



**PHILIPPINE
COMPETITION
COMMISSION**

Ensuring businesses compete and consumers benefit

ENFORCEMENT HANDBOOK

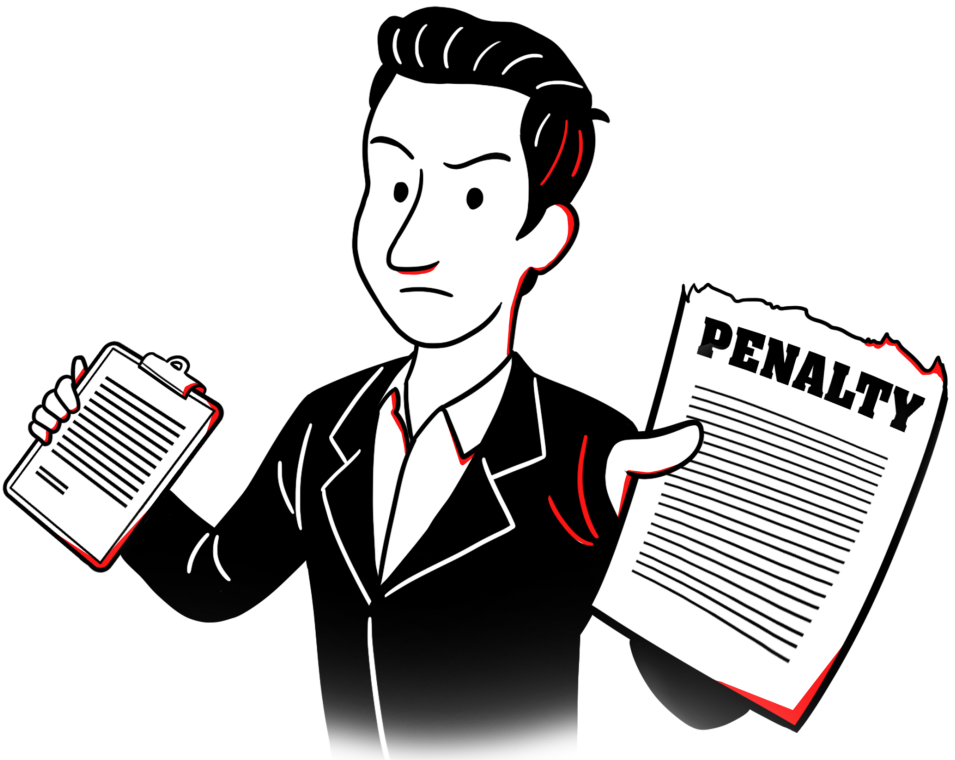


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THE PHILIPPINE COMPETITION ACT



Republic Act No. 10667

CONGRESS OF THE PHILIPPINES SIXTEENTH CONGRESS

Second Regular Session

AN ACT PROVIDING FOR A NATIONAL COMPETITION POLICY PROHIBITING ANTI-COMPETITIVE AGREEMENTS, ABUSE OF DOMINANT POSITION AND ANTI-COMPETITIVE MERGERS AND ACQUISITIONS, ESTABLISHING THE PHILIPPINE COMPETITION COMMISSION AND APPROPRIATING FUNDS THEREFOR

CHAPTER I GENERAL PROVISIONS

SEC. 1. Short Title. - This Act shall be known as the "Philippine Competition Act".

SEC. 2. Declaration of Policy. - The efficiency of market competition as a mechanism for allocating goods and services is a generally accepted precept. The State recognizes that past measures undertaken to liberalize key sectors in the economy need to be reinforced by measures that safeguard competitive conditions. The State also recognizes that the provision of equal opportunities to all promotes entrepreneurial spirit, encourages private investments, facilitates technology development and transfer and enhances resource productivity. Unencumbered market competition also serves the interest of consumers by allowing them to exercise their right of choice over goods and services offered in the market.

Pursuant to the constitutional goals for the national economy to attain a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged and the constitutional mandate that the State shall regulate or prohibit monopolies when the public interest so requires and that no combinations in restraint of trade or unfair competition shall be allowed, the State shall:

(a) Enhance economic efficiency and promote free and fair competition in trade, industry and all commercial economic activities, as well as establish a National Competition Policy to be implemented by the Government of the Republic of the Philippines and all of its political agencies as a whole;

(b) Prevent economic concentration which will control the production, distribution, trade, or industry that will unduly stifle competition, lessen, manipulate or constrict the discipline of free markets; and

(c) Penalize all forms of anti-competitive agreements, abuse of dominant position and anti-competitive mergers and acquisitions, with the objective of protecting consumer welfare and advancing domestic and international trade and economic development.

SEC. 3. Scope and Application. - This Act shall be enforceable against any person or entity engaged in any trade, industry and commerce in the Republic of the Philippines. It shall likewise be applicable to international trade having direct, substantial, and reasonably foreseeable effects in trade, industry, or commerce in the Republic of the Philippines, including those that result from acts done outside the Republic of the Philippines.

This Act shall not apply to the combinations or activities of workers or employees nor to agreements or arrangements with their employers when such combinations, activities, agreements, or arrangements are designed solely to facilitate collective bargaining in respect of conditions of employment.

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

(a) Acquisition refers to the purchase of securities or assets, through contract or other means, for the purpose of obtaining control by:

(1) One (1) entity of the whole or part of another;

(2) Two (2) or more entities over another; or

(3) One (1) or more entities over one (1) or more entities;

(b) Agreement refers to any type or form of contract, arrangement, understanding, collective recommendation, or concerted action, whether formal or informal, explicit or tacit, written or oral;

(c) Conduct refers to any type or form of undertaking, collective recommendation, independent or concerted action or practice, whether formal or informal;

(d) Commission refers to the Philippine Competition Commission created under this Act;

(e) Confidential business information refers to information which concerns or relates to the operations, production, sales, shipments, purchases, transfers, identification of customers, inventories, or amount or source of any income, profits, losses, expenditures;

(f) Control refers to the ability to substantially influence or direct the actions or decisions of an entity, whether by contract, agency or otherwise;

(g) Dominant Position refers to a position of economic strength that an entity or entities hold which makes it capable of controlling the relevant market independently from any or a combination of the following: competitors, customers, suppliers, or consumers;

(h) Entity refers to any person, natural or juridical, sole proprietorship, partnership, combination or association in any form, whether incorporated or not, domestic or foreign, including those owned or controlled by the government, engaged directly or indirectly in any economic activity;

(i) Market refers to the group of goods or services that are sufficiently interchangeable or substitutable and the object of competition, and the geographic area where said goods or services are offered;

(j) Merger refers to the joining of two (2) or more entities into an existing entity or to form a new entity;

(k) Relevant Market refers to the market in which a particular good or service is sold and which is a combination of the relevant product market and the relevant geographic market, defined as follows:

(1) A relevant product market comprises all those goods and/or services which are regarded as interchangeable or substitutable by the consumer or the customer, by reason of the goods and/or services' characteristics, their prices and their intended use; and

(2) The relevant geographic market comprises the area in which the entity concerned is involved in the supply and demand of goods and services, in which the conditions of competition are sufficiently homogenous and which can be distinguished from neighboring areas because the conditions of competition are different in those areas.

CHAPTER II PHILIPPINE COMPETITION COMMISSION

SEC. 5. Philippine Competition Commission. - To implement the national competition policy and attain the objectives and purposes of this Act, an independent quasi-judicial body is hereby created, which shall be known as the Philippine Competition Commission (PCC), hereinafter referred to as the Commission, and which shall be organized within sixty (60) days after the effectivity of this Act. Upon establishment of the Commission, Executive Order No. 45 designating the Department of Justice as the Competition Authority is hereby amended. The Office for Competition (OFC) under the Office of the Secretary of Justice shall however be retained, with its powers and functions modified pursuant to Section 13 of this Chapter.

The Commission shall be an attached agency to the Office of the President.

SEC. 6. Composition of the Commission. - The Commission shall be composed of a Chairperson and four (4) Commissioners. The Chairperson and Commissioners shall be citizens and residents of the Philippines, of good moral character, of recognized probity and independence and must have distinguished themselves professionally in public, civic or academic service in any of the following fields: economics, law, finance, commerce or engineering. They must have been in the active practice of their professions for at least ten (10) years, and must not have been candidates for any elective national or local office in the immediately preceding elections, whether regular or special: Provided, That at least one (1) shall be a member of the Philippine Bar with at least ten (10) years of experience in the active practice of law, and at least one (1) shall be an economist. The Chairperson and the Commissioners who shall have the rank equivalent of cabinet secretary and undersecretary, respectively, shall be appointed by the President.

SEC. 7. Term of Office. - The term of office of the Chairperson and the Commissioners shall be seven (7) years without reappointment. Of the first set of appointees, the Chairperson shall hold office

for seven (7) years and of the first four (4) Commissioners, two (2) shall hold office for a term of seven (7) years and two (2) for a term of five (5) years. In case a vacancy occurs before the expiration of the term of office, the appointment to such vacancy shall only be for the unexpired term of the predecessor.

The Chairperson and the Commissioners shall enjoy security of tenure and shall not be suspended or removed from office except for just cause as provided by law.

SEC. 8. Prohibitions and Disqualifications. - The Commissioners shall not, during their tenure, hold any other office or employment. They shall not, during their tenure, directly or indirectly practice any profession, except in a teaching capacity, participate in any business, or be financially interested in any contract with, or any franchise, or special privileges granted by the government or any subdivision, agency, or instrumentality thereof, including government-owned and-controlled corporations 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, that the election mentioned hereof is not a Barangay election or a Sangguniang Kabataan election. Provided they shall not be allowed to personally appear or practice as counsel or agent on any matter pending before the Commission for two (2) years following their cessation from office.

No spouse or relative by consanguinity or affinity within the fourth civil degree of any of the Commissioners, the Chairperson and the Executive Director of the Commission may appear as counsel nor agent on any matter pending before the Commission or transact business directly or indirectly therein during incumbency and within two (2) years from cessation of office.

SEC. 9. Compensation and Other Emoluments for Members and Personnel of the Commission. - The compensation and other emoluments for the members and personnel of the Commission shall be exempted from the coverage of Republic Act No. 6758, otherwise known as the "Salary Standardization Act". For this purpose, the salaries and other emoluments of the Chairperson, the Commissioners, and personnel of the Commission shall

be set based on an objective classification system, taking into consideration the importance and responsibilities attached to the respective positions, and shall be submitted to the President of the Philippines for his approval.

SEC. 10. Quorum. - Three (3) members of the Commission shall constitute a quorum and the affirmative vote of three (3) members shall be necessary for the adoption of any rule, ruling, order, resolution, decision or other acts of the Commission.

SEC. 11. Staff. - The Commission shall appoint, fix the compensation, and determine the status, qualifications, and duties of an adequate staff, which shall include an Executive Director of the Commission. The Executive Director shall be appointed by the Commission and shall have relevant experience in any of the fields of law, economics, commerce, management, finance or engineering for at least ten (10) years. The members of the technical staff, except those performing purely clerical functions, shall possess at least a Bachelor's Degree in any of the following lines of specialization: economics, law, finance, commerce, engineering, accounting, or management.

SEC. 12. Powers and Functions. - The Commission shall have original and primary jurisdiction over the enforcement and implementation of the provisions of this Act, and its implementing rules and regulations. The Commission shall exercise the following powers and functions:

(a) Conduct inquiry, investigate, and hear and decide on cases involving any violation of this Act and other existing competition laws *motu proprio* or upon receipt of a verified complaint from an interested party or upon referral by the concerned regulatory agency, and institute the appropriate civil or criminal proceedings;

(b) Review proposed mergers and acquisitions, determine thresholds for notification, determine the requirements and procedures for notification, and upon exercise of its powers to review, prohibit mergers and acquisitions that will substantially prevent, restrict, or lessen competition in the relevant market;

(c) Monitor and undertake consultation with stakeholders and affected agencies for the purpose of understanding market behavior;

(d) Upon finding, based on substantial evidence, that an entity has entered into an anti-competitive agreement or has abused its dominant position after due notice and hearing, stop or redress the same, by applying remedies, such as, but not limited to, issuance of injunctions, requirement of divestment, and disgorgement of excess profits under such reasonable parameters that shall be prescribed by the rules and regulations implementing this Act;

(e) Conduct administrative proceedings, impose sanctions, fines or penalties for any non-compliance with or breach of this Act and its implementing rules and regulations (IRR) and punish for contempt;

(f) Issue subpoena *duces tecum* and subpoena *ad testificandum* to require the production of books, records, or other documents or data which relate to any matter relevant to the investigation and personal appearance before the Commission, summon witnesses, administer oaths, and issue interim orders such as show cause orders and cease and desist orders after due notice and hearing in accordance with the rules and regulations implementing this Act;

(g) Upon order of the court, undertake inspections of business premises and other offices, land and vehicles, as used by the entity, where it reasonably suspects that relevant books, tax records, or other documents which relate to any matter relevant to the investigation are kept, in order to prevent the removal, concealment, tampering with, or destruction of the books, records, or other documents;

(h) Issue adjustment or divestiture orders including orders for corporate reorganization or divestment in the manner and under such terms and conditions as may be prescribed in the rules and regulations implementing this Act. Adjustment or divestiture orders, which are structural remedies, should only be imposed:

(1) Where there is no equally effective behavioral remedy; or

(2) Where any equally effective behavioral remedy would be more burdensome for the enterprise concerned than the structural remedy. Changes to the structure of an enterprise as it existed before the infringement was committed would only be proportionate to the substantial risk of a lasting or repeated infringement that derives from the very structure of the enterprise;

(i) Deputize any and all enforcement agencies of the government or enlist the aid and support of any private institution, corporation, entity or association, in the implementation of its powers and functions;

(j) Monitor compliance by the person or entities concerned with the cease and desist order or consent judgment;

(k) Issue advisory opinions and guidelines on competition matters for the effective enforcement of this Act and submit annual and special reports to Congress, including proposed legislation for the regulation of commerce, trade, or industry;

(l) Monitor and analyze the practice of competition in markets that affect the Philippine economy; implement and oversee measures to promote transparency and accountability; and ensure that prohibitions and requirements of competition laws are adhered to;

(m) Conduct, publish, and disseminate studies and reports on anti-competitive conduct and agreements to inform and guide the industry and consumers;

(n) Intervene or participate in administrative and regulatory proceedings requiring consideration of the provisions of this Act that are initiated by government agencies such as the Securities and Exchange Commission, Energy Regulatory Commission and the National Telecommunications Commission;

(o) Assist the National Economic and Development Authority, in consultation with relevant agencies and sectors, in the preparation and formulation of a national competition policy;

(p) Act as the official representative of the Philippine government in international competition matters;

(q) Promote capacity building and the sharing of best practices with other competition-related bodies;

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

(1) Reviewing economic and administrative regulations, *motu proprio* or upon request, as to whether or not they adversely affect relevant market competition, and advising the concerned agencies against such regulations; and

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

(s) Charge reasonable fees to defray the administrative cost of the services rendered.

SEC. 13. Office for Competition (OFC), Powers and Functions.

- The OFC under the Department of Justice (DOJ)-OFC shall only conduct preliminary investigation and undertake prosecution of all criminal offenses arising under this act and other competition related laws in accordance with Section 31 of Chapter VI of this act. The OFC shall be reorganized and allocated resources as may be required therefor to effectively pursue such mandate.

**CHAPTER III
PROHIBITED ACTS**

SEC. 14. Anti-Competitive Agreements. –

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

(1) Restricting competition as to price, or components thereof, or other terms of trade;

(2) Fixing price at an auction or in any form of bidding including cover bidding, bid suppression, bid rotation and market allocation and other analogous practices of bid manipulation;

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

(1) Setting, limiting, or controlling production, markets, technical development, or investment;

(2) Dividing or sharing the market, whether by volume of sales or purchases, territory, type of goods or services, buyers or sellers or any other means.

(c) Agreements other than those specified in (a) and (b) of this Section which have the object or effect of substantially preventing, restricting or lessening competition shall also be prohibited: Provided, Those which contribute to improving the production or distribution of goods and services or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefits, may not necessarily be deemed a violation of this Act.

An entity that controls, is controlled by, or is under common control with another entity or entities, have common economic interests, and are not otherwise able to decide or act independently of each other, shall not be considered competitors for purposes of this Section.

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

(a) Selling goods or services below cost with the object of driving competition out of the relevant market: Provided, That in the Commission's evaluation of this fact, it shall consider whether the entity or entities have no such object and the price established was in good faith to meet or compete with the lower price of a competitor in the same market selling the same or comparable product or service of like quality;

(b) Imposing barriers to entry or committing acts that prevent competitors from growing within the market in an anti-competitive manner except those that develop in the market as a result of or arising from a superior product or process, business acumen, or legal rights or laws;

(c) Making a transaction subject to acceptance by the other parties of other obligations which, by their nature or according to commercial usage, have no connection with the transaction;

(d) Setting prices or other terms or conditions that discriminate unreasonably between customers or sellers of the same goods or services, where such customers or sellers are contemporaneously trading on similar terms and conditions, where the effect may be to lessen competition substantially: Provided, That the following shall be considered permissible price differentials:

(1) socialized pricing for the less fortunate sector of the economy;

(2) price differential which reasonably or approximately reflect differences in the cost of manufacture, sale, or delivery resulting from differing methods, technical conditions, or quantities in which the goods or services are sold or delivered to the buyers or sellers;

(3) price differential or terms of sale offered in response to the competitive price of payments, services or changes in the facilities furnished by a competitor; and

(4) price changes in response to changing market conditions, marketability of goods or services, or volume;

(e) Imposing restrictions on the lease or contract for sale or trade of 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 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; or

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

(f) Making supply of particular goods or services dependent upon the purchase of other goods or services from the supplier which have no direct connection with the main goods or services to be supplied;

(g) Directly or indirectly imposing unfairly low purchase prices for the goods or services of, among others, marginalized agricultural producers, fisherfolk, micro-, small-, medium-scale enterprises, and other marginalized service providers and producers;

(h) Directly or indirectly imposing unfair purchase or selling price on their competitors, customers, suppliers or consumers, Provided that prices that develop in the market as a result of or due to a superior product or process, business acumen or legal rights or laws shall not be considered unfair prices; and

(i) Limiting production, markets or technical development to the prejudice of consumers, provided that limitations that develop in the market as a result of or due to a superior product or process, business acumen or legal rights or laws shall not be a violation of this Act;

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

CHAPTER IV MERGERS AND ACQUISITIONS

SEC. 16. Review of Mergers and Acquisitions. - The Commission shall have the power to review Mergers and Acquisitions based on factors deemed relevant by the Commission.

SEC. 17. Compulsory Notification. - Parties to the merger or acquisition agreement referred to in the preceding section wherein the value of the transaction exceeds One Billion Pesos (P1,000,000,000.00) are prohibited from consummating their agreement until thirty (30) days after providing notification to the Commission in the form and containing the information specified in the regulations issued by the Commission: Provided, That the Commission shall promulgate other criteria, such as increased market share in the relevant market in excess of minimum thresholds, that 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.

An agreement consummated in violation of this requirement to notify the Commission 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 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 deemed approved and the parties may proceed to implement or consummate it. All notices, documents and information provided to or emanating from the Commission

under this section shall be subject to confidentiality rule under Section 34 of this Act except when the release of information contained therein is with the consent of the notifying entity or is mandatorily required to be disclosed by law or by a valid order of a court of competent jurisdiction, or of a government or regulatory agency, including an exchange.

In the case of the merger or acquisition of banks, banking institutions, building and loan associations, trust companies, insurance companies, public utilities, educational institutions and other special corporations governed by special laws, a favorable or no-objection ruling by the Commission shall not be construed as dispensing of the requirement for a favorable recommendation by the appropriate government agency under Section 79 of the Corporation Code of the Philippines.

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

SEC. 18. Effect of Notification. - If within the relevant periods stipulated in the preceding Section, the Commission determines that such agreement is prohibited under Section 20 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.

SEC. 19. Notification Threshold. - The Commission shall, from time to time, adopt and publish regulations stipulating:

- (a) The transaction value threshold and such other criteria subject to the notification requirement of Section 17 of this Act;

(b) The information that must be supplied for notified mergers or acquisition;

(c) Exceptions or exemptions from the notification requirement; and

(d) Other rules relating to the notification procedures.

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

SEC. 21. Exemptions from Prohibited Mergers and Acquisitions. – Merger or acquisition agreement prohibited under Section 20 of this Chapter may, nonetheless, be exempt from prohibition by the Commission when the parties establish either of the following:

(a) The concentration has brought about or is likely to bring about gains in efficiencies that are greater than the effects of any limitation on competition that result or likely to result from the merger or acquisition agreement; or

(b) A party to the merger or acquisition agreement is faced with actual or imminent financial failure, and the agreement represents the least anti-competitive arrangement among the known alternative uses for the failing entity's assets:

Provided, That an entity shall not be prohibited from continuing to own and hold the stock or other share capital or assets of another corporation which it acquired prior to the approval of this Act or acquiring or maintaining its market share in a relevant market through such means without violating the provisions of this Act.

Provided further, That the acquisition of the stock or other share capital of one or more corporations solely for investment and not used for voting or exercising control and not to otherwise bring about, or attempt to bring about the prevention, restriction, or lessening of competition in the relevant market shall not be prohibited.

SEC. 22. Burden of Proof. – The burden of proof under Section 21 lies with the parties seeking the exemption. A party seeking to rely on the exemption specified in Section 21(a) must demonstrate that if the agreement were not implemented, significant efficiency gains would not be realized.

SEC. 23. Finality of Rulings on Mergers and Acquisitions. – Merger or acquisition agreements that have received a favorable ruling from the Commission, except when such ruling was obtained on the basis of fraud or false material information, may not be challenged under this Act.

