Monopolize*. – It shall be unlawful for any person to monopolize, or attempt to monopolize, or to combine or conspire, expressly or impliedly, with any other person or persons, to monopolize any part of the trade or commerce within the country, or with any foreign country or territory, and any such person shall be guilty of an offense. Nothing in this Act shall render unlawful the right of a patent holder or a copyright holder to enjoy the benefit of its patent or copyright duly registered in the Philippines or in any foreign country.

SEC. 26. *Unlawful Price Discrimination*. – a) It shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchasers involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the Philippines, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided*, That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing method or quantities in which such commodities are to such

purchasers sold or delivered: *Provided, however,* That the Secretary of Trade and Industry in the case of non-agricultural commodities may, after due notice to all interested parties, investigation and hearing, fix and establish quantity limits, and revise the same as the Secretary finds necessary, as to particular commodities or classes of commodities, where available purchasers in greater quantities are so few as to render differentials on account thereof unjustly discriminatory or promotive of monopoly in any line of commerce within the jurisdiction of the Department of Trade and Industry.

The foregoing shall not be construed to permit differentials based on differences in quantities greater than those so fixed and established: *Provided,* That nothing in this Act shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in *bona fide* transactions and not in restraint of trade: *Provided, further,* That nothing in this Act shall prevent price changes from time to time in response to changing conditions affecting the market for or the marketability of the goods, such as but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business of the goods;

b) It shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid;

c) It shall be unlawful for any person engaged in commerce to pay or contract for payment of anything of value to or for the benefit of a customer of such person or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such person, unless such payment or consideration is available on

proportionally equal terms to all other customers competing in the distribution of such products or commodities.

d) It shall be unlawful for any person to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms;

e) It shall be unlawful for any person engaged in commerce, in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by this Act; and

f) Upon proof being made, at any hearing on a complaint under this Act, that there has been discrimination in price or services or facilities furnished, the burden of rebutting the *prima-facie* case thus made by showing justification shall be upon the person charged with a violation of this Act, and unless justification shall be affirmatively shown, the Secretary of Trade and Industry is authorized to issue an order terminating the discrimination: *Provided, however,* That nothing in this Act shall prevent a seller rebutting the *prima-facie* case thus made by showing that the lower price or the furnishing of service or facility to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the service or facility furnished by a competitor.

SEC. 27. *Prohibited Stipulations in Lease or Sales Contracts.* ... It shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for the sale of goods, ware, merchandise, machinery, supply, or other commodity, whether patented or unpatented, for use, consumption, or resale within the Philippines, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser shall not use or deal in the goods, ware, merchandise, machinery, supply, or other commodity of a competitor or competitors of the lessor or seller where the effect of such lease, sale, or contract for sale or such condition, agreement, or understanding may be to lessen competition or tend to create a monopoly in any line of commerce.

SEC. 28. *Prohibited Stock or Asset Acquisition.* – No person engaged in commerce or in any activity affecting commerce 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 another person engaged also in commerce or in any activity affecting commerce, where in any line of commerce or in any part of the country, the effect of such acquisition may be substantially to lessen competition or tend to create a monopoly.

SEC. 29. *Prohibited Grant of Proxies or Voting Rights.* – No person shall acquire, directly or indirectly, the whole or any part of the stock or other share capital, nor shall any person acquire the whole or any part of the assets of one or more persons engaged in commerce or in any activity affecting commerce in the country or in any part of the country, where the effect of acquisition of such stock or assets, or of the use of such stock by the voting or granting of proxies or otherwise, may be substantially to lessen competition, or tend to create a monopoly.

This prohibition shall not apply to persons purchasing such stock 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. Nor shall anything in this Act prevent a corporation engaged in commerce or in any activity affecting commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extension thereof, or from owning and holding all or part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Nothing contained in this Section shall be held to affect or impair any right heretofore legally acquired or be held or construed to authorize or make anything prohibited or made illegal by any anti-trust law of the Philippines, particularly Article 186 of the Revised Penal Code of the Philippines, nor exempt any person from the penal provisions thereof or the civil remedies provided therefor, if any.

SEC. 30. *Prohibited Board Memberships.* – No person shall be a director in any two or more corporations engaged in whole or in part in commerce in the Philippines at the same time, other than banks, banking

associations, investment companies, and trust companies, if such corporations are or shall have been, by virtue of their business and location of operation, eliminate competitors, so that the elimination of competition by agreement between them would constitute a violation of any provisions of this Act or any anti-trust law of the Philippines, particularly Article 186 of the Revised Penal Code of the Philippines.

SEC. 31. *Exemption of Labor, Agricultural, or Horticultural Organizations.* The labor of a human being is not a commodity or article of commerce. Nothing contained in this Act shall be construed to forbid the existence and operation of any labor, agricultural or horticultural organizations instituted for purposes of mutual help and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof, nor shall such organizations or the members thereof be held or construed to be illegal combinations or conspiracies in restraint of trade under this Act.

SEC. 32. *Penalties.* – a) Any person who shall violate Section 9, 24 or 25 of this Act shall, for each and every such violation, be punished by a fine not exceeding One million pesos (₱1,000,000.00) if a natural person and Ten million pesos (₱10,000,000.00) if a corporation or association, or by imprisonment not exceeding five (5) years, or both such fine and imprisonment, in the discretion of the court;

b) Any person who shall violate Sections 26, 27, 28, 29, 30 or any combination of such sections of this Act shall, for each and every violation, be punished by a fine not exceeding Five million pesos (₱5,000,000.00), or by imprisonment not exceeding three (3) years, or both such fine and imprisonment, in the discretion of the court;

In all cases, if the offender is an association, corporation or any other juridical person, the penalty shall be imposed on the chief operating officer, president, secretary, treasurer, or any other person responsible for the violation.

