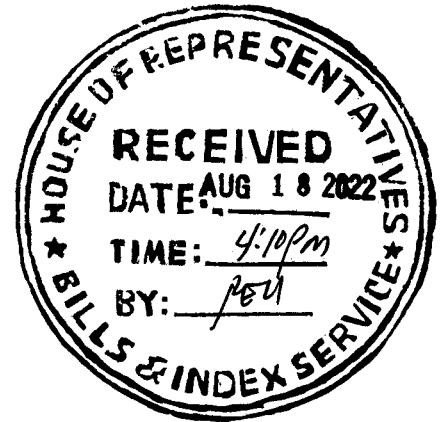




Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City
NINETEENTH CONGRESS
First Regular Session
House Bill No. 3837



Introduced by REP. LEX ANTHONY CRIS A. COLADA

EXPLANATORY NOTE

The state recognizes that apart from businesses, there must also be a culture of competition among government agencies who is responsible in molding the competitive landscape through regulation. Internationally, it is recognized that effective market competition benefits consumers through lower prices, but of higher quality and available more choices. Various studies show that cases worldwide found that prices can be raised by as much as 50 percent due to overcharges by cartels.

There is indeed a need for enforcement and legislative measure which will respond to anti-competitive conduct and ultimately, improves consumer welfare. To date, the PCA serves as the country's first comprehensive competition law, which prohibits anti-competitive agreements, abuse of dominant position, and anti-competitive mergers and acquisitions.

This measure seeks to amend the PCA for purposes of enhancing the PCC' 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 towards competition enforcement, this bill also proposes a shift to a voluntary merger review regime.

This bill seeks to legislate principles of the National Competition Policy to ensure that competition considerations are included in the formulation and deliberation of government policies. It also proposes that the PCC mandated to review fiscal incentives for anti-competitive effects. While incentives 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.

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


LEX ANTHONY CRIS A. COLADA
Party-list, AAMBIS-OWA



Republic of the Philippines
House of Representatives
Quezon City, Metro Manila

NINETEENTH CONGRESS
First Regular Session

HOUSE BILL NO. **3837**

Introduced by REP. LEX ANTHONY CRIS A. COLADA

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

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

1 SECTION 1. ~~Section 4 of Republic Act No. 10667 is hereby amended to~~
2 ~~read as follows:~~
3 ~~“SEC. 4. *Definition of Terms.* As used in this Act:~~
4 ~~“(a) x x x;~~
5 ~~“(b) x x x;~~
6 ~~“(c) x x x;~~
7 ~~“(d) x x x;~~
8 ~~“(e) x x x;~~

1 ~~“(g) Dominant position refers to A SIGNIFICANT MARKET POWER~~
2 ~~OR a position of economic strength that an entity or entities hold which makes it~~
3 ~~capable of controlling the relevant market independently from any or a~~
4 ~~combination of the following: competitors, customers, suppliers, or consumers;~~

5 ~~“x x x”~~

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

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

15 **“(A) ALL GOVERNMENT POLICIES, LAWS, RULES AND**
16 **REGULATIONS, ISSUANCES AND OTHER INTERVENTIONS**
17 **SHALL PROMOTE MARKET EFFICIENCY AND ENHANCE**
18 **CONSUMER WELFARE, AND SHALL NOT DISTORT**
19 **COMPETITION BY CREATING BARRIERS TO ENTRY,**
20 **PROMOTING COLLUSIVE MARKET OUTCOMES, OR**
21 **RESTRICTING TRADE, EXCEPT WHEN THE RESTRICTIONS**

22 ARE PROVEN CONSISTENT WITH THE PROMOTION OF
23 CONSUMER WELFARE AND MAY NOT BE ACHIEVED BY

24 OTHER MEANS, OR WHEN THE BENEFITS TO THE
25 COMMUNITY OUTWEIGH THE COSTS; AND

26 “(B) GOVERNMENT-OWNED OR CONTROLLED
27 CORPORATIONS AND PRIVATE SECTOR BUSINESSES
28 SHALL COMPETE ON A LEVEL PLAYING FIELD.

29 GOVERNMENT-OWNED OR CONTROLLED
30 CORPORATIONS SHALL BE HELD TO THE SAME
31 STANDARDS AS PRIVATE SECTOR BUSINESSES AND SHALL
32 NOT ENJOY NET COMPETITIVE ADVANTAGES OR
33 DISADVANTAGES OVER PRIVATE SECTOR BUSINESSES
34 SIMPLY BY VIRTUE OF PUBLIC SECTOR OWNERSHIP,
35 UNLESS IT IS CLEARLY DEMONSTRATED THAT THE
36 GREATER PUBLIC INTEREST WILL BE SERVED AND THERE
37 IS LACK OF COMMERCIAL VIABILITY.

