

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

NINETEENTH CONGRESS
First Regular Session

HOUSE BILL NO. **2249**



Introduced by Representative Stella Luz A. Quimbo

AN ACT
STRENGTHENING THE NATIONAL COMPETITION POLICY, AMENDING FOR
THE PURPOSE REPUBLIC ACT NO. 10667, OTHERWISE KNOWN AS "THE
PHILIPPINE COMPETITION ACT"

EXPLANATORY NOTE

In July 2015, the state enacted Republic Act No. 10667, otherwise known as the Philippine Competition Act (PCA), in line with its policy to ensure free and fair competition for the protection of consumer welfare and advancement of economic development. The PCA serves as the country's first comprehensive competition law, which prohibits anti-competitive mergers and acquisitions. The PCA also established the Philippine Competition Commission (PCC) as the national competition authority.

It is internationally recognized that effective market competition benefits consumers through lower prices, higher quality, and more choices. A study of various cases worldwide found that prices can be raised by as much as 50 percent due to overcharges by cartels.¹ Successful enforcement against such anti-competitive conduct immediately improves consumer welfare. Competition also promotes a dynamic business environment by improving market access, lowering the cost of inputs, and spurring innovation.

In the years since its establishment in 2016, the PCC has been recognized as one of the most productive young competition authorities in the region and a model to fellow authorities in developing countries, having reviewed hundreds of merger cases, participated actively in policy advice, and rolled out key programs such as its Leniency Program. However, the agency's enforcement efforts have been hamstrung by provisions in the PCA which require revision.

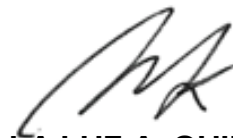
This bill seeks to amend the PCA for purposes of enhancing the PCC's ability to enforce its mandate, particularly in investigating cartels, bid rigging, market foreclosure, and other anti-competitive conduct, as well as imposing various fines, penalties, and remedies. To allow the PCC to focus its resources toward competition enforcement, the bill also proposes a shift to a voluntary merger review regime.

¹ Ivaldi et. al. (2016)

The state recognizes that apart from businesses, there must also be a culture of competition among government agencies who shape the competitive landscape through regulation. The PCA provides for the establishment of a national competition policy (NCP), to be formulated by the National Economic and Development Authority with assistance from the PCC and implemented by all government agencies. This bill seeks to legislate principles of the NCP to ensure that competition considerations are included in the formulation and deliberation of government policies. It also proposes that the PCC be mandated to review fiscal incentives for anti-competitive effects. While incentive can be used to promote development goals, they can also give undue competitive advantage to certain entities and distort competition. The PCC's expertise in competition policy make it the most equipped to help the government avoid redundant incentives which are not only wasteful, but could stunt the growth of the economy.

Lastly, this bill also seeks to update the PCC's system and standards for remuneration, cognizant of the technical nature of competition policy and the need to hire and retain high-caliber personnel.

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



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

1 SECTION 1. New sections denominated as Sections 2-A, 2-B, and 2-C,
2 are hereby inserted after Section 2 of the same Act to read as follows:

3 **“SEC. 2-A KEY ELEMENTS OF THE NATIONAL**
4 **COMPETITION POLICY. – IN THE EXERCISE OF THEIR**
5 **RESPECTIVE FUNCTIONS, ALL NATIONAL GOVERNMENT**
6 **AGENCIES, OFFICES, INSTRUMENTALITIES, LOCAL**
7 **GOVERNMENT UNITS, AND GOVERNMENT-OWNED OR**
8 **CONTROLLED CORPORATIONS SHALL ADOPT AND BE**
9 **GUIDED BY THE FOLLOWING KEY ELEMENTS:**

10 **“(A) ALL GOVERNMENT POLICIES, LAWS, RULES AND**
11 **REGULATIONS, ISSUANCES AND OTHER INTERVENTIONS**

1 SHALL PROMOTE MARKET EFFICIENCY AND ENHANCE
2 CONSUMER WELFARE, AND SHALL NOT DISTORT
3 COMPETITION BY CREATING BARRIERS TO ENTRY,
4 PROMOTING COLLUSIVE MARKET OUTCOMES, OR
5 RESTRICTING TRADE, EXCEPT WHEN THE RESTRICTIONS
6 ARE PROVEN CONSISTENT WITH THE PROMOTION OF
7 CONSUMER WELFARE AND MAY NOT BE ACHIEVED BY
8 OTHER MEANS, OR WHEN THE BENEFITS TO THE
9 COMMUNITY OUTWEIGH THE COSTS; AND

10 “(B) GOVERNMENT-OWNED OR CONTROLLED
11 CORPORATIONS AND PRIVATE SECTOR BUSINESSES
12 SHALL COMPETE ON A LEVEL PLAYING FIELD.
13 GOVERNMENT-OWNED OR CONTROLLED
14 CORPORATIONS SHALL BE HELD TO THE SAME
15 STANDARDS AS PRIVATE SECTOR BUSINESSES AND SHALL
16 NOT ENJOY NET COMPETITIVE ADVANTAGES OR
17 DISADVANTAGES OVER PRIVATE SECTOR BUSINESSES
18 SIMPLY BY VIRTUE OF PUBLIC SECTOR OWNERSHIP,
19 UNLESS IT IS CLEARLY DEMONSTRATED THAT THE
20 GREATER PUBLIC INTEREST WILL BE SERVED AND THERE
21 IS LACK OF COMMERCIAL VIABILITY.

1 **“SEC. 2-B REVIEW OF RELEVANT POLICIES. – ALL**
2 **NATIONAL GOVERNMENT AGENCIES, OFFICES,**
3 **INSTRUMENTALITIES, LOCAL GOVERNMENT UNITS, AND**
4 **GOVERNMENT-OWNED OR CONTROLLED**
5 **CORPORATIONS ARE MANDATED TO REVIEW THEIR**
6 **RESPECTIVE POLICIES, LAWS, RULES AND REGULATIONS,**
7 **ISSUANCES AND INTERVENTIONS AND OTHER RELEVANT**
8 **LAWS APPLICABLE TO THEIR RESPECTIVE OFFICES TO**
9 **DETERMINE WHETHER THEY RESTRICT, PREVENT OR**
10 **LESSEN COMPETITION, IN COMPLIANCE WITH THE**
11 **PRINCIPLES ABOVE AND SUBJECT TO THE GUIDELINES**
12 **FORMULATED BY THE NATIONAL ECONOMIC AND**
13 **DEVELOPMENT AUTHORITY AND THE PHILIPPINE**
14 **COMPETITION COMMISSION.**

15 **“SEC. 2-C ENFORCEMENT OF COMPETITION-**
16 **RELATED LAWS AND ISSUANCES. – TO ASSIST THE**
17 **PHILIPPINE COMPETITION COMMISSION IN ENFORCING**
18 **AND ATTAINING THE OBJECTIVES AND PURPOSES OF THIS**
19 **ACT, ALL NATIONAL GOVERNMENT AGENCIES, OFFICES,**
20 **INSTRUMENTALITIES, LOCAL GOVERNMENT UNITS, AND**
21 **GOVERNMENT-OWNED OR CONTROLLED**
22 **CORPORATIONS SHALL:**

1 “(A) COORDINATE WITH THE PHILIPPINE
2 COMPETITION COMMISSION TO IDENTIFY SPECIFIC
3 ACTIONS THAT THEY CAN UNDERTAKE IN THEIR AREAS
4 OF RESPONSIBILITY TO PROMOTE COMPETITION,
5 ELIMINATE ANTI-COMPETITIVE BEHAVIOR AND UNDUE
6 REGULATORY BURDENS ON COMPETITION;

7 “(B) ESTABLISH CHANNELS OF COMMUNICATION
8 AND COOPERATION WITH THE PHILIPPINE COMPETITION
9 COMMISSION AND REQUEST ITS ASSISTANCE IN THE
10 CRAFTING OF POLICY INITIATIVES RELATING TO
11 COMPETITION;

12 “(C) COOPERATE WITH AND EXTEND ASSISTANCE TO
13 THE PHILIPPINE COMPETITION COMMISSION IN THE
14 ENFORCEMENT OF THIS ACT, AS WELL AS ITS ORDERS
15 AND DECISIONS; AND

16 “(D) CONSULT THE PHILIPPINE COMPETITION
17 COMMISSION IN ESTABLISHING A FAIR, PREDICTABLE
18 AND TRANSPARENT PROCESS OF RESOLVING
19 COMPETITION-RELATED DISPUTES THAT ARE WITHIN
20 THEIR JURISDICTION.”