If the offender is an alien, he shall, after service of sentence, be deported immediately without further proceedings in the Bureau of Immigration.

SEC. 33. *Imposition of a Higher Penalty.* – If the act committed is punishable both under Article 186 the Revised Penal Code and this Act, the

penalties imposed under the provisions of the Revised Penal Code or under the provisions of this Act, whichever is higher, shall be imposed.

SEC. 34. *Exclusion of Civil Action from Criminal Action.* – The institution of a criminal action under this Act against a defendant shall not be deemed to include any claim for damages in favor of any person that may have suffered any monetary injury because of any violation of this Act.

SEC. 35. *Civil Action for Monetary Injury.* – In addition to the penalties provided in Section 32 of this Act, any person whose business or property suffers monetary injury by reason of any prohibited acts under Sections 9, 24, 25, 26, 27, 28, 29 or 30 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 threefold of the monetary injury sustained and the cost of suit, including a reasonable attorney's fee.

The complaint for the civil action may be filed or instituted in the Regional Trial Court where the defendant or any of the defendants resides or is found or has an agent, or in the Regional Trial Court where the plaintiff resides. Any complaint for civil action that may be filed or instituted against a defendant to recover monetary injury suffered as a consequence of a violation of this Act shall be exempted from the payment of any filing fee.

SEC. 36. *Government Civil Action.* – In addition to any criminal action that may be instituted against any defendant or defendants for any violation of this Act, the Secretary of Justice may bring a civil action in the name of the Republic of the Philippines, as *parens patriae*, on behalf of any natural person residing in the Philippines, in any Regional Trial Court having jurisdiction over the defendant, to secure treble damages for any monetary injury sustained by such person by reason of any violation of this Act, plus the cost of suit and a reasonable attorney's fee.

Any civil action brought by the Secretary of Justice under this Act in the name of the Republic of the Philippines, as *parens patriae*, shall likewise be exempted from the payment of any filing fee.

SEC. 37. *Determination of Monetary Relief.* – In the event of successful civil action brought by the Secretary of Justice, the Regional Trial Court having jurisdiction over the case shall exclude from the amount of the monetary relief

awarded in such action, the amount: (1) which duplicates amounts of monetary relief that have been awarded for the same injury, or (2) which is properly allocable to natural persons who have excluded their claims from the civil action instituted by the Secretary of Justice in the name of the Republic of the Philippines, and to any business entity.

SEC. 38. *Notice by Publication.* - In any civil action brought in the name of the Republic of the Philippines, as *parens patriae*, the Secretary of Justice shall, at such times and in such manner as the Regional Trial Court having jurisdiction may direct, cause notice thereof to be given by publication. However, if such Regional Trial Court finds that notice given solely by publication would deny due process of law to any person or persons, that court may direct further notice to such persons according to the circumstances of the case.

SEC. 39. *Exclusion from the Suit.* - Any person on whose behalf a civil action has been brought by the Secretary of Justice under this Act in the name of the Republic of the Philippines, as *parens patriae*, may elect to exclude from adjudication the portion of the claim of the Republic of the Philippines for monetary relief attributable to him by filing notice of such election with the Regional Trial Court having jurisdiction over the civil action within such time as specified in the notice given.

SEC. 40. *Effect of Final Judgment.* - The final judgment in an action brought by the Secretary of Justice under this Act in the name of the Republic of the Philippines, as *parens patriae*, shall be *res judicata* as to any claim by any person on behalf of whom such action was brought and who fails to give the notice of election under Section 39 of this Act within the period directed and specified by the Regional Trial Court having jurisdiction of the case in accordance with Section 35 of this Act.

SEC. 41. *Suit to Recover Its Own Damages.* - Whenever the Republic of the Philippines is injured in its business or property by reason of anything forbidden or rendered unlawful in this Act, it may sue thereon in the Regional Trial Court in which the defendant or any of the defendants, if there are more than one defendant, resides or has an agent, without respect to the amount in

controversy and shall recover actual damages sustained by it including the cost of suit.

SEC. 42. *Court Approval.* – Any civil action filed under this Act shall not be dismissed or compromised without the approval of the court having jurisdiction of the case, and notice of any proposed dismissal or compromise shall be given to the public and to the parties in such manner as the court directs.

SEC. 43. *Attorney's Fee.* – In any civil action filed against a defendant under this Act, the court having jurisdiction of the case may award a reasonable attorney's fee in favor of a prevailing defendant upon a finding that the Secretary of Justice or the plaintiff has acted in bad faith, vexatiously, wantonly, or for oppressive reasons.

SEC. 44. *Methods to Prove and Assess Damages.* – In any civil action under this Act in which there has been a determination that a defendant agreed to fix prices in violation of the provisions of this Act, 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 having jurisdiction of the case in its discretion may permit without necessarily proving the individual claim of, or the amount of damage to, persons on whose behalf the suit was brought.

SEC. 45. *Distribution of Monetary Relief.* – The monetary relief recovered in a civil action filed by the Secretary of Justice in the name of the Republic of the Philippines, as *parens patriae*, in accordance with the provisions of Section 36 hereof shall (1) be distributed in such manner as the Regional Trial Court having jurisdiction of the case in its discretion may authorize; or (2) be deemed a civil penalty by the Regional Trial Court and deposited with the National Treasury as a part of the general fund of the government, subject in either case to the requirement that any distribution procedure adopted by the Regional Trial Court shall afford each person having an interest in the monetary relief a reasonable opportunity to secure his appropriate portion of the net monetary relief obtained.

