

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

SIXTEENTH CONGRESS
First Regular Session



House Bill No. **1281**

Introduced by Honorable REYNALDO V. UMALI

EXPLANATORY NOTE

Section 19, Article XII of the 1987 Constitution provides:

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

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

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

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

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

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

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

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

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

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



REYNALDO V. UMALI
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AN ACT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a) Adopt and publish regulations stipulating:

- 1) The minimum size of concentrations subject to the notification requirement of Section 12;
- 2) The information that must be supplied for notified concentrations;
- 3) Exceptions or exemptions from the notification requirements of Section 12 for specified types of concentrations; and
- 4) Other rules relating to the notification procedures in Sections 12, 13 and 14 hereof.

b) Determine within three (3) years after consummation that either a notified concentration or a notified concentration in which the provisions of Sections 12 to 14 are not fully complied with has led or will probably lead to a significant limitation of competition and does not qualify for exemption set out in Section 10 of this Act. If it so determines, the Council may:

- 1) Undo the concentration by dissolving it into its individual elements;
- 2) Require other modifications of the concentration, including sale of a portion of its operations or assets; or
- 3) Require the surviving firm or firms to enter into legally enforceable agreements specified by the Council and designed to reduce or eliminate the competition limiting effects of the concentration.

c) Enforce and effectively administer the provisions of this Act and other fair trade laws, subject to the powers vested in the courts and other administrative agencies under this Act;

d) Undertake and prepare industry studies to determine industry structures, and the state of competition and competitiveness of Philippine industries, and collate, compile, distribute and disseminate resource materials on competition policy, with the end in view of creating a national database on competition;

e) Conduct workshops and seminars, information campaigns for the public and train or develop a pool of experts on competition;

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

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

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

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

j) Conduct its own administrative investigations;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a) Distribution of false or misleading information which is capable of harming the business interests of another firm;

b) Distribution of false or misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the price, character, method or place of production, properties, suitability for use or quality of goods;

c) False or misleading comparison of goods in the process of advertising;

d) Fraudulent use of another's trademark, firm name, or product labeling or packaging;

e) Unauthorized receipt, use or dissemination of confidential scientific, technical, production, business or trade information; or

f) Collusion in business practices that are clearly against economic efficiency and consumer welfare, such as price fixing, bid rigging, restriction of output and market shares and allocation of geographic markets and customers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 28. *Prohibited Stock or Asset Acquisition.* — No person engaged in commerce or in any activity affecting commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share-capital or the whole or any part of the assets of another person engaged also in commerce or in any activity affecting commerce, where in any line of commerce or in any part of the country, the effect of such acquisition may be substantially to lessen competition or tend to create a monopoly.

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 35. *Civil Action for Monetary Injury.* – In addition to the penalties provided in Section 32 of this Act, any person whose business or property suffers monetary injury by reason of any prohibited acts under Sections 9, 24, 25, 26, 27, 28, 29 or 30 of this Act may institute a separate and independent civil action, irrespective of the amount involved in the controversy, against the defendant or defendants and shall recover threefold of the monetary injury sustained and the cost of suit, including a reasonable attorney's fee.

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 44. *Methods to Prove and Assess Damages.* — In any civil action under this Act in which there has been a determination that a defendant agreed to fix prices in violation of the provisions of this Act, damages may be proved and assessed in the aggregate by statistical or sampling methods, by the computation of illegal overcharges, or by such other reasonable system of estimating aggregate damages as the court having jurisdiction of the case in its discretion may permit without necessarily proving the individual claim of, or the amount of damage to, persons on whose behalf the suit was brought.

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

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

brought by or on behalf of the Republic of the Philippines under this Act to the effect that a defendant has violated any of the provisions of this Act shall be *prima facie* evidence against such defendant in any civil action brought by any other party against such defendant under this Act as to all matters respecting which said judgment or decree would be an estoppel as between the parties. This Section shall not apply to consent judgment or decree as provided in Section 47 of this Act, entered before any testimony has been taken.

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

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

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

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

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

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

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

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

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

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

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

SEC. 53. *Statute of Limitations.* – Any civil or criminal action to enforce any cause of action arising from a violation of any provision of this Act shall be forever barred unless commenced within five (5) years after the cause of action accrued. Whenever any civil or criminal proceeding is instituted by the Republic of the Philippines in case of a civil action or by the People of the Philippines in case of a criminal action to prevent, restrain, or punish any violation of any provision of this Act, the running of the statute of limitation provided herein shall, in respect of every private or sovereign right of action arising under this Act and based in whole or in part on any matter complained of in said proceeding, be suspended during the pendency thereof and for one year thereafter.

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

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

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

Approved,