21 SEC. 2. Section 4 of Republic Act No. 10667 is hereby amended to read
22 as follows:

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

2 “(a) x x x;

3 “(b) x x x;

4 “(c) x x x;

5 “(d) x x x;

6 “(e) x x x;

7 “(f) x x x;

8 “(g) *Dominant position* refers to **A SIGNIFICANT MARKET**

9 **POWER OR** a position of economic strength that an entity or entities
10 hold which makes it capable of controlling the relevant market
11 independently from any or a combination of the following: competitors,
12 customers, suppliers, or consumers;

13 “x x x”

14 SEC. 3. Section 8 of the same Act is hereby amended to read as follows:

15 “SEC. 8. *Prohibitions and Disqualifications.* – The
16 **CHAIRPERSON AND** Commissioners shall not, during their tenure,
17 hold any other office or employment. They shall not, during their tenure,
18 directly or indirectly practice any profession, except in a teaching
19 capacity, participate in any business, or be financially interested in any
20 contract with, or any franchise, or special privileges granted by the
21 government or any subdivision, agency, or instrumentality thereof,
22 including government-owned and-controlled corporations or their

1 subsidiaries. They shall strictly avoid conflict of interest in the conduct
2 of their office. ~~[They shall not be qualified to run for any office in the~~
3 ~~election immediately succeeding their cessation from office. *Provided,*~~
4 ~~that the election mentioned hereof is not a Barangay election or a~~
5 ~~Sangguniang Kabataan election.]~~ **THEY** shall not be allowed to
6 personally appear or practice as counsel or agent on any matter pending
7 before the Commission for ~~[two (2)]~~ **ONE (1)** year[s] following their
8 cessation from office.

9 “No spouse or relative by consanguinity or affinity within the
10 fourth civil degree of any of the Commissioners, the Chairperson and the
11 Executive Director of the Commission may appear as counsel nor agent
12 on any matter pending before the Commission or transact business
13 directly or indirectly therein during incumbency and within **ONE (1)**
14 **YEAR** from cessation of office.”

15 SEC. 4. Section 9 of the same Act is hereby amended to read as follows:

16 “SEC. 9. *Compensation and Other Emoluments for Members*
17 *and Personnel of the Commission.* – ~~[The compensation and other~~
18 ~~emoluments for the members and personnel of the Commission shall be~~
19 ~~exempted from the coverage of Republic Act No. 6758, otherwise known~~
20 ~~as the “Salary Standardization Act”. For this purpose, the salaries and~~
21 ~~other emoluments of the Chairperson, the Commissioners, and personnel~~
22 ~~of the Commission shall be set based on an objective classification~~

1 ~~system, taking into consideration the importance and responsibilities~~
2 ~~attached to the respective positions, and shall be submitted to the~~
3 ~~President of the Philippines for his approval.] ALL POSITIONS FOR~~
4 **THE MEMBERS AND PERSONNEL OF THE COMMISSION**
5 **SHALL BE GOVERNED BY A COMPENSATION AND**
6 **POSITION CLASSIFICATION SYSTEM AND QUALIFICATION**
7 **STANDARDS APPROVED BY THE COMMISSION BASED ON A**
8 **COMPREHENSIVE JOB ANALYSIS AND AUDIT OF ACTUAL**
9 **DUTIES AND PERSONAL RESPONSIBILITIES. THE**
10 **COMPENSATION PLAN SHALL BE COMPARABLE WITH**
11 **THE PREVAILING SALARIES, BENEFITS AND**
12 **EMOLUMENTS OF THAT OF THE BANGKO SENTRAL NG**
13 **PILIPINAS, AND SHALL BE SUBJECT TO PERIODIC REVIEW**
14 **BY THE COMMISSION NO MORE THAN ONCE EVERY TWO**
15 **(2) YEARS, WITHOUT PREJUDICE TO YEARLY MERIT**
16 **REVIEW OR INCREASES BASED ON PRODUCTIVITY AND**
17 **EFFICIENCY. THE COMMISSION SHALL, THEREFORE, BE**
18 **EXEMPT FROM LAWS, RULES, AND REGULATIONS ON**
19 **COMPENSATION, POSITION CLASSIFICATION, AND**
20 **QUALIFICATIONS STANDARDS PROMULGATED BY THE**
21 **CIVIL SERVICE COMMISSION.”**

22 SEC. 5. Section 10 of the same Act is hereby amended to read as follows:

1 “SEC. 10. **Quorum.** – Three (3) members of the Commission shall
2 constitute a quorum, provided however, that ~~the~~ an affirmative vote of
3 **AT LEAST** three (3) members shall be necessary for the adoption of any
4 rule, ruling, order, resolution, decision or other acts of the Commission.”

5 SEC. 6. Section 11 of the same Act is hereby amended to read as follows:

6 “SEC. 11. **Staff.** – The Commission shall appoint, fix the
7 compensation, and determine the status, qualifications, and duties of an
8 adequate staff, which shall include an Executive Director of the
9 Commission.

10 “The Executive Director, **WHO SHALL HAVE A TERM OF**
11 **FIVE (5) YEARS, RENEWABLE FOR ANOTHER TERM OF**
12 **FIVE YEARS**, shall be appointed by the Commission and shall have
13 relevant experience in any of the fields of law, economics, commerce,
14 management, finance or engineering. The members of the technical staff,
15 except those performing purely clerical functions, shall possess at least a
16 Bachelor’s Degree in any of the following lines of specialization:
17 economics, law, finance, commerce, engineering, accounting, or
18 management.”

19 SEC. 7. Section 12 of the same Act is hereby amended to read as follows:

20 “SEC. 12. **Powers and Functions.** – The Commission shall have
21 original and primary jurisdiction over the enforcement and
22 implementation of the provisions of this Act, and its implementing rules

1 and regulations. The Commission shall exercise the following powers
2 and functions:

3 “(a) x x x;

4 “(b) Review proposed mergers and acquisitions **UPON**
5 **REQUEST OR MOTU PROPRIO**, determine thresholds for
6 notification, determine the requirements and procedures for notification,
7 **AND REVIEW**, and upon exercise of its powers to review, prohibit
8 mergers and acquisitions that, ~~[will]~~ **IN ITS REASONABLE**
9 **DETERMINATION, HAVE SUBSTANTIALLY PREVENTED,**
10 **RESTRICTED, OR LESSENEED, OR WILL** substantially prevent,
11 restrict, or lessen, competition in the relevant market;

12 “(c) x x x;

13 “(d) Upon finding, based on substantial evidence, that an entity has
14 entered into an anti-competitive agreement or has abused its dominant
15 position after due notice and hearing, stop or redress the same, by
16 applying remedies, such as, but not limited to, issuance of injunctions,
17 requirement of divestment, **REQUIREMENT OF MODIFICATION**
18 **OR TERMINATION OF CONTRACTS, OPENING ACCESS TO**
19 **COMPETITORS, PROHIBITIONS ON RESTRICTIVE**
20 **CONTRACTING PRACTICES, SETTING UP OF**
21 **INFORMATION FIREWALLS, MAKING INFORMATION**
22 **AVAILABLE TO THIRD PARTIES**, and disgorgement of excess

1 profits under such reasonable parameters that shall be prescribed by the
2 rules and regulations implementing this Act;

3 “(e) x x x;

4 “(f) Issue subpoena *duces tecum* and subpoena *ad testificandum* to
5 require the production of books, records, or other documents or data
6 which relate to any matter relevant to the investigation and personal
7 appearance before the Commission, summon witnesses, administer
8 oaths, and issue ~~[interim orders such as]~~ show cause orders in accordance
9 with the rules and regulations implementing this Act;

