



Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City



SIXTEENTH CONGRESS
First Regular Session
1133

Introduced by Representative Feliciano Belmonte, Jr.

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 provides 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 presence of a comprehensive competition policy will further boost our nation's GDP to rise at par with our first-world counterparts, real wages to improve, prices to drop and our country to attain further economic growth.

In November 2007, the leaders of the Association of South East Asian Nations (ASEAN) adopted the ASEAN Economic Community (AEC) Blueprint which each ASEAN Member Country shall abide by and implement by 2015. The AEC Blueprint will transform the ASEAN into a single market and production base, a highly competitive economic region of equitable and economic development, and a region fully integrated into the global economy.

As outlined in the AEC Blueprint, all ASEAN Member States, including the Philippines, will endeavor to introduce competition policy by 2015.

In his first State of the Nation Address in July 2010, President Benigno Simeon Aquino III called for an anti-trust law to promote fair competition and provide opportunities for small and medium scale enterprises to participate and contribute to economic growth. A level playing field is essential for inclusive growth and development.

The Legislature under the Fifteenth (15th) Congress responded by shepherding comprehensive competition bills, and both Houses deliberated on their own versions in earnest.

In the House of Representatives, the Committee on Trade and Industry, chaired by then Representative Albert S. Garcia, prepared and submitted House Bill No. 4835 in

substitution to twelve (12) bills, and which was subsequently co-authored 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.), Saccalan, 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.

Unfortunately, due to time and other constraints, both Houses failed to pass their respective bills on competition in the previous Congress.

The current proposed bill is a refiled measure of HB 4835 of the Fifteenth (15th) Congress with some improvements. It 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.

Likewise, the bill mandates that the exercise of regulatory powers by different government agencies, including local government units, over an industry or subsector thereof shall be cumulative and shall not be construed in any way as derogating from the power and authority of the concerned agency. Hence, while the Commission shall have primary and sole jurisdiction over competition issues, the regulatory bodies shall continue to exercise over all matters with regards to the firms' operation and existence.

Moreover, the bill offers a leniency program for 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 Commission.

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.

Felipe Belmonte Jr.

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SIXTEENTH (16th) CONGRESS
First Regular Session

HOUSE BILL NO. 1133

Introduced by Representative Feliciano Belmonte, Jr.

AN ACT
PENALIZING ANTI-COMPETITIVE CONDUCT, 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:*

CHAPTER I

GENERAL PROVISIONS

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

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, full and fair
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 anti-competitive conduct, abuse of dominant
position, and anti-competitive mergers, with the objective of protecting

1 consumer welfare and advancing domestic and international trade and
2 economic development.

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

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

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

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

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

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

33 (c) "Commission" shall mean the Philippine Fair Competition Commission
34 created under this Act;

- 1 (d) "Competition" shall mean the process by which economic agents,
2 acting independently in a market, limit each other's ability to control the
3 prevailing conditions in the market;
- 4 (e) "Control" shall refer to the power to direct or cause the direction of
5 management policies of a person by contract, agency or otherwise;
- 6 (f) "Dominant Position" shall refer to a situation where a firm, either by
7 itself or acting in collusion with other firms, is in a position to control a
8 relevant market for the sale of a particular good or service by fixing its
9 prices, excluding competitor firm, or controlling the market in a specific
10 geographical area;
- 11 (g) "Firms" shall include any person, natural or juridical, partnership,
12 combination or association in any form, whether incorporated or not,
13 domestic or foreign, including those owned or controlled by the
14 government, engaged directly or indirectly in any economic activity:
15 *Provided*, That, two firms, one of which is controlled by the other, shall
16 be treated as one firm: *Provided, further*, That two or more firms that
17 are controlled by a single firm shall be treated as one firm;
- 18 (h) "Goods" and "Services": "Goods" shall include all types of tangible and
19 intangible property that could be bought and sold, and the possession
20 of which could be transferred in whole or in part, temporarily or
21 permanently;
- 22 "Services" shall refer to the provision of things of value or articles or
23 items that could be used by one person, whether natural or juridical, to
24 another through human interaction or through the use, without transfer
25 of ownership, of the facilities of the provider by the client, or a
26 combination of both. It shall include all non-tangible goods. It is the
27 non-material equivalent of a good, consumed at the point of sale and
28 does not result in ownership;
- 29 (i) "Market" and "Relevant Market": "Market" shall refer to a place or
30 venue for commercial activity, which may be a city, province, region,
31 the whole area of the Philippines, or which may extend beyond the
32 borders of the Republic of the Philippines, where articles are bought or
33 sold. It shall also refer to the geographical or economic extent of
34 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 be when 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 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.