SEC. 46. *Effect of a Final Judgment.* – Any final judgment or decree rendered in any criminal action brought by or on behalf of the People of the Philippines as well as any final judgment or decree rendered in any civil action

brought by or on behalf of the Republic of the Philippines under this Act to the effect that a defendant has violated any of the provisions of this Act 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 or decree would be an estoppel as between the parties. This Section shall not apply to consent judgment or decree as provided in Section 47 of this Act, entered before any testimony has been taken.

SEC. 47. *Proposal for a Consent Judgment.* – At any time in the course of a civil action brought by or on behalf of the Republic of the Philippines under this Act, the Republic of the Philippines, through the Secretary of Justice, may propose in a proper pleading to the defendant or defendants a consent judgment by the latter based on the facts alleged by the parties in their respective pleadings.

Any such proposal for a consent judgment for entry in such civil action shall be filed with the Regional Trial Court having jurisdiction of the case. A summary of the terms of the proposal for the consent judgment with a competitive impact statement which shall recite (a) the nature and purpose of the proceeding; (b) a description of the practices or events giving rise to the alleged violation of this Act; (c) an explanation of the proposal for a consent judgment, including an explanation of any unusual circumstances giving rise to such proposal or any provision contained therein, relief to be obtained thereby, and the anticipated effects on competition of such relief; (d) the remedies available to potential private plaintiffs damaged by the alleged violation in the event that such proposal for the consent judgment entered in such proceeding; (e) a description of the procedure available for modification of such proposal; (f) a description and evaluation of alternatives to such proposal actually considered by the Republic of the Philippines; and (g) a list of the materials and documents which the Republic of the Philippines shall make available for purposes of meaningful public comment, and the place where such materials and documents are available for public inspection, shall be published at least sixty (60) days prior to the effective date of such consent judgment for seven (7) days over a period of three (3) weeks in at least two (2) newspapers of general circulation.

Copies of the proposal for a consent judgment or any other materials and documents which the Republic of the Philippines considered determinative in formulating its proposal for a consent judgment shall be made available to the public at the Regional Trial Court having jurisdiction of the case.

SEC. 48. *Comments to the Proposal for a Consent Judgment.* – During the sixty (60) day period mentioned in Section 47 hereof, and such additional time as the Republic of the Philippines may request and the Regional Trial Court may grant, the Republic of the Philippines shall receive and consider any written comments relating to the proposal for the consent judgment filed with the Regional Trial Court having jurisdiction of the case in accordance with Section 47 of this Act. At the close of the period during which such comments may be received, the Republic of the Philippines shall file with the Regional Trial Court having jurisdiction of the case a response to such comments not later than thirty (30) days from the date the last comment was filed with the Regional Trial Court.

SEC. 49. *Duty of the Regional Trial Court.* - Before entering any consent judgment proposed by the Republic of the Philippines under Section 47 of this Act, the Regional Trial Court having jurisdiction of the case shall determine that the entry of such judgment is in the public interest.

For purposes of determining that the entry of such judgment is in the public interest, the Regional Trial Court may consider: (a) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment; and (b) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint, including consideration of the public benefit, if any, to be derived from the determination of the issues at the trial.

SEC. 50. *Powers of the Regional Trial Court.* – In making its determination under Section 49 of this Act, the Regional Trial Court may: (a) take the testimony of government officials or experts or such expert witnesses, as the Regional Trial Court may deem appropriate; (b) appoint such outside consultants or expert witnesses as the Regional Trial Court may deem

appropriate; (c) request and obtain the views, evaluations, or advice of any individual, group, or agency of the government with respect to any aspects of the proposed consent judgment or the effect of such consent judgment, in such manner as the Regional Trial Court having jurisdiction of the case deems appropriate; (d) authorize full or limited participation in the civil proceedings before the Regional Trial Court having jurisdiction of the case by interested persons or agencies of the government, including appearance of *amicus curiae*, intervention as a party pursuant to the provisions of the Rules of Court, examination of witnesses or documentary materials, or participation in any other manner and extent which serves the public interest as the Regional Trial Court having jurisdiction of the case may deem appropriate; (e) review any comments including any objections filed with the Republic of the Philippines concerning the proposed consent judgment and the responses of the Republic of the Philippines to such comments and objections, in accordance with the provisions of Section 48 of this Act; and (f) take such other action in the public interest as the Regional Trial Court may deem appropriate.

SEC. 51. *Certifications of the Defendants.* Not later than fifteen (15) days following the date of the filing of any proposal for a consent judgment under Section 47 of this Act, each defendant shall file with the Regional Trial Court having jurisdiction of the case a description of any and all written or oral communications made by or on behalf of such defendants, including any and all written or oral communications relevant to such proposal filed on behalf of such defendants with any officer or employee of the Republic of the Philippines except that any such communications made by counsel of record with the Secretary of Justice or the employees of the Department of Justice shall be excluded from the requirements of this Section. Prior to the entry of any consent judgment pursuant to this Act, each defendant shall certify under oath to the Regional Trial Court having jurisdiction of the case that the requirements of this Section have been complied with and that such filing is a true and complete description of such communications known to the defendant or which the defendant reasonably should have known.

SEC. 52. *Evidential Value of Proceedings in a Proposal for a Consent Judgment.* — Proceedings in a proposal for a consent judgment before the

Regional Trial Court having jurisdiction of the case, shall not be admissible against any defendant in any other action or proceeding brought by any other party against such defendant nor constitute a basis for the introduction of the consent judgment as a *prima facie* evidence against the defendant in such other action or proceeding.

SEC. 53. *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 accrued. Whenever any civil or criminal proceeding is instituted by the Republic of the Philippines in case of a civil action or by the People of the Philippines in case of a criminal action to prevent, restrain, or punish any violation of any provision of this Act, the running of the statute of limitation provided herein shall, in respect of every private or sovereign right of action arising under this Act and based in whole or in part on any matter complained of in said proceeding, be suspended during the pendency thereof and for one year thereafter.