10 “(g) Upon order of the court, **UNDERTAKE BY ITSELF OR**
11 **THROUGH ITS DEPUTIZED LAW ENFORCEMENT AGENCY,**
12 **TO SEARCH AND INSPECT** ~~[inspections of]~~ business premises and
13 other offices, **STRUCTURES, SPACES,** land and vehicles, as used by
14 the entity, where it reasonably suspects that relevant ~~[books, tax records,~~
15 ~~or other documents]~~ **DATA AND INFORMATION** which relate to any
16 matter relevant to the investigation are kept, ~~[in order to prevent the~~
17 ~~removal, concealment, tampering with, or destruction of the books,~~
18 ~~records, or other documents]~~ **AND EXAMINE, COPY,**
19 **PHOTOGRAPH, RECORD OR PRINT THE SUCH**
20 **INFORMATION;**

21 “x x x

1 “(o) **PREPARE AND FORMULATE, IN COORDINATION**
2 **WITH THE NATIONAL ECONOMIC AND DEVELOPMENT**
3 **AUTHORITY, THE NATIONAL COMPETITION POLICY;**

4 “(p) x x x;

5 “(q) x x x;

6 “(r) Advocate pro-competitive policies of the government by:

7 “(1) Reviewing economic and administrative regulations, *motu*
8 *proprio* or upon request, as to whether or not they adversely affect
9 relevant market competition, and [~~advising the concerned agencies~~
10 ~~against such regulations~~] **ISSUING GUIDANCE TO THE**
11 **RELEVANT AGENCY, INCLUDING BUT NOT LIMITED**
12 **TO ISSUING ADVISORY OPINIONS TO REMEDY**
13 **COMPETITION CONCERNS, AND NO OBJECTION**
14 **CERTIFICATES IN THE CASE WHERE NO**
15 **COMPETITION CONCERN IS RAISED; [and]**

16 “(2) Advising the Executive Branch on the competitive
17 implications of government actions, policies and programs; AND

18 **“(3) PROVIDING AN ADVISORY OPINION ON**
19 **PROPOSED LEGISLATION, UPON REQUEST, AS TO**
20 **WHETHER OR NOT IT MAY ADVERSELY AFFECT**
21 **RELEVANT MARKET COMPETITION, AND**

1 **RECOMMENDING TO CONGRESS REMEDIES TO**
2 **COMPETITION CONCERNS;**

3 “(s) Charging reasonable fees to defray the administrative cost of
4 the services rendered. **FOR THIS PURPOSE, AN ANTITRUST**
5 **FUND IS HEREBY CONSTITUTED, WHICH SHALL BE USED**
6 **TO DEVELOP AND UTILIZE AN INVESTIGATION AND**
7 **RESEARCH FUND. THE USE OF SUCH FUND SHALL BE**
8 **SUBJECT TO THE AUDITING REQUIREMENTS,**
9 **STANDARDS, AND PROCEDURES UNDER EXISTING LAWS;**

10 “(T) **PROVIDE ADVISORY OPINION TO THE**
11 **RELEVANT AGENCY ON FISCAL AND OTHER INDUSTRY-**
12 **SPECIFIC INCENTIVES OF THE GOVERNMENT THAT MAY**
13 **ADVERSELY AFFECT COMPETITION IN THE RELEVANT**
14 **MARKET, AND RECOMMEND REMEDIES THERETO;**

15 “(U) **ISSUE NOTICES OF POTENTIAL VIOLATIONS OF**
16 **THIS ACT;**

17 “(V) **ISSUE AND IMPOSE INTERIM MEASURES TO**
18 **ENSURE CONTINUITY OF OPERATIONS AND PROVISION OF**
19 **SERVICES AND GOODS PENDING THE REVIEW OF THE**
20 **COMMISSION;**

21 “(W) **ISSUE, AFTER DUE NOTICE AND HEARING,**
22 **CEASE AND DESIST ORDERS; AND**

1 “(X) DEVELOP AND UTILIZE A RESEARCH AND
2 INVESTIGATION FUND FOR PURPOSES OF ENFORCEMENT
3 OPERATIONS, INFORMANT’S BENEFITS OR PROTECTION.”

4 SEC. 8. A new section denominated as Section 12-A is hereby inserted
5 after Section 12 of the same Act, to read as follows:

6 “SEC. 12–A. POWERS AND FUNCTIONS OF THE
7 CHAIRPERSON. – THE CHAIRPERSON OF THE
8 COMMISSION SHALL ACT AS THE CHIEF EXECUTIVE
9 OFFICER OF THE COMMISSION. THE CHAIRPERSON
10 SHALL EXECUTE AND ADMINISTER THE POLICIES,
11 DECISIONS, ORDERS AND RESOLUTIONS APPROVED BY
12 THE COMMISSION AND SHALL HAVE THE GENERAL
13 EXECUTIVE DIRECTION AND SUPERVISION OF THE WORK
14 AND OPERATION OF THE COMMISSION AND IT’S
15 MEMBERS, BODIES, BOARDS, OFFICES, PERSONNEL AND
16 ALL ITS ADMINISTRATIVE BUSINESS.”

17 SEC. 9. Section 13 of the same Act is hereby amended to read as follows:

18 “SEC. 13. *Office for Competition (OFC), Powers and Functions.*
19 – The OFC under the Department of Justice (DOJ-OFC) shall only
20 conduct preliminary investigation and undertake prosecution of all
21 criminal offenses arising under this Act and other competition-related
22 laws in accordance with Section 31 of Chapter VI of this Act, **UPON**

1 **THE FILING OF A CRIMINAL COMPLAINT BY THE PCC**
2 **WITH THE DOJ.** The OFC shall be reorganized and allocated
3 resources as may be required therefor to effectively pursue such
4 mandate.”

5 SEC. 10. Section 14 of the same Act is hereby amended to read as follows:

6 “SEC. 14. ***Anti-Competitive Agreements.*** –

7 “(a) The following agreements, between or among competitors,
8 are *per se* prohibited:

9 “(1) **DIRECTLY OR INDIRECTLY FIXING**
10 **PURCHASE OR SELLING PRICES,** [Restricting
11 ~~competition as to price~~], or components thereof, or other terms
12 of trade;

13 “(2) [~~Fixing price at an auction or in~~] **RIGGING** any form
14 of bidding including **THROUGH** cover bidding, bid
15 suppression, bid rotation and market allocation and other
16 analogous practices of bid manipulation;

17 ~~“(b) The following agreements, between or among competitors~~
18 ~~which have the object or effect of substantially preventing,~~
19 ~~restricting or lessening competition shall be prohibited:]~~

20 “~~[(1)]~~(3) Setting, limiting, or controlling production,
21 markets, technical development, or investment; **AND**

1 “~~[(2)]~~(4) Dividing or sharing the market, whether by
2 volume of sales or purchases, territory, type of goods or
3 services, buyers or sellers or any other means~~[:]~~].

4 “[~~(e)~~](B) Agreements other than those specified in
5 **PARAGRAPH** (a) of this section which have the object or effect
6 of substantially preventing, restricting or lessening competition
7 shall also be prohibited: Provided, Those which contribute to
8 improving the production or distribution of goods and services or
9 to promoting technical or economic progress, while allowing
10 consumers a fair share of the resulting benefits, may not
11 necessarily be deemed a violation of this Act.

12 “X X X.”