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, which shall be known as the Philippine Fair Competition Commission (PFCC), hereinafter referred to as the Commission, and which 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 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 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, 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 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,* he 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 Degree in the following lines of specialization: economics, preferably in industrial organization; law; finance; commerce; accounting; or management.

1 **SEC. 6. *Original and Exclusive Jurisdiction.*** – The Commission shall
 2 have original and exclusive jurisdiction to enforce and implement the
 3 administrative provisions of this Act, its implementing rules and regulations, and
 4 all other competition laws, and in particular:

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

7 (1) *Motu Proprio Investigation or Upon Complaint.* – To commence
 8 investigation, on its own initiative or upon the complaint of any person,
 9 any and all violations of this Act and other competition laws and cause
 10 the issuance of a cease and desist order prior to the commencement
 11 of a preliminary inquiry, and/or the institution of a civil or administrative
 12 action;

13 (2) *Administrative Action.* – To attest and file all complaints for appropriate
 14 administrative relief from, or against, violations of this Act or other
 15 competition laws;

16 (3) *Civil Action.* – To attest and file on behalf of the State, civil complaints
 17 for damages to business or property of the State, arising from a
 18 violation of this Act and other competition laws;

19 (4) *Deputization.* – To require any government agency to lend assistance
 20 and information necessary in the discharge of its responsibilities under
 21 this Act, and examine if necessary, pertinent records and documents in
 22 the possession of such government agency;

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

26 i. No subpoena shall be issued to require the production or disclosure
 27 of trade secrets as defined in paragraph (c)(2) hereof;

28 ii. A *subpoena* may be quashed only by means of a motion duly set
 29 for hearing and on the grounds prescribed by the Rules of Court;

30 iii. A person appearing before the Commission in obedience to a
 31 *subpoena* shall be advised, before he is required to testify or
 32 produce any documentary or real evidence, of his right to be
 33 assisted or represented by a counsel of his choice, or if he has
 34 none, the Commission shall appoint a *de officio* counsel for him;

1 and of his rights to avail of the immunity from prosecution privilege
2 herein prescribed;

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

6 (1) *Binding Rules* – To issue binding rulings;

7 (2) *Show Cause Order and Decision* – To issue show cause orders, and
8 thereafter, render decision thereon;

9 (3) *Consent Judgment* – To approve, or disapprove, proposals for consent
10 judgment;

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

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

18 (c) *Other Powers of the Commission:*

19 (1) *Industry Studies and Company Profile.* – To gather and compile
20 information and investigate from time to time, the way a given
21 industry is structured or organized whether as a monopoly,
22 oligopoly, or competitive; the way the firms within that industry act,
23 behave, or conduct themselves in such matters as setting prices,
24 determining output, and the resulting performance of the industry
25 as a whole; the organization, business, conduct, practices and
26 management of any person, partnership, or corporation engaged
27 in trade, commerce, or industry and its relation to individuals,
28 partnerships, associations, corporations, firms and other business
29 enterprises;

30 (2) *Annual and Special Reports.* – To require, by general or special
31 orders, firms engaged in trade, commerce, or industry to file with
32 the Commission in such form as the Commission may prescribe,
33 annual or special reports, or answers in writing to specific
34 questions, furnishing the Commission such information as it may

1 require as to the organization, business, conduct, practices,
2 management and relation to other persons of the respective
3 natural or juridical persons or entities filing such reports or answers
4 in writing except that the Commission shall not require, either by a
5 specific order or by a *subpoena*, the disclosure or production of
6 trade secrets such as a secret formula, pattern, device or
7 compilation of information, including names of customers, which is
8 used in one's business and which gives one an opportunity to
9 obtain advantage over competitors who do not know or use it.
10 Trade secrets shall include a plan or process, tool, mechanism, or
11 compound known only to the owner and his employees to whom it
12 is necessary to confide it;