CHAPTER V DISPOSITION OF CASES

SEC. 24. Relevant Market. – For purposes of determining the relevant market, the following factors, among others, affecting the substitutability among goods or services constituting such market and the geographic area delineating the boundaries of the market shall be considered:

(a) The possibilities of substituting the goods or services in question, with others of domestic or foreign origin, considering the technological possibilities, extent to which substitutes are available to consumers and time required for such substitution;

(b) The cost of distribution of the good or service, its raw materials, its supplements and substitutes from other areas and abroad, considering freight, insurance, import duties and non-tariff restrictions; the restrictions imposed by economic agents or by their associations; and the time required to supply the market from those areas;

(c) The cost and probability of users or consumers seeking other markets; and

(d) National, local or international restrictions which limit access by users or consumers to alternate sources of supply or the access of suppliers to alternate consumers.

SEC. 25. Control of an Entity. – In determining the control of an entity, the Commission may consider the following:

Control is presumed to exist when the parent owns directly or indirectly, through subsidiaries, more than one half (1/2) of the voting power of an entity, unless in exceptional circumstances, it can clearly be demonstrated that such ownership does not constitute control. Control also exists even when an entity owns one half (1/2) or less of the voting power of another entity when:

(a) There is power over more than one half (1/2) of the voting rights by virtue of an agreement with investors;

(b) There is power to direct or govern the financial and operating policies of the entity under a statute or agreement;

(c) There is power to appoint or remove the majority of the members of the board of directors or equivalent governing body;

(d) There is power to cast the majority votes at meetings of the board of directors or equivalent governing body;

(e) There exists ownership over or the right to use all or a significant part of the assets of the entity;

(f) There exist rights or contracts which confer decisive influence on the decisions of the entity.

SEC. 26. Determination of Anti-Competitive Agreement or Conduct. – In determining whether anti-competitive agreement or conduct has been committed, the Commission shall:

(a) Define the relevant market allegedly affected by the anti-competitive agreement or conduct, following the principles laid out in Section 24 of this Chapter;

(b) Determine if there is actual or potential adverse impact on competition in the relevant market caused by the alleged agreement or conduct, and if such impact is substantial and outweighs the actual or potential efficiency gains that result from the agreement or conduct;

(c) Adopt a broad and forward-looking perspective, recognizing future market developments, any overriding need to make the goods or services available to consumers, the requirements of large investments in infrastructure, the requirements of law, and the need of our economy to respond to international competition, but also taking account of past behavior of the parties involved and prevailing market conditions;

(d) Balance the need to ensure that competition is not prevented or substantially restricted and the risk that competition efficiency, productivity, innovation, or development of priority areas or industries in the general interest of the country may be deterred by overzealous or undue intervention; and

(e) Assess the totality of evidence on whether it is more likely than not that the entity has engaged in anti-competitive agreement or conduct including whether the

entity's conduct was done with a reasonable commercial purpose such as but not limited to phasing out of a product or closure of a business, or as a reasonable commercial response to the market entry or conduct of a competitor.

SEC. 27. Market Dominant Position. – In determining whether an entity has market dominant position for purposes of this Act, the Commission shall consider the following:

- (a) The share of the entity in the relevant market and whether it is able to fix prices unilaterally or to restrict supply in the relevant market;
- (b) The existence of barriers to entry and the elements which could foreseeably alter both said barriers and the supply from competitors;
- (c) The existence and power of its competitors;
- (d) The possibility of access by its competitors or other entities to its sources of inputs;
- (e) The power of its customers to switch to other goods or services; (f) Its recent conducts; and
- (g) Other criteria established by the regulations of this Act.

There shall be a rebuttable presumption of market dominant position if the market share of an entity in the relevant market is at least fifty percent (50%), unless a new market share threshold is determined by the Commission for that particular sector.

The Commission shall from time to time determine and publish the threshold for dominant position or minimum level of share in the relevant market that could give rise to a presumption of dominant position. In such determination, the Commission would consider the structure of the relevant market, degree of integration, access to end-users, technology and financial resources, and other factors affecting the control of a market, as provided in sub-sections (a) to (g) of this Section.

The Commission shall not consider the acquiring, maintaining and increasing of market share through legitimate means not substantially preventing, restricting, or lessening competition in the market such as but not limited to having

superior skills, rendering superior service, producing or distributing quality products, having business acumen, and the enjoyment and use of protected intellectual property rights as violative of this Act.

SEC. 28. Forbearance. – The Commission may forbear from applying the provisions of this Act, for a limited time, in whole or in part, in all or specific cases, on an entity or group of entities, if in its determination:

- (a) Enforcement is not necessary to the attainment of the policy objectives of this Act;
- (b) Forbearance will neither impede competition in the market where the entity or group of entities seeking exemption operates nor in related markets; and
- (c) Forbearance is consistent with public interest and the benefit and welfare of the consumers.

A public hearing shall be held to assist the Commission in making this determination.

The Commission's order exempting the relevant entity or group of entities under this Section shall be made public. Conditions may be attached to the forbearance if the Commission deems it appropriate to ensure the long-term interest of consumers.

In the event that the basis for the issuance of the exemption order ceases to be valid, the order may be withdrawn by the Commission.

CHAPTER VI FINES AND PENALTIES

SEC. 29. Administrative Penalties. –

(a) Administrative Fines. – In any investigation under Chapter III, Sections 14 and 15, and Chapter IV, Sections 17 and 20 of this Act, after due notice and hearing, the Commission may impose the following schedule of administrative fines on any entity found to have violated the said Sections:

First offense: Fine of up to One Hundred Million Pesos (P100,000,000.00);

Second offense: Fine of not less than One Hundred Million Pesos (P100,000,000.00) but not more than Two Hundred Fifty Million Pesos (P250,000,000.00).

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

(b) Failure to Comply With An Order of the Commission. – An entity which fails or refuses to comply with a ruling, order or decision issued by the commission shall pay a penalty of not less than Fifty Thousand Pesos (P50,000.00) up to Two Million Pesos (P2,000,000.00) for each violation and a similar amount of penalty for each day thereafter until the said entity fully complies. Provided that these fines shall only accrue daily beginning forty-five (45) days from the time that the said decision, order or ruling was received.

(c) Supply of Incorrect or Misleading Information. – The Commission may likewise impose upon any entity fines of up to One million pesos (P1,000,000.00) where, intentionally or negligently, they supply incorrect or misleading information in any document, application or other paper filed with or submitted to the Commission or supply incorrect or misleading information in an application for a binding ruling, a proposal for a consent judgment, proceedings relating to a show cause order, or application for modification of the Commission's ruling, order or approval, as the case may be.

(d) Any other violations not specifically penalized under the relevant provisions of this Act shall be penalized by a fine of not less than Fifty Thousand Pesos (P50,000.00) up to Two Million Pesos (P2,000,000.00).

Provided that the schedule of fines indicated in this Section shall be increased by the Commission every five (5) years to maintain their real value from the time it was set.

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 (P50,000,000.00) but not more than Two Hundred Fifty Million Pesos (P250,000,000.00). The penalty of imprisonment shall be imposed upon the responsible officers, and directors of the entity.

When the entities involved are juridical persons, the penalty of imprisonment shall be imposed on its officers, directors, or employees holding managerial positions, who are knowingly and willfully responsible for such violation.

CHAPTER VII ENFORCEMENT

SEC. 31. Fact Finding; Preliminary Inquiry. – The Commission, *motu proprio*, or upon the filing of a verified complaint by an interested party or upon referral by a regulatory agency, shall have the sole and exclusive authority to initiate and conduct a fact-finding or preliminary inquiry for the enforcement of this Act based on reasonable grounds.

The Commission, after considering the statements made, or documents or articles produced in the course of the fact-finding or preliminary inquiry, shall terminate the same by:

(a) Issuing a resolution ordering its closure if no violation or infringement of this Act is found; or

(b) Issuing a resolution to proceed, on the basis of reasonable grounds, to the conduct of a full administrative investigation.

The Commission, after due notice and hearing, and on the basis of facts and evidence presented, may issue an order for the temporary cessation or desistance from the performance of certain acts by the respondent entity, the continued performance of which would result in a material and adverse effect on consumers or competition in the relevant market.

If the evidence so warrants, the Commission may file before the DOJ criminal complaints for violations of this Act or relevant laws for preliminary investigation and prosecution before the proper court. The DOJ shall conduct such preliminary investigation in accordance with the revised rules of criminal procedure.

The preliminary inquiry shall, in all cases, be completed by the Commission within ninety (90) days from submission of the verified complaint, referral, or date of initiation by the Commission, *motu proprio*, of the same.

Except as provided in Section 12 (i) of Chapter II of this Act, no law enforcement agency shall conduct any kind of fact-finding, inquiry or investigation into any competition related matters.

SEC. 32. Relationship With Sector Regulators. The Commission shall have original and primary jurisdiction in the enforcement and regulation of all competition-related issues.

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

Where appropriate, the Commission and the sector regulators shall work together to issue rules and regulations to promote competition, protect consumers, and prevent abuse of market power by dominant players within their respective sectors.

SEC. 33. Power to Investigate and Enforce Orders and Resolutions. – The Commission shall conduct inquiries by administering oaths, issuing subpoena *duces tecum* and summoning witnesses, and commissioning consultants or experts. It shall determine if any provision of this Act has been violated, enforce its orders and carry out its resolutions by making use of any available means, provisional or otherwise, under existing laws and procedures including the power to punish for contempt and to impose fines.

SEC. 34. Confidentiality of Information. – Confidential business information submitted by entities, relevant to any inquiry or investigation being conducted pursuant to this Act as well as any deliberation in relation thereto, shall not, in any manner, be directly or indirectly disclosed, published, transferred, copied, or disseminated. Likewise, the Commission shall, to the extent possible, subject such information to the confidentiality rule provided under this section when it issues notices, bulletins, rulings and other documents: Provided, That the confidentiality rule shall not apply if the notifying entity consents to the disclosure, or the document or information is mandatorily required to be disclosed by law or by a valid order of a court of competent jurisdiction or of a government or regulatory agency, including an exchange. The identity of the persons who provide information to the Commission under condition of anonymity, shall remain confidential, unless such confidentiality is expressly waived by these persons.

Any violation of this provision shall be imposed a fine of not less than One Million Pesos (P1,000,000.00) but not more than Five Million Pesos (P5,000,000.00).

SEC. 35. Leniency Program. - The Commission shall develop a Leniency Program to be granted to any entity in the form of immunity from suit or reduction of any fine which would otherwise be imposed on a participant in an anti-competitive agreement as provided in Section 14(a) and 14(b) of this Act in exchange for the voluntary disclosure of information regarding such an agreement which satisfies specific criteria prior to or during the fact finding or preliminary inquiry stage of the case.

Immunity from suit will be granted to an entity reporting illegal anti- competitive activity before a fact finding or preliminary inquiry has begun if the following conditions are met:

(a) At the time the entity comes forward, the Commission has not received information about the activity from any other source;

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

(c) The entity reports the wrongdoing with candor and completeness and provides full, continuing, and complete cooperation throughout the investigation; and

(d) The entity did not coerce another party to participate in the activity and clearly was not the leader in, or the originator of, the activity.

Even after the Commission has received information about the illegal activity after a fact finding or preliminary inquiry has commenced, the reporting entity will be conditions (b) and (c) and the following additional requirements are complied with:

(1) The entity is the first to come forward and qualify for leniency;

(2) At the time the entity comes forward, the Commission does not have evidence against the entity that is likely to result in a sustainable conviction; and

(3) The Commission determines that granting leniency would not be unfair to others.

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

Nothing in this Section shall preclude prosecution for entities that report to the Commission false, misleading, or malicious information, data or documents damaging to the business or integrity of the entities under inquiry as a violation of said Section. An entity found to have reported false, misleading or malicious information, data, or document may be penalized by a fine not less than the penalty imposed in the Section reported to have been violated by the entity complained of.

The DOJ-OFC may likewise grant leniency or immunity as provided in this Section in the event that there is already a preliminary investigation pending before it.

SEC. 36. Nolo Contendere. - An entity charged in a criminal proceeding pursuant to Section 14(a) and 14(b) of this Act may enter a plea of *Nolo Contendere*, in which he does not accept nor deny responsibility for the charges but agrees to accept punishment as if he had pleaded guilty. The plea cannot be used against the defendant entity to prove liability in a civil suit arising from the criminal action nor in another cause of action: Provided, That a plea of *Nolo Contendere* may be entered only up to arraignment and subsequently, only with the permission of the court which shall accept it only after weighing its effect on the parties, the public and the administration of justice.

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

(a) Binding Ruling. - Where no prior complaint or investigation has been initiated, any entity that is in doubt as to whether a contemplated act, course of conduct, agreement, or decision, is in compliance with, is exempt from, or is in violation of any of the provisions of this Act, other competition laws, or implementing rules and regulations thereof, may request the Commission, in writing, to render a binding ruling thereon; Provided that the ruling is for a specified period, subject to extension as may be determined by the commission, and based on substantial evidence.

In the event of an adverse binding ruling on an act, course or conduct, agreement, or decision, the applicant shall be provided with a reasonable period, which in no case shall be more than ninety (90) days, to abide by the ruling of the Commission and shall not be subject to administrative, civil, or criminal action unless the applicant fails to comply with the provisions of this Act;

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

(c) Consent Order. - At any time prior to the conclusion by the commission of its inquiry, any entity under inquiry may, without in any manner admitting a violation of this Act or any other competition laws, submit to the commission a written proposal for the entry of a consent order, specifying therein the terms and conditions of the proposed consent order which shall include among others the following:

(1) The payment of an amount within the range of fines provided for under this Act;

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

(3) Payment of damages to any private party/ parties who may have suffered injury; and

(4) Other terms and conditions that the Commission deems appropriate and necessary for the effective enforcement of this Act or other Competition Laws.

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

(d) Monitoring of Compliance. - The Commission shall monitor the compliance by the entity or entities concerned, their officers, and employees, with the final and executory binding ruling, cease and desist order, or approval of a consent judgment. upon motion of an interested party/ parties, the commission shall issue a certification or resolution to the effect that the entity or entities concerned have, or have not, as the case may be, complied with a final and executory ruling, order, or approval.

(e) Inadmissibility of Evidence in Criminal Proceedings. - The request for a binding ruling, the show cause order, or the proposal for consent order; the facts, data, and information therein contained or subsequently supplied by the entity or entities concerned; admissions, oral or written, made by them against their interest; all other documents filed by them, including their evidence presented in the proceedings before the Commission; and the judgment or order rendered thereon; shall not be admissible as

evidence in any criminal proceedings arising from the same act subject of the binding ruling, show cause order or consent order against such entity or entities, their officers, employees, and agents.

SEC. 38. Contempt. - The Commission may summarily punish for contempt by imprisonment not exceeding thirty (30) days or by a fine not exceeding one hundred thousand pesos (P100,000.00), or both, any entity guilty of such misconduct in the presence of the Commission in its vicinity as to seriously interrupt any hearing, session or any proceedings before it, including cases in which an entity willfully fails or refuses, without just cause, to comply with a summons, subpoena or subpoena *duces tecum* legally issued by the commission being present at a hearing, proceeding, session or investigation, refused to be sworn as a witness or to answer questions or to furnish information when lawfully required to do so.

SEC. 39. Appeals of the Decisions of the Commission. - Decisions of the Commission shall be appealable to the Court of Appeals in accordance with the Rules of Court. The appeal shall not stay the order, ruling or decision sought to be reviewed, unless the Court of Appeals shall direct otherwise upon such terms and conditions it may deem just. In the appeal, the Commission shall be included as a party respondent to the case.

SEC. 40. Writ of Execution. - Upon the finality of its binding ruling, order, resolution, decision, judgment, or rule or regulation, collectively, the Commission may issue a writ of execution to enforce its decision and the payment of the administrative fines provided in the preceding sections.

SEC. 41. Basic Necessities and Prime Commodities. - If the violation involves the trade or movement of basic necessities and prime commodities as defined by RA 7581, as amended, the fine imposed by the Commission or the courts, as the case may be, shall be tripled.

SEC. 42. Immunity from Suit. - The Chairperson, the Commissioners, officers, employees and agents of the Commission shall not be subject to any action, claim or demand in connection with any act done or omitted by them in the performance of their duties and exercise of their powers except for those actions and omissions done in evident bad faith or gross negligence.

SEC. 43. Indemnity. - Unless the actions of the Commission or its Chairperson, any of its Commissioners, officers, employees and agents are found to be in willful violation of this Act, performed with evident bad faith or gross negligence, the Commission, its Chairperson, Commissioners, officers, employees and agents are held free and harmless to the fullest extent permitted by law from any liability, and they shall be indemnified for any and all liabilities, losses, claims, demands, damages, deficiencies, costs and expenses of whatsoever kind and nature that may arise in connection with the exercise of their powers and performance of their duties and functions.

The Commission shall underwrite or advance litigation costs and expenses, including legal fees and other expenses of external counsel, or provide legal assistance to its Chairperson, Commissioners, officers, employees, or agents in connection with any civil, criminal, administrative or any other action or proceeding, to which they are made a party by reason of, or in connection with, the exercise of authority or performance of duties and functions under this Act: Provided, That such legal protection shall not apply to any civil, criminal, administrative, or any action or proceeding that may be initiated by the Commission, against such Chairperson, Commissioners, officers, employees, or agents: Provided, further, That the Chairperson, Commissioners, officers, employees, or agents who shall resign, retire, transfer to another agency or be separated from the service, shall continue to be provided with such legal protection in connection with any act done or omitted to be done by them in good faith during their tenure or employment with the Commission: Provided, finally, That in the event of a settlement or compromise, indemnification shall be provided only in connection with such matters covered by the settlement as to which the Commission is advised by counsel that the persons to be indemnified did not commit any negligence or misconduct.

The costs and expenses incurred in defending the aforementioned action, suit or proceeding may be paid by the Commission in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the Chairperson, Commissioner, officer, employee or agent to repay the amount advanced should it ultimately be determined by the Commission that one is not entitled to be indemnified as provided in this section.

SEC. 44. Jurisdiction of the Regional Trial Court. - The Regional Trial Court of the city or province where the entity or any of the entities whose business act or conduct constitutes the subject matter of a case, conducts its principal place of business, shall have original and exclusive jurisdiction, regardless of the penalties and fines herein imposed, of all criminal and civil cases involving violations of this Act and other competition related laws.

If the defendant or anyone is charged in the capacity of a director, officer, shareholder, employee, or agent of a corporation or other juridical entity who knowingly and willfully authorized the commission of the offense charged, the Regional Trial Court of the city or province where such corporation or juridical entity conducts its principal place of business, shall have jurisdiction.

SEC. 45. Private Action. - Any person who suffers direct injury by reason of any violation of this Act may institute a separate and independent civil action after the Commission has completed the preliminary inquiry provided under Section 31.

CHAPTER VIII OTHER PROVISIONS

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

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

(b) For administrative and civil actions, the time the cause of action accrues.

SEC. 47. Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Injunctions and Preliminary Mandatory Injunctions. - Except for the Court of Appeals and the Supreme Court, no other court shall issue any temporary restraining order, preliminary injunction or preliminary mandatory injunction against the Commission in the exercise of its duties or functions: Provided, That, this prohibition shall apply in all cases, disputes or controversies instituted by a private party, including, but not limited to, cases filed by entities or those claiming to have rights through such entities: Provided, however, That, this prohibition shall not apply when the matter is of extreme urgency involving a constitutional issue, such that the non- issuance of a temporary restraining order will result in grave injustice and irreparable injury to the public: Provided, further, That, the applicant shall file a bond, in an amount to be fixed by the Court, but in no case shall it exceed twenty percent (20%) of the imposable fines provided for under Chapter VI, Section 29 of this Act: Provided, finally, That in the event that the court finally decides that the applicant was not entitled to the relief applied for, the bond shall accrue in favor of the Commission.

Any temporary restraining order, preliminary injunction or preliminary mandatory injunction issued in violation of this section is void and of no force and effect. Any judge who violates this section shall be penalized by suspension of at least one (1) year without pay in addition to other criminal, civil or administrative penalties.

**CHAPTER IX
FINAL PROVISIONS**

SEC. 48. Trade Associations. - Nothing contained in this Act shall be construed to prohibit the existence and operation of trade associations organized to promote quality standards and safety issues: Provided, That, these associations shall not in any way be used to justify any violation of this Act; Provided, however, That it shall not be illegal to use the association as a forum to discuss or promote quality standards, efficiency, safety, security, productivity, competitiveness and other matters of common interest involving the industry; Provided, further, That such is done without any anti-competitive intent or effect.

SEC. 49. Congressional Oversight Committee. - To oversee the implementation of this Act, there shall be created a Congressional Oversight Committee on Competition (COCC) to be composed of the Chairpersons of the Senate Committees on Trade and Commerce, Economic Affairs, and Finance, the Chairpersons of the House of Representatives Committees on Economic Affairs, Trade and Industry, and Appropriations and two (2) members each from the Senate and the House of Representatives who shall be designated by the Senate President and the Speaker of the House of Representatives: Provided, That one (1) of the two (2) Senators and one (1) of the two (2) House Members shall be nominated by the respective Minority Leaders of the Senate and the House of Representatives. The Congressional Oversight Committee shall be jointly chaired by the Chairpersons of the Senate Committee on Trade and Commerce and the House of Representatives Committee on Economic Affairs.

The Vice Chairperson of the Congressional Oversight Committee shall be jointly held by the Chairpersons of the Senate Committee on Economic Affairs and the House of Representatives Committee on Trade and Industry.

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

SEC. 50. Implementing Rules and Regulations. - Within one hundred eighty (180) days from the effectivity of this Act, the Commission, in consultation with the DOJ-OFC and concerned sector regulators shall promulgate the necessary implementing rules and regulations for the implementation of this Act: Provided, That, the Commission may revise such implementing rules and regulations as it deems necessary: Provided, however, That such revised implementing rules and regulations for the implementation of this Act: Provided, That, the Commission may revise such implementing rules and regulations as it deems necessary: Provided, however, That such revised implementing rules and regulations shall only take effect fifteen (15) days following its publication in two (2) newspapers of general circulation.

SEC. 51. Appropriations and Use of Fees, Charges and Penalties. - The initial budgetary requirements of the Commission of Three Hundred Million Pesos (P300,000,000.00) is hereby appropriated.

All fees, fines, penalties collected by the Commission shall not be retained by the Commission, but will be remitted to the National Treasury and shall accrue to the general funds.