SEC. 54. *Separability Clause.* – Should any part or section of this Act be declared invalid or unconstitutional, other provisions not affected thereby shall remain in full force and effect.

SEC. 55. *Repealing Clause.* – All laws, decrees, orders, rules and regulations and other issuances or any part thereof, which are inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SEC. 56. *Effectivity.* – This Act shall take effect fifteen (15) days after publication in the Official Gazette or in two (2) national newspapers of general circulation.

Approved,

Republic of the Philippines

House of Representatives
Quezon City, Metro Manila

FIFTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 3534

Introduced by Rep. Lorenzo R. Tañada III

EXPLANATORY NOTE

Article XII, Section 19 of the 1987 Constitution of the Republic of the Philippines mandates that "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". Section 22 thereof states that "Acts which circumvent or negate any of the provisions of [Article XII] shall be considered inimical to the national interest and subject to criminal and civil sanctions as may be provided by law". To this end, the Constitution directs the State to protect Filipino enterprises against unfair competition and trade practices.

With the government's push to deregulate and privatize state-owned public utilities and to promote micro, small and medium enterprises and considering that laws governing anticompetitive behavior, monopolies, combinations in restraint of trade and other frauds in commerce and industry, provide inadequate penalties to deter violations thereof, coupled with lack of effective enforcement mechanism and that there is a need to regulate a market scheme wherein competition forces the players to produce products of high quality and in lower prices, the passage of this bill is, therefore, imperative.

The purpose of the bill is to provide a comprehensive and general law which shall regulate anticompetitive behavior and business practices unfettered by limitations based on self-interest, by strengthening prohibitions against monopolies, cartels, combinations in restraint of trade and other anticompetitive practices and conduct, as a means of attaining a more equitable

distribution of opportunities, income and wealth, while recognizing permissible concerted actions that need not be curtailed by an antitrust law.

The bill is distinctive as it promotes competition in the market, with utmost consideration for the development of micro, small and medium enterprises, by classifying price discrimination as a form of illegal trade practice and by enumerating contracts, concerted actions or combinations in restraint of trade, while distinguishing mere growth or development as a consequence of a superior product, business acumen or historic accident. Finally, the bill completes and harmonizes current laws of the country with respect to intellectual property, corporations, right to form organizations and the right to collective bargaining.

It is, therefore, earnestly requested that this bill be urgently approved.


LORENZO R. TAÑADA III
Representative
4th District, Quezon

Republic of the Philippines

House of Representatives
Quezon City, Metro Manila

FOURTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 3534

Introduced by Representative Lorenzo R. Tañada III

AN ACT PRESCRIBING AN ANTITRUST LAW TO STRENGTHEN THE PROHIBITION AGAINST MONOPOLIES, CARTELS, COMBINATIONS IN RESTRAINT OF TRADE AND OTHER ANTICOMPETITIVE PRACTICES AND CONDUCT, AND FOR OTHER PURPOSES.

SECTION 1. *Title* – This Act shall be known as the “Philippine Antitrust Act”.

SECTION 2. *Declaration of Policy* – It is the declared policy of the State to achieve a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all by espousing competition and protecting Filipino enterprises from unfair trade practices.

SECTION 3. *Definition of Terms* – As used in this act, the following terms shall be taken to mean as follows:

- a. Antitrust Laws – this Act, statutes and all other statutes hereinafter enacted by Congress relating to or governing monopolies, oligopolies, cartels, combinations, contracts and/or agreements or arrangements in restraint of trade, production, commerce or industry or which make available to national or local governments, or any private person whose rights have been or in danger of being impaired, any civil and/or criminal remedies or administrative proceedings before the Regional Trial Court or administrative agency with respect to any act, contract, agreement, rule, control, course of conduct, or other activity by, between or among persons constituting a restraint upon or monopolization of domestic or foreign trade, commerce or industry or methods of competition in or affecting such trade, commerce or industry.

- b. Person – any natural person, firm, company, corporation, society, association, partnership, joint-stock company, or any other legal entity including any person acting under color or authority of law.
- c. Commerce – intercourse by way of trade and traffic between different regions, provinces, towns or cities in the Philippines and the citizens or inhabitants thereof, including not only the purchase, sale and exchange of commodities, goods, articles, services, productions or property of any kind, but also the instrumentalities and agencies by which it is promoted and the means and modes by which it is carried on.
- d. Export trade – trade or commerce in goods, wares, merchandise or object of trade, commerce or industry exported, or in the course of being exported from the Philippines to any foreign country.
- e. Implementing Agencies – shall refer to administrative agencies vested by law with jurisdiction to regulate competition and grant administrative relief in specific industries and/or sectors.
- f. Industry – any department or branch of art, occupation or business conducted as a means of livelihood or for profit, especially one which employs much labor and capital and is a distinct branch of trade.
- g. Trade – mercantile or commercial business in general, or the buying and selling, exchanging, of commodities and services, either by wholesale or retail.
- h. Trusts – an association or combination of persons or corporations having the intention and power, or the tendency to create a monopoly, control production, interfere with the free course of trade, or to fix and regulate the supply and the price of commodities and services.
- i. Unfair trade practices – refers to any act that impedes fair competition such as unjustly discriminating between persons, dealing at unjust prices, unjustly inducing or coercing customers of a competition to deal with oneself, dealing with another party on such terms as will unjustly restrict the business activities of the said party, and dealing with another party by unjust use of one's bargaining position.

SECTION 4. *Contracts, Concerted Actions or Combinations in Restraint of Trade* – It shall be unlawful for any person to enter into any contract or agreement or shall take part in any conspiracy or combinations in the form of trusts or otherwise or any other form of mutual understanding with a competing person.