13 (3) *Public Disclosure of Information.* – To make public, from time to
14 time, such portions of the information obtained by it under this Act,
15 except trade secrets and names of customers, as it shall deem
16 expedient in the public interest;

17 (4) *Reports and Recommendations to Congress.* – To submit annual
18 and special reports to Congress, through the Congressional Oversight
19 Committee On Fair Competition created under this Act, including
20 proposed legislation for the regulation of trade, commerce, or
21 industry, and provide for the publication of its reports and
22 resolutions in such form and manner as may be best adopted for
23 public information and transparency; and

24 (5) *Trade Conditions, Domestic and Foreign.* – To study, from time to
25 time, trade conditions in and with foreign countries where
26 associations, combinations, or practices of manufacturers,
27 merchants, or traders, or other conditions, may affect the foreign
28 trade of the Philippines, and report to Congress its findings and
29 recommendations thereon as it may deem advisable.

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

33 With respect to personal actions arising from violations of the provisions of
34 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 Conduct* – It shall be unlawful for firms to engage in anti-competitive conduct that prevent, distort or restrict competition, unless otherwise exempted.

There shall be a *prima facie* case for the existence of an anti-competitive conduct 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 simultaneously and unreasonably increase, decrease or fix the prices of their seemingly competing goods thereby lessening competition in the relevant market among themselves.

(a) *Price Fixing* – Any conduct 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.

(b) *Bid Rigging* – Any conduct 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

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

15 **SEC. 9. Abuse of Dominant Position.** – It shall be unlawful for one or
 16 more firms to abuse their dominant position, by engaging in unfair methods of
 17 competition, or in unfair or deceptive trade practices, or entering into
 18 combinations in the form of trust or otherwise, or conspiracy, with the purpose
 19 and effect to prevent, restrict, or distort competition. Abusive conduct such as,
 20 but not limited to, any of the following, shall be deemed to fall under the crime of
 21 abuse of dominant position:

- 22 (a) *Predatory Behavior Towards Competitors* – Any conduct, including, but not
- 23 limited to, selling goods at below relevant cost with the intent of driving
- 24 competitors out of the market, or creating barriers to entry;
- 25 (b) *Limitation and Control of Markets* – Any conduct to limit or control
- 26 production, markets, technical development, or investment with the
- 27 purpose and effect of creating a monopoly or cartel, or lessening
- 28 competition;
- 29 (c) *Market Allocation* – Any conduct to divide the market, whether by volume
- 30 of sales or purchase or by territory, by type of goods sold, by customers or
- 31 sellers or by any other means, with the purpose and effect of creating a
- 32 monopoly or cartel, or lessening competition;

- 1 (d) *Arrangements to Share Markets or Sources of Supply* – Any conduct to
 2 share markets or sources of supply of raw materials, with the purpose and
 3 effect of creating a monopoly or cartel, or lessening competition;
- 4 (e) *Price Discrimination* – Any conduct prescribing or charging, directly or
 5 indirectly, discriminatory pricing terms or conditions in the supply or
 6 purchase of goods of like grade and quality with the purpose and effect of
 7 creating a monopoly or cartel, or substantially lessening competition:
 8 *Provided*, That nothing contained herein shall be construed to prohibit
 9 permissible price differentials unless the same shall have the effect of
 10 preventing, restricting or distorting competition: *Provided, further*, That for
 11 the purpose of this section, the following shall be considered permissible
 12 price differentials:
- 13 (1) Socialized Pricing – Socialized pricing for the less fortunate sector
 14 of the economy;
- 15 (2) Volume Discounts – Price differentials which reflect an allowance
 16 for differences in the cost of manufacture, sale, or delivery resulting
 17 from differing methods or quantities in which the goods are sold or
 18 delivered to the purchasers;
- 19 (3) Competitive Pricing – A price differential or other terms of sale in
 20 response to the competitive price of payments, services or facilities
 21 furnished by a competitor;
- 22 (4) *Bonafide* Selection of Customers – The selection of customers on
 23 *bona fide* transaction; and
- 24 (5) Price Differentials Due to Changing Market Conditions or
 25 Marketability of Goods – Price changes from time to time in
 26 response to changing conditions affecting the market or the
 27 marketability of the goods concerned such as, but not limited to,
 28 actual or imminent deterioration of perishable goods, obsolescence
 29 of seasonal goods, distress sales under court process, or sale on
 30 good faith in discontinuance of business.
- 31 (f) *Exclusivity Arrangement* – Any conduct imposing restrictions on the lease
 32 or contract for sale or trade of goods concerning where, to whom, or in
 33 what forms goods may be sold or traded, such as, but not limited to, fixing
 34 prices, or giving preferential discounts, or rebate upon such price, or