38 “SEC. 2-B REVIEW OF RELEVANT POLICIES. – ALL
39 NATIONAL GOVERNMENT AGENCIES, OFFICES,
40 INSTRUMENTALITIES, LOCAL GOVERNMENT UNITS, AND
41 GOVERNMENT-OWNED OR CONTROLLED
42 CORPORATIONS ARE MANDATED TO REVIEW THEIR
43 RESPECTIVE POLICIES, LAWS, RULES AND REGULATIONS,

44 ISSUANCES AND INTERVENTIONS AND OTHER RELEVANT
45 LAWS APPLICABLE TO THEIR RESPECTIVE OFFICES TO
46 DETERMINE WHETHER THEY RESTRICT, PREVENT OR
47 LESSEN COMPETITION, IN COMPLIANCE WITH THE
48 PRINCIPLES ABOVE AND SUBJECT TO THE GUIDELINES
49 FORMULATED BY THE NATIONAL ECONOMIC AND
50 DEVELOPMENT AUTHORITY AND THE PHILIPPINE
51 COMPETITION COMMISSION.

52 “SEC. 2-C ENFORCEMENT OF
53 COMPETITION-RELATED LAWS AND ISSUANCES. – TO
54 ASSIST THE PHILIPPINE COMPETITION COMMISSION IN
55 ENFORCING
56 AND ATTAINING THE OBJECTIVES AND PURPOSES OF THIS
57 ACT, ALL NATIONAL GOVERNMENT AGENCIES, OFFICES,
58 INSTRUMENTALITIES, LOCAL GOVERNMENT UNITS, AND
59 GOVERNMENT-OWNED OR CONTROLLED
60 CORPORATIONS SHALL:

61 “(A) COORDINATE WITH THE PHILIPPINE
62 COMPETITION COMMISSION TO IDENTIFY SPECIFIC
63 ACTIONS THAT THEY CAN UNDERTAKE IN THEIR AREAS
64 OF RESPONSIBILITY TO PROMOTE COMPETITION,
65 ELIMINATE ANTI-COMPETITIVE BEHAVIOR AND UNDUE

REGULATORY BURDENS ON COMPETITION;

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

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

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

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

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

“(a) x x x;

“(b) x x x;

“(c) x x x;

“(d) x x x;

88

“(e) x x x;

89

1 “(f) x x x;

2 “(g) Dominant position refers to A SIGNIFICANT MARKET

3 POWER OR a position of economic strength that an entity or
4 entities

5 hold which makes it capable of controlling the relevant market

6 independently from any or a combination of the following:
7 competitors,

8 customers, suppliers, or consumers;

9 “x x x”

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

12 “SEC. 8. ***Prohibitions and Disqualifications.*** –
13 The

14 **CHAIRPERSON AND** Commissioners shall not, during their tenure,
15 hold any other office or employment. They shall not, during their tenure,
16 directly or indirectly practice any profession, except in a teaching 13
17 capacity, participate in any business, or be financially interested in any
18 contract with, or any franchise, or special privileges granted by the
19 government or any subdivision, agency, or instrumentality thereof,
 including government-owned and-controlled corporations or their
 subsidiaries. They shall strictly avoid conflict of interest in the conduct
 of their office. ~~[They shall not be qualified to run for any office in the~~
 ~~election immediately succeeding their cessation from office. *Provided,*~~

20 ~~that the election mentioned hereof is not a Barangay election or a~~ 21
 ~~Sangguniang Kabataan election.]~~ **THEY** shall not be allowed to
22 personally appear or practice as counsel or agent on any matter pending

1 before the Commission for [~~two (2)~~] **ONE (1)** year[s] following their
2 cessation from office.

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

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

10 “SEC. 9. *Compensation and Other Emoluments for Members*
11 *and Personnel of the Commission.* – [~~The compensation and other~~
12 ~~emoluments for the members and personnel of the Commission shall be~~
13 ~~exempted from the coverage of Republic Act No. 6758, otherwise known~~
14 ~~as the “Salary Standardization Act”. For this purpose, the salaries and~~
15 ~~other emoluments of the Chairperson, the Commissioners, and personnel~~
16 ~~of the Commission shall be set based on an objective classification~~
17 ~~system, taking into consideration the importance and responsibilities~~
18 ~~attached to the respective positions, and shall be submitted to the~~
19 ~~President of the Philippines for his approval.] **ALL POSITIONS FOR**
20 **THE MEMBERS AND PERSONNEL OF THE COMMISSION**
21 **SHALL BE GOVERNED BY A COMPENSATION AND**~~

22 **POSITION CLASSIFICATION SYSTEM AND QUALIFICATION**
23 **STANDARDS APPROVED BY THE COMMISSION BASED ON A**
24 **COMPREHENSIVE JOB ANALYSIS AND AUDIT OF ACTUAL**
25 **DUTIES AND PERSONAL RESPONSIBILITIES. THE**
26 **COMPENSATION PLAN SHALL BE COMPARABLE WITH**
27 **THE PREVAILING SALARIES, BENEFITS AND EMOLUMENTS**
28 **OF THAT OF THE BANGKO SENTRAL NG**
29 **PILIPINAS, AND SHALL BE SUBJECT TO PERIODIC REVIEW**
30 **BY THE COMMISSION NO MORE THAN ONCE EVERY TWO**
31 **(2) YEARS, WITHOUT PREJUDICE TO YEARLY MERIT**
32 **REVIEW OR INCREASES BASED ON PRODUCTIVITY AND**
33 **EFFICIENCY. THE COMMISSION SHALL, THEREFORE, BE**
34 **EXEMPT FROM LAWS, RULES, AND REGULATIONS ON**
35 **COMPENSATION, POSITION CLASSIFICATION, AND**
36 **QUALIFICATIONS STANDARDS PROMULGATED BY THE**
37 **CIVIL SERVICE COMMISSION.”**

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

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

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

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

47 “The Executive Director, **WHO SHALL HAVE A TERM OF**
48 **FIVE (5) YEARS, RENEWABLE FOR ANOTHER TERM OF**
49 **FIVE YEARS**, shall be appointed by the Commission and shall have
50 relevant experience in any of the fields of law, economics, commerce,
51 management, finance or engineering. The members of the technical staff,
52 except those performing purely clerical functions, shall possess at least a
53 Bachelor’s Degree in any of the following lines of specialization:
54 economics, law, finance, commerce, engineering, accounting, or
55 management.”

