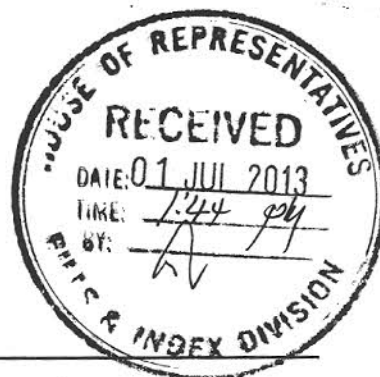


Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Philippines

SIXTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 453



INTRODUCED BY HON. MARCELINO "MARCY" R. TEODORO

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."

These constitutional provisions not only recognize 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.

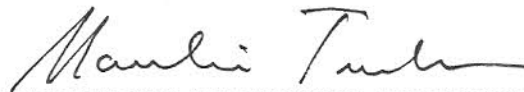
Amidst the difficult economic conditions we are presently laboring under, it is not very difficult to imagine how artificial prices in one or two commodities are able to directly or indirectly raise the prices of related goods and services. It is imperative that our people be protected against exploitative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

This proposed 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.

Admittedly, there were laws 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 the 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.


MARCELINO "MARCY" R. TEODORO
Representative

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Philippines

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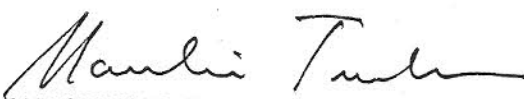
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MARCELINO "MARCY" R. TEODORO
Representative
1st District, Marikina City

1

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SIXTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 453

INTRODUCED BY REP. MARCELINO R. TEODORO

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:

1 **CHAPTER I**

2 **GENERAL PROVISIONS**

3 **SECTION 1. Title.** – This Act shall be known and cited as the “Philippine
4 Fair Competition Act of 2013.”

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

- 9 (a) promote and enhance economic efficiency and free, full and fair
10 competition in trade, industry and all commercial economic activities;
11 (b) prevent the concentration of economic power in a few persons who
12 threaten to control the production, trade, or industry in order to stifle
13 competition, distort, manipulate or constrict the discipline of free
14 markets, increase market prices in the Philippines; and
15 (c) penalize all forms of anti-competitive agreements, abuse of dominant
16 position, and anti-competitive mergers, with the objective of protecting
17 consumer welfare and advancing domestic and international trade and
18 economic development.
- ?

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

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

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

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

19 (a) "Agreement" shall refer to any type or form of arrangement,
20 understanding, undertaking or concerted action, whether formal or
21 informal or tacit, written or oral;

22 (b) "Cartel" shall refer to a combination of firms, providing goods in
23 relevant markets, acting or joined together to obtain a shared monopoly
24 to control production, sale and price, or to obtain control in any
25 particular industry or commodity, or a group of firms that agree to
26 restrict trade. It shall also refer to firms or section of firms having
27 common interest designed to promote the exchange of knowledge
28 resulting from scientific and technical research, exchange of patent
29 rights and standardization of products among themselves with the
30 intent of preventing, restricting or distorting competition;

31 (c) "Commission" shall refer to the Philippine Fair Competition
32 Commission created under this Act;

- (d) "Competition" shall refer to 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) "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;
- (g) "Firm" shall refer to 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;*
- (h) "Goods" and "Services": "Goods" shall refer to all types of tangible and 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 this Act, and examine, if necessary, pertinent records and documents in the possession of such government agency;

(5) *Issuance of Subpoena.* – To issue *subpoena*, *subpoena duces tecum* and *subpoena ad testificandum* 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 paragraph (c)(2) 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 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, and if he has none, the Commission shall appoint a *de officio* counsel for him;

and of his right to avail of the privilege of immunity from prosecution herein prescribed;

(b) *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 Inquiry* – To conduct the required preliminary inquiry of cases involving violations of this Act and other competition laws; and thereafter, if appropriate, to sign and file the proper criminal complaint before the Department of Justice; and

(5) *Administrative Fines, Penalties and Sanctions* – To impose the appropriate administrative fines or penalties herein authorized to be imposed.