13 SEC. 11. Section 15 of the same Act is hereby amended to read as follows:

14 “SEC. 15. ***Abuse of Dominant Position.*** – It shall be prohibited
15 for one or more entities to abuse their dominant position by engaging in
16 conduct that would substantially prevent, restrict or lessen competition:

17 “(a) X X X;

18 “(b) X X X;

19 “(c) X X X;

20 “(d) X X X;

21 “(e) Imposing restrictions on the lease or contract for sale or trade
22 of goods or services concerning where, to whom, or in what forms goods

1 or services may be sold or traded, such as fixing prices, giving
2 preferential discounts or rebate upon such price, or imposing conditions
3 not to deal with competing entities, where the object or effect of the
4 restrictions is to prevent, restrict or lessen competition substantially:
5 *Provided*, That nothing contained in this Act shall **NECESSARILY**
6 ~~[prohibit or]~~ render unlawful:

7 “(1)~~[Permissible — franchising, — licensing, — exclusive~~
8 ~~merchandising or exclusive distributorship agreements such as~~
9 ~~those which give each party the right to unilaterally terminate the~~
10 ~~agreement]~~ **AGREEMENTS OR PRACTICES WHICH**
11 **CONTRIBUTE TO IMPROVING THE PRODUCTION OR**
12 **DISTRIBUTION OF GOODS OR TO PROMOTING**
13 **TECHNICAL OR ECONOMIC PROGRESS, WHILE**
14 **ALLOWING CONSUMERS A FAIR SHARE OF THE**
15 **RESULTING BENEFIT, AND WHICH DOES NOT:**

16 “(A) **IMPOSE ON THE ENTITIES CONCERNED**
17 **RESTRICTIONS WHICH ARE NOT INDISPENSABLE**
18 **TO THE ATTAINMENT OF THESE OBJECTIVES;**
19 **AND**

20 “(B) **AFFORD SUCH ENTITIES THE POSSIBILITY**
21 **OF ELIMINATING COMPETITION IN RESPECT OF A**
22 **SUBSTANTIAL PART OF THE PRODUCTS IN**

1 **QUESTION; or**

2 “(2) Agreements protecting intellectual property rights,
3 confidential information, or trade secrets;

4 “(f) x x x

5 “(g) x x x

6 “(h) x x x

7 “(i) x x x

8 **“(J) COMMITTING ANY ACT SIMILAR OR ANALOGOUS**
9 **TO ANY OF THE FOREGOING THAT WOULD**
10 **SUBSTANTIALLY PREVENT, RESTRICT OR LESSEN**
11 **COMPETITION;**

12 *Provided*, That nothing in this Act shall be construed or interpreted
13 as a prohibition on having a dominant position in a relevant market or on
14 acquiring, maintaining and increasing market share through legitimate
15 means that do not substantially prevent, restrict or lessen competition:

16 *Provided, further*, That any conduct which contributes to
17 improving production or distribution of goods or services within the
18 relevant market, or promoting technical and economic progress while
19 allowing consumers a fair share of the resulting benefit may not
20 necessarily be considered an abuse of dominant position:

21 *Provided, finally*, That the foregoing shall not constrain the
22 Commission or the relevant regulator from pursuing measures that would

1 promote fair competition or more competition as provided in this Act,
2 **INCLUDING THE IMPOSITION OF SIGNIFICANT MARKET**
3 **POWER OBLIGATIONS.”**

4 SEC. 12. New sections denominated as Sections 17-A, 17-B and 17-C are
5 hereby inserted after Section 16 of the same Act to read as follows:

6 **“SEC. 17-A. COMPULSORY NOTIFICATION. – A PARTY**
7 **TO ANY MERGER OR ACQUISITION TRANSACTION THAT**
8 **MEETS THE THRESHOLD PROVIDED IN SEC. 17-B MUST**
9 **SUBMIT A NOTIFICATION OF THEIR TRANSACTION TO THE**
10 **COMMISSION CONTAINING THE FOLLOWING**
11 **INFORMATION:**

12 **“(A) NAMES OF THE PARTIES TO THE TRANSACTION**
13 **AND THE NATURE OF THEIR BUSINESSES**

14 **“(B) LATEST FINANCIAL STATEMENT**

15 **“(C) SUMMARY OF THE TRANSACTION AND COPY OF**
16 **DEFINITIVE AGREEMENTS**

17 **“(D) ANY OTHER PERTINENT INFORMATION AS**
18 **DETERMINED BY THE COMMISSION.**

19 **“PARTIES MUST SUBMIT THEIR NOTIFICATIONS TO**
20 **THE COMMISSION WITHIN THIRTY (30) DAYS AFTER**
21 **SIGNING OF DEFINITIVE AGREEMENTS RELATING TO THE**

1 TRANSACTION BUT PRIOR TO ANY ACTS OF
2 CONSUMMATING THE SAME.

3 “SEC. 17-B. COMPULSORY REVIEW. – A MERGER OR
4 ACQUISITION SHALL BE SUBJECT TO COMPULSORY
5 NOTIFICATION AND REVIEW BY THE COMMISSION IF THE
6 VALUE OF THE TRANSACTION EXCEEDS FIFTY BILLION
7 PESOS (Php50,000,000,000.00);

8 “AN AGREEMENT CONSUMMATED IN VIOLATION OF
9 THIS COMPULSORY REVIEW REQUIREMENT SHALL BE
10 CONSIDERED VOID AND SUBJECT THE PARTIES TO AN
11 ADMINISTRATIVE FINE OF ONE PERCENT (1%) TO FIVE
12 PERCENT (5%) OF THE VALUE OF THE TRANSACTION.

13 “SEC. 17-C. VOLUNTARY REVIEW. –A PARTY TO A
14 MERGER OR ACQUISITION TRANSACTION WHICH DOES
15 NOT MEET THE CRITERIA FOR COMPULSORY REVIEW
16 UNDER THE PREVIOUS SECTION MAY, UPON
17 NOTIFICATION, REQUEST THE COMMISSION TO REVIEW
18 THEIR PROPOSED MERGER OR ACQUISITION TO
19 DETERMINE IF THE PROPOSED MERGER OR ACQUISITION
20 AGREEMENT OR CERTAIN TERMS THEREUNDER WILL
21 SUBSTANTIALLY PREVENT, RESTRICT OR LESSEN
22 COMPETITION IN THE RELEVANT MARKET.”

1 SEC. 13. Section 17 of the same Act is hereby amended and denominated
2 as 17-D to read as follows:

3 “SEC. 17-D. [~~Compulsory~~] Notification **AND REVIEW**
4 **PROCEDURE.** – Parties to [~~the~~] a merger or acquisition [agreement
5 referred to in the preceding section wherein the value of the transaction
6 exceeds one billion pesos (Php1,000,000,000.00)] **THAT IS SUBJECT**
7 **TO REVIEW BY THE COMMISSION BY VIRTUE OF SECTIONS**
8 **17-B OR 17-C OF THIS ACT SHALL SUBMIT THE FOLLOWING**
9 **INFORMATION TO THE COMMISSION ALONG WITH THEIR**
10 **MERGER NOTIFICATION:**

11 “(1) **REQUIRED DOCUMENTS AND INFORMATION FOR**
12 **REVIEW AS DETERMINED BY THE COMMISSION; AND**

13 “(2) **AN APPLICATION TO THE COMMISSION FOR A**
14 **DECISION.**

15 “**PARTIES TO A MERGER OR ACQUISITION THAT IS**
16 **SUBJECT TO REVIEW BY THE COMMISSION** are prohibited from
17 consummating their agreement until thirty (30) days after providing
18 notification to the Commission in the form and containing the information
19 specified in the regulations issued by the Commission: Provided, That the
20 Commission [shall] **MAY** promulgate other criteria, such as increased
21 market share in the relevant market in excess of minimum thresholds, that
22 may be applied specifically to a sector, or across some or all sectors, in

determining whether parties to a merger or acquisition shall notify the Commission under this Chapter.

“PARTIES MUST GIVE PRIOR NOTICE TO THE COMMISSION OF ANY MODIFICATIONS TO THE TRANSACTION THAT ARE MADE AFTER THE COMMENCEMENT OF THE COMMISSION’S REVIEW.

“An agreement consummated in violation of this [requirement to notify the Commission] **SECTION** shall be considered void and subject the parties to an administrative fine of one percent (1%) to five percent (5%) of the value of the transaction.