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

57 “SEC. 12. *Powers and Functions*. – The Commission shall have
58 original and primary jurisdiction over the enforcement
59 and
60 implementation of the provisions of this Act, and its implementing rules
61 and regulations. The Commission shall exercise the following powers
62 and functions:

63 “(a) x x x;

64 “(b) Review proposed mergers and acquisitions **UPON**

65 **REQUEST OR MOTU PROPRIO**, determine thresholds for

1 notification, determine the requirements and procedures for
notification,

2 **AND REVIEW**, and upon exercise of its powers to review,
prohibit

3 mergers and acquisitions that, [~~will~~] **IN ITS REASONABLE**

4 **DETERMINATION, HAVE SUBSTANTIALLY**
PREVENTED,

5 **RESTRICTED, OR LESSENER, OR WILL** substantially
prevent,

6 restrict, or lessen, competition in the relevant market;

7 “(c) x x x;

8 “(d) Upon finding, based on substantial evidence, that an entity
has 9 entered into an anti-competitive agreement or has abused its
dominant

10 position after due notice and hearing, stop or redress the same, by

11 applying remedies, such as, but not limited to, issuance of injunctions,

12 requirement of divestment, **REQUIREMENT OF MODIFICATION**

13 **OR TERMINATION OF CONTRACTS, OPENING ACCESS TO**

14 **COMPETITORS, PROHIBITIONS ON RESTRICTIVE** 15
CONTRACTING PRACTICES, SETTING UP OF

16 **INFORMATION FIREWALLS, MAKING**
INFORMATION

17 **AVAILABLE TO THIRD PARTIES**, and disgorgement of
excess

18 profits under such reasonable parameters that shall be prescribed
by the

19 rules and regulations implementing this Act;

20 “(e) x x x;

21 “(f) Issue subpoena *duces tecum* and subpoena *ad testificandum* to
22 require the production of books, records, or other documents or
data 1 which relate to any matter relevant to the investigation and
personal

2 appearance before the Commission, summon witnesses, administer
3 oaths, and issue ~~[interim orders such as]~~ show cause orders in accordance
4 with the rules and regulations implementing this Act;

5 “(g) Upon order of the court, **UNDERTAKE BY ITSELF OR**
6 **THROUGH ITS DEPUTIZED LAW ENFORCEMENT**
AGENCY,
7 **TO SEARCH AND INSPECT** ~~[inspections of]~~ business
premises and

8 other offices, **STRUCTURES, SPACES,** land and vehicles, as
used by

9 the entity, where it reasonably suspects that relevant ~~[books, tax~~
~~records,~~

10 ~~or other documents]~~ **DATA AND INFORMATION** which relate
to any

11 matter relevant to the investigation are kept, ~~[in order to prevent~~
the

12 ~~removal, concealment, tampering with, or destruction of the~~
 ~~books,~~

13 ~~records, or other documents]~~ **AND EXAMINE, COPY,** 14

PHOTOGRAPH, RECORD OR PRINT THE SUCH

15 **INFORMATION;**

16

17 “x x x

18 “(o) **PREPARE AND FORMULATE, IN COORDINATION**

19 **WITH THE NATIONAL ECONOMIC AND**
 DEVELOPMENT

20 **AUTHORITY, THE NATIONAL COMPETITION POLICY;**

21 “(p) x x x; 22 “(q) x x x;

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

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

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

13 “(3) ~~REVIEWING~~ **PROVIDING AN ADVISORY**
14 **OPINION ON PROPOSED LEGISLATION, MOTU**
15 ~~PROPRIO OR~~ **UPON REQUEST, AS TO WHETHER OR**
16 **NOT IT MAY ADVERSELY AFFECT RELEVANT**
17 **MARKET COMPETITION, AND ISSUING GUIDANCE TO**
18 ~~CONGRESS INCLUDING BUT NOT LIMITED TO~~
19 ~~ISSUING ADVISORY OPINIONS RECOMMENDING TO~~
20 **CONGRESS REMEDIES TO COMPETITION CONCERNS,**
21 ~~AND NO OBJECTION CERTIFICATES IN THE CASE~~
22 ~~WHERE NO COMPETITION CONCERN IS RAISED;~~

23 “(s) Charging reasonable fees to defray the administrative cost of
24 the services rendered. **FOR THIS PURPOSE, AN ANTITRUST FUND**
25 **IS HEREBY CONSTITUTED, WHICH SHALL BE USED**
26 **TO DEVELOP AND UTILIZE AN INVESTIGATION AND**
27 **RESEARCH FUND. THE USE OF SUCH FUND SHALL BE**
28 **SUBJECT TO THE AUDITING REQUIREMENTS,**
29 **STANDARDS, AND PROCEDURES UNDER EXISTING LAWS;**