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

(1) *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;

(2) *Annual and Special Reports.* – 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;

(3) *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;

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

1 principal plaintiff resides, or where the defendant or any of the principal
2 defendants reside, or in the case of a non-resident defendant, where he may be
3 found, at the election of the plaintiff.

4 CHAPTER III

5 PROHIBITED ACTS

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

- 9 i. “Horizontal agreement” means an agreement entered into between
10 two or more enterprises operating at the same level in the market;
11 ii. “Vertical agreement” means an agreement entered into between two
12 or more enterprises, each of which operates, for the purposes of the
13 agreement, at different levels of the production or distribution chain,
14 and relating to the conditions under which the parties may purchase,
15 sell or resell certain goods or services;

16 There shall be a *prima facie* case for the existence of an anti-competitive
17 agreement if and when the Commission finds that two or more firms that are
18 ostensibly competing for the same relevant market and actually perform uniform
19 or complementary acts among themselves which tend to bring about artificial and
20 unreasonable increase, decrease or fixing in the price of any goods or when they
21 simultaneously and unreasonably increase, decrease or fix the prices of their
22 seemingly competing goods thereby lessening competition in the relevant market
23 among themselves.

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

33 (b) *Bid Rigging* – Any agreement to fix prices at auctions or in any other
34 form of bidding, with the purpose and effect of creating a monopoly or

1 cartel, or lessening competition such as, but not limited to, cover
2 bidding, bid suppression, bid rotation and market allocation and other
3 analogous practices of bid manipulation.

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

- 6 (1) generally, any considered evidence that two sellers of similar goods
7 have agreed to set the price of their goods, to sell only a certain
8 amount of their goods, or to sell only to a limited number of buyers
9 or consumers;
- 10 (2) a drastic change in prices of goods and services involving more
11 than one seller of similar goods of different brands, particularly if the
12 changes in prices take place in equal amount and about the same
13 time;
- 14 (3) a seller refusing to sell based on an agreement with a competitor;
- 15 (4) the same firm has repeatedly been the low bidder who has been
16 awarded contracts for a certain service or a particular bidder seems
17 to win bids on a fixed-rotation;
- 18 (5) there is an unusual and unexplainable difference between the
19 winning bid and all other bids; and
- 20 (6) the same bidder bids substantially higher on some bids than on
21 others, and there is no logical reason to explain the difference.

22 **SEC. 9. Abuse of Dominant Position.** – It shall be unlawful for one or
23 more firms to abuse their dominant position, by engaging in unfair methods of
24 competition, or in unfair or deceptive trade practices, or entering into
25 combinations in the form of trust or otherwise, or conspiracy, with the purpose
26 and effect to prevent, restrict, or distort competition. Abusive agreements such
27 as, but not limited to, any of the following, shall be deemed to fall under the crime
28 of abuse of dominant position:

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

32 (b) *Limitation and Control of Markets* – Any agreement to limit or control
33 production, markets, technical development, or investment with the

1 purpose and effect of creating a monopoly or cartel, or lessening
2 competition;

3 (c) *Market Allocation* – Any agreement to divide the market, whether by
4 volume of sales or purchase or by territory, by type of goods sold, by
5 customers or sellers or by any other means, with the purpose and effect of
6 creating a monopoly or cartel, or lessening competition;

7 (d) *Arrangements to Share Markets or Sources of Supply* – Any agreement to
8 share markets or sources of supply of raw materials, with the purpose and
9 effect of creating a monopoly or cartel, or lessening competition;

10 (e) *Price Discrimination* – Any agreement prescribing or charging, directly or
11 indirectly, discriminatory pricing terms or conditions in the supply or
12 purchase of goods of like grade and quality with the purpose and effect of
13 creating a monopoly or cartel, or substantially lessening competition:
14 *Provided*, That nothing contained herein shall be construed to prohibit
15 permissible price differentials unless the same shall have the effect of
16 preventing, restricting or distorting competition: *Provided, further*, That for
17 the purpose of this section, the following shall be considered permissible
18 price differentials:

19 (1) *Socialized Pricing* – Socialized pricing for the less fortunate sector
20 of the economy;

21 (2) *Volume Discounts* – Price differentials which reflect an allowance
22 for differences in the cost of manufacture, sale, or delivery resulting
23 from differing methods or quantities in which the goods are sold or
24 delivered to the purchasers;

25 (3) *Competitive Pricing* – A price differential or other terms of sale in
26 response to the competitive price of payments, services or facilities
27 furnished by a competitor;

28 (4) *Bonafide Selection of Customers* – The selection of customers on
29 *bona fide* transaction; and

30 (5) *Price Differentials Due to Changing Market Conditions or*
31 *Marketability of Goods* – Price changes from time to time in
32 response to changing conditions affecting the market or the
33 marketability of the goods concerned such as, but not limited to,
34 actual or imminent deterioration of perishable goods, obsolescence

1 of seasonal goods, distress sales under court process, or sale on
2 good faith when a business is going to be discontinued.

3 (f) *Exclusivity Arrangement* – Any agreement imposing restrictions on the
4 lease or contract for sale or trade of goods concerning where, to whom, or
5 in what forms goods may be sold or traded, such as, but not limited to,
6 fixing prices, or giving preferential discounts, or rebate upon such price, or
7 imposing conditions not to deal with competing firms, where the purpose of
8 such agreement is to lessen competition: *Provided*, That nothing
9 contained herein shall prohibit or render unlawful permissible franchising,
10 licensing or exclusive distributorship agreements;

11 (g) *Tie-In Arrangements* – Any agreement making the supply of particular
12 goods dependent upon the purchase or lease of other goods from the
13 supplier or his consignee, where the purpose and effect of such sale or
14 lease or such condition is to substantially lessen competition or to create a
15 monopoly or cartel;

16 (h) *Boycott* – Any concerted refusal to sell or conspiracy not to sell or to stop
17 doing business on the part of the suppliers of any goods, unless for a
18 legitimate purpose.

19 **SEC. 10. *Anti-competitive Mergers*** – No firm engaged in commerce or
20 trade shall acquire, directly or indirectly, the whole or any part of the stock or
21 other share capital, or the whole or any part of the assets, of one or more firms
22 engaged in any line of commerce or trade where the effect of such acquisition of
23 such stocks, share capital, or assets, or of the use of such stock by voting or
24 granting of proxies or otherwise maybe to substantially lessen competition, or
25 tend to create a monopoly.

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

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

32 (2) A corporation from causing the formation of subsidiary
33 corporations, or from owning and holding all or part of the stock
34 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 acquired 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 twenty percent (20%) 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. 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, within further sixty (60) calendar days in accordance with the procedure prescribed herein for the disposition of a show cause order. If the Commission fails to make a decision within the prescribed 60 calendar day limit, the acquisition shall be deemed approved and the parties may proceed to implement it.

(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;

- 1 (3) Acquisitions of voting securities of an issuer at least fifty
2 percent (50%) of the voting securities of which are owned by
3 the acquiring firm prior to such acquisition;
- 4 (4) Transfers to, or from, government agencies or
5 instrumentalities, including government-owned or controlled
6 corporations;
- 7 (5) Transactions exempted from the provisions of this Act and
8 other proper and applicable laws;
- 9 (6) Transactions which require the approval of a specialized
10 agency which regulates the particular industry;
- 11 (7) Acquisitions, solely for the purpose of investment, of voting
12 securities, if as a result of such acquisition the securities
13 acquired or held do not exceed ten percent (10%) of the
14 outstanding voting securities of the issuer;
- 15 (8) Acquisitions of voting securities pursuant to the preemptive
16 rights of the acquiring firm or, if, as a result of such acquisition,
17 the voting securities acquired do not increase, directly or
18 indirectly, the acquiring firm's per centum share of outstanding
19 voting securities of the issuers; or
- 20 (9) Such other acquisitions, transfers, or transactions which the
21 Commission may declare as not likely to violate the provisions
22 of this Act or any other proper and applicable law.