Such funds necessary for the continuous and effective operation of the Commission shall be included in the Annual General Appropriations Act.

SEC. 52. Transparency Clause. - Final decisions, orders and rulings of the commission shall be published on the official website subject to Section 34 of this Act.

Records of public proceedings shall be made available to the public subject to Section 34 of this Act.

SEC. 53. Transitional Clause. - In order to allow affected parties time to renegotiate agreements or restructure their business

to comply with the provisions of this Act, an existing business structure, conduct, practice or any act that may be in violation of this Act shall be subject to the administrative, civil and criminal penalties prescribed herein only if it is not cured or is continuing upon the expiration of two (2) years after the effectivity of this Act: Provided, That this section shall not apply to administrative, civil and criminal proceedings against anti-competitive agreement or conduct, abuse of dominant position, and anti-competitive mergers and acquisitions, initiated prior to the entry into force of this Act: Provided, further, That during the said two (2)-year period, the government shall undertake an advocacy program to inform the general public of the provisions of this Act.

SEC. 54. Separability Clause. – If any clause, sentence, section or part of this Act shall be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this Act, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy.

SEC. 55. Repealing Clause. – The following laws, and all other laws, decrees, executive orders and regulations, or part or parts thereof inconsistent with any provision of this Act, are hereby repealed, amended or otherwise modified accordingly:

(a) Article 186 of Act No. 3815, otherwise known as the Revised Penal Code: Provided, that violations of Article 186 of the Revised Penal Code committed before the effectivity of this Act may continue to be prosecuted unless the same have been barred by prescription, and subject to the procedure under Section 31 of this Act;

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

(c) Section 43(u) on Functions of the ERC of Republic Act No. 9136, entitled “An Act Ordaining Reforms in the Electric Power Industry, Amending for the Purpose Certain Laws and for Other Purposes”, otherwise known as the “Electric Power Industry Reform Act of 2001”, insofar as the provision thereof is inconsistent with this Act;

(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”, insofar as the provisions thereof are inconsistent with this Act; and

(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, insofar as they are inconsistent with the provisions of this Act.

SEC. 56. Effectivity Clause. – This Act shall take effect fifteen (15) days following its publication in the Official Gazette or at least two (2) national newspapers of general circulation. Notwithstanding any provision herein, this Act shall have no retroactive effect.



**RULES AND
REGULATIONS TO
IMPLEMENT THE
PROVISIONS OF
REPUBLIC ACT NO.
10667**



RULES AND REGULATIONS TO IMPLEMENT THE PROVISIONS OF REPUBLIC ACT NO. 10667

RULE 2. DEFINITION OF TERMS

To effectively carry out the provisions of Republic Act No. 10667, or the Philippine Competition Act (Act), the Philippine Competition Commission, pursuant to the powers vested in it under said Act, hereby issues, adopts and promulgates the following rules and regulations. The Commission may revise and supplement these rules and regulations and issue related guidelines, circulars and other subsidiary issuances as it deems necessary for the effective implementation of the various provisions of this Act.

The following definition of terms shall apply for purposes of these Rules:

RULE 1. TITLE AND SCOPE

SECTION 1. Title.

These rules and regulations shall be referred to as the "Implementing Rules and Regulations of Republic Act No. 10667" (Rules).

SECTION 2. Scope.

(a) These Rules shall apply to any entity engaged in trade, industry or commerce in the Republic of the Philippines or in international trade, industry or commerce having direct, substantial and reasonably foreseeable effects in the Philippines, including those that result from acts done outside the territory of the Philippines.

(b) These Rules shall not apply to the combinations or activities of workers or employees nor to agreements or arrangements with their employers when such combinations, activities, agreements, or arrangements are designed solely to facilitate collective bargaining in respect of conditions of employment.

(a) "Acquisition" refers to the purchase or transfer of securities or assets, through contract or other means, for the purpose of obtaining control by:

- (1) One (1) entity of the whole or part of another;
- (2) Two (2) or more entities over another; or
- (3) One (1) or more entities over one (1) or more entities;

(b) "Agreement" refers to any type or form of contract, arrangement, understanding, collective recommendation, or concerted action, whether formal or informal, explicit or tacit, written, or oral;

(c) "Conduct" refers to any type or form of undertaking, collective recommendation, independent or concerted action or practice, whether formal or informal;

(d) "Commission" refers to the Philippine Competition Commission created under the Act;

(e) "Confidential business information" refers to information, which concerns or relates to the operations, production, sales, shipments, purchases, transfers, identification of customers, inventories, or amount or source of any income, profits, losses, expenditures,

which are not generally known to the public or to other persons who can obtain economic value from its disclosure or use, or is liable to cause serious harm to the person who provided it, or from whom it originates, and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy;

(f) "Control" refers to the ability to substantially influence or direct the actions or decisions of an entity, whether by contract, agency or otherwise;

(g) "Dominant position" refers to a position of economic strength that an entity or entities hold which makes it capable of controlling the relevant market independently from any

or a combination of the following: competitors, customers, suppliers, or consumers;

(h) "Entity" refers to any person, natural or juridical, sole proprietorship, partnership, combination or association in any form, whether incorporated or not, domestic or foreign, including those owned or controlled by the government, engaged directly or indirectly in any economic activity;

(i) "Joint venture" refers to a business arrangement whereby an entity or group of entities contribute capital, services, assets, or a combination of any or all of the foregoing, to undertake an investment activity or a specific project, where each entity shall have the right to direct and govern the policies in connection therewith, with the intention to share both profits and risks and losses subject to agreement by the entities;

(j) "Market" refers to the group of goods or services that are sufficiently interchangeable or substitutable and the object of competition, and the geographic area where said goods or services are offered;

(k) "Merger" refers to the joining of two (2) or more entities into an existing entity or to form a new entity, including joint ventures;

(l) "Relevant market" refers to the market in which a particular good or service is sold and which is a combination of the relevant product market and the relevant geographic market, defined as follows:

(1) a relevant product market comprises all those goods and/or services which are regarded as interchangeable or substitutable by the consumer or the customer, by reason of the goods and/or services' characteristics, their prices, and their intended use; and

(2) the relevant geographic market comprises the area in which the entity concerned is involved in the supply and demand of goods and services, in which the conditions of competition are sufficiently homogenous and which can be distinguished from neighboring areas because the conditions of competition are different in those area;

(m) "Ultimate parent entity" is the juridical entity that, directly or indirectly, controls a party to the transaction, and is not controlled by any other entity.

RULE 3. PROHIBITED ACTS

SECTION 1. Anti-Competitive Agreements.

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

(1) Restricting competition as to price, or components thereof, or other terms of trade;

(2) Fixing the price at an auction or in any form of bidding, including cover bidding, bid suppression, bid rotation and market allocation, and other analogous practices of bid manipulation.

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

(1) Setting, limiting, or controlling production, markets, technical development, or investment;

(2) Dividing or sharing the market, whether by volume of sales or purchases, territory, type of goods or services, buyers or sellers, or any other means.

(c) Agreements other than those specified in (a) and (b) of this Section, which have the object or effect of substantially preventing, restricting, or lessening competition shall also be prohibited. Provided, that those which contribute to improving the production or distribution of goods and services or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefits, may not necessarily be deemed a violation of the Act.

(d) For purposes of this Section, entities that control, are controlled by, or are under common control with another entity or entities, have common economic interests, and are

not otherwise able to decide or act independently of each other, shall not be considered competitors.

SECTION 2. Abuse of Dominant Position.

(a) It shall be prohibited for one or more entities to abuse their dominant position by engaging in conduct that would substantially prevent, restrict, or lessen competition, including:

(1) Selling goods or services below cost with the object of driving competition out of the relevant market. Provided, that in the Commission's evaluation of this fact, it shall consider whether such entity or entities had no such object and that the price established was in good faith to meet or compete with the lower price of a competitor in the same market selling the same or comparable product or service of like quality.

(2) Imposing barriers to entry or committing acts that prevent competitors from growing within the market in an anti-competitive manner, except those that develop in the market as a result of or arising from a superior product or process, business acumen, or legal rights or laws;

(3) Making a transaction subject to acceptance by the other parties of other obligations which, by their nature or according to commercial usage, have no connection with the transaction;

(4) Setting prices or other terms or conditions that discriminate unreasonably between customers or sellers of the same goods or services, where such customers or sellers are contemporaneously trading on similar terms and conditions, where the effect may be to lessen competition substantially; Provided, that the following shall be considered permissible price differentials:

- i. Socialized pricing for the less fortunate sector of the economy;
- ii. Price differentials which reasonably or approximately reflect differences in the cost of manufacture, sale, or delivery resulting from

differing methods, technical conditions, services are sold or delivered to the buyers or sellers;

iii. Price differential or terms of sale offered in response to the competitive price of payments, services, or changes in the facilities furnished by a competitor; and

iv. Price changes in response to changing market conditions, marketability of goods or services, or volume.

(5) Imposing restrictions on the lease or contract for sale or trade of goods or services concerning where, to whom, or in what forms goods or services may be sold or traded, such as:

i. fixing prices, or

ii. giving preferential discounts or rebate upon such price, or

iii. 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 the Act shall 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, unless found by the Commission to have substantial anti-competitive effect;

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

(6) Making supply of particular goods or services dependent upon the purchase of other goods or services from the supplier which have no direct connection with the main goods or services to be supplied;

(7) Directly or indirectly imposing unfairly low purchase prices for the goods or services of, among others, marginalized agricultural producers, fisherfolk, micro-, small-, medium-scaled enterprises, and other marginalized service providers and producers;

(8) Directly or indirectly imposing unfair purchase or selling price on their competitors, customers, suppliers, or consumers, Provided that prices that develop in the market as a result of or due to a superior product or process, business acumen or legal rights or laws shall not be considered unfair prices; and

(9) Limiting production, markets, or technical development to the prejudice of consumers, Provided, that limitations that develop in the market as a result of or due to a superior product or process, business acumen, or legal rights or laws shall not be a violation of this Act.

(b) Nothing in the Act or these Rules 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.

(c) 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.

(d) The foregoing shall not constrain the Commission or the relevant regulator from pursuing measures that would promote fair competition or more competition as provided in the Act.

SECTION 3. Determination of exceptions.

In Section 2, par. (a) (2), (8) and (9), the concerned entity or entities invoking the exception shall clearly establish to the Commission's satisfaction, that the barrier to entry or anti-competitive act is an indispensable and natural result of the superior product or process, business acumen, or legal rights or laws.

RULE 4. MERGERS AND ACQUISITIONS

SECTION 1. Review of mergers and acquisitions.

The Commission, *motu proprio* or upon notification as provided under these Rules, shall have the power to review mergers and acquisitions having a direct, substantial and reasonably foreseeable effect on trade, industry, or commerce in the Philippines, based on factors deemed relevant by the Commission.

(a) In conducting this review, the Commission shall:

(1) Assess whether a proposed merger or restrict, or lessen competition in the relevant market or in the market for goods and services as may be determined by the Commission; and

(2) Take into account any substantiated efficiencies put forward by the parties to the proposed merger or acquisition, which are likely to arise from the transaction.

(b) In evaluating the competitive effects of a merger or acquisition, the Commission shall endeavor to compare the competitive conditions that would likely result from the merger or acquisition with the conditions that would likely have prevailed without the merger or acquisition.

(c) In its evaluation, the Commission may consider, on a case-to-case basis, the broad range of possible factual contexts and the specific competitive effects that may arise in different transactions, such as:

(1) the structure of the relevant markets concerned;

(2) the market position of the entities concerned;

(3) the actual or potential competition from entities within or outside of the relevant market;

(4) users, and their access to supplies or markets;

(5) any legal or other barriers to entry.

SECTION 2. Notifying entities.

(a) Parties to a merger or acquisition that satisfy the thresholds in Section 3 of this Rule are required to notify the Commission before the execution of the definitive agreements relating to the transaction.

(b) If notice to the Commission is required for a merger or acquisition, then all acquiring and acquired pre-acquisition ultimate parent entities or any entity authorized by the ultimate parent entity to file notification on its behalf must each submit a Notification Form (the "Form") and comply with the procedure set forth in Section 5 of this Rule. The parties shall not consummate the transaction before the expiration of the relevant periods provided in this Rule.

(c) In the formation of a joint venture (other than in connection with a merger or consolidation), the contributing entities shall be deemed acquiring entities, and the joint venture shall be deemed the acquired entity.

SECTION 3. Thresholds for compulsory notification.

Parties to a merger or acquisition are required to provide notification when:

(a) The aggregate annual gross revenues in, into or from the Philippines, or value of the assets in the Philippines of the ultimate parent entity of at least one of the acquiring or acquired entities, including that of all entities that the ultimate parent entity controls, directly or indirectly, exceeds One Billion Pesos (PhP1,000,000,000.00).

and

(b) The value of the transaction exceeds One Billion Pesos (PhP1,000,000,000.00), as determined in subsections (1), (2), (3) or (4), as the case may be.

(1) With respect to a proposed merger or acquisition of assets in the Philippines if either

i. the aggregate value of the assets in the Philippines being acquired in the proposed transaction exceeds One Billion Pesos (PhP1,000,000,000.00); or

ii. the gross revenues generated in the Philippines by assets acquired in the Philippines exceed One Billion Pesos (PhP1,000,000,000.00).

(2) With respect to a proposed merger or acquisition of assets outside the Philippines, if

i. the aggregate value of the assets in the Philippines of the acquiring entity exceeds One Billion Pesos (PhP1,000,000,000.00); and

ii. the gross revenues generated in or into the Philippines by those assets acquired outside the Philippines exceed One Billion Pesos (PhP1,000,000,000.00).

(3) With respect to a proposed merger or acquisition of assets inside and outside the Philippines, if

i. the aggregate value of the assets in the Philippines of the acquiring entity exceeds One Billion Pesos (PhP1,000,000,000.00); and

ii. the aggregate gross revenues generated in or into the Philippines by assets acquired in the Philippines and any assets acquired outside the Philippines collectively exceed One Billion Pesos (PhP1,000,000,000.00).

(4) With respect to a proposed acquisition of (i) voting shares of a corporation or of (ii) an interest in a non-corporate entity

i. If the aggregate value of the assets in the Philippines that are owned by the corporation or non-corporate entity or by entities it controls, other than assets that are shares of any of those corporations, exceed One Billion Pesos (PhP1,000,000,000.00); or

ii. The gross revenues from sales in, into, or from the Philippines of the corporation or non-corporate entity or by entities it controls, other than assets that are shares of any of those corporations, exceed One Billion Pesos (PhP1,000,000,000.00);

and

iii. If

A. as a result of the proposed acquisition of the voting shares of a corporation, the entity or entities acquiring the shares, together with their affiliates, would own voting shares of the corporation that, in the aggregate, carry more than the following percentages of the votes attached to all the corporation's outstanding voting shares:

I. Thirty-five percent (35%), or

II. Fifty percent (50%), if the entity or entities already own more than the percentage set out in subsection I above, as the case may be, before the proposed acquisition;

or

B. as a result of the proposed acquisition of an interest in a non-corporate entity, the entity or entities acquiring the interest, together with their affiliates, would hold an aggregate interest in the non-corporate entity that entitles the entity or entities to receive more than the following percentages of the profits of the non-corporate entity or assets of that non-corporate entity on its dissolution:

I. Thirty-five percent (35%), or

II. Fifty percent (50%), if the entity or entities acquiring the interest are already entitled to receive more than the percentage set out in subsection I immediately above before the proposed acquisition.

(c) Where an entity has already exceeded the 35% threshold for an acquisition of voting shares, or the 35% threshold for an acquisition of an interest in a non-corporate entity, another notification will be required if the same entity will exceed 50% threshold after making a further acquisition of either voting shares or an interest in a non-corporate entity.

(d) In a notifiable joint venture transaction, an acquiring entity shall be subject to the notification requirements if either

(i) the aggregate value of the assets that will be combined in the Philippines or contributed into the proposed joint venture exceeds One Billion Pesos (PhP1,000,000,000.00) or (ii) the gross revenues generated in the Philippines by assets to be combined in the Philippines or contributed into the proposed joint venture exceed One Billion Pesos (PhP1,000,000,000.00). In determining the assets of the joint venture, the following shall be included:

1) All assets which any entity contributing to the formation of the joint venture has agreed to transfer, or for which agreements have been secured for the joint venture to obtain at any time, whether or not such entity is subject to the requirements of the act; and

2) Any amount of credit or any obligations of the joint venture which any entity contributing to the formation has agreed to extend or guarantee, at any time.

(e) A merger or acquisition consisting of successive transactions, or acquisition of parts of one or more entities, which shall take place within a one-year period between the same parties, or any entity they control or are controlled by or are under common control with another entity or entities, shall be treated as one transaction. If a binding preliminary agreement provides for such successive transactions or acquisition of parts, the entities shall provide notification on the basis of such preliminary agreement. If there is no binding preliminary agreement, notification shall be made when the parties execute the agreement relating to the last transaction which, when taken together with the preceding transactions, satisfies the thresholds under this Section.

(f) For purposes of calculating notification thresholds:

(1) The aggregate value of assets in the Philippines shall be as stated on the last regularly prepared balance sheet or the most recent audited financial statements in which those assets are accounted for.

(2) The gross revenues from sales of an entity shall be the amount stated on the last regularly prepared annual statement of income and expense of that entity.

(g) A transaction that meets the thresholds and does not comply with the notification requirements and waiting periods set out in Section 5 shall be considered void and will subject the parties to an administrative fine of one percent (1%) to five percent (5%) of the value of the transaction.

(h) In the case of a merger or acquisition of banks, banking institutions, building and loan associations, trust companies, insurance companies, public utilities, educational institutions, and other special corporations governed by special laws, a favorable or no-objection ruling by the Commission shall not be construed as dispensing with the requirement for a favorable recommendation by the appropriate government agency under Section 79 of the Corporation Code of the Philippines.

(i) A favorable recommendation by a governmental agency with a competition mandate shall give rise to a disputable presumption that the proposed merger or acquisition is not violative of the Act or these Rules, Provided, that the recommendation must arise directly from the exercise of the agency's mandate to determine any anti-competitive effect of the proposed merger or acquisition.

SECTION 4. Consultations preceding the submission of notification.

(a) Prior to filing a notification pursuant to this Rule, parties to a proposed merger or acquisition that are required to notify may inform the Commission of their proposed merger or acquisition and request a pre-notification consultation with the staff of the Commission.

To request a meeting, the parties must provide the following information in writing:

- (1) the names and business contact information of the entities concerned;
- (2) the type of transaction; and
- (3) the markets covered or lines of businesses by the proposed merger or acquisition.

(b) During such pre-notification consultations, the parties may seek nonbinding advice on the specific information that is required to be in the notification.

SECTION 5. Procedure for notification and review.

(a) Each party to a merger or acquisition required to give notification to the Commission shall submit the Notification Form and pay such applicable fees as may be determined by the Commission. An electronic copy of the Form and a scanned copy of the certification referred to in subparagraph (b) of this Section, contained in a secure electronic storage device, shall likewise be submitted to the Commission, simultaneous with the filing of the aforementioned hard copy.

(b) The Form must be signed by a general partner of a partnership, an officer or director of a corporation, or in the case of a natural person, the natural person or his/her legal representative, and certified that the contents of the Form are true and accurate of their own personal knowledge and/or based on authentic records. In all cases, the certifying individual must possess actual authority to make the certification on behalf of the entity filing the notification.

(c) The parties may notify, on the basis of a binding preliminary agreement in any form, such as a memorandum of agreement, term sheet, or letter of intent. Each of the acquired and acquiring entities must submit an affidavit with their Forms, attesting to the fact that a binding preliminary agreement has been executed and that each party has an intention of completing the proposed transaction in good faith.

(d) Both the certification and affidavit must be notarized or otherwise authenticated.

(e) Except as described below, the waiting period begins after all notifying entities have filed their respective Forms, together with the corresponding certifications and affidavits, and have been notified by the Commission that the Forms are complete.

(1) In voting securities acquisitions, such as tender offers, third party and open market transactions, in which the acquiring entity proposes to buy voting securities from shareholders of the acquired entity, rather than from the entity itself:

i. the acquiring entity is required to serve notice on the issuer of those shares to ensure the acquired entity is aware of its reporting obligation;

ii. only the acquiring entity must submit an affidavit. The acquiring entity must state in the affidavit that it has an intention of completing the proposed transaction in good faith, and that it has served notice on the acquired entity as to its potential reporting obligations (and in tender offers, the acquiring entity also must affirm that the intention to make the tender offer has been publicly announced); and

iii. the waiting period begins after the acquiring entity files a complete Form.

(f) Upon submission of the Form, the Commission shall determine within fifteen (15) days whether the Form and other relevant requirements have been completed in accordance with applicable rules or guidelines, and shall inform the parties of other information and/or documents it may parties that the notification is sufficient for purposes of commencing Phase I review of the merger or acquisition.

(g) The waiting period under this Section shall commence only upon the Commission's determination that the notification has been completed in accordance with applicable rules and guidelines.

(h) Within thirty (30) days from commencing Phase I review, the Commission shall, if necessary, inform the parties of the need for a more comprehensive and detailed analysis of the merger or acquisition under a Phase II review, and request other information and/or documents that are relevant to its review.

(i) The issuance of the request under the immediately preceding paragraph has the effect of extending the period within which the agreement may not be consummated for an

additional sixty (60) days. The additional sixty (60) day period shall begin on the day after the request for information is received 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 the time the initial notification by the parties is deemed complete as provided under paragraph (f) of this Section; Provided further, that should the parties fail to provide the requested information within fifteen (15) days from receipt of the said request, the notification shall be deemed expired and the parties must refile their notification. Alternatively, should the parties wish to submit the requested information beyond the fifteen (15) day period, the parties may request for an extension of time within which to comply with the request for additional information, in which case, the period for review shall be correspondingly extended.

(j) Parties to a proposed transaction under review shall inform the Commission of any substantial modifications to the transaction. On the basis of the information provided, the Commission shall determine if a new notification is required.

(k) Where notification of a transaction is not required, then the periods provided above for the Commission to conclude its review shall not apply.

(l) The Commission, in its discretion, may terminate a waiting period prior to its expiration.