30 “(T) PROVIDE ADVISORY OPINION TO THE
31 RELEVANT AGENCY ON FISCAL AND OTHER
32 INDUSTRYSPECIFIC INCENTIVES OF THE GOVERNMENT
33 THAT MAY
34 ADVERSELY AFFECT COMPETITION IN THE RELEVANT
35 MARKET, AND RECOMMEND REMEDIES THERETO;

36 “(U) ISSUE NOTICES OF POTENTIAL VIOLATIONS OF
37 THIS ACT;

38 “(V) ISSUE AND IMPOSE INTERIM MEASURES TO
39 ENSURE CONTINUITY OF OPERATIONS AND PROVISION OF
40 SERVICES AND GOODS PENDING THE REVIEW OF THE
41 COMMISSION;

42 “(X)W) ISSUE, AFTER DUE NOTICE AND HEARING,
43 CEASE AND DESIST ORDERS; AND

44 “(YX) DEVELOP AND UTILIZE A RESEARCH AND
45 INVESTIGATION FUND FOR PURPOSES OF ENFORCEMENT
46 OPERATIONS, INFORMANT’S BENEFITS OR PROTECTION.”

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

49 “SEC. 12–A. POWERS AND FUNCTIONS OF THE
50 CHAIRPERSON. – THE CHAIRPERSON OF THE
51 COMMISSION SHALL ACT AS THE CHIEF EXECUTIVE
52 OFFICER OF THE COMMISSION. THE CHAIRPERSON SHALL
53 EXECUTE AND ADMINISTER THE POLICIES,
54 DECISIONS, ORDERS AND RESOLUTIONS APPROVED BY
55 THE COMMISSION AND SHALL HAVE THE GENERAL
56 EXECUTIVE DIRECTION AND SUPERVISION OF THE WORK
57 AND OPERATION OF THE COMMISSION AND IT’S MEMBERS,
58 BODIES, BOARDS, OFFICES, PERSONNEL AND
59 ALL ITS ADMINISTRATIVE BUSINESS.”

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

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

66 **THE FILING OF A CRIMINAL COMPLAINT BY THE PCC**
67 **WITH THE DOJ.** The OFC shall be reorganized and allocated resources

68 as may be required therefor to effectively pursue such mandate.”

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

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

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

73 “(1) **DIRECTLY OR INDIRECTLY FIXING**
74 **PURCHASE OR SELLING PRICES,** [Restricting
75 ~~competition as to price~~], or components thereof, or other terms
76 of trade;

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

81 ~~[(b) The following agreements, between or among competitors~~
82 ~~which have the object or effect of substantially preventing,~~
83 ~~restricting or lessening competition shall be prohibited:]~~

84 “~~[(1)]~~(3) Setting, limiting, or controlling production,
85 markets, technical development, or investment; **AND**

86 “[(2)](4) Dividing or sharing the market, whether by
87 volume of sales or purchases, territory, type of goods or
88 services, buyers or sellers or any other means[;].

89 “[(e)](B) Agreements other than those specified in
90 **PARAGRAPH** (a) of this section which have the object or effect
91 of substantially preventing, restricting or lessening competition
92 shall also be prohibited: Provided, Those which contribute to
93 improving the production or distribution of goods and services or
94 to promoting technical or economic progress, while allowing
95 consumers a fair share of the resulting benefits, may not
96 necessarily be deemed a violation of this Act.

97 “x x x.”

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

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

102 “(a) x x x;

103 “(b) x x x;

104 “(c) x x x;

105 “(d) x x x;

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

services may be sold or traded, such as fixing prices, giving preferential discounts or rebate upon such price, or imposing conditions not to deal with competing entities, where the object or effect of the restrictions is to prevent, restrict or lessen competition substantially:

Provided, That nothing contained in this Act shall **NECESSARILY** ~~[prohibit or]~~ render unlawful:

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

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

“(B) **AFFORD SUCH ENTITIES THE POSSIBILITY OF ELIMINATING COMPETITION IN RESPECT OF A**

SUBSTANTIAL PART OF THE PRODUCTS IN QUESTION; or

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

“(f) x x x

“(g) x x x

“(h) x x x

“(i) X X X

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

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

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

Provided, finally, That the foregoing shall not constrain the

151 Commission or the relevant regulator from pursuing measures that would
152 promote fair competition or more competition as provided in this Act,

153 **INCLUDING THE IMPOSITION OF SIGNIFICANT MARKET**
154 **POWER OBLIGATIONS.”**

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

157 **“SEC. 17-A. COMPULSORY NOTIFICATION. – A PARTY**
158 **TO ANY MERGER OR ACQUISITION TRANSACTION THAT**
159 **MEETS THE THRESHOLD PROVIDED IN SEC. 17-B MUST**
160 **SUBMIT A NOTIFICATION OF THEIR TRANSACTION TO THE**
161 **COMMISSION CONTAINING THE FOLLOWING**
162 **INFORMATION:**