23 CHAPTER IV

24 FINES AND PENALTIES

25 SEC. 11. *Administrative Penalties.*

26 (a) Without prejudice to the violation of other laws, any firm that shall be
27 found to have violated Sections 8, 9 and 10 of this Act, or any combination
28 thereof, shall, for each and every violation, be punished by a fine of not less than
29 Ten million pesos (Php10,000,000.00) and not exceeding Fifty million pesos
30 (Php50,000,000.00) if a natural person; by a fine of not less than Two hundred
31 fifty million pesos (Php250,000,000.00) but not exceeding Seven hundred fifty
32 million pesos (Php750,000,000.00) if a firm, at the discretion of the Commission.

1 In addition, a fine shall be imposed in an amount double the gross
2proceeds gained by the violator/s or double the gross loss suffered by the
3plaintiffs.

4 **(b) Failure to Comply With An Order of the Commission.** – Any person
5who fails or neglects to comply with any term or condition of a binding ruling, a
6cease and desist order or an order for readjustment issued by the Commission,
7shall pay a fine of not less than Fifty thousand pesos (Php50,000.00) for each
8violation. Each violation shall be deemed a separate offense: *Provided, That in*
9*the case of a violation through a continuing failure or neglect to comply, each day*
10*of continuance of such failure or neglect shall be deemed a separate offense.*

11 **(c) Supply of Incorrect or Misleading Information.** - The Commission
12may likewise impose upon persons or entities fines of not less than Five
13thousand pesos (Php 5,000.00) to not more than One hundred thousand pesos
14(Php100,000.00) where, intentionally or negligently, they supply incorrect or
15misleading information in any document, application or other paper filed with or
16submitted to the Commission or supply incorrect or misleading information in an
17application or other paper filed with or submitted to the Commission or supply
18incorrect or misleading information in an application for a binding ruling, a
19proposal for a consent judgment, proceedings relating to a show cause order, or
20application for modification of the Commission's ruling, order or approval, as the
21case may be.

22 **SEC. 12. Criminal Penalties.** - Without prejudice to the violation of other
23laws, any firm that shall be found to have violated Sections 8, 9 and 10 of this
24Act, or any combination thereof, shall, for each and every violation, be punished
25by a fine of not less than Ten million pesos (Php10,000,000.00) and not
26exceeding Fifty million pesos (Php 50,000,000.00) if a natural person; by a fine of
27not less than Two hundred fifty million pesos (Php250,000,000.00) but not
28exceeding Seven hundred fifty million pesos (Php750,000,000.00) if a firm, and
29by imprisonment not exceeding ten (10) years, or both, at the discretion of the
30court.

31 In the alternative, a fine shall be imposed in the amount double the gross
32proceeds gained by the violator or double the gross loss suffered by the plaintiffs.

33 For purposes of determining the persons who will suffer the punishment of
34imprisonment as provided under the preceding paragraph, provisions of the

1 Revised Penal Code, Title II, Articles 16, 17, 18 and 19 on criminal liability of
2 principals, accomplices, and accessories shall apply.

3

CHAPTER V

4

ENFORCEMENT

5

SEC. 13. Preliminary Inquiry. – The Commission shall *motu proprio*, or
6 upon the filing of a verified complaint by an interested party or upon referral by
7 the concerned regulatory agency, initiate a preliminary inquiry for the
8 enforcement of this Act.