1 imposing conditions not to deal with competing firms, where the purpose of
2 such agreement is to lessen competition: *Provided*, That nothing
3 contained herein shall prohibit or render unlawful permissible franchising,
4 licensing or exclusive distributorship agreements;

5 (g) *Tie-In Arrangements* – Any conduct making the supply of particular goods
6 dependent upon the purchase or lease of other goods from the supplier or
7 his consignee, where the purpose and effect of such sale or lease or such
8 condition is to substantially lessen competition or to create a monopoly or
9 cartel;

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

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

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

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

26 (2) A corporation from causing the formation of subsidiary
27 corporations, or from owning and holding all or part of the stock
28 of such subsidiary corporations, for the actual carrying on of
29 their immediate lawful business, or the natural and legitimate
30 branches or extensions thereof; and

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

1 (b) *Notification Prior to Stock or Asset Acquisition.* – No firm shall acquire,
2 directly or indirectly, the shares of stock or assets of any other firm, if
3 as a result of the acquisition, the acquiring firm would have the power
4 to direct or cause the direction of management policies of the acquired
5 firm, unless, the acquiring and selling firm notify, prior to the conclusion
6 of the agreement for such acquisition and in the prescribed form, the
7 Commission of such proposed acquisition. Only the acquiring firm is
8 required to make the notification in a tender offer. The contemplated
9 acquisition shall be deemed approved, unless the Commission, within
10 thirty (30) calendar days from receipt of the notification, orders the
11 acquiring firm to show cause why the proposed acquisition shall not be
12 declared as prohibited under this Act. The show cause order shall set
13 forth the facts upon which it is based. The acquiring or selling firm may
14 contest the show cause order, in which case, the proposed acquisition
15 shall be considered enjoined until the Commission shall have rendered
16 a decision on the proposed acquisition after due notice and hearing,
17 within a further sixty (60) calendar days in accordance with the
18 procedure prescribed herein for the disposition of a show cause order.
19 If the Commission fails to make a decision within the prescribed 60
20 calendar day limit, the acquisition shall be deemed approved and the
21 parties may proceed to implement it.

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

- 25 (1) Acquisition of goods or realty transferred in the ordinary course
26 of business;
- 27 (2) Acquisitions of bonds, mortgages, deeds of trust, or other
28 obligations which are not voting securities;
- 29 (3) Acquisitions of voting securities of an issuer at least fifty
30 percent (50%) of the voting securities of which are owned by
31 the acquiring firm prior to such acquisition;
- 32 (4) Transfers to, or from, government agencies or
33 instrumentalities, including government-owned or controlled
34 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.

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) and not exceeding Fifty Million Pesos (Php50,000,000) if a natural person; by a fine of not less than Two Hundred Fifty Million Pesos (Php250,000,000) but not exceeding Seven Hundred Fifty Million Pesos (Php750,000,000) 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) for each violation. Each violation shall be deemed a separate offense: *Provided, That in*

1 the case of a violation through a continuing failure or neglect to comply, each day
2 of continuance of such failure or neglect shall be deemed a separate offense.

3 **(c) Supply of Incorrect or Misleading Information.** - The Commission
4 may likewise impose upon persons or entities fines of not less than Five
5 Thousand Pesos (Php 5,000) to not more than One Hundred Thousand Pesos
6 (Php100,000) where, intentionally or negligently, they supply incorrect or
7 misleading information in any document, application or other paper filed with or
8 submitted to the Commission or supply incorrect or misleading information in an
9 application or other paper filed with or submitted to the Commission or supply
10 incorrect or misleading information in an application for a binding ruling, a
11 proposal for a consent judgment, proceedings relating to a show cause order, or
12 application for modification of the Commission's ruling, order or approval, as the
13 case may be.