(m) When either waiting period set out ends on a Saturday, Sunday or holiday, the waiting period is extended until the next business day.

(n) When the above periods have expired and no decision has been promulgated for whatever reason, the merger or acquisition shall be deemed approved and the parties may proceed to implement or consummate it.

(o) All notices, documents, and information provided to or emanating from the Commission under Sections 4 and 5 of this Rule shall be subject to the confidentiality rule under Section 34 of the Act and Section 13 of this Rule, except for the purpose of enforcing the Act or these Rules, or when the release of information contained therein is with the consent of the notifying entity or is mandatorily required to be disclosed by law or by a valid order of a court of competent

jurisdiction, or of a government or regulatory agency, including an exchange.

SECTION 6. Effect of notification.

If within the relevant periods stipulated in the preceding section, the Commission determines that the merger or acquisition agreement is prohibited under Section 20 of the Act and Section 9 of this Rule, and does not qualify for exemption under Section 21 of the Act and Section 10 of this Rule, 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; or
- (c) Prohibit the implementation of the agreement unless and until the pertinent party or parties enter into legally enforceable agreements specified by the Commission.

SECTION 7. Publication of notification summary.

(a) When additional information or documents requested by the Commission for the purpose of a Phase II review of a notified merger or acquisition has been submitted by the parties, the Commission shall publish on its website the following information related to the notification on the basis of the Form submitted by the parties:

- (1) the name of the involved entities;
- (2) the type of the transaction;
- (3) the markets covered or lines of businesses by the proposed merger or acquisition; and
- (4) the date when the complete notification was received.

(b) When publishing this information, the Commission shall take into account the legitimate interest of the entities regarding the protection of their trade secrets and other confidential information.

SECTION 8. Modifications to thresholds on compulsory notification.

The Commission shall publish, from time to time, regulations adopting, modifying, rescinding or otherwise changing:

- (a) The transaction value threshold and such other criteria subject to compulsory notification;
- (b) The information that must be supplied for notified mergers or acquisitions;
- (c) Exceptions or exemptions from the notification requirement; and
- (d) Other rules relating to the notification procedures.

SECTION 9. Prohibited mergers and acquisitions.

Merger or acquisition agreements that substantially prevent, restrict, or lessen competition in the Philippines in the relevant market or in the market for goods or services, as may be determined by the Commission, shall be prohibited.

SECTION 10. Exemptions from prohibited mergers and acquisitions.

Merger or acquisition agreements prohibited under Section 20 of the Act and Section 9 of this Rule may, nonetheless, be exempt from prohibition by the Commission when the parties establish either of the following:

- (a) The concentration has brought about or is likely to bring about gains in efficiencies that are greater than the effects of any limitation on competition that result or are likely to result from the merger or acquisition agreement; or
- (b) A party to the merger or acquisition agreement is faced with actual or imminent financial failure, and the agreement represents the least anti-competitive arrangement among the known alternative uses for the failing entity's assets.

Provided, that an entity shall not be prohibited from continuing to own and hold the stock or other share capital or assets of another corporation, which it acquired prior to the approval of the Act, or from acquiring or maintaining its market share in a relevant

market through such means without violating the provisions of the Act and these Rules; Provided, further, that the acquisition of the stock or other share capital of one or more corporations solely for investment and not used for voting or exercising control and not to otherwise bring about, or attempt to bring about the prevention, restriction or lessening of competition in the relevant market shall not be prohibited.

SECTION 11. Burden of proof.

The burden of proof under Section 10 of this Rule lies with the parties seeking the exemption. A party seeking to rely on the exemption specified in Section 21(a) of the Act or Section 10(a) of this Rule must demonstrate that if the agreement were not implemented, significant efficiency gains would not be realized.

SECTION 12. Finality of rulings on mergers and acquisitions.

Merger or acquisition agreements that have received a favorable ruling from the Commission, except when such ruling was obtained on the basis of fraud or false material information, may not be challenged under the Act or these Rules.

SECTION 13. Treatment of confidential information.

(a) Information, including documents, shall not be communicated or made accessible by the Commission, insofar as it contains trade secrets or other confidential information, the disclosure of which is not considered necessary by the Commission for the purpose of the review.

(b) Any entity or party that supplies information, including documents, to the Commission, shall clearly identify any material that it considers to be confidential, provide a justification for the request of confidential treatment of the information supplied and the time period within which confidentiality is requested, and provide a separate non-confidential version by the date set by the Commission.

(c) The Commission may require the parties to the merger or acquisition and other interested parties to identify any part of a decision or case summary adopted

by the Commission, if any, which in their view contains trade secrets or other confidential information. Where trade secrets or other confidential information are identified, the parties to the merger or acquisition and other interested parties shall provide a justification for the request of confidential treatment and provide a separate non-confidential version by the date set by the Commission.

(d) Whenever the Commission, pursuant to Section 13(c) of this Rule, deems that the justification for confidential treatment provided by the party is insufficient or not grounded, it shall inform the interested party of its decision to make the information accessible.

(e) If a merger or acquisition is under review in multiple jurisdictions, parties to the transaction may waive the confidentiality protections contained in this Rule, so as to allow the Commission to exchange otherwise protected information with competition authorities in other countries.

RULE 5. DETERMINATION OF THE RELEVANT MARKET

SECTION 1. For purposes of determining the relevant market, the following factors, among others, affecting the substitutability among goods or services constituting such market, and the geographic area delineating the boundaries of the market shall be considered:

(a) The possibilities of substituting the goods or services in question with others of domestic or foreign origin, considering the technological possibilities, the extent to which substitutes are available to consumers and the time required for such substitution;

(b) The cost of distribution of the good or service, its raw materials, its supplements and substitutes from other areas and abroad, considering freight, insurance, import duties, and non-tariff restrictions; the restrictions imposed by economic agents or by their associations; and the time required to supply the market from those areas;

(c) The cost and probability of users or consumers seeking other markets; and

(d) National, local or international restrictions which limit the access by users or consumers to alternate sources of supply or the access of suppliers to alternate consumers.

RULE 6. DETERMINATION OF CONTROL

SECTION 1. What constitutes control of an entity.

Control refers to the ability to substantially influence or direct the actions or decisions of an entity, whether by contract, agency or otherwise.

In determining the control of an entity, the Commission may consider the following:

(a) Control is presumed to exist when the parent owns directly or indirectly, through subsidiaries, more than one half (1/2) of the voting power of an entity, unless in exceptional circumstances, it can clearly be demonstrated that such ownership does not constitute control.

(b) Control also exists even when an entity owns one half (1/2) or less of the voting power of another entity when:

(1) There is power over more than one half (1/2) of the voting rights by virtue of an agreement with investors;

(2) There is power to direct or govern the financial and operating policies of the entity under a statute or agreement;

(3) There is power to appoint or remove the majority of the members of the board of directors or equivalent governing body;

(4) There is power to cast the majority votes at meetings of the board of directors or equivalent governing body;

(5) There exists ownership over or the right to use all or a significant part of the assets of the entity; or

(6) There exist rights or contracts which confer decisive influence on the decisions of the entity.

RULE 7. DETERMINATION OF ANTI-COMPETITIVE AGREEMENT OR CONDUCT

SECTION 1. Determination of an anti-competitive agreement or conduct.

In determining whether an anti-competitive agreement or conduct substantially prevents, restricts, or lessens competition, the Commission, in appropriate cases, shall, *inter alia*:

(a) Define the relevant market allegedly affected by the anti-competitive agreement or conduct, following the principles laid out in Section 24 of the Act and Rule 5 of these Rules;

(b) Determine if there is actual or potential adverse impact on competition in the relevant market caused by the alleged agreement or conduct, and if such impact is substantial and outweighs the actual or potential efficiency gains that result from the agreement or conduct;

(c) Adopt a broad and forward-looking perspective, recognizing future market developments, any overriding need to make the goods or services available to consumers, the requirements of large investments in infrastructure, the requirements of law, and the need of our economy to respond to international competition, but also taking account of past behavior of the parties involved and prevailing market conditions;

(d) Balance the need to ensure that competition is not prevented or substantially restricted and the risk that competition efficiency, productivity, innovation, or development of priority areas or industries in the general interest of the country may be deterred by overzealous or undue intervention; and

(e) Assess the totality of evidence on whether it is more likely than not that the entity has engaged in anti-competitive agreement or conduct, including whether the entity's conduct was done with a reasonable commercial purpose, such as but not limited to, phasing out of a product or closure of a business, or as a reasonable commercial response to the market entry or conduct of a competitor.

RULE 8. DETERMINATION OF DOMINANCE

SECTION 1. Existence of dominance.

Dominance can exist on the part of one entity (single dominance) or of two or more entities (collective dominance).

SECTION 2. Assessment of dominance.

In determining whether an entity has a market dominant position for purposes of this Act and these Rules, the Commission shall consider the following illustrative and non-exhaustive criteria, as may be appropriate:

- (a) The share of the entity in the relevant market and the ability of the entity to fix prices unilaterally or to restrict supply in the relevant market;
- (b) The share of other market participants in the relevant market;
- (c) The existence of barriers to entry and the elements which could foreseeably alter both the said barriers and the supply from competitors;
- (d) The existence and power of its competitors;
- (e) The credible threat of future expansion by its actual competitors or entry by potential competitors (expansion and entry);
- (f) Market exit of actual competitors;

- (g) The bargaining strength of its customers (countervailing power);
- (h) The possibility of access by its competitors or other entities to its sources of inputs;
- (i) The power of its customers to switch to other goods or services;
- (j) Its recent conduct;
- (k) Its ownership, possession or control of infrastructure which are not easily duplicated;
- (l) Its technological advantages or superiority, compared to other competitors;
- (m) Its easy or privileged access to capital markets or financial resources;
- (n) Its economies of scale and of scope;
- (o) Its vertical integration; and
- (p) The existence of a highly developed distribution and sales network.

SECTION 3. Presumption of dominance.

There shall be a rebuttable presumption of market dominant position if the market share of an entity in the relevant market is at least fifty percent (50%), unless a new market share threshold is determined by the Commission for that particular sector.

SECTION 4. Setting the thresholds for dominance.

The Commission shall, from time to time, determine and publish the threshold for dominant position or the minimum level of share in the relevant market that could give rise to a presumption of dominant position. In such a determination, the Commission would consider:

- (a) The structure of the relevant market;
- (b) The degree of integration;
- (c) Access to end-users;
- (d) Technology and financial resources; and
- (e) Other factors affecting the control of a market, as provided in Section 2 of this Rule.

SECTION 5. Exceptions.

The Commission shall not consider the acquisition, maintenance and increase of market share through legitimate means that does not substantially prevent, restrict, or lessen competition in the market, such as but not limited to, having superior skills, rendering superior service, producing or distributing quality products, having business acumen, and enjoying the use of protected intellectual property rights as violative of the Act and these Rules, Provided, that the concerned entity or entities invoking the exception shall clearly establish to the Commission's satisfaction, that the barrier to entry or anti-competitive act is an indispensable and natural result of the superior product or process, business acumen, or legal rights or laws.

RULE 9. FORBEARANCE

SECTION 1. Forbearance of the Commission.

The Commission, *motu proprio* or upon application, prior to its initiation of an inquiry, may forbear from applying the provisions of the Act or these Rules, for a limited time, in whole or in part, in all or specific cases, on an entity or group of entities, if in its determination:

- (a) Enforcement is not necessary to the attainment of the policy objectives of this Act;
- (b) Forbearance will neither impede competition in the market where the entity or group of entities seeking exemption operates nor in related markets;
- (c) Forbearance is consistent with public interest and the benefit and welfare of the consumers; and
- (d) Forbearance is justified in economic terms;

Provided, that forbearance will be granted for a maximum period of one year. Any extension to the period will have to be expressly approved by the Commission. Any extension of the duration of an exemption shall not be longer than one year.

SECTION 2. Public hearing.

- (a) A public hearing shall be held to assist the Commission in making its determination under Section 1 of this Rule.
- (b) The Commission's order exempting the relevant entity, or group of entities under this Rule shall be made public. Conditions may be attached to the forbearance if the Commission deems it appropriate to ensure the long-term interests of consumers.
- (c) In the event that the basis for the issuance of the exemption order ceases to be valid, the order may be withdrawn by the Commission.

**RULE 10.
FINAL PROVISIONS**

SECTION 1. Revisions of these Rules.

The Commission may revise these Rules whenever it deems necessary and after due consultation with affected stakeholders.

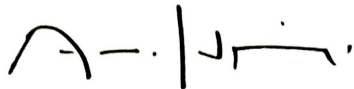
SECTION 2. Separability clause.

Should any provision herein be subsequently declared unconstitutional, the same shall not affect the validity or legality of the other provisions.

SECTION 3. Effectivity.

These Rules shall take effect fifteen (15) days after the date of its publication in at least two (2) newspapers of general circulation.

Approved, this 31st day of May 2016.



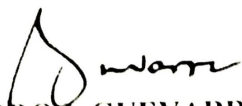
ARSENIO M. BALISACAN
Chairman



JOHANNES BENJAMIN R. BERNABE
Commissioner



STELLA LUZ A. QUIMBO
Commissioner



MENARDO L. GUEVARRA
Commissioner



EL CID R. BUTUYAN
Commissioner



RULES OF PROCEDURE OF THE PHILIPPINE COMPETITION COMMISSION



RULES OF PROCEDURE OF THE PHILIPPINE COMPETITION COMMISSION

Pursuant to Republic Act No. 10667, otherwise known as the "Philippine Competition Act" ("Act"), the Philippine Competition Commission ("PCC") hereby promulgates the following rules of procedure:

RULE I GENERAL PROVISIONS

Section 1.1. Title. – These Rules shall be known as the "2017 Rules of Procedure of the Philippine Competition Commission."

Section 1.2. Scope and coverage. – These Rules shall apply to investigations, hearings, and proceedings of the PCC, except to matters involving mergers and acquisitions unless otherwise provided in the issuances and guidelines governing the same.

Section 1.3. Jurisdiction and powers. – The PCC shall have original and primary jurisdiction over the enforcement and implementation of the provisions of the Act and its implementing rules. It has the power to conduct inquiry, investigate, and hear and decide on cases involving violations of the Act, its implementing rules, and other competition laws.

Section 1.4. Prioritization of investigations. – In initiating and conducting investigations, the PCC shall be guided by the enforcement priorities set by the Commission.

Section 1.5. Definitions. – For the purpose of these Rules, terms shall mean:

- (a) **Commission** refers to the Chairman and the Commissioners of the PCC;
- (b) **Complainant** refers to an Entity which files a verified complaint with the Commission;
- (c) **Confidential Information** refers to Confidential Business Information submitted and duly claimed as confidential by an

Entity, and determined to be such by the PCC, and all other information that are considered confidential under Rule XI;

- (d) **Control** refers to the ability to substantially influence or direct the actions or decisions of an Entity, whether by contract, agency, or otherwise;
- (e) **Electronic Service** refers to the service by e-mail on an Entity, party, or its counsel of orders, decisions, and other papers emanating from the Commission;
- (f) **Electronically Stored Information** refers to any writings, drawings, graphs, charts, photographs, sound recordings, images and other data, metadata, or data compilations temporarily or permanently stored in any electronic medium from which information can be obtained either directly or, if necessary, after conversion into a reasonably usable form or in the form that it is ordinarily maintained;
- (g) **Enforcement Office** refers to the Competition Enforcement Office;
- (h) **Entity** refers to any person, natural or juridical, sole proprietorship, partnership, combination or association in any form, whether incorporated or not, domestic or foreign, including those owned or controlled by the government engaged directly or indirectly in any economic activity;
- (i) **Investigation** refers to Preliminary Inquiry or Full Administrative Investigation, or both;
- (j) **Relevant Market** refers to the market in which a particular good or service is sold and which is a combination of the relevant product market and the relevant geographic market, defined as follows:
 - (1) A *relevant product market* comprises all those goods and/or services which are regarded as interchangeable or substitutable by the consumer or the customer, by reason of the goods and/or services' characteristics, their prices and their intended use; and

(2) The relevant geographic market comprises the area in which the entity concerned is involved in the supply and demand of goods and services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighboring areas because the conditions of competition are different in those areas;

(k) **Respondent** refers to an Entity that is subject of the Statement of Objections; and

(l) **Statement of Objections** refers to a document filed by the Enforcement Office with the Commission charging an Entity for any violation of the Act, its implementing rules, or other competition laws.

Section 1.6. Construction and application of these Rules. – These Rules shall be liberally construed and applied in order to promote their objective of securing a just and speedy conduct of investigations and disposition of proceedings.

For the purpose of these Rules:

(a) Any term in the singular includes the plural, and any term in the plural includes the singular, if such use would be appropriate;

(b) Any use of the masculine, feminine, or neutral gender encompasses such other genders as would be appropriate;

(c) Specific rules shall prevail over rules of general applicability; and

(d) *Days* mean calendar days, unless otherwise specified.

Subject to the requirements of due process, the technicalities of law and procedure and the rules obtaining in the courts of law shall not strictly apply. Accordingly, the PCC, its offices, and its officers may avail themselves of all reasonable means to ascertain the facts of the controversy speedily. The PCC may, in exceptional cases, also suspend these Rules or apply supplemental rules as

may be necessary in the interest of expeditious dispensation of justice.

Section 1.7. Verification. – A pleading, motion, or any other document is verified by an affidavit that the affiant has read the same and that the allegations therein are true and correct of his personal knowledge or based on authentic records. A pleading, motion, or any other document required to be verified which contains a verification based on “information and belief,” or upon “knowledge, information and belief,” or lacks a proper verification, shall be considered as not filed.

If the Entity is a natural person, the verification shall be made by the person himself. In all other cases, it shall be made by the partner, officer, director, trustee, or executive head of the Entity with evidence of his authority.

Section 1.8. Service and filing. – Article II of Rule IV on *Service and Filing* shall apply, as far as practicable, and unless otherwise stated, to the service and filing of all pleadings, motions, notices, orders, decisions, and other papers under these Rules.

Section 1.9. Negative inference. – The destruction or concealment of adverse evidence may be considered as circumstantial evidence of violation of the Act in the absence of any credible explanation.

Section 1.10. Computation of period. – In computing any period of time prescribed or allowed by these Rules, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday where the Commission sits, the time shall not run until the next working day.

**RULE II
PRELIMINARY INQUIRY AND FULL ADMINISTRATIVE
INVESTIGATION**

Article I. Preliminary Inquiry

Section 2.1. Purpose and scope. – The purpose of fact-finding or preliminary inquiry (“Preliminary Inquiry”) is to ascertain whether there are reasonable grounds to conduct a Full Administrative Investigation for any violation of the Act, its implementing rules, or other competition laws.

During Preliminary Inquiry, the potential adverse effect of a conduct or agreement on consumer welfare or competition in the relevant sector or industry, and the prejudice to public interest shall be considered. The following factors, among others, shall also be looked into:

- (a) The interest of the Entity filing the complaint;
- (b) The PCC’s jurisdiction over the subject matter of the Preliminary Inquiry;
- (c) The specific provisions of the Act, its implementing rules, or other competition laws that may have been violated; or
- (d) The possible violators of the Act, its implementing rules, or other competition laws.

The conduct of Preliminary Inquiry shall not be limited by the allegations or contents of the verified complaint, referral by a regulatory agency, or the *motu proprio* directive, but may include other matters gathered in the course thereof.

Section 2.2. Who shall conduct; basis. – The PCC, through the Enforcement Office, shall conduct the Preliminary Inquiry on the basis of a verified complaint, referral by a regulatory agency, or *motu proprio* directive from the Commission based on reasonable grounds.

Other forms of complaints, referrals, or reports may be the basis of a *motu proprio* Preliminary Inquiry upon the discretion of the Commission.

Section 2.3. Commencement of Preliminary Inquiry. – The Preliminary Inquiry shall commence ten (10) days from receipt of a verified complaint or referral by a regulatory agency, or the latest amended, supplemental, or related complaint or referral, if any, unless the Commission resolves to deny due course to the said complaint or referral taking into consideration the following: (a) jurisdiction of the PCC; (b) public interest; (c) resource allocation; (d) likelihood of a successful outcome; (e) non-compliance with Section 2.4 of this Rule in the case of a verified complaint; or (f) absence of reasonable grounds to commence Preliminary Inquiry.

In the event that a verified complaint or referral from a regulatory agency is denied due course, the appropriate notice shall be issued to the Complainant or referring agency within ten (10) days from the adoption of the pertinent resolution.

Section 2.4. Verified complaint. – A verified complaint from an interested Entity shall contain the following:

- (a) Identity of the Entity complained of;
- (b) Acts constituting the violation of the Act, its implementing rules, or other competition laws;
- (c) Documents and other materials supporting the allegations; and
- (d) A statement of the present status of any other case or proceeding involving substantially similar facts, issues, and Entities, and an undertaking to inform the Commission of any such case or proceeding within five (5) days from knowledge thereof.

Section 2.5. Period. – The Preliminary Inquiry shall, in all cases, be completed by the Enforcement Office within ninety (90) days from the commencement thereof.

Section 2.6. Termination of Preliminary Inquiry. – The Enforcement Office shall terminate a Preliminary Inquiry by:

- (a) Issuing a resolution ordering its closure if no violation or infringement of the Act, its implementing rules, or other competition laws is found, subject to any other action that

the Enforcement Office may consider proper or necessary under the circumstances;

- (b) Issuing a resolution to close the Preliminary Inquiry without prejudice, if the facts or information available at the end of the ninety (90)-day period are insufficient to proceed, on the basis of reasonable grounds, to the conduct of a Full Administrative Investigation; or
- (c) Issuing a resolution to proceed, on the basis of reasonable grounds, to the conduct of a Full Administrative Investigation.

Section 2.7. Notice to the Complainant or referring agency.

– Appropriate notice shall be given to the Complainant or referring agency, as the case may be, within fifteen (15) days from the termination of the Preliminary Inquiry.

Article II. Full Administrative Investigation

Section 2.8. Purpose. – A Full Administrative Investigation is conducted to ascertain whether there is sufficient basis to charge an Entity for violation of the Act, its implementing rules, or other competition laws.