9

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

13

SEC. 14. Powers of Concerned Government Agencies. –
14 Notwithstanding the provisions of the preceding section, the exercise of
15 regulatory powers by different government agencies, including local government
16 units, over an industry or a sub-sector of an industry shall be cumulative and
17 shall not be construed in any way as derogating from the power and authority of
18 the concerned agency. The government agencies shall cooperate and coordinate
19 with one another in the exercise of their powers in order to prevent overlap, to
20 share confidential information, or for other effective measures. The Commission
21 can seek technical assistance from sectoral regulators.

22

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

25

SEC. 15. Power to Investigate and Enforce Orders and Resolutions. –
26 The Commission shall conduct preliminary inquiries by administering oaths,
27 issuing *subpoena duces tecum* and summoning witnesses, and commissioning
28 consultants or experts. It shall determine if any provision of this Act has been
29 violated, enforce its orders and carry out its resolutions by making use of any
30 available means, provisional or otherwise, under existing laws and procedures
31 including the power to punish for contempt and to impose fines.

32

SEC. 16. Self-incrimination. – Pursuant to the preceding section, a person
33 who is the subject of any preliminary inquiry or investigation by the Commission
34 shall produce the specified document or information when so required by written

1notice: *Provided*, That no person shall be excused from disclosing any *document*
2or information to the inquiring officer on the ground that the disclosure of the
3information or document may be incriminating: *Provided, further*, That such
4document or information produced by the person who is the subject of
5investigation shall not be admissible as evidence against the person in criminal
6proceedings: *Provided, finally*, That such document or information shall be
7admissible in evidence in civil proceedings including those arising from or in
8connection to the implementation of this Act.

9 **SEC. 17. *Privileged Communication Exclusion.***- Nothing in the
10preceding section shall compel the disclosure of privileged communication:
11*Provided*, That the person who refuses to disclose the information or produce the
12document or other material required by the inquiring officer in relation to the
13preliminary inquiry being conducted shall nevertheless be obliged to give the
14name and address of the firm to whom, or by whom, or on whose behalf, such
15privileged communication was made.

16 **SEC. 18. *Confidentiality of Information.***- Any document or information
17submitted by firms, as determined and marked confidential by the Commission,
18relevant to any investigation being conducted pursuant to this Act shall not, in any
19manner, be directly or indirectly disclosed, published, transferred, copied, or
20disseminated. The identity of persons who provide information to the
21Commission and who need confidentiality to protect themselves against
22economic retaliation, and any Commission deliberations in regard to current or
23still uncompleted matters shall remain confidential.

24 Any violation of this provision shall be imposed a fine of not less than One
25hundred thousand pesos (Php100,000.00) but not more than Five hundred
26thousand pesos (Php500,000.00).

27 **SEC. 19. *Leniency.*** - Any person or firm which cooperates or furnishes
28any information, document or data to the Commission before or during the
29conduct of the preliminary inquiry that constitutes material evidence as
30determined by the Commission under this Act shall be immune from any suit or
31charge including from affected parties and third parties: *Provided*, That the
32person or firm is not the most guilty. *Provided, further*, That any person or firm
33which cooperates or furnishes information, document or data to the Commission
34in connection to an investigation being conducted shall not be subjected to any

1 form of reprisal or discrimination: *Provided, furthermore,* That such reprisal or
2 discrimination shall be considered a violation of this Act and subjected to the
3 penalties provided for under Section 11 hereof.

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

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

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

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

25 **SEC. 21. Nolo Contendere Resolution.** – Any firm under inquiry for
26 violation of the provisions of this Act may submit to a *nolo contendere* resolution
27 at any time before the termination of the preliminary inquiry by: a) the payment of
28 an amount within the range of penalties provided for under Section 11 b) hereof
29 by entering into an undertaking to effectively stop and rectify the acts complained
30 against, make restitution to the affected parties, whether or not the parties are
31 plaintiffs or witnesses; and, c) by submitting regular compliance reports as may
32 be directed: *Provided,* That ten percent (10%) of the amount paid under this
33 section shall equitably accrue to the Commission: *Provided, further,* That a *nolo*

1 *contendere* resolution shall not bar any inquiry for the same or similar acts if
2 continued or repeated.