14 **SEC. 12. Criminal Penalties.** - Without prejudice to the violation of other
15 laws, any firm that shall be found to have violated Sections 8, 9 and 10 of this
16 Act, or any combination thereof, shall, for each and every violation, be punished
17 by a fine of not less than Ten Million Pesos (Php10,000,000) and not exceeding
18 Fifty Million Pesos (Php 50,000,000) if a natural person; by a fine of not less than
19 Two Hundred Fifty Million Pesos (Php250,000,000) but not exceeding Seven
20 Hundred Fifty Million Pesos (Php750,000,000) if a firm, and by imprisonment not
21 exceeding ten (10) years, or both, at the discretion of the court.

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

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

28 **CHAPTER V** 29 **ENFORCEMENT**

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

1 **SEC. 14. Powers of Concerned Government Agencies.**—

2 Notwithstanding the provisions of the preceding section, the exercise of
3 regulatory powers by different government agencies, including local government
4 units, over an industry or a sub-sector of an industry shall be cumulative and
5 shall not be construed in any way as derogating from the power and authority of
6 the concerned agency. The government agencies shall cooperate and coordinate
7 with one another in the exercise of their powers in order to prevent overlap, to
8 share confidential information, or for other effective measures. The Commission
9 can seek technical assistance from sectoral regulators.

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

13 **SEC. 15. Power to Investigate and Enforce Orders and Resolutions.** —

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

20 **SEC. 16. Self-incrimination.**— Pursuant to the preceding section, a person
21 subject of any preliminary inquiry or investigation by the Commission shall
22 produce the specified document or information when so required by written
23 notice: *Provided*, That no person shall be excused from disclosing any *document*
24 or information to the inquiring officer on the ground that the disclosure of the
25 information or document may be incriminating: *Provided, further*, That such
26 document or information produced by the person subject of investigation shall not
27 be admissible as evidence against him in criminal proceedings: *Provided, finally*,
28 That such document or information shall be admissible in evidence in civil
29 proceedings including those arising from or in connection to the implementation
30 of this Act.

31 **SEC. 17. Privileged Communication Exclusion.**— Nothing in the
32 preceding section shall compel the disclosure of privileged communication:
33 *Provided*, That the person who refuses to disclose the information or produce the
34 document or other material required by the inquiring officer in relation to the

1 preliminary inquiry being conducted shall nevertheless be obliged to give the
 2 name and address of the firm to whom, or by whom, or on whose behalf, such
 3 privileged communication was made.

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

12 Any violation of this provision shall be imposed a fine of not less than One
 13 Hundred Thousand Pesos (Php100,000) but not more than Five Hundred
 14 Thousand Pesos (Php500,000).

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

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

31

32 **SEC. 20. Termination and Action on Preliminary Inquiry.** – The
 33 Commission, after considering the statements made, or documents or articles
 34 produced, in the course of an inquiry conducted by it, shall terminate the

1 preliminary inquiry by issuing a resolution ordering its closure if no violation or
 2 infringement of this Act is found; or by issuing a *nolo contendere* resolution; or
 3 issuing a resolution to, singly or cumulatively, (a) impose penalties in the range
 4 provided under Section 11 hereof; (b) order the rectification of certain acts or
 5 omissions; or (c) order the restitution to the affected parties.

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

11 If the evidence so warrants, the Commission shall file criminal cases for
 12 violation of this Act before the Department of Justice pursuant to Section 12 of
 13 this Act.

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

25 **SEC. 22. *Implementing Policy; Non-Adversarial Administrative***
 26 ***Remedies.*** – As an implementing and enforcement policy, the Commission shall,
 27 under such rules and regulations it may prescribe, encourage voluntary
 28 compliance with this Act and other competition laws by making available to the
 29 parties concerned the following and other analogous non-adversarial and non-
 30 adjudicatory administrative remedies, before the institution of administrative, civil
 31 or criminal action:

32 (a) *Request for Binding Ruling.* – Any person who is in doubt as to whether
 33 his contemplated or existing act, course of conduct, agreement,
 34 decision or practice is in compliance with, is exempt from, or in