Section 2.9. Notice of investigation; when and to whom issued; content. – Notice of investigation shall be given to the Entity under Full Administrative Investigation without compromising the conduct of the same. The notice shall state the provision of the Act, its implementing rules, or other competition laws, for which the Entity is being investigated.

After notice has been issued to the concerned Entities, the commencement of the Full Administrative Investigation shall be published on the PCC website. The publication shall provide a general description of the industry involved and the provision of the Act, its implementing rules, or other competition laws possibly violated.

Section 2.10. Conference. – Before concluding the Full Administrative Investigation, the Enforcement Office may, in its discretion, conduct a conference with the Entity under Full Administrative Investigation for purposes of clarifying or

ascertaining facts, issues, and other matters necessary and relevant to the Full Administrative Investigation.

The Entity concerned may be accompanied by counsel who shall confine his activity to advising the Entity of its legal rights. The counsel shall not be permitted to answer questions for or argue on behalf of the Entity.

Section 2.11. Termination of Full Administrative Investigation.

– After the Full Administrative Investigation, the Enforcement Office shall, if it finds sufficient basis, file with the Commission a Statement of Objections (“SO”) charging the Entity under Full Administrative Investigation for violation of the Act, its implementing rules, or other competition laws. Otherwise, the Enforcement Office shall close the Investigation.

Sufficient basis means the existence of such facts and circumstances that would engender reasonable belief that there is a violation of the Act, its implementing rules, or other competition laws, and that the Entity subject of the SO probably committed it.

Section 2.12. Contents of the SO. – The SO shall identify the Respondents, describe the violations, and shall contain a summary of the facts and relevant factors that would reasonably tend to aggravate liability. Evidence supporting the alleged violations shall also be attached thereto. The SO may also include a recommendation on the imposable fines and remedies which, however, shall not be binding on the Commission.

Section 2.13. Closure without prejudice. – Closure of the Full Administrative Investigation under Section 2.11 shall be without prejudice to the conduct of another Investigation if the circumstances so warrant. Appropriate notice shall be given to the Complainant or referring agency, as the case may be, within fifteen (15) days from the termination of the Full Administrative Investigation.

Article III. Common Provisions

Section 2.14. Powers of the Enforcement Office. – The Enforcement Office shall have, among others, the following powers:

- (a) Conduct an Investigation in accordance with these Rules;
- (b) Administer oaths, summon and examine witnesses, and receive evidence;
- (c) Request anyone who may have access to, possession, custody, or control of any documents, Electronically Stored Information, or other things, or may have knowledge of any information, which relate to any matter relevant to the Investigation or proceeding to:
(1) submit or make available to the Enforcement Office such document, Electronically Stored Information, or other things, for inspection, copying, or reproduction;
(2) file written reports or answers to questions; (3) give a statement concerning documents or other information; or (4) submit the required information in a specified format such as lists, summaries, or tables;
- (d) Issue subpoena *duces tecum* and subpoena *ad testificandum* as provided in Rule XIII;
- (e) Apply for an inspection order with the court to undertake inspections of business premises and other offices, land, and vehicles, as used by the Entity to be inspected, where it reasonably suspects that relevant books, tax records, or other documents, including Electronically Stored Information that relate to any matter relevant to the Investigation are kept, and when it is necessary for the conduct of a full and thorough Investigation, to prevent the removal, concealment, tampering with, or destruction of the books, records, or other documents. Business premises include: (1) premises used in connection with the affairs of the Entity; and (2) premises where documents relating to the affairs of the Entity can be found;
- (f) Consult with resource persons;

- (g) Deputize any enforcement agency of the government, or enlist the aid and support of any private institution, corporation, Entity, or association;
- (h) Initiate proceedings for contempt and similar violations committed during Investigation;
- (i) Charge an Entity for violations of the Act, its implementing rules, or other competition laws; and
- (j) Exercise such other powers and functions that it may deem necessary and proper for the conduct of the Investigation.

Section 2.15. Resolution of procedural issues. – The Enforcement Office shall resolve issues relating to claims of privileged information and confidentiality, propriety of subpoenas, and other procedural issues arising during the Investigation.

Section 2.16. Effect of withdrawal of a verified complaint or referral. – Withdrawal of a verified complaint or referral does not automatically result in the termination of the Investigation, discharge the Entity complained of or under Investigation from complying with processes under the Act and its implementing rules, nor exempt the Entity from possible imposition of administrative sanction or penalty.

Section 2.17. Proposal for settlement. – At any time after the commencement of the Preliminary Inquiry but prior to the termination of the Full Administrative Investigation, the Entity subject thereof may submit to the Enforcement Office a proposal for settlement.

If submitted during the Preliminary Inquiry, the proposal for settlement shall not suspend the running of the ninety (90) day period within which to complete the same.

Upon the recommendation of the Enforcement Office, the Commission may approve a settlement under such terms and conditions that are fair and reasonable. The denial by the Commission of the proposed settlement shall not be construed as a prejudgment on the matters subject thereof.

Section 2.18. Referral to the Department of Justice. – At any time after termination of the Preliminary Inquiry and if the evidence so warrants, the PCC may file before the Department of Justice criminal complaints for violations of the Act or other competition laws for preliminary investigation and prosecution before the proper court.

RULE III NON-ADVERSARIAL REMEDIES

Article I. Binding Ruling

Section 3.1. Binding Ruling; when availed. – Any Entity that is in doubt as to whether a contemplated act, course of conduct, agreement, or decision (the “Subject Matter”) is in compliance with, exempt from, or in violation of any of the provisions of the Act, its implementing rules, or other competition laws, may request the Commission, in writing, to render a Binding Ruling thereon: *Provided*, That the Subject Matter has not been executed or implemented, and no prior verified complaint or referral from a regulatory agency has been filed, or Investigation has been initiated on the Subject Matter: *Provided, further*, That all acts preparatory to the Subject Matter should not be in violation of the Act, its implementing rules, or other competition laws: *Provided, finally*, That the Subject Matter does not involve a merger or an acquisition.

Section 3.2. Contents of request for Binding Ruling. – The written request for a Binding Ruling must be verified and shall contain the following:

- (a) Material facts and supporting documents and information relating to the Subject Matter;
- (b) Identity of the Entities involved in the Subject Matter;
- (c) The issue/s that the Entity seeks to be ruled upon;
- (d) Provision of law or rule under which the issue on the Subject Matter arises;

- (e) Statement that the Entity has the intention of engaging in the Subject Matter;
- (f) Documents necessary for evaluating the fees provided in Section 3.4; and
- (g) Other relevant matters that will aid in the evaluation of the request for a Binding Ruling.

Each request shall be limited to only one Subject Matter.

Section 3.3. Due course. – Within fifteen (15) days from receipt of the request, the Commission shall either give due course to the same and direct the Enforcement Office to file a comment thereon, or deny it based on any of the following, among others:

- (a) The information provided by the Entity which will form the basis of the ruling is insufficient or incomplete;
- (b) The request relates to a hypothetical or speculative matter;
- (c) The same issue involving the same Entity or a related Entity is subject of an Investigation or proceeding of the PCC;
- (d) Sufficient guidance on the same issue can be found in the Commission’s guidelines, rules, or clarificatory notes, if any, already issued by the Commission;
- (e) The Subject Matter is appropriate for a merger and acquisition review under Section 17 and 20 of the Act;
- (f) The request will require an inordinate amount of the PCC’s resources; and
- (g) The request is not in accordance with these Rules or is not appropriate for a binding ruling.

Section 3.4. Fees. – If the request is given due course, the Entity shall pay within five (5) days from notice thereof a fee of one to three percent (1%-3%) of the value of the Entity’s assets or annual revenues, whichever is higher. The value of assets shall be

based on the last regularly prepared balance sheet or the most recent audited financial statements. The value of annual revenues shall be based on the last regularly prepared annual statement of income and expense of the Entity.

In assessing the fee to be paid by the Entity, the Commission shall take into consideration the complexity of the request and the nature of the business of the Entity, among others.

Section 3.5. Additional information. – The Commission or the Enforcement Office, as the case may be, may require the submission of additional information or documents, or the conduct of market studies, research, surveys, as well as call for a conference with the Entity in order to propound clarificatory questions and obtain more information relating to the request.

Section 3.6. Comment of the Enforcement Office. – The Enforcement Office shall submit its comment to the Commission on the request for a Binding Ruling within ninety (90) days, extendible for another sixty (60) days, from the receipt of the directive of the Commission to comment and the payment by the Entity of the fee in Section 3.4: *Provided*, That the period may be shortened in consideration of the specific circumstances relating to the Subject Matter: *Provided, further*, That the running of the period shall stop when the Enforcement Office requests for additional information, and shall run again once the Enforcement Office determines that the Entity has submitted all the requested information.

Section 3.7. Action by the Commission. – The Commission shall issue a Binding Ruling within thirty (30) days from receipt of the Enforcement Office’s comment. A favorable Binding Ruling shall be for a specified period, subject to extension as may be determined by the Commission, and based on substantial evidence.

However, the Commission may terminate the proceedings without issuing a Binding Ruling if the Entity does not pay the fee under Section 3.4. The proceedings may also be terminated based on, among others, the same considerations provided in Section 3.3 should they become evident or manifest after the request has been given due course. Unless the termination is based on paragraphs (c), (d), and (e) of Section 3.3, the Entity

may file a new request for Binding Ruling on the same Subject Matter in accordance with this Rule. The filing of such request shall be treated as a new proceeding.

Section 3.8. Compliance with an adverse Binding Ruling.

– In the case of an adverse Binding Ruling that requires the performance of an act, the Entity shall be provided with a reasonable period, which in no case shall be more than ninety (90) days, to abide by the ruling of the Commission during which period the Entity shall not be subject to administrative, civil, or criminal action.

Section 3.9. Applicability. – The Binding Ruling shall only be applicable as regards the Entity that applied for it, the specific set of circumstances set forth therein, and within the period specified, if any, by the Commission.

Article II. Show Cause Order as a Non-Adversarial Remedy

Section 3.10. Show Cause Order as a Non-Adversarial Remedy.

– After Preliminary Inquiry or upon a preliminary finding that an Entity is conducting its business, in whole or in part, in a manner that may not be in accord with the provisions of the Act or other competition laws, the Enforcement Office may, in the interest of the public, issue a Show Cause Order to the Entity as a Non-Adversarial Remedy pursuant to Section 37(b) of the Act.

Section 3.11. Contents of Show Cause Order as a Non-Adversarial Remedy.

– The Show Cause Order shall contain a written description of the anti-competitive conduct or agreement, a statement of relevant facts, data, and information, as well as a summary of the evidence thereof, with an order requiring the said Entity or Entities to file an explanation (“Explanation”) within a given period.

Section 3.12. Contents of Explanation.

– In the Explanation, the Entity may either: (a) dispute, deny, or justify the anti-competitive conduct or agreement described in the Show Cause Order, providing sufficient legal and evidentiary basis why it should not be required to cease and desist from continuing with its identified business conduct or agreement, pay an administrative fine, or adjust its business conduct, practice, or agreement; or (b) admit the anti-competitive conduct or agreement described

in the Show Cause Order and provide a written proposal for addressing the same.

Section 3.13. Additional information. – After receiving the Explanation, the Enforcement Office may require the Entity to appear at a Show Cause conference and submit additional documents or information. The Show Cause conference may be continued at a later date as may be necessary to allow the Entity to submit or revise a written proposal.

Section 3.14. Termination of the Show Cause proceedings. – If the Entity fails to submit an Explanation, or if the same is found to be unsatisfactory, the proceedings shall be terminated and the Enforcement Office may continue with Investigation or issue an SO. If the Entity submits a satisfactory Explanation, the proceedings shall be terminated and the Enforcement Office may close the Investigation.

Section 3.15. Action on the written proposal. – If the Entity submits a written proposal for addressing the anti-competitive conduct or agreement described in the Show Cause Order, the Enforcement Office shall transmit the same to the Commission within ninety (90) days together with its comment thereon.

Section 3.16. Action by the Commission. – The Commission shall resolve the matter within thirty (30) days from receipt of the comment, unless an additional period is warranted. In case of a denial by the Commission of the written proposal, the Show Cause proceedings shall be terminated.

Article III. Consent Order

Section 3.17. Consent Order. – At any time prior to the termination of an Investigation, any Entity subject thereof may, without in any manner admitting a violation of the Act, its implementing rules, or other competition laws, submit to the Commission a verified application for a Consent Order.

Section 3.18. Contents of the verified application. – In the verified application, the Entity shall specify the terms and conditions of the proposed Consent Order for addressing the anti-competitive conduct or agreement, and shall include, among others, the following:

- (a) The payment of an amount within the range of fines provided for under the Act, its implementing rules, or other competition laws;
- (b) The proposed mandatory compliance reports as well as the identity of the Entity that will submit such reports;
- (c) Payment of damages to any private party or parties who may have suffered injury; and
- (d) Other terms and conditions that may be considered appropriate and necessary for the effective enforcement of the Act, its implementing rules, or other competition laws.

Section 3.19. Due course. – Within fifteen (15) days from receipt of the application, the Commission shall decide whether to give due course to the same. Should the application be given due course, the Commission shall direct the Enforcement Office to submit its comment on the said application.

Section 3.20. Additional information. – The Commission or the Enforcement Office, as the case may be, may request the submission of additional information or documents or call for a conference with the applicant in order to propound clarificatory questions and obtain more information relating to the application.

Section 3.21. Comment by the Enforcement Office. – The Enforcement Office shall submit its comment to the Commission on the application within ninety (90) days, extendible for another sixty (60) days, from receipt of the directive of the Commission to comment: *Provided*, That the period may be shortened in consideration of the specific circumstances of the application: *Provided, further*, That the running of the period shall stop when the Enforcement Office requests for additional information, and shall run again once the Enforcement Office determines that the Entity has submitted all the requested information.

Section 3.22. Action by the Commission. – The Commission shall resolve the application for Consent Order within thirty (30) days from receipt of the Enforcement Office's comment, unless an additional period is warranted. Should the Commission deny the application, the Consent Order proceedings shall be terminated and the Enforcement Office may continue with the Investigation

or issue an SO. The denial by the Commission of the application shall not be construed as a prejudgment on the matters subject thereof. Should the Commission approve the application by issuing a Consent Order, any inquiry or investigation for the same or similar conduct or agreement if continued or repeated shall not be barred.

Article IV. Common Provisions

Section 3.23. Effectivity of the approval of written proposals.

– The order by the Commission approving the written proposal or granting the application in the Show Cause and Consent Order proceedings, as the case may be, shall be final and immediately executory.

Section 3.24. Monitoring of compliance. – The Commission shall monitor the compliance by the Entity or Entities concerned, their officers, directors, trustees, partners, and employees, with the Binding Ruling, order based on a Show Cause proceeding, or Consent Order. Upon motion of an interested party, the Commission shall issue a certification or resolution to the effect that the Entity or Entities concerned have, or have not, as the case may be, complied with the ruling or order.

Section 3.25. Inadmissibility of evidence in criminal proceedings. – The request for a Binding Ruling, the Show Cause Order, or the application for Consent Order; the facts, data, and information therein contained or subsequently supplied by the Entity or Entities concerned; admissions, oral or written, made by them against their interest; all other documents filed by them, including their evidence presented in the proceedings before the Commission; and the judgment or order rendered thereon; shall not be admissible as evidence in any criminal proceedings arising from the same act subject of the Binding Ruling, Show Cause Order, or Consent Order against such Entity or Entities, their officers, employees, and agents.

This Section shall not apply to requests for Binding Ruling, applications for Consent Order, facts, data and information, oral and written admissions, evidence, documents, judgments, or orders which: (a) do not relate to the matter under Investigation or the Subject Matter of the request for a Binding Ruling, Show Cause Order, or a Consent Order application; (b) are already

in the possession of the PCC prior to the initiation of the non-adversarial proceedings; (c) are independently obtained; or (d) are false or fraudulent.

Section 3.26. Void ruling or order. – Upon application by the Enforcement Office or upon *motu proprio* determination by the Commission, and subject to the requirements of due process, a Binding Ruling, order based on a Show Cause proceeding, or Consent Order found to be obtained on the basis of fraud, or incorrect or misleading or information as described in Section 6.11, shall be void.

Section 3.27. Investigation not suspended. – The proceedings under this Rule shall not suspend the conduct of an ongoing Investigation.

Section 3.28. Powers of the Enforcement Office. – The Enforcement Office may exercise the powers provided in Section 2.14 when appropriate.

RULE IV ADJUDICATION

Article I. General Provisions

Section 4.1. Scope; expedition of adjudication. – This Rule shall govern the proceedings before the Commission during adjudication. To the extent practicable and consistent with objectives of the Act or other competition laws, the Commission's policy is to conduct such proceedings expeditiously. Every effort shall be made at each stage of the proceedings to avoid delay.

Section 4.2. Purpose of adjudication. – Adjudication is conducted by the Commission to determine whether there exists substantial evidence of a violation of the Act, its implementing rules, or other competition laws, and to justify the imposition of appropriate penalties and remedies relative thereto.

Section 4.3. Liberal application of evidentiary rules. – Technical rules of procedure and evidence shall not be strictly applied. The Commission shall have the discretion to determine the relevance, materiality, weight, and sufficiency of all evidence

presented. Evidence willfully suppressed by an Entity may be presumed to be adverse if produced.

Section 4.4. Public hearings; record of proceedings. – All hearings shall be public unless otherwise ordered by the Commission, *motu proprio* or upon motion. The proceedings shall be recorded.

Section 4.5. Role of the Enforcement Office. – The Enforcement Office shall prosecute the case in the manner provided for under these Rules and as the Commission may direct.

Section 4.6. Participation of Complainant. – The Complainant may be allowed by the Commission to participate in the proceedings in the manner that the latter may allow.

Section 4.7. Appearance of counsel. – The Respondent may be represented by counsel, who shall file a written entry of appearance.

The written entry of appearance may include the express consent of the counsel to the Electronic Service of orders, decisions, and other papers emanating from the Commission. In such case, the counsel shall provide the e-mail address at which he agrees to accept such service.

Section 4.8. Votes; quorum. – The Commission shall be composed of the Chairman and four (4) Commissioners. Three (3) members of the Commission shall constitute a quorum. The affirmative vote of three (3) members shall be necessary for the adoption of any ruling, order, resolution, or decision of the Commission.

Section 4.9. Prohibited Motions. – A motion to dismiss, motion for bill of particulars, or any similar submission filed or made under a different guise or title shall be prohibited. Should any of the foregoing be filed, the reliefs prayed for therein shall be considered denied, but the prohibited motion or submission will be allowed to remain on record insofar as the contents thereof may be taken as an admission or confession.

A motion to amend pleadings, a motion for extension of time to file pleadings, affidavits or any other paper, or a motion for postponement of hearings or proceedings, and any other motions of similar intent shall also be prohibited, except those filed due to clearly compelling reasons, in which case such motion must be verified.

Section 4.10. Dispositions of businesses, shareholdings, business units, or assets during adjudication. – The Respondent shall notify the Commission of any sale, donation, disposition, or any other transfer, whether absolute or otherwise, made during adjudication, of its interest in businesses, shareholdings, business units, assets, or any other interest related to matters under adjudication. Otherwise, the Respondent shall be liable for the administrative fines imposed under Rule VI.

Article II. Service and Filing

Section 4.11. Manner, completeness, and proof of service. –

- (a) **Modes of service.** – Service of pleadings, motions, notices, orders, decisions, and other papers (“Papers”) shall be made personally, by mail, or private courier.
- (b) **Personal service.** – Service may be made by delivering personally a copy to Respondent or by leaving the Papers at Respondent’s office with its clerk or with a person having charge thereof. If no person is found at the office, or the Respondent’s office is not known, or the Respondent has no office, then by leaving the copy, between the hours of eight in the morning and six in the evening, at Respondent’s residence, if known, with a person of sufficient age and discretion then residing therein.
- (c) **Service by mail.** – Service by registered mail or private courier shall be made by depositing the copy in the post office or courier in a sealed envelope, plainly addressed to the Respondent, if known, otherwise at Respondent’s residence, if known, and with instructions to the postmaster or private courier to return the mail to the sender after ten (10) days if undelivered.

- (d) **Substituted service.** – If service of Papers cannot be made under the two preceding paragraphs, the office and place of residence of the Respondent or its counsel being unknown, service may be made by delivering the copy to the PCC, with proof of failure of both personal service and service by mail. The service is complete at the time of such delivery.
- (e) **Service of Papers emanating from the Commission.** – The Commission may serve Papers through personal service, registered mail, private courier, or, if the Respondent or its counsel consents, through Electronic Service.
- (f) **Service on counsel.** – When any Respondent has appeared by counsel, service shall be made upon its counsel of record, unless the Commission has ordered service upon the Respondent. Where one counsel appears for several Respondents, he shall only be entitled to one copy of the Papers served upon him. Where several counsels represent the Respondent, service may be made upon any of them.
- (g) **Completeness of service.** – Service shall be considered complete when: (1) the Paper is personally received by Respondent, or its authorized agent; (2) the Paper is received by the clerk or some other person in charge thereof at Respondent’s principal office or regular place of business; (3) the Paper is received by some person of suitable age and discretion then residing at Respondent’s dwelling house or residence; (4) the Paper is received by Respondent in a sealed envelope by registered mail or by private courier at its office or residence address, or after five (5) days from the date Respondent received the first notice of the postmaster or the private courier, whichever date is earlier; or (5) in the case of Electronic Service of Papers emanating from the Commission, service is completed upon transmission.
- (h) **Proof of service.** – Proof of service may consist of a written admission of the party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place, and manner of service. It

shall specify the Papers served and the name of the person who received them, and shall be sworn to when made by a person other than the server of the Commission.

If the service is by registered mail or by private courier, proof thereof shall consist of an affidavit of the person who undertook the mailing stating facts showing compliance with paragraph (c) of this Section, and the registry receipt issued by the mailing office, or the acknowledgement receipt issued by the private courier, as the case may be. The registry return card or any other proof of delivery shall be filed immediately upon its receipt by the sender, or in lieu thereof, the unclaimed mail together with the certified or sworn copy of the notice given by the postmaster to the addressee.