“Should the Commission deem it necessary, it may request further information that are reasonably necessary and directly relevant to the prohibition under Section 20 hereof from the parties to the agreement before the expiration of the thirty (30)-day period referred. The issuance of such a request has the effect of extending the period within which the agreement may not be consummated for an additional sixty (60) days, beginning on the day after the request for information is ~~[received]~~ **COMPLIED WITH** by the parties: *Provided, That*, in no case shall the total period for review by the Commission of the subject agreement exceed ninety (90) days from initial notification by the parties.

“When the above periods have expired and no decision has been promulgated for whatever reason, the merger or acquisition shall be

1 deemed approved and the parties may proceed to implement or
2 consummate it. All notices, documents and information provided to or
3 emanating from the Commission under this section shall be subject to
4 confidentiality rule under Section 34 of this Act except when the release of
5 information contained therein is with the consent of the notifying entity or
6 is mandatorily required to be disclosed by law or by a valid order of a court
7 of competent jurisdiction, or of a government or regulatory agency,
8 including an exchange.

9 “In the case of the merger or acquisition of banks, banking
10 institutions, building and loan associations, trust companies, insurance
11 companies, public utilities, educational institutions and other special
12 corporations governed by special laws, a favorable or no-objection ruling
13 by the Commission shall not be construed as dispensing of the requirement
14 for a favorable recommendation by the appropriate government agency
15 under Section 7[9]8 of the **REVISED** Corporation Code of the Philippines.

16
17 “A favorable recommendation by a governmental agency with a
18 competition mandate shall give rise to a disputable presumption that the
19 proposed merger or acquisition is not violative of this Act.”

20 SEC. 14. A new section denominated as Section 17-E is hereby inserted
21 after Section 17 of the same Act to read as:

1 “SEC. 17-E. MOTU PROPRIO REVIEW. — THE
2 COMMISSION MAY INITIATE A MOTU PROPRIO REVIEW
3 OF A MERGER OR ACQUISITION WHICH IT REASONABLY
4 SUSPECTS WILL SUBSTANTIALLY PREVENT, RESTRICT,
5 OR LESSEN COMPETITION.

6 “THE COMMISSION SHALL ISSUE A NOTICE TO THE
7 PARTIES TO THE AGREEMENT UPON INITIATION OF
8 REVIEW, INCLUDING INTERIM ORDERS AND A REQUEST
9 FOR INFORMATION IT DEEMS REASONABLY NECESSARY
10 TO THE CONDUCT OF ITS REVIEW. THE COMMISSION MAY
11 REQUEST RELEVANT INFORMATION FROM
12 GOVERNMENT AGENCIES, IF NECESSARY.

13 “IF PARTIES RECEIVE NOTICE OF REVIEW FROM
14 THE COMMISSION PRIOR TO CONSUMMATION OF THEIR
15 AGREEMENT, THEY ARE PROHIBITED FROM
16 CONSUMMATING THEIR AGREEMENT UNTIL THE SAME
17 HAS BEEN CLEARED BY THE COMMISSION.

18 “IF PARTIES RECEIVE THE NOTICE OF REVIEW
19 AFTER THE AGREEMENT SHALL HAVE BEEN
20 CONSUMMATED, THEN THE COMMISSION SHALL
21 CONDUCT THE REVIEW IN A MANNER THAT WILL RESULT

1 **IN THE LEAST DISRUPTION IN THE BUSINESS OPERATIONS**
2 **OF, AND LEAST BURDENSOME ON, THE PARTIES.”**

3 SEC. 15. Section 18 of the same Act is hereby amended to read as follows:

4 “SEC. 18. [~~Effect of Notification.~~] **ISSUANCE OF A**
5 **DECISION BY THE COMMISSION. – IF** [If within the relevant
6 periods stipulated in the preceding section,] **AFTER THE**
7 **COMPULSORY OR VOLUNTARY REVIEW CONDUCTED BY**
8 **THE COMMISSION PURSUANT TO SECTION 17,** the
9 Commission **REASONABLY** determines that [such] **A PROPOSED**
10 **TRANSACTION OR** agreement **WILL SUBSTANTIALLY**
11 **PREVENT, RESTRICT, OR LESSEN COMPETITION,** and does
12 not qualify for exemption under Section 21 of this Chapter, the
13 Commission may:

14 “(a) prohibit the implementation of the agreement;

15 “(b) prohibit the implementation of the agreement unless and until
16 it is modified by changes specified by the Commission;

17 “(c) prohibit the implementation of the agreement unless and until
18 the pertinent party or parties enter into legally enforceable agreements
19 specified by the commission; **OR**

20 **“(D) APPROVE THE IMPLEMENTATION, SUBJECT TO**
21 **COMPLIANCE WITH SPECIFIC CONDITIONS.”**

22 SEC. 16. Section 19 of the same Act is hereby amended to read as follows:

1 SEC. 19. Notification ~~{Threshold}~~ AND REVIEW
2 **REQUIREMENTS.** – The Commission shall, from time to time, adopt
3 and publish regulations stipulating:

4 “(a) **AN INCREASE IN** the transaction value threshold and such
5 other criteria subject to the notification requirement of Section 17 of this
6 Act;

7 “(b) The information that must be supplied for notified mergerS or
8 acquisitionS **AND MERGERS OR ACQUISITIONS UNDERGOING**
9 **REVIEW;**

10 “(c) Exceptions or exemptions from the [notification] **REVIEW**
11 requirement; and

12 “(d) Other rules relating to the notification procedures.”

13 Sec. 17. Section 20 of the same Act is hereby amended to read as follows:

14 “SEC. 20. ***Prohibited Mergers and Acquisitions.*** – Merger or
15 acquisition agreements that substantially prevent, restrict or lessen
16 competition in the relevant market or in the market for goods or services
17 as may be determined by the Commission shall be prohibited.

18 **“A MERGER OR ACQUISITION THAT IS DEEMED**
19 **PROHIBITED EX-POST SHALL BE SUBJECT TO THE**
20 **NECESSARY REMEDIES AS MAY BE DETERMINED BY THE**
21 **COMMISSION.”**

22 SEC. 18. Section 26 of the same Act is hereby amended to read as follows:

1 “SEC. 26. ***Determination of Anti-Competitive Agreement or***
2 ***Conduct.*** – In determining whether an anti-competitive agreement or
3 conduct ~~[has been committed]~~ **SUBSTANTIALLY PREVENTS,**
4 **RESTRICTS, OR LESSENS COMPETITION,** the Commission, **IN**
5 **APPROPRIATE CASES,** shall, ***INTER ALIA:***

6 “a) x x x”

7 SEC. 19. Section 28 of the same Act is hereby amended to read as follows:

8 “SEC. 28. ***Forbearance.*** – The Commission may forbear from
9 applying the provisions of this Act, for a limited time, in whole or in part,
10 in all or specific cases, on ~~[an entity or]~~ **A** group of entities, if in its
11 determination:

12 “x x x.”

13 “The Commission’s order exempting the relevant ~~[entity or]~~ group
14 of entities under this section shall be made public. Conditions may be
15 attached to the forbearance if the Commission deems it appropriate to
16 ensure the long-term interest of consumers.”

17 “x x x.”

18 SEC. 20. New sections denominated as Section 28-A and Section 28-B are
19 hereby inserted after Section 28 of the same Act to read as follows:

20 “**SEC. 28-A. ASSISTANCE TO RELEVANT AGENCIES ON**
21 **INCENTIVES. – THE COMMISSION SHALL ASSIST THE**
22 **RELEVANT GOVERNMENT AGENCY ON FISCAL AND**

1 OTHER INDUSTRY-SPECIFIC INCENTIVES IN ASSESSING
2 POSSIBLE ANTI-COMPETITIVE EFFECTS OF INCENTIVE
3 SCHEMES OF THE GOVERNMENT BASED ON THE
4 FOLLOWING FACTORS:

5 “(1) WHETHER THE INCENTIVE SCHEME GRANTS
6 UNDUE COMPETITIVE ADVANTAGE TO AN ENTITY OR
7 ENTITIES;

8 “(2) WHETHER THE INCENTIVE SCHEME IS
9 PROPORTIONATE AND NECESSARY TO ACHIEVE A GIVEN
10 EFFICIENCY OR EQUITY OBJECTIVE;

11 “(3) WHETHER THE ACTUAL BENEFIT ACHIEVED
12 THROUGH THE INCENTIVE SCHEME OUTWEIGHS THE
13 COST OF DISTORTING COMPETITION; AND

14 “(4) OTHER FACTORS THAT MAY BE DETERMINED
15 BY THE COMMISSION.