3 **SEC. 22. Implementing Policy; Non-Adversarial Administrative**

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

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

16 (b) *Show Cause Order.* – Upon preliminary findings *motu proprio* or on
17 written complaint under oath by an interested party, that any person is
18 conducting his business, in whole or in part in a manner that may not
19 be in accord with the provisions of this Act or other competition laws,
20 and it finds that the issuance of a show cause order would be in the
21 interest of the public, the Commission shall issue and serve upon such
22 person or persons a written description of its business conduct
23 complained of, a statement of the facts, data, and information together
24 with a summary of the evidence thereof, with an order requiring the
25 said person or persons to show cause, within the period therein fixed,
26 why no order shall issue requiring such person or persons to cease
27 and desist from continuing with ties identified business conduct, or pay
28 the administrative fine therein specified, or readjust its business
29 conduct or practices;

30 (c) *Proposal for Consent Judgment.* – At any time prior to the issuance of
31 a binding ruling, the promulgation of a cease and desist judgment
32 under a show cause order or the promulgation of a decision of
33 judgment in any administrative, civil, or criminal case, the person or
34 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 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 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 competition laws, or is exempt therefrom, or constitutes 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 the appropriate order requiring the person or persons concerned to perform certain acts:

(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 in violation 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. 23. Standards. - In the exercise of its powers or in the discharge of its duties under this act, the Commission shall consider the following:

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

(b) the ways the persons engaged in business within a given industry act, behave or conduct themselves in such matters as setting prices, determining output, and other relevant factors and the resulting performance of the industry as a whole;

(c) the supply and demand situation for the relevant goods or services;

(d) the appreciable impact of the particular market conduct on market conditions, if any;

(e) the need to bring together complimentary skills to avoid duplication and promote efficiency in the industry;

(f) the need to determine whether or not the anticompetitive effect of a particular market conduct may be offset by increased efficiency and reduction of excessive or unnecessary expenses;

(g) the cost and profit levels of the industry;

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

19 **SEC. 24. Contempt.** – The Commission or any of its Divisions may
20 summarily punish for contempt by imprisonment not exceeding thirty (30) days or
21 by fine, or both, any person guilty of such misconduct in the presence of the
22 Commission or any of its Divisions in its vicinity as to seriously interrupt any
23 hearing, session or any proceedings before it, including cases in which a person
24 willfully fails or refuses, without just cause, to comply with a summon, *subpoena*
25 or *subpoena duces tecum* legally issued by the Commission or any of its Division,
26 being present at a hearing, proceeding, session or investigation, refused to be
27 sworn as a witness or to answer questions or to furnish information when lawfully
28 required to do so.

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

34 **SEC. 26. Appeal to the Court of Appeals.** – Any party who has actively
35 participated in the proceedings before the Commission and is adversely affected
36 by a binding ruling, order, or resolution, decision, judgment, rule or regulation
37 promulgation after notice and hearing by the Commission sitting *en banc*, may

1 appeal, by means of a notice of appeal and a verified petition for review served
2 upon the Commission and other parties who actively participated in the
3 proceedings, to the Court of Appeals within thirty (30) days from receipt thereof,
4 on the ground that the appealed action of the Commission:

- 5 (a) is arbitrary to constitutional rights, power, privilege, or immunity;
- 6 (b) is contrary to constitutional rights, power, privilege, or immunity;
- 7 (c) is in excess of statutory jurisdiction, authority, or limitations, or is
8 contrary to law;
- 9 (d) is without observance of the procedure required by law; and
- 10 (e) is not supported by substantial evidence.

