

SIXTEENTH CONGRESS OF THE
REPUBLIC OF THE PHILIPPINES
First Regular Session

HOUSE OF REPRESENTATIVES
H. No. 3366



Introduced by Representative Teodorico T. Haresco Jr.

EXPLANATORY NOTE

There is a need to promote and enhance economic efficiency as well as fair competition in trade and all commercial economic activities. The Article 17, Section 19 of the Constitution reads:

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

Except perhaps for the Energy Regulatory Commission in the case of the electric power industry, the prosecution of persons engaged in anti-trust or unfair competition behavior as well as recovery of civil damages arising therefrom is the primary responsibility of the private offended party. While the Department of Justice supervises the prosecutorial service for all criminal complaints in the country, it does not function like a trade board or commission dedicated to the enforcement of anti-competition legal provisions. Apart from this lack of specialized implementation and the absence of a comprehensive law against monopoly, there is also a dearth of jurisprudence on the matter. All laws relating to anti-trust are scattered in different codes. The existing anti-trust laws do not provide for clear-cut guidelines, elements/requisites or evidence to determine whether an act constitutes unfair competition, monopolistic behavior or restraint of trade. We need a proper body to determine whether there is any violation of anti-trust laws.

This bill seeks to prevent the concentration of economic power in a few by penalizing combinations or conspiracies in restraint of trade or those that will prevent free market competition. It prohibits anti-competitive agreements and mergers and abuse of dominant position.

With the foregoing premises, approval of this bill is earnestly sought.


REP. TEODORICO HARESCO, JR.

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11 AN ACT
12 PENALIZING ANTI-COMPETITIVE AGREEMENTS, ABUSE OF DOMINANT POSITION, AND
13 ANTI-COMPETITIVE MERGERS, ESTABLISHING
14 THE PHILIPPINE FAIR COMPETITION COMMISSION

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

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

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

- 20 (a) promote and enhance economic efficiency and free, full and fair competition in trade,
21 industry and all commercial economic activities;
22 (b) prevent the concentration of economic power in a few persons who threaten to control
23 the production, trade, or industry in order to stifle competition, distort, manipulate or
24 constrict the discipline of free markets, increase market prices in the Philippines; and
25 (c) penalize all forms of anti-competitive agreements, abuse of dominant position, and
26 anti-competitive mergers, with the objective of protecting consumer welfare and
27 advancing domestic and international trade and economic development.

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

33 The Act shall apply to: (a) all firms as defined hereunder and all their commercial
34 agreements, actions or transactions involving goods, services or intellectual property; and, (b)

1 all agents, officers, employees, partners, owners, directors, consultants, stockholders,
2 representatives, managers, supervisors, and all other natural persons who acting on behalf of
3 juridical persons shall authorize, engage or aid in the commission of restrictive practices
4 prohibited under this Act.

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

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

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

1 those owned or controlled by the government, engaged directly or indirectly in any
2 economic activity; *Provided*, That, two firms, one of which is controlled by the other,
3 shall be treated as one firm: *Provided, further*, That two or more firms that are
4 controlled by a single firm shall be treated as one firm;

5 (h) "Goods" and "Services"; "Goods" shall refer to all types of tangible and intangible
6 property that could be bought and sold, and the possession of which could be
7 transferred in whole or in part, temporarily or permanently;

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

14 (i) "Market" and "Relevant Market": "Market" shall refer to a place or venue of
15 commercial activity, which may be a city, province, region, the whole area of the
16 Philippines, or which may extend beyond the borders of the Republic of the
17 Philippines, where articles are bought or sold, it shall also refer to the geographical or
18 economic extent of commercial demand;

19 "Relevant Market" shall refer to the line of commerce in which competition has been
20 restrained. It shall also refer to the geographic area involved, including all reasonably
21 substitutable goods, and all competitors, to which consumers could turn if the restraint
22 or abuse results in the significant increase in prices;

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

29 (k) "Monopoly" shall refer to a privilege or undue advantage of one or more firms,
30 consisting in the exclusive right to carry on a particular business or trade, and/or
31 manufacture a particular product, article or object of trade, commerce or industry. It is
32 a form of market structure in which one or only a few firms dominate the total sales of
33 a product or service.