16 “SEC. 28-B. RECOMMENDATION ON GOVERNMENT
17 INCENTIVES. – FOR INCENTIVES WHICH THE
18 COMMISSION DEEMS TO HAVE ADVERSELY AFFECTED
19 COMPETITION IN THE RELEVANT MARKET OR IN THE
20 MARKET FOR GOODS AND SERVICES ACCORDING TO
21 SECTION 24, THE COMMISSION SHALL ISSUE AN EXPERT
22 OPINION OR NO OBJECTION CERTIFICATE RULING TO

1 **THE RELEVANT GOVERNMENT AGENCY ON FISCAL AND**
2 **OTHER INDUSTRY-SPECIFIC INCENTIVES, AND**
3 **RECOMMEND REMEDIES SUCH AS THE REVISION OR**
4 **REVOCATION OF SUCH INCENTIVE SCHEME AND THE**
5 **RECOVERY OF INCENTIVES WITH INTEREST.”**

6 SEC. 21. Section 29 of the same Act is hereby amended to read as follows:

7 **“SEC. 29. *Administrative Penalties.* –**

8 **“(a) *Administrative Fines.* –** In any investigation under Chapter III,
9 Sections 14 and 15, and Chapter IV, Sections 17 and 20 of this Act, after
10 due notice and hearing, the Commission may impose ~~[the following~~
11 ~~schedule of]~~ administrative fines **NOT EXCEEDING TEN PERCENT**
12 **(10%) OF THE TOTAL GLOBAL TURN-OVER OF THE**
13 **ULTIMATE PARENT ENTITY** ~~[on any]~~ **OF THE** entity found to
14 have violated the said sections[:].

15 ~~[First offense: Fine of up to one hundred million pesos~~
16 ~~(P100,000,000.00);~~

17 ~~Second offense: Fine of not less than one hundred million pesos~~
18 ~~(P100,000,000.00) but not more than two hundred fifty million pesos~~
19 ~~(P250,000,000.00),]~~

20 “In fixing the amount of the fine, the Commission shall have
21 regard to both the gravity and the duration of the violation.

1 “(b) *Failure to Comply With An Order of the Commission.* – An
2 entity which fails or refuses to comply with a ruling, order,
3 **CONDITION** or decision issued by the commission shall pay a penalty
4 of not less than [~~Fifty~~] **ONE HUNDRED** Thousand Pesos
5 [~~(P50,000.00)~~] **(Php100,000.00)** up to [~~Two~~] **FIVE** Million Pesos
6 [~~(P2,000,000.00)~~] **(Php5,000,000.00), OR ONE PERCENT (1%) OF**
7 **THE TURNOVER, WHICHEVER IS GREATER,** for each violation
8 and a similar amount of penalty for each day thereafter until the said
9 entity fully complies. Provided that these fines shall only accrue daily
10 beginning forty five (45) days from the time that the said decision, order
11 or ruling was received.

12 “(c) *Supply of Incorrect or Misleading Information.* – The
13 Commission may likewise impose upon any entity fines of up to [~~One~~]
14 **TWO** million pesos [~~(P1,000,000.00)~~] **(Php2,000,000.00)** where,
15 intentionally or negligently, they supply incorrect or misleading
16 information in any document, application or other paper filed with or
17 submitted to the Commission or supply incorrect or misleading
18 information in an application for a binding ruling, a proposal for a
19 consent judgment, proceedings relating to a show cause order, or
20 application for modification of the Commission’s ruling, order or
21 approval, as the case may be.

1 “(d) Any other violations not specifically penalized under the
2 relevant provisions of this Act shall be penalized by a fine of not less than
3 ~~[fifty]~~ **ONE HUNDRED** thousand pesos ~~[(P50,000.00)]~~
4 **(Php100,000.00)** up to ~~[two]~~ **FIVE** million pesos ~~[(P2,000,000.00)]~~
5 **(Php5,000,000.00)**.

6 **“(E) OBSTRUCTION. – THE COMMISSION MAY IMPOSE**
7 **A FINE OF NOT LESS THAN ONE HUNDRED THOUSAND**
8 **PESOS (P100,000.00) UP TO FIVE MILLION PESOS**
9 **(P5,000,000.00) ON ANYONE WHO COMMITS ANY**
10 **OBSTRUCTION OF ANY INVESTIGATION OR PROCEEDINGS**
11 **OF THE COMMISSION, THE IMPLEMENTATION OF THE**
12 **ORDERS, RULINGS, OR DECISIONS OF THE COMMISSION,**
13 **OR THE ENFORCEMENT OF THE ACT, ITS IMPLEMENTING**
14 **RULES, OR OTHER COMPETITION LAWS.**

15 **“(F) REPRISAL OR DISCRIMINATION. — ANY PERSON**
16 **THAT COMMITS ANY FORM OF REPRISAL OR**
17 **DISCRIMINATION AGAINST ANYONE COOPERATING OR**
18 **FURNISHING INFORMATION, DOCUMENT, OR DATA TO**
19 **THE COMMISSION IN CONNECTION WITH AN**
20 **INVESTIGATION OR PROCEEDING BEING CONDUCTED,**
21 **SHALL BE PENALIZED WITH A FINE OF NOT LESS THAN**

1 ONE HUNDRED THOUSAND PESOS (Php100,000.00) UP TO
2 FIVE MILLION PESOS (Php5,000,000.00).

3 “REPRISAL OR DISCRIMINATION SHALL INCLUDE
4 REMOVAL, DISCHARGE, DEMOTION, SUSPENSION,
5 THREATS, HARASSMENT, OR ANY FORM OF RETALIATION
6 IN THE TERMS AND CONDITIONS OF EMPLOYMENT,
7 AGENCY, OR ENGAGEMENT, AS THE CASE MAY BE.

8 “(G) *FAILURE TO NOTIFY THE COMMISSION OF SALE,*
9 *DISPOSITION, OR ANY OTHER TRANSFER DURING*
10 *ADJUDICATION.* – A RESPONDENT THAT FAILS TO NOTIFY
11 THE COMMISSION OF ANY SALE, DONATION,
12 DISPOSITION, OR ANY OTHER TRANSFER, WHETHER
13 ABSOLUTE OR OTHERWISE, MADE DURING
14 ADJUDICATION, OF ITS INTEREST IN BUSINESSES,
15 SHAREHOLDINGS, BUSINESS UNITS, ASSETS, OR ANY
16 OTHER INTEREST RELATED TO MATTERS UNDER
17 ADJUDICATION SHALL BE PENALIZED WITH A FINE OF
18 NOT LESS THAN ONE HUNDRED THOUSAND PESOS
19 (Php100,000.00) UP TO FIVE MILLION PESOS (Php5,000,000.00).

20 “Provided that the schedule of fines indicated in this Section shall
21 be ~~increased~~ REVIEWED AND MAY BE ADJUSTED by the

Commission every five (5) years to maintain their real value from the time it was set.”

SEC. 22. Section 30 of the same Act is hereby amended to read as follows:

“SEC. 30. ***Criminal Penalties.*** – An entity that enters into any anti-competitive agreement as covered by Chapter III, Section 14(a) and 14(b) under this Act shall, for each and every violation, be penalized by imprisonment from two (2) to seven (7) years, and a fine of not less than fifty million pesos (Php50,000,000.00) but not more than two hundred fifty million pesos (Php250,000,000.00) **OR A FINE EQUIVALENT TO TEN PERCENT (10%) OF RELEVANT TURNOVER FOR THE YEAR(S) OF INFRINGEMENT, WHICHEVER IS GREATER.** The penalty of imprisonment shall be imposed upon the responsible officers, and directors of the entity.