- a. To limit unduly the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any product;
- b. To prevent, limit or lessen, by artificial means, the manufacture or production of a product or to enhance unreasonably the price thereof;
- c. To prevent or lessen, unduly, competition in the production, manufacture, purchase, barter, sale, storage, rental, transportation or supply of a product, or in the price of insurance on persons or property; or
- d. To otherwise restrain or injure competition through unfair trade practices.

SECTION 5. Monopoly or Attempt to Monopolize – It shall be unlawful for any person to monopolize, or attempt to monopolize, or to combine or conspire, expressly or impliedly, with any other person or persons, to monopolize any part of the trade or commerce within the country, or with any foreign country or territory. Provided, that nothing contained in this Act shall render unlawful the right of a patent holder or a copyright holder to enjoy the benefit of his or its patent or copyright duly registered in the Philippines or in any foreign country with which the Philippines is a co-signatory to any treaty or convention that protects the rights to an invention, patent, or to a copyright as the case may be.

As prohibited in this Act, it has two elements: (1) possession of monopoly power in relevant markets, and (2) willful acquisition or maintenance of that power to exclude competitors from any part of trade, commerce or industry, as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident.

SECTION 6. Price discrimination – It shall be considered an illegal trade practice for a person engaged in business to be party or privy to:

- a. Any sale that discriminates to his knowledge, directly or indirectly, against competitors of a purchaser of articles from him in that any discount, rebate, allowance, price concession or other advantage is granted to the purchaser over and above any discount, rebate, allowance, price concession or other advantage that, at the time the articles are sold to the purchaser, is available to the competitors in respect of a sale of articles of like quantity and quality;
- b. Engage in the policy of selling products in areas of the Philippines at prices lower than those exacted by him elsewhere in the country, having the effect or tendency of substantially lessening competition or eliminating a competitor in that part of the Philippines, or designed to have that effect;
- c. Engage in a policy of selling products at prices unreasonably low, having the effect or tendency of substantially lessening competition or eliminating a competitor, or designed to have that effect.

SECTION 7. Bid-Rigging - No person shall enter into an agreement or arrangement whereby one or more of those persons agree or undertake not to submit a bid in response to a call or request for bids or tenders; or shall agree to make a submission of bids or tenders arrived at by agreement or arrangement between or among two or more bidders or tenderers in response to a call or request for bids or tenders.

SECTION 8. Permissible Concerted Action – Contracts, agreement resulting to concerted action between competing persons is permissible only upon approval and determination by the proper implementing agencies that the planned concerted action shall be beneficial to the economy as a whole and in the public interest. Applications for permissible concerted action may be made for the following purposes:

SECTION 5. *Monopoly or Attempt to Monopolize* – It shall be unlawful for any person to monopolize, or attempt to monopolize, or to combine or conspire, expressly or impliedly, with any other person or persons, to monopolize any part of the trade or commerce within the country, or with any foreign country or territory. Provided, that nothing contained in this Act shall render unlawful the right of a patent holder or a copyright holder to enjoy the benefit of his or its patent or copyright duly registered in the Philippines or in any foreign country with which the Philippines is a co-signatory to any treaty or convention that protects the rights to an invention, patent, or to a copyright as the case may be.

As prohibited in this Act, it has two elements: (1) possession of monopoly power in relevant markets, and (2) willful acquisition or maintenance of that power to exclude competitors from any part of trade, commerce or industry, as distinguished from growth or development as a consequence of a superior product, business acumen or historic accident.

SECTION 6. *Price discrimination* – It shall be considered an illegal trade practice for a person engaged in business to be party or privy to:

- a. Any sale that discriminates to his knowledge, directly or indirectly, against competitors of a purchaser of articles from him in that any discount, rebate, allowance, price concession or other advantage is granted to the purchaser over and above any discount, rebate, allowance, price concession or other advantage that, at the time the articles are sold to the purchaser, is available to the competitors in respect of a sale of articles of like quantity and quality;
- b. Engage in the policy of selling products in areas of the Philippines at prices lower than those exacted by him elsewhere in the country, having the effect or tendency of substantially lessening competition or eliminating a competitor in that part of the Philippines, or designed to have that effect;
- c. Engage in a policy of selling products at prices unreasonably low, having the effect or tendency of substantially lessening competition or eliminating a competitor, or designed to have that effect.

SECTION 7. *Bid-Rigging* - No person shall enter into an agreement or arrangement whereby one or more of those persons agree or undertake not to submit a bid in response to a call or request for bids or tenders; or shall agree to make a submission of bids or tenders arrived at by agreement or arrangement between or among two or more bidders or tenderers in response to a call or request for bids or tenders.

SECTION 8. *Permissible Concerted Action* – Contracts, agreement resulting to concerted action between competing persons is permissible only upon approval and determination by the proper implementing agencies that the planned concerted action shall be beneficial to the economy as a whole and in the public interest. Applications for permissible concerted action may be made for the following purposes:

- a. Unifying the specifications or models of goods for the purpose of reducing costs, improving quality, or increasing efficiency;
- b. Joint research and development on goods or markets for the purpose of upgrading technology, improving quality, reducing costs, or increasing efficiency;
- c. Arrangements to develop a separate and specialized area for the purpose of rationalizing operations;
- d. Entering into agreements concerning solely the competition in foreign markets for the purpose of securing or promoting exports;
- e. Joint acts for the purpose of improving operational efficiency or strengthening the competitiveness of small and medium enterprises.