Section 4.12. Filing of pleadings, motions, affidavits, and other submissions. –

- (a) **Manner of Filing.** – All Papers, and other submissions to the Commission shall be written, printed, or typed on a 13-inch by 8.5-inch white bond paper and shall be in the official language. The size of the font shall not be smaller than 12. All Papers filed shall contain the title of the case and the case number, where appropriate.

The filing of pleadings, motions, affidavits, and other submissions shall be done by filing one (1) original copy thereof, plainly indicated as such, and five (5) photocopies to the Commission personally, by registered mail, or private courier.

In either case, soft copies of all pleadings, motions, affidavits, and other submissions, together with their annexes, must be submitted simultaneously with the hard copy via a USB flash drive or similar storage device, or via e-mail within twenty-four (24) hours from the filing of the hard copy.

The soft copies of the Papers must be in PDF and, as far as practicable, in editable word-processing format. Each Paper as well as their annexes, must be individually saved in the USB flash drive or similar storage device, or attached

to the e-mail, as the case may be. The file name of the soft copy must be the same as the title of the document and must indicate the date of the document. Moreover, the file name of the soft copies shall be numbered in the manner that they appear in the hard copy filed.

To illustrate:

- (1) The soft copy of the *Answer* dated 01 January 2017 must have a file name: "1. Answer dated 01 January 2017.pdf".

The soft copy of the succeeding document, Annex "A", which is a Board Resolution dated 01 January 2017, must have a file name "2. Annex A Board Resolution dated 01 January 2017.pdf".

- (2) The e-mail shall have the following format:

To: _____
From: (Filing party)
Subject: *Docket Number Case Title*

(Sample body of e-mail)

Case Number:
Case Title:
Name of Filing Party:
Contact Numbers:
Other e-mail addresses:
Title of Attached Documents (arranged in the sequence that they appear in the hard copy):

- (a) Answer dated 01 January 2017
- (b) Annex "A" Board Resolution dated 01 January 2017
- (c) Etc.

The filer shall also file with the USB flash drive, or attach to the e-mail a verified declaration that the pleadings, motions, affidavits, and other submissions submitted electronically are complete and true copies of the printed document and annexes filed with the Commission.

- (3) The declaration shall use the following format:

I, _____, hereby declare that the document(s) (and annexes thereof) hereto submitted electronically are complete and true copy(-ies) of the document(s) (and annexes) filed with the Commission.

Signature
Printed Name
Position
Date

[Jurat]

- (b) **Proof of Filing.** – The filing of a Paper shall be proved by its existence in the record of the case. If it is not in the record, but it is claimed to have been filed personally, the filing shall be proved by the written or stamped acknowledgement of its filing by the PCC on a copy of the same; if filed by registered mail or through private courier, by the registry receipt or the acknowledgement receipt issued by the private courier, as the case may be, and by the affidavit of the person who did the mailing, containing a full statement of the date and place of depositing the mail in the post office or private courier in a sealed envelope addressed to the PCC, and with instructions to the postmaster or private courier company to return the mail to the sender after ten (10) days if not delivered.

Section 4.13. Priorities in modes of service and filing. – Whenever practicable, the service and filing of Papers shall be done personally. Except with respect to Papers emanating from the Commission or Enforcement Office, a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally. A violation of this Rule may be basis to consider such Papers as not filed.

Article III. Commencement of Adjudication

Section 4.14. Commencement of proceedings. – Adjudication is commenced upon the filing by the Enforcement Office of the SO with the Commission.

Section 4.15. Commission to issue summons. – Within fifteen (15) days from the filing of the SO, the Commission may issue the corresponding summons with a copy of the SO to the Respondent, or dismiss the SO outright on the ground that the same failed to state a violation cognizable by the Commission.

On the same date of the issuance of a summons, or as soon as practicable thereafter, the Commission shall publish on its website that an SO has been issued, the provisions of the Act, its implementing rules, or other competition laws possibly violated, and such other information that the Commission may deem appropriate.

Section 4.16. Contents of summons. – The summons shall be addressed to the Respondent and must contain:

- (a) A direction that the Respondent file a verified answer, and not a motion to dismiss, within the time fixed by the Commission, which shall not be less than thirty (30) days but not more than sixty (60) days; and
- (b) A notice that unless the Respondent files a verified answer, the Commission may render a decision granting such relief as the records and evidence may warrant and impose the appropriate penalties and remedies.

A copy of the SO and its supporting evidence shall be attached to the summons, subject to Rule XI. To prevent the loss of documents in the course of the service of the summons, or whenever necessary under the circumstances, the Commission may require the Respondent to appear at a designated date, time, and place to receive or view the evidence against it.

Section 4.17. By whom served. – The summons shall be served by the officer designated by the Commission.

Section 4.18. Service of summons. –

- (a) **To individuals.** – Summons issued by the Commission shall be served to the individual or to his authorized agent. Service to an individual or his authorized agent shall be made or effected through any of the following means: (1) by handing a copy thereof to him or his

authorized agent in person; (2) by leaving a copy at his principal office or regular place of business with a clerk or some other person in charge thereof; (3) by leaving a copy at his dwelling house or residence with some person of suitable age and discretion then residing therein; or (4) by sending a copy thereof addressed to him in a sealed envelope by registered mail or by private courier at his last known office or residence.

- (b) **To corporations, partnerships, associations, or other Entities with juridical personality.** – Summons shall be served to a person other than a natural person upon its president, executive head, managing partner, general manager, corporate secretary, treasurer, compliance officer, in-house counsel, director or trustee, managing or general agent or any other authorized agent, or such other officer as may be found in official documents, in the manner provided in paragraph (a) of this Section.

- (c) **To foreign corporations, partnerships, associations, or other foreign Entities with juridical personality.** – Service of summons issued by the Commission to a foreign corporation, partnership, association, or Entity may be made on its resident agent designated in accordance with law for that purpose, on the government official designated by law to that effect, or on any of its officers or agents within the Philippines.

If the foreign private juridical Entity is not registered in the Philippines, summons may be served: (1) on its officers or agents in the Philippines; (2) through the appropriate court in the foreign country with the assistance of the Department of Foreign Affairs; (3) by publication once in a newspaper of general circulation in the country where the Respondent may be found as well as in such places as the Commission may order, posting the summons on the PCC website, and serving a copy of the summons by registered mail at the last known address of the Respondent; (4) by facsimile or any recognized electronic means that could generate proof of service; or (5) by such other means as the Commission may in its discretion direct.

- (d) **To an Entity without juridical personality.** – When persons associated in an Entity without juridical personality are sued under the name by which they are generally or commonly known, service may be effected upon all the Respondents by serving: (1) upon any one of them; (2) upon the person in charge of the office or place of business maintained in such name; (3) upon the government official designated in accordance with law for that purpose; (4) upon any of the Entity's officers or agents within the Philippines; (5) through the appropriate court in the foreign country with the assistance of the Department of Foreign Affairs; (6) by publication once in a newspaper of general circulation in the country where any of the Respondents may be found as well as in such places as the Commission may order, posting the summons on the PCC website, and serving a copy of the summons by registered mail at the last known address of any of the Respondents; (7) by facsimile or any recognized electronic means that could generate proof of service; or (8) by such other means as the Commission may in its discretion direct. Such service shall not bind individually anyone whose connection with the Entity has, upon due notice, been severed before the initiation of the proceedings.
- (e) **To an Entity that is a resident of the Philippines but the whereabouts are unknown.** – If the address of the Respondent who is a resident of the Philippines is unknown or, even if known, his whereabouts cannot be ascertained by diligent inquiry, service of summons may be effected on him: (1) by publication of the summons once in a newspaper of general circulation in the Philippines, posting on the PCC website, and service by registered mail to the last known address of the Respondent; or (2) through such other modes that the Commission may in its discretion direct.
- (f) **To an Entity that is not a resident of but is present in the Philippines.** – If the Respondent is not a resident of but is present in the Philippines, service may be effected as follows: (1) in the manner provided for in paragraph (a) of this Section; (2) if Respondent's whereabouts cannot be ascertained by diligent inquiry, by publication of the

summons once in a newspaper of general circulation in the Philippines, posting on the PCC website, and service by registered mail to the last known address of the Respondent; or (3) through such other modes that the Commission may in its discretion direct.

- (g) **To an Entity that is not a resident of and is not found in the Philippines.** – If the Respondent does not reside or is not found in the Philippines, summons may be effected: (1) out of the Philippines by publication once in a newspaper of general circulation in the country where the Respondent may be found as well as in such places as the Commission may order, posting the summons on the PCC website, and serving a copy of the summons by registered mail at the last known address of the Respondent, if any; (2) through the appropriate court in the foreign country with the assistance of the Department of Foreign Affairs; (3) by facsimile or any recognized electronic means that could generate proof of service; or (4) through such other modes that the Commission may in its discretion direct.

Section 4.19. Return. – When the service has been completed, the server shall, within five (5) days therefrom, return the summons to the Commission, accompanied by proof of service.

Section 4.20. Proof of service. – The proof of service of summons shall be made in the same manner indicated in Section 4.11.

Service by publication in a newspaper of general circulation or PCC website may be proven by the respective affidavit of the editor, business or advertising manager, or PCC website administrator, to which affidavit a copy of the publication shall be attached, and if applicable, by an affidavit showing the deposit of a copy of the summons or order for publication, or both, in the post office directed to the party by registered mail to Respondent's last known or address.

Section 4.21. Voluntary appearance. – The Respondent's voluntary appearance or that of its counsel before the Commission shall be equivalent to service of summons for purposes of acquiring jurisdiction over Respondent's person.

Article IV. Verified Answer

Section 4.22. Verified answer. – An answer is a pleading in which the Respondent shall set forth its defenses. The answer must be verified.

Section 4.23. Period to file a verified answer. – The Respondent shall file a verified answer within the time indicated in the summons which shall not be less than thirty (30) days but not more than sixty (60) days.

In case of service of summons by publication, the summons shall state the reasonable time within which the Respondent must answer, which shall not be less than forty-five (45) days but not more than sixty (60) days from the date of last publication.

Section 4.24. Contents of verified answer. – The verified answer shall contain the following:

- (a) Admissions and denials, if any, of material facts alleged in the SO. Denials shall be made with particularity and, whenever practicable, the Respondent shall state the substance of the matters supporting its denial;
- (b) Facts or circumstances relevant and necessary to explain why the Respondent should not be held liable for the alleged violation stated in the SO;
- (c) Legal grounds on which such answer is based;
- (d) Evidence to support Respondent's claims or arguments;
- (e) The express consent, if any, of the Respondent or its counsel to the Electronic Service of Papers emanating from the Commission, and the e-mail address at which he agrees to accept such service; and
- (f) Such other matters the Respondent deems necessary to include.

Section 4.25. Access to Confidential Information. – A Respondent who seeks to access information treated provisionally confidential or otherwise considered to be confidential under Rule XI, may file a motion for the purpose and show that the same

is essential for Respondent's defense. The Enforcement Office and the Entity which claimed confidentiality may comment on the motion. The Commission, in resolving the motion and when giving access to Confidential Information under this Section, shall be guided by Rule XI and shall implement such means as may be necessary to protect the confidentiality of the information.

Section 4.26. Effect of failure to file a verified answer. – If the Respondent fails to answer within the time allowed therefor, the Commission may, upon motion by the Enforcement Office with notice to the Respondent and proof of such failure, declare the Respondent in default. If the Respondent files a comment or opposition to the motion, it shall also attach a verified answer to the SO. Should the Respondent be declared in default, the Commission may require the Enforcement Office to submit additional evidence *ex parte* or proceed to render judgment as the allegations in the SO and evidence may warrant. A party in default shall be entitled to notice of subsequent proceedings but not to take part in the same.

Section 4.27. Reply. – The Enforcement Office and the other Respondents, if any, may file a reply to a Respondent's verified answer within twenty (20) days from their receipt thereof. If a party does not file a reply, all the new matters alleged in the answer are considered controverted.

Section 4.28. Compulsory processes and interim measures not precluded. – Failure of the Respondent to file a verified answer within the time provided shall not preclude the Commission from ordering interim measures and issuing compulsory processes, including subpoena *duces tecum* and subpoena *ad testificandum*, before entering a decision.

Article V. Proceedings After the Filing of Verified Answer

Section 4.29. Notice of preliminary conference. – Upon its receipt of the verified answer and reply, if any, the Commission, as appropriate, may submit the case for decision and shall render a decision within forty-five (45) days therefrom. Otherwise, the Commission shall hold further proceedings and issue a notice of preliminary conference directing the Respondent and Enforcement Office to:

- (a) Appear before a designated case officer at a preliminary conference at the place and on the date specified therein; and
- (b) File a preliminary conference brief which shall contain, among others:
 - (1) A summary of admitted facts and a proposed stipulation of facts;
 - (2) The factual and legal issues to be tried or resolved;
 - (3) The list of documents or exhibits as well as the purpose thereof; and
 - (4) As far as practicable, any request for the issuance of subpoena *duces tecum* or *ad testificandum*.

The Respondent may also include in the preliminary conference brief a statement of its willingness to enter into a settlement.

Section 4.30. Filing of preliminary conference brief. – The Respondent and Enforcement Office shall ensure receipt by the other party as well as by the Commission of the preliminary conference brief at least ten (10) days before the date of the preliminary conference.

Failure of the Respondent to file a preliminary conference brief shall have the same effect as failure to attend the preliminary conference as provided in Section 4.33.

Section 4.31. Preliminary conference. – At the preliminary conference, the following shall be taken up:

- (a) The issues to be tried or resolved;
- (b) Deadline for filing of position papers, affidavits and other submissions;
- (c) Amenability of the Respondent to Electronic Service of Papers emanating from the Commission, if he has not consented to such service;

- (d) Consideration of confidentiality issues or protection of sensitive information;
- (e) Propriety of settlement; and
- (f) Other matters that may aid in the just and expeditious disposition of the proceeding.

Section 4.32. Extension of conference. – Where additional time is needed to complete the preliminary conference, the Commission shall set additional dates for the conduct thereof.

Section 4.33. Failure to Appear at the Preliminary Conference. – If the sole Respondent or if all the Respondents fail to appear at the preliminary conference, the Commission may render a decision based on the records, or allow the Enforcement Office to present evidence *ex parte*.

In a case with multiple Respondents, failure of any but not all of the Respondents to appear at the preliminary conference shall not prevent the conduct of the same.

In either case, the Respondent that failed to appear shall be entitled to notice of subsequent proceedings but not to take part in same.

Section 4.34. Preliminary Conference Order. – Not later than fifteen (15) days from termination of the preliminary conference, a preliminary conference order shall be issued containing the matters taken up at the preliminary conference and the actions taken thereon. The contents of the preliminary conference order shall bind the parties, whether or not they participated in the preliminary conference, and shall control the subsequent course of the proceeding unless modified to prevent manifest injustice.

Section 4.35. Submission of position papers. – Within the period provided in the preliminary conference order, the parties shall submit their respective position papers setting forth the law and the facts relied upon by them, attaching thereto the supporting affidavits and other evidence.

Article VI. Correction, Revision, and Withdrawal of the SO

Section 4.36. Correction of clerical errors in SO. – Clerical or typographical errors in the SO may be corrected at any stage of the proceedings, upon motion by the Enforcement Office: *Provided*, That no prejudice is caused thereby to any party.

Section 4.37. Revised SO. – Before the case is submitted for decision, a revised SO may be issued, upon motion by the Enforcement Office, where there is evidence acquired after the issuance of the SO which tends to support a violation or facts not contained in the SO but which violation or facts arise from the same transactions, occurrences, or events subject of the SO. The Respondent shall be given an opportunity to respond to the Revised SO.

Section 4.38. Withdrawal of SO. – Before the case is submitted for decision, an SO or a violation indicated therein may be ordered withdrawn by the Commission upon motion of the Enforcement Office. Unless otherwise stated in the order, granting the withdrawal shall be without prejudice.

Section 4.39. Ex parte motion. – Before service of summons, motions under this article shall be filed *ex parte*.

Article VII. Resource Person

Section 4.40. Resource person. – A resource person may, at any time before the case is submitted for decision, be called on or allowed by the Commission to submit a brief or to make an oral presentation for the purpose of aiding in the determination of the issues in the case. The Commission may allow the resource person to present via video conference.

Section 4.41. Comment to the brief or presentation. – The Enforcement Office and the Respondent may file a comment to the brief or presentation within fifteen (15) days from receipt of the brief or from the date of the presentation, as the case may be, unless a longer period is allowed.

Article VIII. Settlement

Section 4.42. Benefits of settlement. – Settlement may, among others, result in a reduction of fines or modification of charges, taking into account the following factors:

- (a) Stage of the proceedings at which the motion for settlement is filed;
- (b) Number of Respondents moving for settlement;
- (c) Number, nature, and gravity of alleged violations;
- (d) Likelihood of addressing the alleged anti-competitive conduct at the soonest possible time; and
- (e) Other procedural efficiencies and resource savings that can be achieved by a settlement.

Section 4.43. Joint motion for settlement. – If the Enforcement Office finds the Respondent's proposed settlement to be proper and reasonable, the Enforcement Office and Respondent shall file a joint motion for approval with the Commission, stating therein the terms of the settlement, including the consequences for non-compliance therewith. The joint motion shall be filed before the case is submitted for decision.

Should the Respondent have a representative, the joint motion shall contain the representative's written authority to enter into stipulations or admissions of facts and of documents, and to enter into a settlement.

Section 4.44. Period to file a verified answer when joint motion is denied or proceedings terminated. – In case of a denial of a joint motion for settlement that was filed prior to the filing of a verified answer or the termination of the settlement proceedings arising therefrom, the Respondent shall file its verified answer within the balance of the period allowed in the summons, but which period shall not be less than ten (10) days in any event, computed from its receipt of the notice of the denial or termination of the settlement proceedings, or the expiration of the sixty (60)-day period provided in Section 4.45, whichever is earlier.

Section 4.45. Action by the Commission. – The Commission has full discretion to approve a joint motion for settlement. The settlement must contain, among others, such terms and conditions that the Commission finds appropriate or necessary for the effective enforcement of the Act, its implementing rules, or other competition laws.

Should the Commission deny the joint motion for settlement, the Commission may nevertheless appoint a mediator or provide for such other means to facilitate further discussions between the Enforcement Office and the Respondent, and may indicate the terms and conditions that it requires for the approval of a settlement: *Provided*, That the settlement discussions shall be concluded within a period of not more than sixty (60) days from initiation of the same.

If the Enforcement Office and the Respondent agree on the terms of the settlement in compliance with the Commission's requirements, if any, they shall file another joint motion within the period provided in the preceding paragraph, stating therein the terms of the settlement they agreed upon. Otherwise, the settlement proceedings shall be considered terminated.

Section 4.46. Effect of denial of a joint motion for settlement. – The denial by the Commission of the joint motion for settlement shall not be construed as a prejudgment on the matters subject thereof.

Section 4.47. Effect of settlement. – An order approving a settlement shall be final and immediately executory.

Should the Respondent not comply with the terms of the settlement, the Commission shall issue an order enforcing the provisions of the settlement on the consequences of non-compliance as provided in Section 4.43.

Article IX. Decision

Section 4.48. Before rendition of decision. – At any time before the case is submitted for decision, the Commission may perform such acts or issue orders to aid in the expeditious and judicious resolution of the case, such as:

- (a) Conduct a clarificatory hearing for the purpose of ascertaining facts, issues, and other matters necessary and relevant to the resolution of the case;
- (b) Require the submission of additional documents;
- (c) Issue an order requiring the Respondent or the Enforcement Office, or both, to: (1) answer in writing any clarificatory question; (2) submit a position paper on any issue; (3) appear before the Commission to make an oral presentation on any issue; or (4) submit a memorandum summarizing the facts, issues, and arguments, provided that no evidence which has not been previously submitted or presented to the Commission may be attached or referred to; and
- (d) Consult a sector regulator, relevant government agency, as well as agencies from foreign jurisdictions, if appropriate.

Section 4.49. Submission for decision. – After the filing of the last pleading or the expiration of the period to file the same, or the conduct of the last hearing, as the case may be, the Commission shall issue an order submitting the case for decision.

Section 4.50. Rendition of decision. – The Commission shall render its decision within sixty (60) days from the time the case is submitted for decision, unless an additional period is warranted.

Section 4.51. Partial, several, or separate decision. – Upon motion or *motu proprio*, the Commission may render a partial, several, or separate decision at any stage of the proceedings.

Section 4.52. Form and content of decision. – All decisions of the Commission shall contain a concise statement of its findings, legal basis, the penalties or remedies imposed, and such other appropriate matters.

Section 4.53. Publication. – The decision shall be published on the PCC website subject to Rule XI.

Section 4.54. Motion for reconsideration. – A motion for reconsideration of a decision, order, or resolution may be filed pursuant to Rule X.

Section 4.55. Finality of decisions and final orders of the Commission. – If no appeal or motion for reconsideration is filed within the period fixed in these rules, the decision or final order of the Commission, as the case may be, shall become final.

RULE V APPEAL

Section 5.1. Appeals of final orders or decisions of the Commission. – Final orders or decisions of the Commission shall be appealable to the Court of Appeals in accordance with the Rules of Court. The appeal shall not stay the final order or decision sought to be reviewed, unless the Court of Appeals shall direct otherwise. In the appeal, the Commission shall be included as a party respondent to the case.

RULE VI FINES, PENALTIES, AND FINAL REMEDIES

Article I. Fines and Penalties

Section 6.1. Administrative fines. – After due notice and hearing, the Commission may impose the following schedule of administrative fines on any Entity found by the Commission to have violated Sections 14 or 15 of the Act:

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

Second offense: Fine of not less than one hundred million pesos (P100,000,000.00) but not more than two hundred fifty million pesos (P250,000,000.00); and

Third and succeeding offenses: Fine of not less than one hundred fifty million pesos (P150,000,000.00) but not more than two hundred fifty million pesos (P250,000,000.00).

Any previous finding of violation under Sections 14 or 15 of the Act by the Commission shall be counted for purposes of determining the minimum imposable penalty according to the above schedule.