1 (l) "Subsidiary" shall refer to a corporation more than fifty percent (50%) of the voting
2 stock of which is owned or controlled, directly or indirectly, through one or more
3 intermediaries, by another corporation, which thereby becomes its parent corporation.

4 **Chapter II**
5 **PHILIPPINE FAIR COMPETITION COMMISSION**

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

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

12 (a) *Composition.* - The Commission shall be composed of a Chairperson and four (4)
13 Associate Commissioners. The Chairperson and Commissioners shall be citizens
14 and residents of the Philippines, at least forty (40) but not more than sixty-five (65)
15 years of age, of good moral character and of recognized probity and independence.
16 The Chairperson and two (2) of the Associate Commissioners shall be members of
17 the Philippine Bar and the remaining two (2) shall be of recognized competence in
18 the field of economics preferably in industrial organization economics, or finance,
19 commerce, accounting, or management. They must have actively practiced their
20 professions for at least ten (10) years, but must not have been candidates for any
21 elective national or local office in the immediately preceding elections, whether
22 regular or special.

23 (b) *Term of Office.* - The Chairperson and the Associate Commissioners shall be
24 appointed by the President of the Philippines. The term of office of the Chairperson
25 and the Associate Commissioners shall be six (6) years without reappointment. The
26 Chairperson shall hold office for six years and of the first four (4) Associate
27 Commissioners, two (2) shall hold office for a term of four (4) years and two (2) for a
28 term of two (2) years. In case a vacancy occurs before the expiration of the term of
29 office, the appointment to such vacancy shall be only for the unexpired term of the
30 predecessor,

1 (c) *Prohibition and Disqualifications.* – The Commissioners shall not, during their tenure,
2 hold any other office of employment. They shall not, during their tenure, directly or
3 indirectly practice any profession, participate in any business, or be financially
4 interested in any contract with, or any franchise, or special privileges granted by the
5 government or any subdivision, agency, or instrumentality thereof, including
6 government-owned and controlled corporations of their subsidiaries. They shall strictly
7 avoid conflict of interest in the conduct of their office. They shall not be qualified to run
8 for any office in the election immediately succeeding their cessation from office. They
9 shall not be allowed to appear or practice before the Commission for two (2) years
10 following their cessation from office.

11 No spouse or relative by consanguinity or affinity within the fourth civil degree and no
12 former law, business, or professional partner or associate of any of the
13 Commissioners, the Chairperson and the Secretary of the Commission may appear
14 as Counsel or agent on any matter pending before the Commission or transact
15 business directly or indirectly therein during his/her incumbency and within one (1)
16 year from his/her cessation of office.

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

23 (e) *Quorum.* – Three (3) members of the Commission shall constitute a quorum and the
24 affirmative vote of three members (3) shall be necessary for the adoption of any rule,
25 ruling, order, resolution, decision or other acts of the Commission *en banc*.

26 (f) *Principal Office, Branch and Venue.* – The Commission shall hold its principal office
27 in Metro Manila but it may conduct hearings outside of Metro Manila upon prior
28 notice for inquiries, studies or any other proceedings required for the proper and
29 efficient exercise of its power and the discharge of its duties. It may establish branch
30 office outside of Metro Manila as may be necessary for the effective discharge of its
31 functions.