163 **“(A) NAMES OF THE PARTIES TO THE TRANSACTION**
164 **AND THE NATURE OF THEIR BUSINESSES**

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

166 **“(C) SUMMARY OF THE TRANSACTION AND COPY OF**
167 **DEFINITIVE AGREEMENTS**

168 **“(D) ANY OTHER PERTINENT INFORMATION AS**
169 **DETERMINED BY THE COMMISSION.**

170 **“PARTIES MUST SUBMIT THEIR NOTIFICATIONS TO**
171 **THE COMMISSION WITHIN THIRTY (30) DAYS AFTER**
172 **SIGNING OF DEFINITIVE AGREEMENTS RELATING TO THE**
173 **TRANSACTION BUT PRIOR TO ANY ACTS OF**

174 CONSUMMATING THE SAME.

175 “SEC. 17-B. COMPULSORY REVIEW. – A MERGER OR
176 ACQUISITION SHALL BE SUBJECT TO COMPULSORY
177 NOTIFICATION AND REVIEW BY THE COMMISSION IF THE
178 VALUE OF THE TRANSACTION EXCEEDS FIFTY BILLION
179 PESOS (Php50,000,000,000.00);

180 “AN AGREEMENT CONSUMMATED IN VIOLATION OF
181 THIS COMPULSORY REVIEW REQUIREMENT SHALL BE
182 CONSIDERED VOID AND SUBJECT THE PARTIES TO AN
183 ADMINISTRATIVE FINE OF ONE PERCENT (1%) TO FIVE
184 PERCENT (5%) OF THE VALUE OF THE TRANSACTION.

185 “SEC. 17-C. VOLUNTARY REVIEW. –A PARTY TO A
186 MERGER OR ACQUISITION TRANSACTION WHICH DOES
187 NOT MEET THE CRITERIA FOR COMPULSORY REVIEW
188 UNDER THE PREVIOUS SECTION MAY, UPON
189 NOTIFICATION, REQUEST THE COMMISSION TO REVIEW
190 THEIR PROPOSED MERGER OR ACQUISITION TO
191 DETERMINE IF THE PROPOSED MERGER OR ACQUISITION
192 AGREEMENT OR CERTAIN TERMS THEREUNDER WILL
193 SUBSTANTIALLY PREVENT, RESTRICT OR LESSEN
194 COMPETITION IN THE RELEVANT MARKET.”

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

197 “SEC. 17-D. [~~Compulsory~~] Notification **AND REVIEW**
198 **PROCEDURE.** – Parties to [~~the~~] a merger or acquisition [agreement
199 referred to in the preceding section wherein the value of the transaction
200 exceeds one billion pesos (Php1,000,000,000.00)] **THAT IS SUBJECT**
201 **TO REVIEW BY THE COMMISSION BY VIRTUE OF SECTIONS**
202 **17-B OR 17-C OF THIS ACT SHALL SUBMIT THE FOLLOWING**
203 **INFORMATION TO THE COMMISSION ALONG WITH THEIR**
204 **MERGER NOTIFICATION:**

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

207 “(2) **AN APPLICATION TO THE COMMISSION FOR A**
208 **DECISION.**

209 “**PARTIES TO A MERGER OR ACQUISITION THAT IS**
210 **SUBJECT TO REVIEW BY THE COMMISSION** are prohibited from
211 consummating their agreement until thirty (30) days after providing
212 notification to the Commission in the form and containing the information
213 specified in the regulations issued by the Commission: Provided, That the
214 Commission [shall] **MAY** promulgate other criteria, such as increased
215 market share in the relevant market in excess of minimum thresholds, that
216 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

239 deemed approved and the parties may proceed to implement or
240 consummate it. All notices, documents and information provided to or
241 emanating from the Commission under this section shall be subject to
242 confidentiality rule under Section 34 of this Act except when the release of
243 information contained therein is with the consent of the notifying entity or
244 is mandatorily required to be disclosed by law or by a valid order of a court
245 of competent jurisdiction, or of a government or regulatory agency,
246 including an exchange.

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

254
255 “A favorable recommendation by a governmental agency with a
256 competition mandate shall give rise to a disputable presumption that the
257 proposed merger or acquisition is not violative of this Act.”

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

260 “SEC. 17-E. MOTU PROPRIO REVIEW. — THE

261 COMMISSION MAY INITIATE A MOTU PROPRIO REVIEW
262 OF A MERGER OR ACQUISITION WHICH IT REASONABLY
263 SUSPECTS WILL SUBSTANTIALLY PREVENT, RESTRICT, OR
264 LESSEN COMPETITION.

265 “THE COMMISSION SHALL ISSUE A NOTICE TO THE
266 PARTIES TO THE AGREEMENT UPON INITIATION OF
267 REVIEW, INCLUDING INTERIM ORDERS AND A REQUEST
268 FOR INFORMATION IT DEEMS REASONABLY NECESSARY
269 TO THE CONDUCT OF ITS REVIEW. THE COMMISSION MAY
270 REQUEST RELEVANT INFORMATION FROM
271 GOVERNMENT AGENCIES, IF NECESSARY.

272 “IF PARTIES RECEIVE NOTICE OF REVIEW FROM
273 THE COMMISSION PRIOR TO CONSUMMATION OF THEIR
274 AGREEMENT, THEY ARE PROHIBITED FROM
275 CONSUMMATING THEIR AGREEMENT UNTIL THE SAME
276 HAS BEEN CLEARED BY THE COMMISSION.