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

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

16 **SEC. 28. Reception of Additional Evidence.** – Any party in the
17 appellate proceedings may apply for leave to the Court of Appeals or the
18 Supreme Court, to adduce additional evidence before the Commission. The
19 Court may, under such terms and conditions as it may prescribe, order the
20 Commission to receive such additional evidence upon showing that it is material
21 and there are reasonable grounds for the failure to present said evidence in the
22 proceedings before the Commission. The Commission, sitting *en banc*, may
23 modify its findings as to the facts, or make new findings, by reason of the
24 additional evidence taken, and it shall file with the appellate court such modified
25 or new findings and its recommendations for the affirmation, modification, or
26 setting aside of the appealed binding ruling, order, resolution, decision, judgment,
27 rule or regulation.

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

33 **SEC. 30. Violation by Corporation, Partnership, Association, and**
34 **Other Entity.** – Whenever a corporation, partnership, association, firm or other

1 entity, whether domestic or foreign, shall commit any of the acts declared to be
2 unlawful under this Act, the Chairperson of the Board of Directors, the President,
3 the General Manager of the corporation, the general partners of a partnership,
4 and the officers and employees directly responsible, shall be jointly and severally
5 liable with the firm for the fine imposed therein.

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

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

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

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

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

32 **SEC. 33. Private Action.** – Regardless of the status or pendency of any
33 proceedings, any firm that suffers injury by reason of any violation of this Act may
34 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. 34. 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 under this Act as to all matters respecting which said judgment would be an estoppel as between the parties concerned.

SEC. 35. Distribution of Damages Recovered. – The damages recovered in a civil action under Section 20 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 interested person a reasonable opportunity to secure his appropriate portion of the net damages obtained.

SEC. 36. 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.

SEC. 37. Immunity from Suit. – The Commissioners and the Staff of the Commission shall not be subject to any action, claim or demand in connection with any act done or omitted by them in the performance of their duties and

1 exercise of their powers, except for those acts and omissions done in evident bad
2 faith or gross negligence.

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

9

CHAPTER VI

10

OTHER PROVISIONS

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

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

23 **SEC. 39. Prohibition on the Issuance of Temporary Restraining**
24 **Orders, Preliminary Injunctions and Preliminary Mandatory Injunctions.** –
25 Except for the Supreme Court, no other court shall issue any temporary
26 restraining order, preliminary injunction or preliminary mandatory injunction
27 against the regulatory agency in the exercise of its duties or functions: *Provided*,
28 That, this prohibition shall apply in all cases, disputes or controversies instituted
29 by a private party, including, but not limited to, cases filed by regulated firms or
30 those claiming to have rights through such firms: *Provided, however*, That, this
31 prohibition shall not apply when the matter is of extreme urgency involving a
32 constitutional issue, such that the non-issuance of a temporary restraining order
33 will result in grave injustice and irreparable injury to the public: *Provided, further*,
34 That, the applicant shall file a bond, in an amount to be fixed by the Court, but in

1 no case shall it be less than half of the imposable fines provided for under
2 Section 11 of this Act: *Provided, finally*, That in the event that the court finally
3 decides that the applicant was not entitled to the relief applied for, the bond shall
4 accrue in favor of the regulatory agency.

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

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

15 **SEC. 40. Intellectual Property Rights.** – The implementation of the
16 provisions of this Act shall be without prejudice to the rights, liabilities and
17 remedies under Republic Act No. 8293, otherwise known as the Intellectual
18 Property Code of the Philippines: *Provided*, That, the exercise of intellectual
19 property rights shall not in any way be used to justify violations of this Act.

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

24 **SEC. 42. Congressional Oversight Committee.** - To oversee the
25 implementation of this Act, there shall be created a Congressional Oversight
26 Committee on Fair Competition (COCFC) to be composed of the Chairpersons of
27 the Senate Committees on Trade and Commerce, Economic Affairs, and
28 Finance; the Chairpersons of the House of Representatives Committees on
29 Trade and Industry, Economic Affairs and Appropriations; and two members each
30 from the Senate and the House of Representatives who shall be designated by
31 the Senate President and the Speaker of the House of Representatives:
32 *Provided*, That one of the two Senators and one of the two House Members shall
33 be nominated by the respective Minority Leaders of the Senate and the House of
34 Representatives. The Congressional Oversight Committee shall be jointly chaired

1 by the Chairpersons of the Senate Committee on Trade and Commerce and the
2 House of Representatives Committee on Trade and Industry. The Vice-Chair of
3 the Congressional Oversight Committee shall be jointly held by the Chairpersons
4 of the Senate Committee on Economic Affairs and the House of Representatives
5 Committee on Economic Affairs.