32 (g) *Staff.* – The Commission shall appoint an adequate staff which shall be headed by
33 an Executive Director, fix the compensation in accordance with the Revised

1 Compensation and Position Classification Law and determine their status,
2 qualifications and duties. The Executive Director shall be appointed by the President
3 and shall have relevant experience in any of the fields of law, economics, commerce,
4 management or finance for at least ten (10) years. *Provided*, That the Executive
5 Director shall be a Career Executive Service Officer (CESO). The members of the
6 technical staff, except those performing purely clerical functions, shall possess at
7 least a Bachelor's Degree in the following lines of specialization: economics,
8 preferably in industrial organization; law; finance; commerce; accounting; or
9 management.

10 **SEC. 6. *Original and Exclusive Jurisdiction, Powers and Functions*** — The
11 Commission shall have the original and exclusive Jurisdiction to enforce and implement the
12 administrative provisions of this Act, its implementing rules and regulations, and all other
13 competition laws, and in particular:

14 (a) *Powers of the Commission Without Hearing.* — The Commission shall have the
15 power to do the following acts, without hearing:

16 (1) *Motu Proprio Investigation or Upon Complaint.* — To commence investigation, on its
17 own initiative or upon the complaint of any person, any and all violations of this Act
18 and other competition laws and cause the issuance of a cease and desist order prior
19 to the commencement of a preliminary inquiry, and/or the institution of a civil or
20 administrative action;

21 (2) *Administrative Action.* — To attest and file all complaints for appropriate administrative
22 relief from or against violations of this Act or other competition laws;

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

26 (4) *Deputization.* — To require any government agency to lend assistance and
27 information necessary in the discharge of its responsibilities under this Act, and
28 examine, if necessary, pertinent records and documents in the possession of such
29 government agency;

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

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

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

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

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

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

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

4 (3) *Reports and Recommendations to Congress.* — To submit annual and special
5 reports to Congress, through the Congressional Oversight Committee on Fair
6 Competition created under this Act, including proposed legislation for the
7 regulation of trade, commerce, or industry, and provide for the publication of its
8 reports and resolutions in such form and manner as may be best adopted for
9 public information and transparency; and

10 (4) *Trade Conditions, Domestic and Foreign.* — To study from time to time, trade
11 conditions in and with foreign countries where associations, combinations, or
12 practices of manufacturers, merchants, or traders, or other conditions, may
13 affect the foreign trade of the Philippines, and report to Congress its findings
14 and recommendations thereon as it may seem advisable.

15 **Sec. 7. Jurisdiction of Regional Trial Courts.** — The Regional Trial Court shall
16 have jurisdiction over cases arising from violations of the provisions of this Act.

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

21 CHAPTER III 22 PROHIBITED ACTS

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

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

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

1 There shall be a *prima facie* case for the existence of an anti-competitive agreement if
2 and when the Commission finds that two or more firms that are ostensibly competing for the
3 same relevant market and actually perform uniform or complimentary acts among themselves
4 which tend to bring about artificial and unreasonable increase, decrease or fixing in the price of
5 any goods or when they simultaneously and unreasonably increase, decrease or fix the prices of
6 their seemingly competing goods thereby lessening competition in the relevant market among
7 themselves.

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

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

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

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

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

3 **SEC. 9. Abuse of Dominant Position.** — It shall be unlawful for one or more firms to
4 abuse their dominant position, by engaging in unfair methods of competition, or in unfair or
5 deceptive trade practices, or entering into combinations in the form of trust or otherwise, or
6 conspiracy, with the purpose and effect to prevent, restrict, or distort competition. Abusive
7 agreements such as, but not limited to, any of the following, shall be deemed to fall under the
8 crime of abuse of dominant position;

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

12 (b) *Limitation and Control of Markets* — Any agreement to limit or control production,
13 markets, technical development, or investment with the purpose and effect of creating a
14 monopoly or cartel, or lessening competition;

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

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

22 (e) *Price Discrimination* — Any agreement prescribing or charging, directly or indirectly,
23 discriminatory pricing terms or conditions in the supply or purchase of goods of like grade
24 and quality with the purpose and effect of creating a monopoly or cartel, or substantially
25 lessening competition: *Provided*, That nothing contained herein shall be construed to
26 prohibit permissible price differentials unless the same shall have the effect of preventing,
27 restricting or distorting competition: *Provided, further*, That for the purpose of this section,
28 the following shall be considered permissible price differentials:

29 (1) *Socialized Pricing* — Socialized pricing for the less fortunate sector of the
30 economy;

- (2) Volume Discounts — Price differentials which reflect an allowance for differences in the cost of manufacture, sale, or delivery resulting from differing methods or quantities in which the goods are sold or delivered to the purchasers;
- (3) Competitive Pricing — A price differential or other terms of sale in response to the competitive price of payments, services or facilities furnished by a competitor;
- (4) *Bonafide* Selection of Customers — the selection of customers on *bona fide* transaction; and
- (5) Price Differentials Due to Changing Market Conditions or Marketability of Goods — Price changes from time to time in response to changing conditions affecting the market or the marketability of the goods concerned such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sale on good faith when a business is going to be discontinued.
- (f) *Exclusivity Arrangement* — Any arrangement imposing restrictions on the lease or contract for sale or trade of goods concerning where, to whom, or in what forms goods may be sold or traded, such as, but not limited to, fixing prices, or giving preferential discounts, or rebate upon such price, or imposing conditions not to deal with competing firms, where the purpose of such agreement is to lessen competition; *Provided*, That nothing contained herein shall prohibit or render unlawful permissible franchising, licensing or exclusive distributorship or merchandising agreements;
- (g) *Tie-In Arrangements* — Any agreement making the supply of particular goods dependent upon the purchase or lease of other goods from the supplier or his consignee, where the purpose and effect of such sale or lease or such condition is to substantially lessen competition or to create a monopoly or cartel;
- (h) *Boycott* — Any concerted refusal to sell or conspiracy not to sell or to stop doing business on the part of the suppliers of any goods, unless for a legitimate purpose.
- (i) *Applicability of the Prohibited Acts to Non-dominant Persons or Firms* - It shall be unlawful for persons or firms who may not be holding a dominant position to commit the same acts specified in this section.

SEC. 10. Anti-competitive Mergers — No firm engaged in commerce or trade shall acquire, directly or indirectly, the whole or any part of the stock or other share capital, or the whole or any part of the assets, of one or more firms engaged in any line of commerce or trade where the effect of such acquisition of such stocks, share capital, or assets, or of the use of such

1 stock by voting or granting of proxies or otherwise maybe to substantially lessen competition, or
2 tend to create a monopoly.

3 (a) *Permissible Stock or Asset Acquisition or Ownership.* — Nothing contained herein,
4 however, shall be construed to prohibit:

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

8 (2) A corporation from causing the formation of subsidiary corporations, or from
9 owning and holding all or part of the stock of such subsidiary corporations, for
10 the actual carrying on of their immediate lawful business, or the natural and
11 legitimate branches or extensions thereof; and

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

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

32 (c) *Transactions Exempt from Prior Notice Requirement.* — The following classes of
33 transactions are exempt from the prior notice requirement under this Section:

- (1) Acquisition of goods or realty transferred in the ordinary course of business;
- (2) Acquisitions of bonds, mortgages, deeds of trust, or other obligations which are not voting securities;
- (3) Acquisition of voting securities of an issuer at least fifty percent (50%) of the voting securities of which are owned by the acquiring firm prior to such acquisition;
- (4) Transfers to, or from, government agencies or instrumentalities, including government-owned or controlled corporations;
- (5) Transactions exempted from the provision 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 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 one hundred thousand pesos (Php100,000.00) and not exceeding twenty million pesos (Php20,000,000.00) if a natural person; or by a fine of not less than one million pesos (Php1,000,000.00) but not exceeding one hundred million pesos (Php100,000,000.00) if a firm, at the discretion of the Commission.