SECTION 9. *Acquisitions of Corporate Stocks and Assets* – No person engaged in commerce or in any activity affecting commerce shall acquire, directly or indirectly, the whole or part of the stock or share capital, or acquire the whole or any part of the assets of another person engaged also in commerce or in any activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition or tend to create a monopoly. Provided, this section shall not apply to persons purchasing such stock 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. Nor shall anything contained in this section prevent a corporation engaged in commerce or in any activity affecting commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

SECTION 10. *Interlocking Directors* – No person shall, at the same time, serve as a director or officer in any two corporations that are engaged in whole or in part in commerce and by virtue of their business and location of operation, competitors, to the effect that an agreement to eliminate competition between them would constitute a violation of any antitrust law except:

- a. Between parent and subsidiary companies;
- b. Between or among affiliates defined to mean ownership by one of not less than twenty percent (20%) but not more than fifty percent (50%) of the shares of stock of the other;
- c. The co-venturers in joint venture companies; and
- d. Family corporations.

SECTION 11. *Labor, Agricultural or Horticultural Organizations* – The labor of a human being is not a commodity or Article of commerce. Nothing contained in this Act,

therefore shall be construed to forbid the existence and operation of any labor, agricultural or horticultural organizations, instituted for purposes of mutual help, and not having capital stock or conducted for profit, or to forbid, restrain, individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed as to be illegal combinations of conspiracies in restraint of trade.

SECTION 12. *Collective Bargaining* – Nothing in this act shall apply to combinations or activities of workmen or employees for their own reasonable protection as such workmen or employees and contracts, agreements or arrangements between or among two or more employers in a trade, industry, or profession, whether effected directly between or among the employers or through the instrumentality of a corporation or association of which the employers are members, pertaining to collective bargaining with their employees in respect of salary or wages and terms or conditions of employment.

SECTION 13. *Liability of Directors, Officers and Agents* – Whenever a corporation shall violate any of the provisions of this Act, such violation shall be deemed to be also that of the individual directors, officers or agents of such corporation who shall have authorized, ordered, or done any of the acts constituting in whole or in part such violation.

SECTION 14. *Penalties for Violations* – Any person found guilty of committing any acts in violation of sections 4, 5, 6 and/or 7 or any combination of such sections of this Act shall, for each violation be punished by a fine not exceeding twenty million pesos (Php 20,000,000.00) if a corporation or association, or, four million pesos (Php 4,000,000.00) if a natural person, or imprisonment not exceeding five (5) years or both fine and imprisonment in the discretion of the court.

Any person found guilty to have violated Sections 9 and/or 10 of this Act or any combination of such sections, shall for each and every violation, be punished by a fine not exceeding five million pesos (Php 5,000,000.00), or by imprisonment not exceeding two (2) years, or both fine and imprisonment upon the discretion of the court.

SECTION 15. *Jurisdiction* – The Regional Trial Court shall have original jurisdiction to try and decide all criminal and civil cases involving violations of this Act. Any administrative agency that is vested by law with jurisdiction to grant administrative relief in specific cases shall continue to exercise such jurisdiction, however availment of a remedy under this Act shall not be precluded if it be found more convenient, adequate and expeditious for his immediate protection and relief.

SECTION 16. *Jurisdiction of Specialized Agencies* – The exclusive and original jurisdiction conferred upon by law to specialized agencies to regulate, enforce

competition laws, and handle administrative cases on specific industries shall be discharged by the specialized agency concerned.

SECTION 17. *Exclusion of Civil Action from the Criminal Action* – The institution of a criminal action under this Act against a defendant shall not be deemed to include any claim for damages in favor of any person that may have suffered any monetary injury because of any violation of this Act.

SECTION 18. *Private Suits for Monetary Injury* – Any person who may be injured in his business or property by reason of the violation of any provision of this Act or its implementing rules and regulations may sue in the Regional Trial Court in the principal place of business of the defendant/s, regardless of the amount in controversy. He shall be entitled to recover not more than threefold the damages sustained by him, plus the costs of suit, including reasonable attorney's fees at the discretion of the Court.

SECTION 19. *Parens Patriae Suit* – In addition to the criminal action instituted by the Secretary of Justice, a civil action may be instituted in the name of the Philippines, as *parens patriae*, on behalf of natural persons residing in the Philippines to secure treble damages for any monetary injury sustained by such natural person by reason of any violation of this Act.

Any person on whose behalf a civil action has been brought by the Secretary of Justice under this Act in the name of the Republic of the Philippines may elect to exclude from adjudication the portion of the claim of the Republic of the Philippines for monetary relief attributable to him by filing such notice of election with the Regional Trial Court having jurisdiction over the civil action within such time specified the rules.

SECTION 20. *Effect of a Final Judgment in a Parens Patriae Suit* – The final judgment rendered in a *parens patriae* suit shall be *res judicata* as to any claim by any person on behalf of whom such action was brought by the Republic of the Philippines and who fails to give a notice of election to exclude from adjudication his portion of the monetary relief.

SECTION 21. *Suit of the Republic of the Philippines to Recover its Own Damages* – Whenever the Republic of the Philippines is hereafter injured in its business or property by reason of anything forbidden or rendered unlawful in this Act, it may sue correspondingly sue the defendants in the proper Regional Trial Court for the recovery of actual damages sustained by it and the costs of suit.

SECTION 21. *Evidential Effect of a Final Judgment Rendered in a Criminal Case* – Any final judgment or decree rendered in any criminal action brought by the People of the Philippines, or any civil action instituted on behalf of the Republic of the Philippines to the effect that the defendant was found to have violated any provision

of this Act shall be prima facie evidence against such defendant in any civil action brought by any party against such defendant under this Act. This Section shall not apply to any consent judgment or degree entered into by the parties concerned.