277 “IF PARTIES RECEIVE THE NOTICE OF REVIEW AFTER
278 THE AGREEMENT SHALL HAVE BEEN
279 CONSUMMATED, THEN THE COMMISSION SHALL
280 CONDUCT THE REVIEW IN A MANNER THAT WILL RESULT
281 IN THE LEAST DISRUPTION IN THE BUSINESS OPERATIONS
282 OF, AND LEAST BURDENSOME ON, THE PARTIES.”

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

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

“(a) prohibit the implementation of the agreement;

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

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

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

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

**SEC. 19. Notification ~~{Threshold}~~ AND REVIEW
REQUIREMENTS. – The Commission shall, from time to time, adopt**

305 and publish regulations stipulating:

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

309 “(b) The information that must be supplied for notified mergerS or
310 acquisitionS **AND MERGERS OR ACQUISITIONS UNDERGOING**
311 **REVIEW;**

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

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

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

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

320 “**A MERGER OR ACQUISITION THAT IS DEEMED**
321 **PROHIBITED EX-POST SHALL BE SUBJECT TO THE**
322 **NECESSARY REMEDIES AS MAY BE DETERMINED BY THE**
323 **COMMISSION.”**

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

325 “SEC. 26. *Determination of Anti-Competitive Agreement or Conduct.* – In
326 determining whether an anti-competitive agreement or

327 conduct ~~[has been committed]~~ **SUBSTANTIALLY PREVENTS,**
328 **RESTRICTS, OR LESSENS COMPETITION,** the Commission, **IN**
329 **APPROPRIATE CASES,** shall, *INTER ALIA*:

330 “a) x x x”

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

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

336 “x x x.”

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

341 “x x x.”

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

344 “SEC. 28-A. **ASSISTANCE TO RELEVANT AGENCIES ON**
345 **INCENTIVES. – THE COMMISSION SHALL ASSIST THE**
346 **RELEVANT GOVERNMENT AGENCY ON FISCAL AND OTHER**
347 **INDUSTRY-SPECIFIC INCENTIVES IN ASSESSING**

348 POSSIBLE ANTI-COMPETITIVE EFFECTS OF INCENTIVE
349 SCHEMES OF THE GOVERNMENT BASED ON THE
350 FOLLOWING FACTORS:

351 “(1) WHETHER THE INCENTIVE SCHEME GRANTS
352 UNDUE COMPETITIVE ADVANTAGE TO AN ENTITY OR
353 ENTITIES;

354 “(2) WHETHER THE INCENTIVE SCHEME IS
355 PROPORTIONATE AND NECESSARY TO ACHIEVE A GIVEN
356 EFFICIENCY OR EQUITY OBJECTIVE;

357 “(3) WHETHER THE ACTUAL BENEFIT ACHIEVED
358 THROUGH THE INCENTIVE SCHEME OUTWEIGHS THE COST
359 OF DISTORTING COMPETITION; AND

360 “(4) OTHER FACTORS THAT MAY BE DETERMINED
361 BY THE COMMISSION.

362 “SEC. 28-B. RECOMMENDATION ON GOVERNMENT
363 INCENTIVES. – FOR INCENTIVES WHICH THE COMMISSION
364 DEEMS TO HAVE ADVERSELY AFFECTED COMPETITION
365 IN THE RELEVANT MARKET OR IN THE
366 MARKET FOR GOODS AND SERVICES ACCORDING TO
367 SECTION 24, THE COMMISSION SHALL ISSUE AN EXPERT
368 OPINION OR NO OBJECTION CERTIFICATE RULING TO THE
369 RELEVANT GOVERNMENT AGENCY ON FISCAL AND

370 **OTHER INDUSTRY-SPECIFIC INCENTIVES, AND**
371 **RECOMMEND REMEDIES SUCH AS THE REVISION OR**
372 **REVOCATION OF SUCH INCENTIVE SCHEME AND THE**
373 **RECOVERY OF INCENTIVES WITH INTEREST.”**

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

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

376 “(a) *Administrative Fines.* – In any investigation under Chapter III,
377 Sections 14 and 15, and Chapter IV, Sections 17 and 20 of this Act, after
378 due notice and hearing, the Commission may impose ~~[the following~~
379 ~~schedule of]~~ administrative fines **NOT EXCEEDING TEN PERCENT**
380 **(10%) OF THE TOTAL GLOBAL TURN-OVER OF THE**
381 **ULTIMATE PARENT ENTITY [on any] OF THE** entity found to
382 have violated the said sections[;].

383 ~~[First offense: Fine of up to one hundred million pesos~~

384 ~~(P100,000,000.00);~~

385 ~~Second offense: Fine of not less than one hundred million pesos~~

386 ~~(P100,000,000.00) but not more than two hundred fifty million pesos~~

387 ~~(P250,000,000.00).]~~

388 “In fixing the amount of the fine, the Commission shall have regard
389 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 THE**
19 **COMMISSION IN CONNECTION WITH AN**
20 **INVESTIGATION OR PROCEEDING BEING CONDUCTED,**

21 SHALL BE PENALIZED WITH A FINE OF NOT LESS THAN ONE
22 HUNDRED THOUSAND PESOS (Php100,000.00) UP TO FIVE
23 MILLION PESOS (Php5,000,000.00).