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

3 **(b) Failure to Comply With an Order of the Commission.** — Any person who
4 unjustifiably fails or neglects to comply with any term or condition of a binding ruling, or a cease
5 and desist order issued by the Commission, shall pay a fine of not less than Fifty thousand
6 pesos (Php50,000.000) for each violation. Each violation shall be deemed a separate offense.
7 In the case of continued non-compliance, the legal interest (herein fixed at 6% per annum) shall
8 be levied on the fine imposed until the orders are complied with.

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

18 **SEC. 12. Criminal Penalties.** — Without prejudice to the violation of other laws, any
19 firm that shall be found to have violated Sections 8, 9, and 10 of this Act, or any combination
20 thereof, shall, for each and every violation, be punished by a fine of not less than one
21 hundred thousand pesos (Php100,000.00) and not exceeding twenty million pesos
22 (Php20,000,000.00) if a natural person; by a fine of not less than one million pesos
23 (Php1,000,000.00) but not exceeding one hundred million pesos (Php100,000,000.00) if a
24 firm, and by imprisonment not exceeding ten (10) years, or both, at the discretion of the court.

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

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

1 CHAPTER V
2 ENFORCEMENT

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

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

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

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

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

26 **SEC.16. Self-Incrimination.** – Pursuant to the preceding section, a person who is the
27 subject of any preliminary inquiry or investigation by the Commission shall produce the
28 specified document or information when so required by written notice subject only to the
29 limitations provided for in Article III, Section 17 of the 1987 Philippine Constitution.

1 **SEC. 17. *Privileged Communication.*** – Nothing in the preceding section shall
2 compel the disclosure of privileged communication.

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

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

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

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

27 **SEC. 20. *Termination and Action on Preliminary Inquiry.*** – The Commission, after
28 considering the statements made, or documents or articles produced, in the course of an
29 inquiry conducted by it, shall terminate the preliminary inquiry by issuing a resolution ordering

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (f) *Monitoring of Compliance*. – The Commission shall monitor the compliance by the
8 person or persons concerned, their officers, and employees, with the final and executory
9 binding ruling, cease and desist order, or approval of a consent judgment. Upon
10 motion of an interested party, the Commission shall issue a certification to the effect that
11 the person or persons concerned have, or have not, as the case may be, complied
12 with a final and executory ruling, order, or approval;

13 (g) *Inadmissibility in Evidence*. – The request for a binding ruling, the show cause order, or
14 the proposal for consent judgment; the facts, data, and information therein contained or
15 subsequently supplied by the person or persons concerned; admissions, oral or
16 written, made by them against their interest; all other documents filed by them
17 including their evidence presented in the proceedings before the Commission; and
18 the judgment rendered thereon, shall not be admissible as evidence in any
19 administrative, civil or criminal proceedings against such person or persons, their
20 officers, employees, and agents nor constitute a basis for the introduction of the
21 binding ruling, the cease and desist order, or the consent judgment as *prima facie*
22 evidence against such persons in any such action of proceeding;

23 (h) *Modification or Reversal of Ruling, Order or Approval*. – The Commission may *motu*
24 *proprio* or upon petition of an interested party, after notice and hearing,
25 reopen and alter, modify, or set aside, in whole or in part, a binding ruling, a cease-
26 and-desist order, or an approved consent judgment:

27 (1) Whenever conditions of material fact or law have so change as to require such
28 action;

29 (2) When the concerned person or persons fail or refuse, without justifiable cause
30 therefore, to comply with any condition attached to such ruling, order, or
31 approval; or

1 (3) When the ruling, order, or approval was based on deliberately falsified material
2 fact, data, or information supplied by an interested party benefited by such
3 ruling, order, or approval.