SECTION 22. Consent Judgment – At any time in the course of a civil action brought by or on behalf of the Republic of the Philippines under this Act, the Republic of the Philippine through the Secretary of Justice, may propose in a proper pleading to the defendant or defendants a consent judgment. Any such proposal for consent judgment must be filed with the Regional Trial Court having jurisdiction over the case. The Regional Trial Court shall correspondingly evaluate and examine the proposal for consent judgment and determine if entry of such judgment shall be in the public interest.

In making its determination, the Regional Trial Court may: (1) take the testimony of the government officials or such expert witnesses, as the Regional Trial Court may require; (2) appoint such outside consultants; (3) request and obtain the views, evaluations, or advice of any individual group, or agency of the government with respect to any aspects of the proposed consent judgment or the effect of such consent judgment; (4) authorize full or limited participation in the civil proceedings before the Regional Trial Court having jurisdiction of the case by interested persons or agencies of the government, including the appearance of amicus curiae, intervention as a party pursuant to provisions of the Rules of Court, examination of witnesses or documentary materials, or participation any other manner and extent which serves the public interest as the Regional Trial Court may deem appropriate.

SECTION 23. Prescription – Any criminal, civil action or any private suit, shall be barred unless commenced within five (5) years from the discovery of the crime or of the act or agreement giving rise to the cause of action, or which would be a valid basis for the commencement of any legal action.

SECTION 24. Separability Clause – Any portion or provision of this Act that may be declared unconstitutional shall not have the effect of nullifying other portions or provisions hereof, as long as such remaining portions or provisions can still subsist and be given effect in their entirety.

SECTION 25. 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.

SECTION 26. Effectivity – This Act shall take effect after fifteen (15) days from the completion of its publication in at least two (2) newspapers of general circulation.

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FIFTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 3985

Introduced by Honorable **EDUARDO R. GULLAS**

EXPLANATORY NOTE

This bill seeks to provide a comprehensive law to regulate anti-competitive behaviour and business practices, free of limitations as self-interest, and to strengthen prohibitions against monopolies and cartels, thereby attaining equal distribution of opportunities, income and wealth.

More importantly, Article XII, Sections 19 and 22 of the 1987 Philippine Constitution calls for the government to protect Filipino enterprises against unfair competitions and trade practices.

This bill shall augment the government efforts to deregulate and privatize state-owned utilities by providing adequate prohibitions and efficient enforcement mechanism to deter violations as provided in the Constitution.

This bill shall also regulate a market scheme where stiff competition among the entrepreneurs will produce high quality goods at lower prices.

Hence, the approval of this bill is earnestly sought.


EDUARDO R. GULLAS

HOUSE OF REPRESENTATIVES

Quezon City

FIFTEENTH CONGRESS

First Regular Session

HOUSE BILL NO. 3985

Introduced by Honorable EDUARDO R. GULLAS

AN ACT

PRESCRIBING AN ANTITRUST LAW TO STRENGTHEN THE PROHIBITION AGAINST MONOPOLIES, CARTELS, COMBINATIONS IN RESTRAINT OF TRADE AND OTHER ANTICOMPETITIVE PRACTICES AND CONDUCT, AND FOR OTHER PURPOSES.

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

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

SECTION 2. Declaration of Policy – It is the declared policy of the State to achieve a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all by espousing competition and protecting Filipino enterprises from unfair trade practices.

SECTION 3. Definitions of Terms – As used in this act, the following terms shall be taken to mean as follows:

- a. Antitrust Laws – this Act, statutes and all other statutes hereinafter enacted by Congress relating to or governing monopolies, oligopolies, cartels, combinations, contracts and/or agreements or arrangements in restraint of trade, production, commerce or industry or which make available to national or local governments, or any private person whose rights have been or in danger of being impaired, any civil and/or criminal remedies or administrative proceedings before the Regional Trial Court or administrative agency with respect to any act, contract, agreement, rule, control, course of conduct, or other activity by, between or among persons constituting a restraint upon or monopolization of domestic or foreign trade, commerce or industry or methods of competition in or affecting such trade, commerce or industry.
- b. Person – any natural person, firm, company, corporation, society, association, partnership, joint-stock company, or any other legal entity including any person acting under color or authority of law.
- c. Commerce – intercourse by way of trade and traffic between different regions, provinces, towns or cities in the Philippines and the citizens or inhabitants thereof, including not only the purchase, sale and exchange of commodities, goods, articles, services, productions or property of any kind, but also the instrumentalities and agencies by which it is promoted and the means and modes by which it is carried on.

- d. Export trade -- trade or commerce in goods, wares, merchandise or object of trade, commerce or industry exported, or in the course of being exported from the Philippines to any foreign country.
- e. Implementing Agencies -- shall refer to administrative agencies vested by law with Jurisdiction to regulate competition and grant administrative relief in specific Industries and/or sectors.
- f. Industry -- any department or branch of art, occupation or business conducted as a means of livelihood or for profit, especially one which employs much labor and capital and is a distinct branch of trade.
- g. Trade -- mercantile or commercial business in general, or the buying and selling, exchanging of commodities and services, either by wholesale or retail
- h. Trusts - - an association or combination of persons or corporations having the intention and power, or the tendency to create a monopoly, control production, interfere with the free course of trade, or to fix and regulate the supply and the price of commodities and services.
- i. Unfair trade practices - - refers to any act that impedes fair competition such as unjustly discriminating between persons, dealing at unjust prices, unjustly inducing or coercing customers of a competition to deal with oneself, dealing with another party on such terms as will unjustly restrict the business activities of the said party, and dealing with another party by unjust use of one's bargaining position.

SECTION 4. Contracts, Concerted Actions or Combinations in Restraint of Trade -- it shall be unlawful for any person to enter into any contract or agreement or shall take part in any conspiracy or combinations in the form of trusts or otherwise or any other form of mutual understanding with a competing person.