1 violation of any of the provisions of this Act, other competition laws, or
2 implementing rules and regulations thereof, may request the
3 Commission, in writing, to render a binding ruling thereon;

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

18 (c) *Proposal for Consent Judgment.* – At any time prior to the issuance of
19 a binding ruling, the promulgation of a cease and desist judgment
20 under a show cause order or the promulgation of a decision of
21 judgment in any administrative, civil, or criminal case, the person or
22 persons, whose business conduct is under inquiry in the particular
23 proceedings may, without in any manner admitting a violation of this
24 Act or any other competition laws, submit to the Commission a written
25 proposal for the entry of a consent judgment, specifying therein the
26 terms and conditions of the proposed consent judgment.

27 (d) *Consultations.* – Prior to the fitting of a request for a binding ruling or
28 the submission of a proposal for consent judgment, the person or
29 persons concerned may communicate, in writing, with the Commission
30 on matters that should be included or excluded in such request or
31 proposal, which the Commission may consider necessary for the
32 effective enforcement of this Act or other competition laws.

33 (e) *Binding Ruling, Cease and Desist Order, and Consent Judgment.* –
34 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 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 Court 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:

- (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) whether or not the particular market conduct has an appreciable impact on market conditions;
- (e) the need to bring together complimentary skills to avoid duplication and promote efficiency in the industry;
- (f) 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;
- (h) the need to increase productivity in the particular industry involved;
- (i) the state of the industry, including the need to develop it or to save it from its distressed state;
- (j) the need of the industry to work more rationally and increase their productivity and competitiveness on a larger market;
- (k) the need to respond to international competition and other developments in the international market;
- (l) the need to encourage or develop small and medium-sized industries;
- (m) the impact of the market conduct on the economy and on the consuming public, particularly low income groups;
- (n) the need to pool capital resources;

- (o) the extent to which the consumers have a possibility of choice of the product or service involved;
- (p) the economic and financial power of the parties concerned;
- (q) the attainment of the objectives which are given priority interest in the general interest of the country, including the need for accelerated industrialization; and
- (r) the extent to which less restrictive practices are available.

SEC. 24. Contempt. – The Commission or any of its Divisions may summarily punish for contempt by imprisonment not exceeding thirty (30) days or by fine, 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. 25. 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. 26. 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. 27. 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. 28. 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 affirmation, modification, or setting aside of the appealed binding ruling, order, resolution, decision, judgment, rule or regulation.

SEC. 29. 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. 30. 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 Chairperson 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, shall be jointly and severally liable with the firm 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

1 Philippines for the management and operation thereof, shall be liable. In
2 addition, its license to do business in the Philippines shall be cancelled.

3 It shall not be a defense for the Chairperson of the Board of Directors, the
4 President or the General Manager of the corporation or the general partners of a
5 partnership, or the persons responsible for the management and operation of a
6 foreign corporation licensed to do business in the Philippines, that he was
7 unaware of the violation, unless, he shall have established to the satisfaction of
8 the court that even with the exercise of due diligence and proper supervision, he
9 could not have avoided or prevented the violation.

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

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

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

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

31 **SEC. 34. Effect of Final Judgment.** – Any final judgment in a civil or
32 criminal action brought by the Commission on behalf of the people of the
33 Philippines under this Act to the effect that a defendant has violated any or all of
34 the provisions of this Act shall be *res judicata* as to any claim by any person on

1 whose behalf such action was brought: *Provided*, That such person notifies the
2 court having jurisdiction of the case within the period given by the court:
3 *Provided, further*, That such period shall not be less than ninety (90) days.

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

8 **SEC. 35. *Distribution of Damages Recovered.*** – The damages
9 recovered in a civil action under Section 20 of this Act shall be distributed in the
10 following manner: (1) as determined and to be authorized by the Court having
11 jurisdiction of the case; (2) ten percent (10%) of the total amount of damages
12 shall accrue to the Commission and/or regulatory agency to be used exclusively
13 in the enforcement of this Act; and, (3) the remainder of which total amount of
14 damages shall be deemed a civil penalty by the Court and shall be deposited to
15 the National Treasury as part of the general fund of the government: *Provided*,
16 That any distribution procedure adopted by the Court shall give preference to
17 individual consumers and afford each person having an interest a reasonable
18 opportunity to secure his appropriate portion of the net damages obtained.