Section 6.2. Relevant turnover. –

(a) The relevant turnover (“Relevant Turnover”) shall be the sales of the Respondent in the Philippines in the Relevant Market/s affected by the violation (“Sales”) for the applicable financial year (“Applicable Financial Year”), after deduction of the output value-added taxes and excise taxes only: *Provided*, That the taxes to be deducted shall be limited to those directly related to the Respondent’s Sales.

Applicable Financial Year shall be the financial year with the highest Sales among the years during which the infringement lasted: *Provided*, That the Applicable Financial Year cannot be earlier than three (3) financial years preceding the date when the violation ended or when the Preliminary Inquiry was commenced, whichever is earlier: *Provided, further*, That financial year shall mean calendar year unless the Respondent has adopted a different accounting period of twelve (12) consecutive months in documents required to be filed before government agencies, or in the Respondent’s accounting records.

(b) Where the geographic scope of an infringement extends beyond the Philippines (“Relevant Geographic Area”), the Commission may, as it deems appropriate, determine Relevant Turnover of each Respondent in the following manner: (1) firstly, assess the total value of the sales of goods or services to which the infringement relates in the Relevant Geographic Area of all Entities which participated in the infringement; (2) secondly, determine the share of the sales of each Entity in that Relevant Geographic

Area; and (3) finally, multiply each Respondent's share to the total value of sales in the Philippines of the goods or services to which the infringement relates. The result may be taken as the Relevant Turnover for the purpose of setting the basic fine ("Basic Fine"): *Provided*, That it is not lower than the figure determined under paragraph (a) of this Section.

- (c) The Relevant Turnover as described in paragraphs (a) and (b) of this Section shall be based on figures from pertinent financial documents of the Respondent, including, but not limited to, audited or unaudited financial statements, books of accounts, internal sales reports, and other source documents. Nevertheless, the Relevant Turnover may be determined on the basis of any other information which the Commission regards as relevant and appropriate where, among others:
 - (1) The Respondent is suspected of providing incomplete or unreliable information for purposes of computing the Relevant Turnover in the abovementioned financial documents; or
 - (2) The abovementioned financial documents are not available or do not reflect the true scale of the Respondent's activities in the Relevant Market/s.
- (d) Where the Respondent involved is a trade association or professional organization, its Relevant Turnover shall be based on the sum of the Relevant Turnover of each member in the Relevant Market/s. Nevertheless, the Relevant Turnover of the trade association or professional organization may be determined on the basis of any other information which the Commission regards as relevant and appropriate if computing the sum of the Relevant Turnover of each member is impracticable or will require excessive resources. The Relevant Turnover of each member shall be determined in the manner prescribed in the preceding paragraphs under this Section.

Section 6.3. Computation of the fine. – Unless otherwise provided in this Section, the Basic Fine shall be up to thirty percent (30%) of the Relevant Turnover of the Respondent, depending on the gravity of the violation, multiplied by the duration of the infringement in years: *Provided*, That a fraction of a year shall be considered as one year.

Where the Respondent does not compete in the Relevant Market/s affected by the violation, the Basic Fine shall be up to twenty percent (20%) of the average of the Basic Fines of the Respondents in the Relevant Market/s, depending on the gravity and duration of the violation.

In assessing the gravity of the violation, the Commission may, in its discretion, consider any of the following, among others:

- (a) Nature of the infringement;
- (b) Combined market share of all Entities involved;
- (c) Geographic scope of the violation;
- (d) In case of violations of Section 14(a) of the Act, implementation of the agreement; and
- (e) Direct or indirect impact and effect of the violation on the Relevant Market/s.

The final fine ("Final Fine") shall be determined by increasing or decreasing the Basic Fine, on a case-by-case basis, taking into account the relevant factors of the case: *Provided*, That the Final Fine imposed for each offense for each Respondent shall be within the limits provided in Section 6.1.

Section 6.4. Factors affecting the Final Fine. –

- (a) **Aggravating factors.** – The Commission may consider the following as aggravating factors, among others:
 - (1) That the Respondent is the leader or instigator of the violation;

(2) That the Respondent's officers, directors, trustees, partners, or employees holding managerial positions are involved in the commission of the violation;

(3) That the Respondent is a repeat offender;

A Respondent shall be considered a repeat offender if it was previously found by the Commission to have violated: (i) any Section of the Act or its implementing rules, except Sections 14 or 15 of the Act; or (ii) either Sections 14 or 15 of the Act at least three times.

(4) That the Respondent engaged in any of the acts under Sections 6.9 to 6.16 of these Rules in the same Investigation or proceedings, unless penalized as an independent offense.

(b) **Mitigating factors.** – The Commission may consider the following as mitigating factors, among others:

(1) That the Respondent voluntarily desisted from continuing the infringement: *Provided*, That this factor shall not apply for violations of Sections 14(a) or 14(b) of the Act;

(2) That the Respondent took adequate steps during the Investigation or proceeding to comply with the prohibitions under Sections 14 or 15 of the Act; and

(3) That the Respondent cooperated with the PCC during the Investigation or proceeding beyond what is required under the Act and its implementing rules.

(c) **Other relevant factors.** – The amount of fine to be imposed may be adjusted, on a case-by-case basis, to deter the Respondents as well as other Entities from engaging in anti-competitive practices.

Section 6.5. Violations involving basic necessities and prime commodities. – If the violation involves the trade or movement of basic necessities and prime commodities as defined by Republic Act No. 7581, as amended, the Final Fine imposed by the Commission shall be tripled.

Section 6.6. Application to other proceedings. – The methodology for the setting of fines provided in the preceding Sections under this Rule may be applied in the determination of the amount to be paid by an Entity in proceedings involving non-adversarial remedies and settlement.

Section 6.7. Alternative computation of fines. – The Commission may, in its discretion, depart from the general methodology for the setting of the Basic Fine and Final Fine in the interest of substantial justice, equity, or fairness.

Section 6.8. Acts of directors, trustees, partners, officers, employees, and agents. – For violations of Sections 14 or 15 of the Act, acts committed by directors, trustees, partners, officers, employees, or agents of an Entity are considered acts of the Entity if: (a) they are acting within the scope of their authority or contracted obligation; or (b) their acts are in furtherance of the interests or for the benefit of, or benefitted the Entity.

Section 6.9. Failure to notify the Commission of sale, donation, disposition, or any other transfer during adjudication. – A Respondent that fails to notify the Commission of any sale, donation, disposition, or any other transfer, whether absolute or otherwise, made during adjudication, of its interest in businesses, shareholdings, business units, assets, or any other interest related to matters under adjudication shall, after due notice and hearing, be penalized with a fine of not less than fifty thousand pesos (P50,000.00) up to two million pesos (P2,000,000.00).

Section 6.10. Failure or refusal to comply with a ruling, order, or decision of the Commission. – An Entity that fails or refuses to comply with a ruling, order, or decision issued by the Commission within the period provided therein shall, after due notice and hearing, pay a penalty of not less than fifty thousand pesos (P50,000.00) up to two million pesos (P2,000,000.00) for each violation. In addition, a similar amount of penalty shall accrue for each day of non-compliance beginning forty-five (45)

days from the time that the said ruling, order, or decision was served until the said Entity fully complies.

Section 6.11. Supply of incorrect or misleading information.

– The Commission may, after due notice and hearing, likewise impose upon any Entity fines of up to one million pesos (P1,000,000.00) where, intentionally or negligently, it supplies incorrect or misleading information in:

- (a) Any document, application, or other paper filed with or submitted to the PCC;
- (b) A request for a Binding Ruling;
- (c) An application for a Consent Order;
- (d) Proceedings relating to a Show Cause Order; or
- (e) Application for modification of any ruling, order, or approval, as the case may be.

Supply of incorrect or misleading information shall mean: (a) providing information that is false, inaccurate, or erroneous; or (2) omitting, concealing, or failing to make known information reasonably likely to be relied upon by the PCC in the performance of its official functions: *Provided*, That such omission, concealment, or failure may mislead, tend to mislead, or otherwise create a false impression on the PCC.

Where the incorrect or misleading information is supplied in written or printed form, supply thereof in any single document shall constitute one violation under this Section.

Section 6.12. Reprisal or discrimination. – Any Entity that commits any form of reprisal or discrimination against anyone cooperating or furnishing information, document, or data to the PCC in connection with an Investigation or proceeding being conducted, shall, after due notice and hearing, be penalized with a fine of not less than fifty thousand pesos (P50,000.00) up to two million pesos (P2,000,000.00).

Reprisal or discrimination shall include removal, discharge, demotion, suspension, threats, harassment, or any form of retaliation in the terms and conditions of employment, agency, or engagement, as the case may be.

Section 6.13. Disclosure, publication, transfer, copying, or dissemination of Confidential Information.

– Unless otherwise allowed under the Act, its implementing rules, or other issuances of the PCC, the direct or indirect disclosure, publication, transfer, copying, or dissemination of the following information shall, after due notice and hearing, be penalized with a fine of not less than one million pesos (P1,000,000.00) but not more than five million pesos (P5,000,000.00):

- (a) Confidential Business Information submitted and duly claimed as confidential by an Entity and determined to be such by the PCC, as well as Confidential Business Information provisionally treated as confidential in accordance with Rule XI; or
- (b) Identity of persons who provide information to the PCC under condition of anonymity.

If the direct or indirect disclosure, publication, transfer, copying, or dissemination involves other forms of Confidential Information, the fine shall be from fifty thousand pesos (P50,000.00) up to two million pesos (P2,000,000.00).

Section 6.14. Contempt. – The Commission may punish for contempt any of the following acts committed against or before the Commission, Enforcement Office, or designated case officer:

- (a) Misconduct that seriously interrupts any hearing, session, or proceeding;
- (b) Refusal to be sworn as a witness or to answer questions or to furnish information when lawfully required to do so, at a hearing, proceeding, session, or Investigation; or
- (c) Willful failure or refusal, without just cause, to comply with a summons or subpoena.

Contempt shall, after due notice and hearing, be punished by imprisonment not exceeding thirty (30) days or by a fine not exceeding one hundred thousand pesos (P100,000.00), or both: *Provided*, That when the Entity commits any of the acts under (a) and (b) in the presence of the Commission, the Entity shall be punished summarily.

When the contempt consists in the refusal or omission to do an act which is yet in the power of the Entity to perform, he may be imprisoned by order of the Commission until he performs it.

Section 6.15. Obstruction. – The Commission may, after due notice and hearing, impose a fine of not less than fifty thousand pesos (P50,000.00) up to two million pesos (P2,000,000.00) on anyone who commits any of the following acts constituting obstruction of any Investigation or proceedings of the PCC, the implementation of the orders, rulings, or decisions of the PCC, or the enforcement of the Act, its implementing rules, or other competition laws:

- (a) Altering, destroying, suppressing, or concealing papers, records, documents, Electronically Stored Information, other things, or information which relate to any matter relevant to the Investigation or proceeding;
- (b) Disobedience of or resistance to a lawful writ or process of the PCC, other than acts covered by Section 6.14;
- (c) Disobedience of or resistance to any agency, officer, or person vested with authority or deputized by the Commission, while acting within the scope of his authority or engaged in the performance of his official duties;
- (d) Making a motion solely for the purpose of delay or in order to gain undue access to Confidential Information, filing a motion in bad faith, or making a motion that is patently frivolous;
- (e) Knowingly making a false oral statement, other than acts covered by Section 6.11;

- (f) Inviting reliance on any document or information that is false, forged, altered, misleading, or otherwise lacking in authenticity;
- (g) Making, presenting, or submitting any object evidence that is misleading in a material respect; or
- (h) Engaging in any act that interferes with, impedes, degrades, or frustrates, or tends, directly or indirectly, to interfere with, impede, degrade, or frustrate the speedy or orderly administration of the Act, its implementing rules, or other competition laws.

Section 6.16. Other violations. – Any other violations not specifically penalized under the relevant provisions of the Act shall be penalized by a fine of not less than fifty thousand pesos (P50,000.00) up to two million pesos (P2,000,000.00).

Section 6.17. Liability of officers, directors, trustees, and partners. – Responsible officers, directors, trustees, and partners shall be solidarily liable with the infringing Entity.

Section 6.18. Solidary liability for violations. – There shall be solidary liability for violations of the Act, its implementing rules, or other competition laws in any of the following cases:

- (a) Controlling and controlled Entities, for violations committed by the latter;
- (b) Controlling and controlled Entities, for violations committed by the former: *Provided*, That controlled Entities shall be liable only if they benefitted from the controlling Entity's violation or committed acts in furtherance or implementation thereof;
- (c) Infringing Entity and Entities that are under common control with said Infringing Entity: *Provided*, That the other Entity or Entities shall be liable only if they benefitted from the

infringing Entity's violation or committed acts in furtherance or implementation thereof; and

- (d) Infringing Entity, and its successors, assignees, or transferees that: (1) control, are controlled by, or are under common control with the infringing Entity; or (2) acquire all or substantially all of the assets of the infringing Entity and continue the latter's business. Any sale, donation, disposition, or any other transfer that renders the infringing Entity incapable of continuing its business or accomplishing the purpose for which the infringing Entity was incorporated shall be considered a sale, donation, disposition, or transfer of substantially all of its assets.

Section 6.19. Satisfaction of fines imposed on trade associations. – Fines imposed on trade associations may also be collected from any of its members active in the Relevant Market/s affected by the violation.

Section 6.20. Satisfaction of fines imposed on professional organizations. – Fines imposed on professional organizations may also be collected from any of its members who participated in the violation.

Section 6.21. Criminal penalties. – An Entity that enters into any anti-competitive agreement as covered by Sections 14(a) and 14(b) under the Act shall, for each and every violation, be penalized by imprisonment of two (2) to seven (7) years, and a fine of not less than fifty million pesos (P50,000,000.00) but not more than two hundred fifty million pesos (P250,000,000.00). The penalty of imprisonment shall be imposed upon the responsible officers, directors, or partners of the Entity.

When the Entities involved are juridical persons, the penalty of imprisonment shall be imposed on its officers, directors, partners, or employees holding managerial positions who are knowingly and willfully responsible for such violation.

Article II. Final Remedies

Section 6.22. Purpose of remedies. – Remedies seek to address anti-competitive conduct or agreements and other competition concerns to the extent reasonably necessary to maintain, enhance, or restore competition in the Relevant Market/s, or to promote public welfare.

The imposition of any remedy shall be without prejudice to the imposition of administrative fines.

Section 6.23. Behavioral remedy. – A behavioral remedy is a measure that obliges the Entity concerned to act in a specific way, or to cease or refrain from engaging in specific conduct.

Section 6.24. Structural remedy. – A structural remedy is a measure that effectively changes the structure of the market in order to maintain, enhance, or restore the competitive structure thereof.

Section 6.25. Injunction. – Injunction is a remedy that orders the Entity to: (a) perform a particular act; or (b) stop or refrain from doing an act or continuing a particular activity or course of action.

Section 6.26. Disgorgement. – Disgorgement is a remedy that requires the Entity to disgorge: (a) excess profits; or (b) any other form of benefit or gain reasonably connected to any violation of the Act, its implementing rules, or other competition laws.

Section 6.27. Divestiture. – Divestiture is a remedy that requires the Entity to change its structure through partial or full disposal of businesses, shareholdings, business units, or tangible or intangible assets by sale, exchange, or any other means recognized by law.

Section 6.28. Imposition of divestiture. – Adjustment or divestiture orders, which are structural remedies, should only be imposed:

- (a) Where there is no equally effective behavioral remedy; or

- (b) Where any equally effective behavioral remedy would be more burdensome for the enterprise concerned than the structural remedy.

Section 6.29. Changes to structure of the enterprise as it existed before the infringement. – Changes to the structure of an enterprise as it existed before the infringement was committed would only be proportionate where there is a substantial risk of a lasting or repeated infringement that derives from the very structure of the enterprise.

Section 6.30. Divestiture process. – The Commission shall issue a divestiture order (“Divestiture Order”) specifying the period within which to complete the divestiture and directing the Entity to propose a divestiture package (“Divestiture Package”), which shall contain, among others, the businesses, shareholdings, business units, or assets to be divested, and other matters incident or corollary to the divestiture. The Commission shall set out in the Divestiture Order the qualifications of an oversight party (“Oversight Party”) and of a suitable purchaser. The Divestiture Order may provide that in cases where the Entity fails to complete divestiture within the period indicated in the order, businesses, shareholdings, business units, or assets not included in the Divestiture Package shall also be divested. The Commission shall approve the proposed Divestiture Package if it finds that the same is adequate to enable a buyer to maintain or restore competition. If it finds otherwise, it shall direct the Entity to amend its proposed Divestiture Package.

The businesses, shareholdings, business units, or assets to be divested shall be sold to a suitable purchaser. Prior to completion of the divestiture, the Commission shall approve or appoint an Oversight Party in accordance with Section 6.31.

Failure to comply with the Divestiture Order within the indicated period shall be subject to administrative fines in accordance with Section 6.10. Amendment of the proposed Divestiture Package does not suspend the period for completion of divestiture as indicated in the Divestiture Order, unless the Commission directs otherwise.

Section 6.31. Approval or appointment of an Oversight Party.

– The Commission may approve an Oversight Party nominated by the Entity or appoint one, *motu proprio*. The Oversight Party shall have oversight functions relating to the divestiture and must have the qualifications specified in the Divestiture Order.

Section 6.32. Prohibition on reacquisition of divested businesses, shareholdings, business units, or assets.

– The Entity ordered to divest its businesses, shareholdings, business units, or assets shall be prohibited from subsequently purchasing or acquiring material influence over the same, or any part thereof, or any shareholdings connected thereto, within the period specified by the Commission. The prohibition shall also apply to Entities that are directly or indirectly related to, or are not otherwise independent from the Entity concerned.

**RULE VII
ENFORCEMENT OF DECISIONS AND ORDERS**

Section 7.1. Execution of decision or final order. – To implement its decision or final order, the Commission shall issue a writ of execution requiring the proper officer, personnel, or sheriff of the Commission, or such other duly deputized officer, to execute the same. A writ of execution shall be effective until fully satisfied.

Section 7.2. No stay of execution pending appeal. – An appeal shall not stay the execution of the Commission’s decision or order sought to be reviewed, unless otherwise directed by the Court of Appeals.

Section 7.3. Return of writ of execution. – The officer, personnel, sheriff, or such other duly deputized officer implementing the writ of execution shall submit his return to the Commission immediately after the full satisfaction thereof.

In case of partial satisfaction or non-satisfaction, he shall submit periodic reports updating the Commission on the status of the execution until fully satisfied.

**RULE VIII
MONITORING OF COMPLIANCE**

Section 8.1. Power of the Commission to monitor and ensure compliance. – The Commission shall monitor and ensure compliance with its decisions or orders.

The Commission shall adopt effective monitoring mechanisms, including the appointment of compliance monitors, trustees, or external experts.

Section 8.2. Compliance report. – Where the filing of compliance report is required, the Entity concerned shall file with the Commission, within the period fixed in the decision or order, a verified written report setting forth in detail the manner and form of its compliance with the decision or order. The Entity shall thereafter file with the Commission written reports of compliance as may be further required.

Section 8.3. Extension of time to file compliance report. – The Commission may, upon motion by the Entity concerned, extend the time within which the required compliance report may be filed. However, a motion for extension or the filing of a report that does not show full compliance shall not relieve the Entity concerned from the obligation to comply with the decision or order.

Section 8.4. Publication of compliance report. – The Commission may, in its discretion, publish on the PCC website the compliance reports submitted by the Entity concerned, subject to Rule XI.

Section 8.5. Effect of non-compliance. – If the Entity is proven, after due notice and hearing, to have failed to comply with a decision or order of the Commission, such Entity shall be liable for the administrative fines imposed under Rule VI. This is without prejudice to any other administrative, civil, and criminal liability arising from such non-compliance, as well as the imposition of new measures or conditions for compliance monitoring.

Section 8.6. Applicability. – This Rule shall apply to the Commission’s decisions, final orders, resolutions, and rulings, as well as interim measures.

**RULE IX
MOTIONS**

Section 9.1. Applicability. – This Rule shall apply to proceedings involving adjudication, non-adversarial remedies, and interim measures, unless otherwise provided in these Rules.

Section 9.2. Motion. – All motions shall be in writing, except those made in the course of a conference or hearing. Written motions shall not be set for hearing and must be served on concerned parties.

A motion shall state the relief sought to be obtained and the grounds upon which it is based, and if required by these Rules or necessary to prove the facts alleged therein, shall be accompanied by supporting affidavits and other evidence.

A motion to amend pleadings, a motion for extension of time to file pleadings, affidavits or any other paper, or a motion for postponement of hearings or proceedings, and any other motions of similar intent shall be prohibited, except those filed due to clearly compelling reasons, in which case such motion must be verified.

Section 9.3. Comment or opposition to a motion. – A comment or opposition to a motion may be filed within ten (10) days from receipt. The comment or opposition may be accompanied by supporting affidavits and other evidence, and shall specify the relevant date of receipt of the motion.

Section 9.4. Resolution of motions. – Motions shall be resolved as soon as practicable. Written motions may be resolved without need of a hearing. If a hearing is necessary, a notice shall be issued therefor.

Oral motions made in the course of a conference or hearing shall be resolved immediately, unless additional time is needed to study the merits of the motion.

Section 9.5. Motions made in bad faith. – A motion made solely for the purpose of delay, is patently frivolous, was done in order to gain undue access to Confidential Information, or was otherwise filed in bad faith, may be basis to hold the movant, his counsel, or both liable for obstruction, in accordance with Rule VI.

RULE X MOTION FOR RECONSIDERATION

Section 10.1. Applicability. – This Rule shall apply to proceedings involving adjudication, non-adversarial remedies, and interim measures, unless otherwise provided in these Rules.

Section 10.2. Period to file motion for reconsideration. – A motion for reconsideration of any decision, order, or ruling may be filed within fifteen (15) days from receipt thereof and must be served on concerned parties.

Section 10.3. Grounds for reconsideration. – A motion for reconsideration shall only be based on any of the following grounds:

- (a) The evidence on record is insufficient to justify the decision, order, or ruling; or
- (b) The decision, order, or ruling is contrary to law.