“X X X.”

SEC. 23. A new section to be denominated as Section 30-A of the same Act is hereby amended to read as follows:

“SEC. 30-A. LIABILITY OF FACILITATORS - ANY PERSON WHO AIDED, ABETTED, OR INDUCED A PERSON, WHETHER BY THREATS OR PROMISES TO COMMIT ANY OF THE PROHIBITED ACTS OR VIOLATIONS UNDER SECTIONS 14 AND 15 OF THIS ACT, OR IN ANY WAY DIRECTLY OR INDIRECTLY, PARTICIPATED OR

1 **CONSPIRED WITH OTHERS TO THE COMMISSION OF THE**
2 **PROHIBITED ACTS OR VIOLATIONS SHALL BE LIABLE**
3 **UNDER THIS ACT.”**

4 SEC. 24. Section 32 of the same Act is hereby amended to read as follows:

5 “SEC. 32. *Relationship with Sector Regulators.* – The
6 Commission shall have original and primary jurisdiction in the
7 enforcement **OF THIS ACT** and **THE** regulation of all competition-
8 related issues.

9 **“THE COMMISSION SHALL EXERCISE ORIGINAL AND**
10 **EXCLUSIVE JURISDICTION OVER THE ADJUDICATION OF**
11 **ALL COMPETITION-RELATED CASES UNDER THIS ACT.**

12 “The Commission shall still have jurisdiction if the issue involves
13 both competition and noncompetition issues, but the concerned sector
14 regulator shall be consulted and afforded reasonable opportunity to
15 submit its own opinion and recommendation on the matter before the
16 Commission makes a decision on any case.

17 “X X X.”

18 SEC. 23. Section 35 of the same Act is hereby amended to read as follows:

19 “SEC. 35. *Leniency Program.* –

20 “X X X.”

21 “(b) Upon the entity’s discovery of illegal activity, it took
22 prompt and effective action to terminate its participation therein;

1 **UNDERTAKEN IN CONSULTATION AND WITH THE**
2 **APPROVAL OF THE COMMISSION;**

3 “X X X.”

4 “(d) The entity did not coerce another party to participate in the
5 activity [~~and clearly was not the leader in, or the originator of, the~~
6 activity].

7 “Even after the Commission has received information about the
8 illegal activity after a fact finding or preliminary inquiry has commenced,
9 the reporting entity [~~will~~] **MAY** be granted leniency, provided preceding
10 conditions (b) and (c) and the following additional requirements are
11 complied with:

12 “~~[(1) The entity is the first to come forward and qualify for~~
13 leniency;]

14 “~~[(2)]~~ (1) At the time the entity comes forward, the Commission
15 does not have evidence against the entity that is likely to result in a
16 sustainable conviction; and

17 “~~[(3)]~~ (2) The Commission determines that granting leniency
18 would not be unfair to others.

19 **“THE COMMISSION SHALL DEVELOP SPECIFIC**
20 **CRITERIA FOR QUALIFICATION FOR THE LENIENCY**
21 **PROGRAM AS IT DEEMS APPROPRIATE.**

1 “Such program shall include the immunity from any suit or charge
2 of affected parties and third parties, exemption, waiver, or gradation of
3 fines and/or penalties giving precedence to the entity submitting such
4 evidence. ~~[An entity cooperating or furnishing information, document or~~
5 ~~data to the Commission in connection to an investigation being~~
6 ~~conducted shall not be subjected to any form of reprisal or discrimination.~~
7 ~~Such reprisal or discrimination shall be considered a violation of this Act~~
8 ~~subject to the sanctions provided in this Act.]~~

9 “x x x.”

10 SEC. 24. Section 37 of the same Act is hereby amended to read as follows:

11 “SEC. 37. ***Non-Adversarial Remedies.*** – As an implementing and
12 enforcement policy, the Commission shall, under such rules and
13 regulations it may prescribe, encourage voluntary compliance with this
14 Act and other competition laws by making available to the parties
15 concerned the following and other analogous non-adversarial
16 administrative remedies, before the institution of administrative, civil or
17 criminal action:

18 “(a) x x x

19 “(b) Show Cause Order. – Upon preliminary findings *motu proprio*
20 or on written complaint under oath by an interested party that any entity
21 is conducting its business, in whole or in part in a manner that may not
22 be in accord with the provisions of this Act or other competition laws,

1 and it finds that the issuance of a show cause order would be in the
2 interest of the public, the Commission shall issue and serve upon such
3 entity or entities a written description of its business conduct complained
4 of, a statement of the facts, data, and information together with a
5 summary of the evidence thereof, with an order requiring the said entity
6 or entities to show cause, within the period therein fixed, why no order
7 shall issue requiring such person or persons to cease and desist from
8 continuing with its identified business conduct, or pay the administrative
9 fine therein specified, or readjust its business conduct or practices;

10 “(c) Consent Order. – At any time prior to the conclusion by the
11 Commission of its inquiry **RELATING TO SECTIONS 14(B) AND 15**
12 **OF THIS ACT**, any entity under inquiry may, without in any manner
13 admitting a violation of this Act or any other competition laws, submit to
14 the Commission a written proposal for the entry of a consent order,
15 specifying therein the terms and conditions of the proposed consent order
16 which shall include among others the following:

17 “(1) ~~[The payment of an amount within the range of fines~~
18 ~~provided for under this Act]~~ **PAYMENT OF DAMAGES TO ANY**
19 **PRIVATE PARTY/PARTIES WHO MAY HAVE SUFFERED**
20 **INJURY;**

21 “(2) The required compliance report as well as an entity to
22 submit regular compliance reports;

1 “(3) AN UNDERTAKING TO PAY AN AMOUNT WITHIN
2 THE RANGE OF FINES PROVIDED FOR UNDER THIS ACT
3 ~~[Payment of damages to any private party/parties who may have suffered~~
4 ~~injury]~~; and

5 “(4) Other terms and conditions that the Commission deems
6 appropriate and necessary for the effective enforcement of this Act or
7 other Competition Laws:

8 *“Provided, That a consent order shall not bar any inquiry for the*
9 *same or similar acts if continued or repeated;*

10 **“PROVIDED, FURTHER, THAT THIS REMEDY IS NOT**
11 **AVAILABLE TO ANY ENTITY UNDER INQUIRY FOR**
12 **VIOLATIONS OF SECTION 14 (A) AND (B) OF THIS ACT.**

13 “(d) x x x;

14 “(e) Inadmissibility of Evidence in Criminal Proceedings. – The
15 request for a binding ruling[;] **OR** the show cause order [~~or the proposal~~
16 ~~for consent order]~~; the facts, data, and information therein contained or
17 subsequently supplied by the entity or entities concerned; admissions,
18 oral or written, made by them against their interest; all other documents
19 filed by them, including their evidence presented in the proceedings
20 before the Commission; and the judgment or order rendered thereon;
21 shall not be admissible as evidence in any criminal proceedings arising
22 from the same act subject of the binding ruling[;] **OR** show cause order

1 ~~[or consent order]~~ against such entity or entities, their officers,
2 employees, and agents.”