- a. To limit unduly the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any product;
- b. To prevent, limit or lessen, by artificial means, the manufacture or production of a product or to enhance unreasonably the price thereof;
- c. To prevent or lessen, unduly, competition in the production, manufacture, purchase, barter, sale, storage, rental, transportation or supply of a product, or in the price of insurance on persons or property; or
- d. To otherwise restrain or injure competition through unfair trade practices.

SECTION 5. Monopoly or Attempt to Monopolize -- It shall be unlawful for any person to monopolize, or attempt to monopolize, or to combine or conspire, expressly or impliedly, with any other person or persons, to monopolize any part of the trade or commerce within the country, or with any foreign country, or territory. Provided, that nothing contained in this Act shall render unlawful the right of a patent holder or a copyright holder to enjoy the benefit of his patent or copyright duly registered in the Philippines or in any foreign country with which the Philippines is a co-signatory to any treaty or convention that protects the rights to an invention, patent, or to a copyright as the case may be.

As prohibited in this Act, it has two elements: (1) possession of monopoly power in relevant markets, and (2) wilful acquisition or maintenance of that power to exclude competitors from any part of trade, commerce or industry, as distinguished from growth or development as a consequence of a superior product, business acumen or historic accident.

SECTION 6. Price discrimination – It shall be considered an illegal trade practice for a person engaged in business to be a party or privy to:

- a. Any sale that discriminates to his knowledge, directly or indirectly, against competitors of a purchaser of articles from him in that any discount, rebate allowance, price concession or other advantage is granted to the purchaser over and above any discount, rebate, allowance, price concession or other advantage that, at the time the articles are sold to the purchaser, is available to the competitors in respect of a sale of articles of like quantity and quality;
- b. Engage in the policy of selling products in areas of the Philippines at prices lower than those exacted by him elsewhere in the country, having the effect or tendency of substantially lessening competition or eliminating a competitor in that part of the Philippines, or designed to have that effect;
- c. Engage in a policy of selling products at prices unreasonably low, having the effect or tendency of substantially lessening competition or eliminating a competitor, or designed to have that effect.

SECTION 7. Bid-Rigging – No person shall enter into an agreement or arrangement whereby one or more of those persons agree or undertake not to submit a bid in response to a call or request for bids or tenders; or shall agree to make a submission of bids or tenders arrived at by agreement or arrangement between or among two or more bidders or tenderers in response to a call or request for bids or tenders.

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corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches of extensions thereof, or from owning and holding all or part of the stock of such subsidiary corporations when the effect of such formation is not substantially lessen competition.

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SECTION 14. Penalties for Violations – Any person found guilty of committing any acts in violation of section 4, 5, 6 and/or 7 any combination of such sections of this Act shall, for each violation be punished by a fine not exceeding twenty million pesos (Php 20,000,000.00) if a corporation or association, or four million pesos (Php 4,000,000.00) if a natural person, or imprisonment not exceeding five (5) years, or both fine and imprisonment upon the discretion of the court.

Any person found guilty to have violated Sections 9 and/or 10 of this Act or any combination of such sections, shall for each and every violation, be punished by a fine not exceeding five million pesos (Php 5,000,000.00), or by imprisonment not exceeding two (2) years, or both fine and imprisonment upon the discretion of the court.

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Any person on whose behalf a civil action has been brought by the Secretary of Justice under this Act in the name of the Republic of the Philippines may elect to exclude from adjudication the portion of the claim of the Republic of the Philippines for monetary relief attributable to him by filing such notice of election with the Regional Trial Court having jurisdiction over the civil action within such time specified the rules.

SECTION 20. Effect of a Final Judgment in a Parens Patriae Suit – The final judgment rendered in a parents patriae suit shall be res judicata as to any claim by any person on behalf of whom such action was brought by the Republic of the Philippines and who fails to give a notice of election to exclude from the adjudication his portion of the monetary relief.

SECTION 21. Suit of the Republic of the Philippines to Recover its Own Damages – Whenever the Republic of the Philippines is hereafter injured in its business or property by reason of anything forbidden or rendered unlawful in this Act, it may sue correspondingly sue the defendants in the proper Regional Trial Court for the recovery of actual damages sustained by it and the costs of suit,

SECTION 22. Evidential Effect of a Final Judgment Rendered in a Criminal Case – Any final judgment or decree rendered in any criminal action brought by the People of the Philippines, or any civil action instituted on behalf of the Republic of the Philippines to the effect that the defendant was found to have violated any provision of this Act shall be prima facie evidence

against such defendant in any civil action brought by any party against such defendant under this Act. This Section shall not apply to any consent judgment or degree entered into by the parties concerned.

SECTION 23. Consent Judgment – At any time in the course of civil action brought by or on behalf of the Republic of the Philippines under this Act, the Republic of the Philippine through the Secretary of Justice, may propose in a proper pleading to the defendant or defendants a consent judgment. Any such proposal for consent judgment must be filed with the Regional Trial Court having jurisdiction over the case. The Regional Trial Court shall correspondingly evaluate and examine the proposal for consent judgment and determine if entry of such judgment shall be in the public interest.

In making its determination, the Regional Trial Court may: (1) take the testimony of the government officials or such expert witnesses, as the Regional Trial Court may require; (2) appoint such outside consultants; (3) request and obtain the views, evaluations, or advice of any individual group, or agency of the government with respect to any aspects of the proposed consent judgment or the effect of such consent judgment; (4) authorize full or limited participation in the civil proceedings before the Regional Trial Court having jurisdiction of the case by interested persons or agencies of the government, including the appearance of amicus curiae, intervention as a party pursuant to provisions of the Rules of Court, examination of witnesses or documentary materials, or participation any other manner and extent which serves the public interest as the Regional Trial Court may deem appropriate.

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