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

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

30 The Commission shall indemnify each Commissioner and Staff of the
31 Commission for all costs and expenses reasonably incurred by such persons in
32 connection with any civil or criminal actions, suits or proceedings to which they
33 may be or made a party by reason of the performance of their duties or exercise

1 of their powers, unless they are finally adjudged in such actions or proceedings to
2 be liable for evident bad faith or gross negligence.

3 CHAPTER VI

4 OTHER PROVISIONS

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

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

17 **SEC. 39. Prohibition on the Issuance of Temporary Restraining**
18 **Orders, Preliminary Injunctions and Preliminary Mandatory Injunctions.** –
19 Except for the Supreme Court, no other court shall issue any temporary
20 restraining order, preliminary injunction or preliminary mandatory injunction
21 against the regulatory agency in the exercise of its duties or functions: *Provided*,
22 That, this prohibition shall apply in all cases, disputes or controversies instituted
23 by a private party, including, but not limited to, cases filed by regulated firms or
24 those claiming to have rights through such firms: *Provided, however*, That, this
25 prohibition shall not apply when the matter is of extreme urgency involving a
26 constitutional issue, such that the non-issuance of a temporary restraining order
27 will result in grave injustice and irreparable injury to the public: *Provided, further*,
28 That, the applicant shall file a bond, in an amount to be fixed by the Court, but in
29 no case shall it be less than half of the imposable fines provided for under
30 Section 11 of this Act: *Provided, finally*, That in the event that the court finally
31 decides that the applicant was not entitled to the relief applied for, the bond shall
32 accrue in favor of the regulatory agency.

33 Any temporary restraining order, preliminary injunction or preliminary
34 mandatory injunction issued in violation of this section is void and of no force and

1 effect. Any judge who violates this section shall be penalized by suspension of at
2 least one (1) year without pay in addition to other criminal, civil or administrative
3 penalties.

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

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

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

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

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

CHAPTER VII

FINAL PROVISIONS

SEC. 43. *Implementing Rules and Regulations.* – The Commission shall prepare the necessary rules and regulations within one hundred twenty (120) days from the effectivity of this Act: *Provided, That,* where the same 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 and stakeholders: *Provided, further,* That the Commission may revise such guidelines as it deems necessary: *Provided, however,* That such revised guidelines shall only take effect following its publication in two newspapers of general circulation.

SEC. 44. *Appropriations.* – The amount necessary to implement the provisions of this Act shall be included in the annual General Appropriations Act. However, for the initial budgetary requirements of the Commission, the amount of One Hundred Million Pesos (P100,000,000) is hereby appropriated.

Provided, That 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.

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

- a) Agencies which will provide administrative support to the Commission:
 - i. Office of the President to be represented by the Executive Secretary with the Deputy Executive Secretary for Legal Affairs as alternate;
 - ii. Department of Budget and Management to be represented by the Secretary with the Undersecretary in charge of organization of new offices and position classifications as alternate;

1 b) Agencies which currently perform functions germane or are related to
2 the purposes of the Commission:

- 3 i. Tariff Commission to be represented by the Chairperson and with
4 an Associate Commissioner permanently designated as alternate;
- 5 ii. Department of Trade and Industry to be represented by the
6 Secretary with the Director of the Bureau of Trade Regulation and
7 Consumer Protection as alternate representative;
- 8 iii. Department of Justice to be represented by the Secretary with an
9 officer holding at least an Assistant Secretary rank as alternate.

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

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

21 **SEC. 46. Separability Clause.** – If any clause, sentence, section or part
22 of this Act shall be adjudged by a court of competent jurisdiction to be invalid,
23 such judgment shall not affect, impair or invalidate the remainder of this Act, but
24 shall be confined in its operation to the clause, sentence, paragraph, section, or
25 part thereof directly involved in the controversy.

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

29 **SEC. 48. Repealing Clause.** – All laws, executive orders, rules and
30 regulations or parts thereof which are inconsistent with this Act are hereby
31 repealed or amended accordingly.

32 **SEC. 49. Effectivity Clause.** – This Act shall take effect fifteen (15) days
33 following its publication in the *Official Gazette* and in at least two (2) national
34 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,