3 SEC. 25. Section 38 of the same Act is hereby amended to read as follows:

4 “SEC. 38. **Contempt.** – The Commission may ~~[summarily]~~ punish
5 for contempt ~~[by imprisonment not exceeding thirty (30) days or by a fine~~
6 ~~not exceeding one hundred thousand pesos (P 100,000.00), or both, any~~
7 ~~entity guilty of such]~~ **ANY OF THE FOLLOWING ACTS**

8 **COMMITTED AGAINST OR BEFORE THE COMMISSION OR**
9 **AGENCY, OFFICER, OR PERSON VESTED WITH**
10 **AUTHORITY OR DEPUTIZED BY THE COMMISSION:**

11 ~~[misconduct in the presence of the Commission in its vicinity as to~~
12 ~~seriously interrupt any hearing, session or any proceeding before it,~~
13 ~~including cases in which an entity willfully fails or refuses, without just~~
14 ~~cause, to comply with a summons, subpoena or subpoena *duces tecum*~~
15 ~~legally issued by the Commission being present at a hearing, proceeding,~~
16 ~~session or investigation, refused to be sworn as a witness or to answer~~
17 ~~questions or to furnish information when lawfully required to do so.]~~

18 **“(A) MISCONDUCT THAT SERIOUSLY INTERRUPTS**
19 **ANY HEARING, SESSION, OR PROCEEDING.**

20 **“(B) REFUSAL TO BE SWORN AS A WITNESS OR TO**
21 **ANSWER QUESTIONS OR TO FURNISH INFORMATION**
22 **WHEN LAWFULLY REQUIRED TO DO SO, AT A HEARING,**

1 **PROCEEDING, SESSION, OR INVESTIGATION, WITHOUT**
2 **ANY VALID OR JUST CAUSE;**

3 **“(C) WILLFUL FAILURE OR REFUSAL, WITHOUT JUST**
4 **CAUSE, TO COMPLY WITH A SUMMONS OR SUBPOENA;**
5 **AND**

6 **“(D) FAILURE OR REFUSAL TO COMPLY WITH ANY**
7 **ORDER, RULING OR DECISION OF THE COMMISSION.**

8 **“CONTEMPT SHALL, AFTER DUE NOTICE AND**
9 **HEARING, BE PUNISHED BY IMPRISONMENT OF NOT**
10 **MORE THAN THIRTY (30) DAYS OR BY A FINE OF NOT**
11 **MORE THAN ONE HUNDRED THOUSAND PESOS**
12 **(Php100,000.00), OR BOTH, AS MAY BE DETERMINED UNDER**
13 **THE PROVISIONS OF THE RULES OF COURT OF THE**
14 **PHILIPPINES: PROVIDED, THAT WHEN THE PERSON**
15 **COMMITTS ANY OF THE ACTS UNDER (A) AND (B) IN THE**
16 **PRESENCE OF THE COMMISSION, THE PERSON SHALL BE**
17 **PUNISHED SUMMARILY.**

18 SEC. 26. Section 39 of the same Act is hereby amended to read as
19 follows:

20 **“SEC. 39. *Appeals of the Decisions of the Commission.* –**
21 **Decisions of the Commission shall be appealable to the Court of Appeals**
22 **in accordance with [the] RULE 65 OF THE Rules of Court. The appeal**

1 shall not stay the order, ruling or decision sought to be reviewed, unless
2 the Court of Appeals shall direct otherwise upon such terms and
3 conditions it may deem just. In the appeal, the Commission shall be
4 included as a party respondent to the case.”

5 SEC. 27. Section 46 of the same Act is hereby amended to read as follows:

6 “SEC. 46. **Statute of Limitations.** – Any action arising from a
7 violation of any provision of this Act shall be forever barred unless
8 commenced within five (5) years from:

9 “(a) For criminal actions, the time the violation is discovered by
10 the offended party, the authorities, or their agents;

11 “(b) For ~~[administrative and]~~ civil actions, the time the cause of
12 action accrues; **AND**

13 “(c) For administrative actions, ~~[the time the cause of action accrues]~~
14 **THE TIME THE VIOLATION IS DISCOVERED BY THE**
15 **COMMISSION.”**

16 SEC. 28. Section 51 of the same Act is hereby amended to read as follows:

17 “SEC. 51. **Appropriations and Use of Fees, Charges and**
18 **Penalties.** – The initial budgetary requirements of the Commission of
19 three hundred million pesos (Php300,000,000.00) is hereby appropriated.

20 “~~[All fees, fines, penalties collected by the Commission shall not~~
21 ~~be retained by the Commission, but will be remitted to the National~~
22 ~~Treasury and shall accrue to the general funds.]~~ **THE COMMISSION**

1 **SHALL BE AUTHORIZED TO RETAIN 50% OF ALL FEES,**
2 **FINES, AND PENALTIES COLLECTED BY THE COMMISSION**
3 **FOR THE PURPOSE OF CREATING THE ANTITRUST FUND,**
4 **WHICH SHALL BE USED TO DEVELOP AND UTILIZE A**
5 **RESEARCH AND INVESTIGATION FUND, AS PROVIDED IN**
6 **SECTIONS 12(S) AND 12(Y) OF THIS ACT, FOR PURPOSES OF**
7 **ENFORCEMENT OPERATIONS, INFORMANT’S BENEFITS**
8 **OR PROTECTION, FUND STAFF DEVELOPMENT AND**
9 **SCHOLARSHIPS, REWARDS FOR REPORTING VIOLATIONS**
10 **OF THE PCA, THE ESTABLISHMENT OF A COMPLIANCE**
11 **PROGRAM, RESEARCH AND DEVELOPMENT, EDUCATION**
12 **AND ADVOCACY, AND OTHER NECESSARY EXPENDITURES**
13 **TO PROMOTE FAIR MARKET COMPETITION AND THE**
14 **OBJECTIVES OF THIS ACT. THE USE OF SUCH ADDITIONAL**
15 **AMOUNT SHALL BE SUBJECT TO THE AUDITING**
16 **REQUIREMENTS, STANDARDS, AND PROCEDURES UNDER**
17 **EXISTING LAWS.**

18 “Such funds necessary for the continuous and effective operation
19 of the Commission shall be included in the annual General
20 Appropriations Act.”

21 SEC. 29. Section 52 of the same Act is hereby amended to read as follows:

1 “SEC. 52. **Transparency Clause.** – Final decisions, orders and
2 rulings of the Commission **AND THE INITIATION OF A MOTU**
3 **PROPRIO REVIEW OF A MERGER OR ACQUISITION** shall be
4 published on the official website **OF THE COMMISSION**, subject to
5 Section 34 of this Act.”

6 SEC. 30. **Separability Clause.** – Should any provision of this Act or any
7 part hereof be declared unconstitutional, the other provisions or parts not affected
8 thereby shall remain valid and effective.

9 SEC. 31. **Repealing Clause.** – The following laws, and all other laws,
10 decrees, executive orders and regulations, or part or parts thereof inconsistent
11 with any provision of this act, are hereby repealed, amended or otherwise
12 modified accordingly:

13 (a) Articles 185 and 186 of Act No. 3815, otherwise known as the
14 “*Revised Penal Code*”: *Provided*, That violations of Articles 185 and 186 of the
15 Revised Penal Code committed before the effectivity of this Act may continue to
16 be prosecuted unless the same have been barred by prescription, and subject to
17 the procedure under Section 31 of this Act;

18 (b) Section 4 of Commonwealth Act No. 138;

19 (c) Section 43 (k), (r), (s), (u) on functions of the ERC and Section 45
20 of Republic Act No. 9136, entitled “*An Act Ordaining Reforms in the Electric*
21 *Power Industry, Amending for the Purpose Certain Laws and for Other*
22 *Purposes, otherwise known as the ‘Electric Power Industry Reform Act of 2001;’*”

(d) Section 24 on illegal acts of price manipulation and Section 25 on penalty for illegal acts of price manipulation of Republic Act No. 9502, entitled “*An Act Providing for Cheaper and Quality Medicines, Amending for the Purpose Republic Act No. 8293 or the Intellectual Property Code, Republic Act No. 6675 or the Generics Act of 1988, and Republic Act No. 5921 or the Pharmacy Law, and for Other Purposes,*” otherwise known as the “*Universally Accessible Cheaper And Quality Medicines Act Of 2008;*”

(e) Executive Order No. 45, Series of 2011, designating the Department of Justice as the competition authority, Department of Justice Circular 005, Series of 2015 and other related issuances;

(f) SECTION 5(3) OF REPUBLIC ACT NO. 7581, OTHERWISE KNOWN AS THE “PRICE ACT,” AS AMENDED; AND

(g) SECTIONS 87 AND 91 OF REPUBLIC ACT NO. 8293, OTHERWISE KNOWN AS THE “INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES.”

SEC. 32. ***Effectivity Clause.*** – This Act shall take effect after fifteen (15) days after its publication in the *Official Gazette* or in a newspaper of general circulation.

Approved,