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

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

- 12 (a) the way a given industry is structured or organized whether monopolistic, oligopolistic,
13 or competitive;
- 14 (b) the ways the persons engaged in business within a given industry act, behave or
15 conduct themselves in such matters as setting prices, determining output, and other
16 relevant factors and the resulting performance of the industry as a whole;
- 17 (c) the supply and demand situation for the relevant goods or services;
- 18 (d) the appreciable impact of the particular market conduct on market conditions, if any;
- 19 (e) the need to bring together complimentary skills to avoid duplication and promote
20 efficiency in the industry;
- 21 (f) the need to determine whether or not the anticompetitive effect of a particular market
22 conduct may be offset by increased efficiency and reduction of excessive or
23 unnecessary expenses;
- 24 (g) the cost and profit levels of the industry;
- 25 (h) the need to increase productivity in the particular industry involved;
- 26 (i) the state of the industry, including the need to develop it or to save it from its
27 distressed state;
- 28 (j) the need of the industry to work more rationally and increase their productivity and
29 competitiveness on a larger market;
- 30 (k) the need to respond to international competition and other developments in the
31 international market;
- 32 (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 the 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 summon, *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. Decision 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:

- i. is arbitrary to constitutional rights, power, privilege, or immunity;

- 1 ii. is contrary to the constitutional rights, power, privilege, or immunity;
- 2 iii. is in excess of statutory jurisdiction, authority, or limitations, or is contrary to law;
- 3 iv. is without observance of the procedure required by law; and
- 4 v. is not supported by substantial evidence.

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

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

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

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

24 **SEC. 30. Violation by Corporation, Partnership, Association, and Other Entity.** –
25 Whenever a corporation, partnership, association, firm or other entity, whether domestic or
26 foreign, shall commit any of the acts declared to be unlawful under this Act, the Chairperson of
27 the Board of Directors, the President, the General Manager of the corporation, the general
28 partners of a partnership, and the officers and employees directly responsible, shall be jointly

1 and severally liable with the firm for the fine imposed therein if they are directly involved in the
2 violation committed or guilty of gross negligence.

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

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

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

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

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

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

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

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

10 **SEC. 35. Distribution of Damages Recovered.** – The damages recovered in a civil
11 action under Section 20 of this Act shall be distributed in the following manner: (1) for restitution
12 of affected parties, as determined by the Court having jurisdiction of the case; and, (2) the
13 remainder of which total amount of damages shall be deemed a civil penalty by the Court and
14 shall be deposited to the National Treasury as part of the general fund of the government:
15 *Provided*, That any distribution procedure adopted by the Court shall give preference to
16 individual consumers and afford each interested person a reasonable opportunity to secure his
17 appropriate portion of the net damages obtained.

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

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

27 The Commission shall indemnify each Commissioner and Staff of the Commission for all
28 costs and expenses reasonably incurred by such persons in connection with any civil or
29 criminal actions, suits or proceedings to which they may be or made a party by reason of the

1 performance of their duties or exercise of their powers, unless they are finally adjudged in such
2 actions or proceedings to 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 any cause of
6 action arising from a violation of any provision of this Act shall be forever barred unless
7 commenced within five (5) years after the cause of action accrues. The running of the statute of
8 limitation shall be suspended during the pendency of any proceeding.

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

15 **SEC. 39. Intellectual Property Rights.** - The implementation of the provisions of this
16 Act shall be without prejudice to the rights, liabilities and remedies under Republic Act No.
17 8293, otherwise known as the Intellectual Property Code of the Philippines: *Provided*, That, the
18 exercise of intellectual property rights shall not in any way be used to justify violations of this
19 Act.

20 **SEC. 40. Trade Associations.** – Nothing contained in this Act shall be construed to
21 prohibit the existence and operation of trade associations organized to promote quality
22 standards and safety issues. *Provided*, That, these associations shall not in any way be used to
23 justify any violation of this Act.