6 The Secretariat of the Congressional Oversight Committee on Fair
7 Competition shall be drawn from the existing personnel of the Senate and House
8 of Representatives committees comprising the Congressional Oversight
9 Committee.

10 CHAPTER VII

11 FINAL PROVISIONS

12 **SEC. 43. *Implementing Rules and Regulations.*** – The Commission
13 shall prepare the necessary rules and regulations within one hundred twenty
14 (120) days from the effectivity of this Act: *Provided*, That, where the same would
15 apply to an industry or a sub-sector of industry that is subject to the jurisdiction of
16 a regulatory agency, the Commission shall, in preparing the guidelines, consult
17 with the concerned regulatory agency and stakeholders: *Provided, further*, That
18 the Commission may revise such guidelines as it deems necessary: *Provided*,
19 however, That such revised guidelines shall only take effect following its
20 publication in two newspapers of general circulation.

21 **SEC. 44. *Appropriations.*** – The amount necessary to implement the
22 provisions of this Act shall be included in the annual General Appropriations Act.
23 However, for the initial budgetary requirements of the Commission, the amount of
24 One hundred million pesos (P100,000,000.00) is hereby appropriated: *Provided*,
25 That all moneys recovered or charges or composition sums collected under this
26 Act, other than financial penalties, shall be paid into and form part of the moneys
27 of the Commission.

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

32 a) Agencies which will provide administrative support to the Commission:

- 1 i. Office of the President, to be represented by the Executive
2 Secretary with the Deputy Executive Secretary for Legal Affairs as
3 alternate;
- 4 ii. Department of Budget and Management, to be represented by the
5 Secretary with the Undersecretary in charge of organization of new
6 offices and position classifications as alternate;
- 7 b) Agencies which currently perform functions germane or are related to
8 the purposes of the Commission:
 - 9 i. Tariff Commission, to be represented by the Chairperson and with
10 an Associate Commissioner permanently designated as alternate;
 - 11 ii. Department of Trade and Industry, to be represented by the
12 Secretary with the Director of the Bureau of Trade Regulation and
13 Consumer Protection as alternate representative;
 - 14 iii. Department of Justice, to be represented by the Secretary with an
15 officer holding at least an Assistant Secretary rank as alternate.

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

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

27 **SEC. 46. *Supplementary Application.*** – For purposes of this Act, the
28 Revised Penal Code, as amended, and other applicable laws shall be applied in
29 a supplementary character.

30 **SEC. 47. *Separability Clause.*** – If any clause, sentence, section or part
31 of this Act shall be adjudged by a court of competent jurisdiction to be invalid,
32 such judgment shall not affect, impair or invalidate the remainder of this Act, but

1 shall be confined in its operation to the clause, sentence, paragraph, section, or
2 part thereof directly involved in the controversy.

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

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

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

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

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

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

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

17 *Provided*, That in case of conflict between this Act and such provisions of
18 existing competition laws and regulations, the provisions of this Act shall prevail.

19 **SEC. 49. Effectivity Clause.** – This Act shall take effect fifteen (15) days
20 following its publication in the *Official Gazette* and in at least two (2) national
21 newspapers of general circulation: *Provided, however*, That in order to allow
22 affected parties time to renegotiate agreements or restructure their business to
23 comply with the new competition law, the penal provisions under Section 12 of
24 this Act, except for those already prohibited under the Revised Penal Code, shall
25 be imposed one (1) year after the effectivity of the Implementing Rules and
26 Regulations of this Act.

27 Approved,