24 “REPRISAL OR DISCRIMINATION SHALL INCLUDE
25 REMOVAL, DISCHARGE, DEMOTION, SUSPENSION,
26 THREATS, HARASSMENT, OR ANY FORM OF RETALIATION
27 IN THE TERMS AND CONDITIONS OF EMPLOYMENT,
28 AGENCY, OR ENGAGEMENT, AS THE CASE MAY BE.

29 “(G) *FAILURE TO NOTIFY THE COMMISSION OF SALE,*
30 *DISPOSITION, OR ANY OTHER TRANSFER DURING*
31 *ADJUDICATION.* – A RESPONDENT THAT FAILS TO NOTIFY
32 THE COMMISSION OF ANY SALE, DONATION,
33 DISPOSITION, OR ANY OTHER TRANSFER, WHETHER
34 ABSOLUTE OR OTHERWISE, MADE DURING
35 ADJUDICATION, OF ITS INTEREST IN BUSINESSES,
36 SHAREHOLDINGS, BUSINESS UNITS, ASSETS, OR ANY
37 OTHER INTEREST RELATED TO MATTERS UNDER
38 ADJUDICATION SHALL BE PENALIZED WITH A FINE OF
39 NOT LESS THAN ONE HUNDRED THOUSAND PESOS
40 (Php100,000.00) UP TO FIVE MILLION PESOS (Php5,000,000.00).

41 “Provided that the schedule of fines indicated in this Section shall

42 be [~~increased~~] **REVIEWED AND MAY BE ADJUSTED** by the
43 Commission every five (5) years to maintain their real value from the time
44 it was set.”

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

46 “SEC. 30. *Criminal Penalties.* – An entity that enters into any
47 anticompetitive agreement as covered by Chapter III, Section 14(a) and
48 14(b) under this Act shall, for each and every violation, be penalized by
49 imprisonment from two (2) to seven (7) years, and a fine of not less than
50 fifty million pesos (Php50,000,000.00) but not more than two hundred
51 fifty million pesos (Php250,000,000.00) **OR A FINE EQUIVALENT**
52 **TO TEN PERCENT (10%) OF RELEVANT TURNOVER FOR THE**
53 **YEAR(S) OF INFRINGEMENT, WHICHEVER IS**
54 **GREATER.** The penalty of imprisonment shall be imposed upon the
55 responsible officers, and directors of the entity.

56 “X X X.”

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

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

64 **DIRECTLY OR INDIRECTLY, PARTICIPATED**
65 **OR CONSPIRED WITH OTHERS TO THE COMMISSION OF**
66 **THE**

67 **PROHIBITED ACTS OR VIOLATIONS SHALL BE LIABLE**

68 **UNDER THIS ACT.”**

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

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

74 **“THE COMMISSION SHALL EXERCISE ORIGINAL AND**
75 **EXCLUSIVE JURISDICTION OVER THE ADJUDICATION OF**
76 **ALL COMPETITION-RELATED CASES UNDER THIS ACT.**

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

82 “x x x.”

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

84 “SEC. 35. *Leniency Program.* –

85 “x x x.”

86 “(b) Upon the entity’s discovery of illegal activity, it took prompt
87 and effective action to terminate its participation therein; **UNDERTAKEN**
88 **IN CONSULTATION AND WITH THE**
89 **APPROVAL OF THE COMMISSION;**

90 “X X X.”

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

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

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

101 “[~~(2)~~] (1) At the time the entity comes forward, the Commission
102 does not have evidence against the entity that is likely to result in a
103 sustainable conviction; and

104 “[~~(3)~~] (2) The Commission determines that granting leniency would
105 not be unfair to others.

106 **“THE COMMISSION SHALL DEVELOP SPECIFIC**
107 **CRITERIA FOR QUALIFICATION FOR THE LENIENCY**

108 **PROGRAM AS IT DEEMS APPROPRIATE.**

109 “Such program shall include the immunity from any suit or charge
110 of affected parties and third parties, exemption, waiver, or gradation of
111 fines and/or penalties giving precedence to the entity submitting such
112 evidence. ~~[An entity cooperating or furnishing information, document or~~
113 ~~data to the Commission in connection to an investigation being conducted~~
114 ~~shall not be subjected to any form of reprisal or discrimination. Such~~
115 ~~reprisal or discrimination shall be considered a violation of this Act~~
116 ~~subject to the sanctions provided in this Act.]~~

117 “x x x.”

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

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

126 “(a) x x x

127 “(b) Show Cause Order. – Upon preliminary findings *motu proprio*
128 or on written complaint under oath by an interested party that any entity
129 is conducting its business, in whole or in part in a manner that may not

130 be in accord with the provisions of this Act or other competition laws,
131 and it finds that the issuance of a show cause order would be in the
132 interest of the public, the Commission shall issue and serve upon such
133 entity or entities a written description of its business conduct complained
134 of, a statement of the facts, data, and information together with a
135 summary of the evidence thereof, with an order requiring the said entity
136 or entities to show cause, within the period therein fixed, why no order
137 shall issue requiring such person or persons to cease and desist from
138 continuing with its identified business conduct, or pay the administrative
139 fine therein specified, or readjust its business conduct or practices;

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

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

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

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

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

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

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

164 “(d) x x x;