24 **SEC. 41. Congressional Oversight Committee.** – To oversee the implementation of
25 this Act, there shall be created a Congressional Oversight Committee on Fair Competition
26 (COCFC) to be composed of the Chairpersons of the Senate Committees on Trade and
27 Commerce, Economic Affairs, and Finance; the Chairpersons of the House of Representatives
28 Committees on Trade and Industry, Economic Affairs and Appropriations; and two members

1 each from the Senate and the House of Representatives who shall be designated by the
2 Senate President and the Speaker of the House of Representatives; *Provided*, That one of the
3 two Senators and one of the two House Members shall be nominated by the respective Minority
4 Leaders of the Senate and the House of Representatives. The Congressional Oversight
5 Committee shall be jointly chaired by the Chairpersons of the Senate Committee on Trade and
6 Commerce and the House of Representatives Committee on Trade and Industry. The Vice-
7 Chair of the Congressional Oversight Committee shall be jointly held by the Chairpersons of the
8 Senate Committee on Economic Affairs and the House of Representatives Committee on
9 Economic Affairs.

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

13 CHAPTER VII 14 FINAL PROVISIONS

15 **SEC. 42. *Implementing Rules and Regulations.*** – The Commission shall prepare the
16 necessary rules and regulations within one hundred twenty (120) days from the effectivity of
17 this Act: *Provided*, That, where the same would apply to an industry or a sub-sector of industry
18 that is subject to the jurisdiction of a regulatory agency, the Commission shall, in preparing the
19 guidelines, consult, with the concerned regulatory agency and stakeholders: *Provided, further*,
20 That the Commission may revise such guidelines as it deems necessary: *Provided, however*,
21 That such revised guidelines shall only take effect following its publication in two newspapers of
22 general circulation.

23 **SEC. 43. *Appropriations.*** – The amount necessary to implement the provisions of this
24 Act shall be included in the annual General Appropriations Act. However, for the initial
25 budgetary requirements of the Commission, the amount of One hundred million pesos
26 (P100,000,000.00) is hereby appropriated.

27 **SEC. 44. *Transitory Provision.*** – For the purpose of ensuring that the Commission is
28 organized within the mandated period of one hundred eighty (180) days after the approval of
29 this Act, an Inter-Agency Task Force shall be created and composed of the following agencies:

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

16 The Task Force shall also meet in Executive Session with all the agency heads to

17 deliberate on possible appointees for the position of Chairperson and Associate Commissioners

18 of the Commission for submission to and consideration of the President of the Philippines.

19 The Task Force shall also commence the coordinated advocacy for this Act within

20 ninety (90) days from the effectivity thereof. It shall also implement a broad-based consultation

21 on inputs for the Implementing Rules and Regulations of this Act which must be completed

22 within one hundred twenty (120) days from the effectivity of this Act. The report on the

23 consultations shall be submitted to the Commission within fifteen (15) days from its

24 establishment a copy of which will be furnished to the Congressional Oversight Committee on

25 Fair Competition.

26 **SEC. 45. *Suppletory Application.*** – For purposes of this Act, the Revised Penal

27 Code, as amended, and other applicable laws shall be applied in a suppletory character.

28 **SEC. 46. *Separability Clause.*** - If any clause, sentence, section or part of this Act shall

29 be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect,

30 impair or invalidate the remainder of this Act, but shall be confined in its operation to the

31 clause, sentence, paragraph, section, or part thereof directly involved in the controversy.

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

4 (a) Sec. 5(3) of Republic Act No. 7851 or the Price Act;

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

6 (c) Sec. 11(a) and (b) of Republic Act No. 8479 of the Downstream Oil Industry
7 Deregulation Act;

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

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

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

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

14 **SEC. 48. Effectivity Clause.** – This Act shall take effect fifteen (15) days following its
15 publication in the *Official Gazette* and in at least two (2) national newspapers of general
16 circulation: *Provided, however,* That in order to allow affected parties time to renegotiate
17 agreements or restructure their business to comply with the new competition law, the penal
18 provisions under Section 12 of this Act, except for those already prohibited under the Revised
19 Penal Code, shall be imposed one (1) year after the effectivity of the Implementing Rules and
20 Regulations of this Act.

Approved,