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

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

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

177 “SEC. 38. *Contempt*. – The Commission may ~~[summarily]~~ punish
178 for contempt ~~[by imprisonment not exceeding thirty (30) days or by a fine~~
179 ~~not exceeding one hundred thousand pesos (P 100,000.00), or both, any~~
180 ~~entity guilty of such]~~ **ANY OF THE FOLLOWING ACTS**
181 **COMMITTED AGAINST OR BEFORE THE COMMISSION OR**
182 **AGENCY, OFFICER, OR PERSON VESTED WITH AUTHORITY**
183 **OR DEPUTIZED BY THE COMMISSION:**

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

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

193 **“(B) REFUSAL TO BE SWORN AS A WITNESS OR TO**
194 **ANSWER QUESTIONS OR TO FURNISH INFORMATION**

195 WHEN LAWFULLY REQUIRED TO DO SO, AT A HEARING,
196 PROCEEDING, SESSION, OR INVESTIGATION, WITHOUT
197 ANY VALID OR JUST CAUSE;

198 “(C) WILLFUL FAILURE OR REFUSAL, WITHOUT JUST
199 CAUSE, TO COMPLY WITH A SUMMONS OR SUBPOENA; AND

200 “(D) FAILURE OR REFUSAL TO COMPLY WITH ANY
201 ORDER, RULING OR DECISION OF THE COMMISSION.

202 “CONTEMPT SHALL, AFTER DUE NOTICE AND
203 HEARING, BE PUNISHED BY IMPRISONMENT OF NOT
204 MORE THAN THIRTY (30) DAYS OR BY A FINE OF NOT
205 MORE THAN ONE HUNDRED THOUSAND PESOS
206 (Php100,000.00), OR BOTH, AS MAY BE DETERMINED UNDER
207 THE PROVISIONS OF THE RULES OF COURT OF THE
208 PHILIPPINES: PROVIDED, THAT WHEN THE PERSON
209 COMMITTS ANY OF THE ACTS UNDER (A) AND (B) IN THE
210 PRESENCE OF THE COMMISSION, THE PERSON SHALL BE
211 PUNISHED SUMMARILY.

212 ~~“WHEN THE CONTEMPT CONSISTS IN THE REFUSAL~~
213 ~~OR OMISSION TO DO AN ACT WHICH IS YET IN THE POWER~~
214 ~~OF THE PERSON TO PERFORM, HE MAY BE IMPRISONED BY~~
215 ~~ORDER OF THE COMMISSION UNTIL HE PERFORMS IT.”~~

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

217 “SEC. 39. *Appeals of the Decisions of the Commission.* –
218 Decisions of the Commission shall be appealable to the Court of Appeals
219 in accordance with ~~[the]~~ **RULE 65 OF THE** Rules of Court. The appeal
220 shall not stay the order, ruling or decision sought to be reviewed, unless
221 the Court of Appeals shall direct otherwise upon such terms and
222 conditions it may deem just. In the appeal, the Commission shall be
223 included as a party respondent to the case.”

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

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

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

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

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

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

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

239 ~~“[All fees, fines, penalties collected by the Commission shall not~~
240 ~~be retained by the Commission, but will be remitted to the National~~
241 ~~Treasury and shall accrue to the general funds.]~~ **THE COMMISSION**
242 **SHALL BE AUTHORIZED TO RETAIN 50% OF ALL FEES,**
243 **FINES, AND PENALTIES COLLECTED BY THE COMMISSION**
244 **FOR THE PURPOSE OF CREATING THE ANTITRUST FUND,**
245 **WHICH SHALL BE USED TO DEVELOP AND UTILIZE A**
246 **RESEARCH AND INVESTIGATION FUND, AS PROVIDED IN**
247 **SECTIONS 12(S) AND 12(Y) OF THIS ACT, FOR PURPOSES OF**
248 **ENFORCEMENT OPERATIONS, INFORMANT’S BENEFITS**
249 **OR PROTECTION, FUND STAFF DEVELOPMENT AND**
250 **SCHOLARSHIPS, REWARDS FOR REPORTING VIOLATIONS**
251 **OF THE PCA, THE ESTABLISHMENT OF A COMPLIANCE**
252 **PROGRAM, RESEARCH AND DEVELOPMENT, EDUCATION**
253 **AND ADVOCACY, AND OTHER NECESSARY EXPENDITURES**
254 **TO PROMOTE FAIR MARKET COMPETITION AND THE**
255 **OBJECTIVES OF THIS ACT. THE USE OF SUCH ADDITIONAL**
256 **AMOUNT SHALL BE SUBJECT TO THE AUDITING**
257 **REQUIREMENTS, STANDARDS, AND PROCEDURES UNDER**
258 **EXISTING LAWS.**

259 “Such funds necessary for the continuous and effective operation
260 of the Commission shall be included in the annual General

261 Appropriations Act.”

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

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

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

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

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

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

281 (c) Section 43 (k), (r), (s), (u) on functions of the ERC and Section 45

282

283 of Republic Act No. 9136, entitled “*An Act Ordaining Reforms in the Electric*
284 *Power Industry, Amending for the Purpose Certain Laws and for Other*
285 *Purposes, otherwise known as the ‘Electric Power Industry Reform Act of 2001;’*”

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

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

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

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

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

304 Approved,