Section 10.4. Form and content of a motion for reconsideration. – The motion shall be in writing, specifically identifying the findings of fact or conclusions of law in the decision, order, or ruling which are not supported by evidence, or which are contrary to law.

Section 10.5. Comment or opposition to the motion. – A comment or opposition to the motion may be filed within ten (10) days from receipt and shall specify the date of receipt thereof.

Section 10.6. Second motion for reconsideration not allowed. – A second or subsequent motion for reconsideration shall be prohibited.

Section 10.7. Effect of pending motion for reconsideration. – A pending motion for reconsideration shall stay the order or decision sought to be reconsidered, unless otherwise provided in these Rules.

RULE XI CONFIDENTIALITY

Section 11.1. Confidentiality of Information. – Confidential Information shall not be disclosed to any person not authorized to have access thereto.

Section 11.2. Confidential Business Information. – Confidential Business Information refers to information, which concerns or relates to the operations, production, sales, shipments, purchases, transfers, identification of customers, inventories, or amount or source of any income, profits, losses, expenditures, which are not generally known to the public or to other persons who can obtain economic value from its disclosure or use, or is liable to cause serious harm to the person who provided it, or from whom it originates, and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Section 11.3. Other Confidential Information. – The Enforcement Office or the Commission may, *motu proprio*, extend confidential treatment to information other than Confidential Business Information, if such information is not generally known to the public, is subject of reasonable efforts under the circumstances to maintain its secrecy, and the disclosure of such information is prejudicial to, or may compromise or adversely affect any Investigation or proceeding conducted for the enforcement of the Act, its implementing rules, or other competition laws.

Section 11.4. Confidentiality of identity. – The Enforcement Office and the Commission shall keep confidential the identity of persons providing information under condition of anonymity, unless such confidentiality is expressly waived by the latter. The Enforcement Office and the Commission may, even without request of anonymity, treat as confidential the identity of any persons providing information when necessary

for the enforcement of the Act, its implementing rules, or other competition laws.

Section 11.5. Procedure for claiming confidential treatment.

– An Entity that claims confidentiality under Section 11.2 shall, upon the submission of such information to the Commission or Enforcement Office:

- (a) Provide at the time of the submission of the pleading, motion, or any document containing the information it claims as Confidential Business Information, both confidential and non-confidential versions thereof as follows:
 - (1) In the confidential versions of submissions, confidential information must be marked by enclosing it in square brackets or underlining the text; and
 - (2) In the non-confidential version of submissions, redactions must be marked by square brackets containing the word “CONFIDENTIAL”.
- (b) Specifically identify the information it claims as Confidential Business Information. Blanket claims for confidentiality shall not be accepted; and
- (c) Provide a written statement justifying and substantiating the request for confidential treatment over each piece of information, and the period within which confidentiality is requested.

Failure to comply with the foregoing shall result in the waiver of the Entity’s claim for confidentiality.

Confidential Business Information claimed to be confidential in accordance with the foregoing shall be provisionally treated as such until said claim for confidentiality is determined to be unjustified as provided for in Section 11.7 of this Rule. The provisional treatment of confidentiality shall not be construed as an evaluation of the merits of the claim for confidentiality.

Section 11.6. Confidentiality not a ground for non-submission. – A claim for confidentiality is not a ground for the non-submission of information. Any Entity that fails or refuses to comply with the Commission’s order requiring submission of information on the ground of confidentiality shall be liable for the penalty provided in Rule VI.

Section 11.7. Notice to disclose. – Should the Enforcement Office find the claim for confidentiality unjustified, it shall, prior to any disclosure of such information, notify the Entity which claimed confidentiality that the information shall be treated as non-confidential. The Entity concerned may petition the Commission to reverse such determination by the Enforcement Office within five (5) days from notice.

If such determination is made by the Commission, the Entity concerned may file a motion for reconsideration in accordance with Rule X.

Section 11.8. Disclosure of Confidential Information. – Notwithstanding Section 11.1, the Commission may disclose Confidential Information in any of the following circumstances:

- (a) When consent is obtained from the Entity claiming confidentiality;
- (b) When disclosure is required by law;
- (c) When disclosure is required by a valid order of a court of competent jurisdiction or pursuant to a lawful writ or process of a government agency;
- (d) When disclosure is based on an agreement with a government agency: *Provided*, That the information shall be treated by the agency as confidential, and used for law enforcement purposes; or
- (e) When necessary for enforcing the Act, its implementing rules, or other competition laws.

Section 11.9. Disclosure to government agencies outside the Philippines. – Disclosure of Confidential Information to government agencies outside the Philippines shall be made only upon waiver of the Entity claiming confidentiality or pursuant to a cooperation or an information sharing arrangement between the government agencies concerned.

Section 11.10. Publication of decisions, orders, and rulings.

– Prior to the publication on the PCC website of any decision, order, or ruling of the Commission, an Entity may be allowed to request for the redaction of any undisclosed Confidential Business Information contained therein on the ground that they have been previously claimed to be confidential. The Commission however has full discretion to determine what information is confidential.

**RULE XII
INTERIM MEASURES**

Section 12.1. Interim measures. – The Commission may issue an order against an Entity or Respondent for the temporary cessation of or desistance from the performance of certain acts, the continued performance of which would result in a material and adverse effect on consumers or competition in the Relevant Market/s, or impose such other interim measures to protect the integrity of the investigatory or adjudicatory process, or where there is an urgent need to prevent harm to competition. Such orders or measures are without prejudice to any decision of the Commission which finally disposes of the case on the merits.

Section 12.2. Authority to impose interim measures. – The Commission may, on its own or upon application by a Respondent or the Enforcement Office, impose interim measures in accordance with this Rule.

Section 12.3. Contents of the application. – Applications for interim measures shall set forth, among others, the relief sought, the factual and legal grounds for the granting thereof, and supporting evidence. The application shall be verified if filed by a Respondent.

Section 12.4. Order to explain. – Upon receipt of the application sufficient in form and substance, the Commission shall issue an order against whom the interim measure is sought to explain why the application should not be granted.

The explanation must be written and verified, and may include alternative measures that will address the concerns raised in the application.

Section 12.5. Duration of interim measure. – An interim measure shall be immediately effective from issuance, unless otherwise ordered by the Commission, and shall remain in effect until expiration of the period indicated in the order, or until the Commission has lifted the same or rendered a decision on the merits.

The filing of a motion for reconsideration, if any, shall not stay the implementation of an interim measure.

Section 12.6. Motion to lift the interim measure. – A verified motion to lift an interim measure may be filed on the ground that the factual and legal bases for which it was issued no longer exist.

Section 12.7. Publication. – The order imposing an interim measure may be published on the PCC website, subject to Rule XI.

**RULE XIII
SUBPOENA**

Section 13.1. Subpoena ad testificandum and subpoena duces tecum. – Subpoena *ad testificandum* is a process that directs the giving of a testimony before the PCC at any Investigation or proceeding.

Subpoena *duces tecum* is a process that directs anyone who may have access to, possession, custody, or control of documents, Electronically Stored Information, other things, or information which relate to any matter relevant to the Investigation or proceeding to submit or make available to the PCC such documents, Electronically Stored Information, or other things for inspection, copying, or reproduction, file written reports or answers to questions, or submit the required information in a specified format such as lists, summaries, or tables.

Section 13.2. Contents. – The subpoena shall state, among others, the following:

- (a) The purpose for which it is issued;
- (b) Name and address of the Entity or individual to whom the subpoena is directed; and
- (c) The period within which to comply.

In the case of a subpoena *duces tecum*, it shall also contain a reasonable description of the documents, Electronically Stored Information, other things, or other information subject thereof.

Section 13.3. Service. – Service of a subpoena shall be made in the same manner as service of summons as provided in Section 4.18, except through publication.

Section 13.4. Motion to reconsider subpoena. – A subpoena may be reconsidered upon motion on the ground that the subject of the subpoena *duces tecum* is not related to a matter relevant to the Investigation or proceeding, or when the person subject of

the subpoena *ad testificandum* cannot comply therewith on the ground that doing so would violate a law, issuance, or valid order.

Section 13.5. Compliance. – Based on compelling reasons, a motion may be filed praying for an alternative date or manner by which to comply with the subpoena, or for a modification of the scope thereof.

The motion shall be considered denied if the same is not resolved within five (5) days from filing.

In complying with a subpoena *duces tecum*, a certification shall be made stating that all the documents, Electronically Stored Information, other things, or information in any other format required by the subpoena and in one's possession, custody, or control, or to which he has access to, have been made available or submitted, and that there is nothing required in the subpoena that is in one's possession, custody, or control, or to which he has access to, that has not been made available or submitted.

Section 13.6. Period to comply not tolled. – In the absence of any resolution directing otherwise, motions filed under Sections 13.4 and 13.5 shall not toll the period for complying with a subpoena.

Section 13.7. Failure or refusal to comply with subpoenas. – Willful failure or refusal, without just cause, to comply with a subpoena shall constitute contempt in accordance with Rule VI.

Section 13.8. Costs. – Except for the Enforcement Office, the requesting party shall pay the costs of service and compliance with the subpoena.

**RULE XIV
ENLISTMENT AND DEPUTIZATION**

Section 14.1. Enlistment. – The Commission may enlist the aid and support of any private institution, corporation, Entity, or association, in the implementation of the PCC's powers and functions.

**RULE XV
MISCELLANEOUS PROVISIONS**

Section 14.2. Deputization. – The Commission may, in the implementation of the PCC’s powers and functions, deputize enforcement agencies of the government to perform specific acts in representation or on behalf of the PCC, such as the enforcement of its rulings, orders, issuances, resolutions, or decisions. The deputized enforcement agency shall have the authority to perform all acts necessary and proper to carry out the said order.

Nothing in these Rules shall prevent the PCC and the deputized enforcement agencies from directly and fully exercising their respective powers and functions under the law.

Section 14.3. Contents of the deputization order. – The deputization order shall, among others, contain the following:

- (a) The enforcement agency being deputized and when practicable, the specific division, bureau, or office within the agency;
- (b) The scope of the deputization, with sufficient information to enable the enforcement agency to effectively carry out the order;
- (c) The period of effectivity of the order; and
- (d) Such other provisions that the Commission deems appropriate and necessary for the effective enforcement of the order.

Section 14.4. Obstruction. – Disobedience of or resistance to any deputized enforcement agency or its officers, acting within the scope of their authority under the deputization order, shall be subject to administrative fines under Rule VI.

Section 14.5. Non-binding effect of service. – Service of legal processes on the deputized enforcement agency or its officers shall not be considered service on the PCC.

Section 14.6. Effectivity and termination. – The deputization order shall become effective immediately upon issuance. Unless sooner terminated or further extended, the deputization is valid for the period stated in the order.

Section 15.1. Applicability. – These Rules shall apply to pending Investigations and proceedings, and to those commenced after they take effect. These Rules shall supersede the *Interim Rules on Preliminary Inquiry and Full Administrative Investigation*.

Section 15.2. Separability. – If any part or provision of these Rules is declared unconstitutional or illegal, the other parts or provisions shall remain valid.

Section 15.3. Effectivity. – These Rules shall take effect fifteen (15) days after publication in two (2) newspapers of general circulation.

Approved this 11th day of September 2017 in the City of Pasig, Philippines.

(Sgd.)
ARSENIO M. BALISACAN
Chairman

(Sgd.)
JOHANNES R. BERNABE
Commissioner

(Sgd.)
STELLA LUZ A. QUIMBO
Commissioner

(Sgd.)
AMABELLE C. ASUNCION
Commissioner



ENFORCEMENT STRATEGY AND PRIORITIZATION GUIDELINES



Enforcement Strategy and Prioritization Guidelines

I. Introduction

1. The Philippine Competition Commission (PCC) is an independent and quasi-judicial body mandated to implement the national competition policy and enforce the Philippine Competition Act (PCA), which serves as the country's primary competition law for promoting and protecting competitive markets.
2. One of the objectives of the PCA is to penalize anti-competitive agreements and abuses of dominant position for the purpose of protecting consumer welfare and advancing domestic and international trade and economic development. In order to achieve this, the PCC is empowered to investigate violations of the PCA, its implementing rules, and other competition laws.
3. In initiating and conducting an investigation ("enforcement action"), the PCC shall be guided by the enforcement priorities set by the Commission in the exercise of its discretion. Setting priority guidelines enables the PCC to manage its resources, maximize the impact of its enforcement actions and advocacy measures or initiatives, and provide efficient public service.
4. The principles and strategies outlined herein are not intended to be exhaustive and the PCC may take into account other factors it may consider appropriate and necessary for the effective implementation of the PCA, its implementing rules, or other competition laws.

II. Prioritization Strategies

5. Jurisdiction of the PCC. Prior to the conduct of an enforcement action, the PCC shall determine whether it has jurisdiction over the conduct or agreement complained of. In particular, the PCC shall determine whether such conduct or agreement may constitute a violation of Sections 14 or 15 of the PCA, or of other competition laws ("potential anti-competitive practice").
6. Considerations for enforcement action. The PCC shall prioritize potential anti-competitive practices for enforcement action based on the following considerations:
 - a. Public interest;
 - b. Resource allocation;
 - c. Likelihood of a successful outcome; and
 - d. Other reasonable grounds to conduct enforcement action.
7. Determination of Public Interest. In determining whether a potential anti-competitive practice is of public interest, the PCC may consider any of the following factors:
 - a. Whether it involves any of the priority sectors identified by the PCC;
 - b. Whether it results or may result in widespread consumer detriment;
 - c. Whether it involves misuse of public funds;
 - d. Whether action of the PCC thereon will have precedential value; or
 - e. Whether action of the PCC thereon will have significant deterrent effect.

8. Priority Sectors. The priority sectors identified by the PCC are:

a. For 2018

- (i.) Manufacturing;
- (ii.) Rice;
- (iii.) Poultry and livestock;
- (iv.) Pharmaceuticals;
- (v.) Land transportation;
- (vi.) Air transportation;
- (vii.) Rural finance;
- (viii.) E-commerce;
- (ix.) Retail;
- (x.) Telecommunications;
- (xi.) Bakery products;
- (xii.) Milk products; and
- (xiii.) Fertilizers.

b. For 2019

- (i.) Logistics supply chain;
- (ii.) Corn milling and trading;
- (iii.) Refined petroleum manufacturing and trading;
- (iv.) Sugar; and
- (v.) Pesticides.

9. The priority sectors may change based on PCC's market scoping and assessment of enduring, existing, and emerging issues and associated risks.

10. After the PCC has determined that the potential anti-competitive practice is of public interest, it shall assess the likelihood of a successful outcome of an enforcement action thereon and the allocation of its resources; or, whether there are other reasonable and compelling grounds to conduct an enforcement action.

11. The conduct of enforcement action, comprising of preliminary inquiry and full administrative investigation, remains the primary tool in addressing anti-competitive practices and penalizing erring entities.

12. Where a potential anti-competitive practice is not a priority for enforcement action, the PCC may address the same through an advocacy measure or initiative that will promote competition and a culture of compliance.



RULES OF THE LENIENCY PROGRAM OF THE PHILIPPINE COMPETITION COMMISSION



RULES OF THE LENIENCY PROGRAM OF THE PHILIPPINE COMPETITION COMMISSION

The Philippine Competition Commission ("PCC") hereby promulgates the following Rules of the Leniency Program ("Rules") as provided in Section 35 of Republic Act No. 10667, otherwise known as the "Philippine Competition Act" ("Act"):

Section 1. Leniency Program. The Leniency Program of the PCC offers the benefit of leniency in the form of immunity from suit or reduction of administrative fines to an entity that was or is a participant in an anti-competitive agreement as defined in Section 14(a) or 14(b) of the Act in exchange for the entity's voluntary disclosure of information regarding such agreement subject to the requirements provided herein.

Immunity from suit includes immunity from administrative and criminal liability arising from Section 14(a) or 14(b) of the Act. Immunity from suit likewise includes immunity from civil actions initiated by the PCC on behalf of affected parties and third parties.

The amount of reduction of administrative fines which the entity shall be eligible for shall be in accordance with the appropriate guidelines and other issuances of the PCC.

Section 2. Who may apply. Any entity who may be liable for a violation under Section 14(a) or 14(b) of the Act may apply with the PCC for leniency.

Any current or former director, officer, trustee, partner, employee, or agent of a juridical entity who may be liable for a violation under Section 14(a) or 14 (b) may apply for leniency independently of their employer, or the corporation, partnership, or juridical entity that they are associated with.

Section 3. Immunity from suit. An entity reporting an anti-competitive activity under Section 14(a) or 14(b) of the Act before a fact-finding or preliminary inquiry has begun shall be eligible for immunity from suit subject to the following conditions:

- (a) At the time the entity comes forward, the PCC has not received information about the activity from any other source. For purposes of these Rules, "any other source" shall mean an entity that has been granted conditional immunity from suit;
- (b) Upon the entity's discovery of illegal activity, it took prompt and effective action to terminate its participation therein;
- (c) The entity reports the wrongdoing with candor and completeness, and provides full, continuing, and complete cooperation throughout the investigation until the finality of any and all administrative case(s), as well as civil case(s) initiated by the PCC on behalf of affected parties and third parties; and
- (d) The entity did not coerce another to participate or to continue participating in the activity, and clearly was not the leader in, or the originator, of the activity.

Further, an entity that reports the illegal anti-competitive activity under Section 14(a) or 14(b) after the commencement of a fact-finding or preliminary inquiry may, at the discretion of the PCC, still be qualified to avail of the benefit of immunity. In such a case, the entity must comply with all the conditions in this Section and subparagraphs (d) and (e) in Section 4 hereof.

Furthermore, an entity that is otherwise ineligible for the benefit of immunity from suit may be considered for the benefit of reduction of administrative fines in accordance with the appropriate guidelines or issuances of the PCC.

Section 4. Reduction of administrative fines. Even after the PCC has received information about an anti-competitive activity under Section 14(a) or 14(b) of the Act or after a fact-finding or preliminary inquiry has begun, the entity may be eligible for exemption, waiver, or gradation of administrative fines that would otherwise have been imposed on it subject to the following conditions:

- (a) At The entity is the first to come forward and qualify for reduction of administrative fines, or is the first to qualify when a previous grant of conditional reduction of administrative fines has been revoked;
- (b) Upon the entity's discovery of an anti-competitive activity under Section 14(a) or 14(b) of the Act, it took prompt and effective action to terminate its participation therein;
- (c) The entity reports the wrongdoing with candor and completeness, and provides full, continuing, and complete cooperation throughout the investigation until the finality of any and all administrative case(s), as well as civil case(s) initiated by the PCC on behalf of affected parties and third parties;
- (d) At the time the entity comes forward, the PCC does not have evidence against the entity that is likely to result in a sustainable conviction for the reported violation under Section 14(a) or 14(b) of the Act; and
- (e) The PCC determines that granting such leniency would not be unfair to others.

Section 5. Procedure. (a) *Marker.* An entity seeking the benefits of the Leniency Program may request a marker from the PCC at any time prior to the commencement of adjudication on the anti-competitive agreement that it intends to report.

The PCC shall issue a marker to the entity indicating the date and time the request for a marker was made and the description of the anti-competitive agreement reported. A marker is necessary to protect an entity's place in the queue for applicants under the Leniency Program and allows the entity an initial period of thirty (30) days within which to gather and submit information and evidence. The entity may request or may be required to attend a meeting with the PCC in order to discuss the information and evidence that will be required, any extension to the period, and other matters related to the application.

(b) *Submission of information and evidence.* The entity must provide, within the time allowed in the preceding paragraph, information and evidence about the reported anti-competitive agreement, relating in particular to the following:

- (i) The entities involved in the alleged anti-competitive agreement;
- (ii) The affected product(s) or service(s);
- (iii) The affected geographic area(s) or territory (-ies);
- (iv) The duration of the alleged anti-competitive agreement;
- (v) The reasons why the entity is eligible under the Leniency Program;
- (vi) The nature of the alleged anti-competitive agreement; and
- (vii) Information on any past leniency applications with the PCC and other competition authorities outside the Philippines in relation to the alleged anti-competitive agreement.

If the entity fails to submit the information and evidence within the allowed period, the succeeding entity in the marker queue that submits the information and evidence in a timely manner shall be considered for the benefit of immunity from suit or reduction of fines, as the case may be.

(c) *Grant of conditional leniency.* Unless an additional period is warranted in consideration of, among others, the complexities of the matter or the voluminous records involved, within a period of thirty (30) days from the submission by the entity of information and evidence, the PCC shall evaluate the same to determine whether the entity should be granted conditional leniency.

The conditional leniency shall be subject to the entity's continuing, full, and genuine cooperation with the PCC until the finality of any and all administrative, as well as civil case(s) initiated by the PCC. Such cooperation includes, among others, the following:

- (i) Providing the PCC candidly and promptly with all relevant information and evidence that come in to the entity's possession or control, or to which the entity has access or gains access;
- (ii) Providing testimony or a sworn statement for the administrative, criminal and/or civil case(s) arising from the reported violation if the PCC, in its discretion, finds such testimony or sworn statement necessary for the case/s. The testimony or sworn statement shall include among others, in so far as it is known to the entity at the time of the submission, a detailed description of the alleged anti-competitive agreement and the activities related thereto, including: the product(s) and/or service(s) concerned; the geographic scope; the duration of the agreement; the specific participation of entities in relation to the anti-competitive agreement; and all relevant explanations in connection with the pieces of evidence provided;
- (iii) Remaining at the disposal of the PCC to reply promptly to any requests that, in the PCC's view, may contribute to the establishment of relevant facts;
- (iv) Making current and, to the extent possible, former directors, trustees, partners, officers, employees, and agents available for meetings and interviews with the PCC;

- (v) Not altering, destroying, suppressing, or concealing papers, records, documents, Electronically Stored Information, other things, or information which relate to any matter relevant to the investigation or proceeding; and
- (vi) Not disclosing the fact of, or any of the contents of the leniency application, unless and to the extent otherwise explicitly authorized by the PCC.

Section 6. Basis for granting of conditional leniency. If no investigation on the reported anti-competitive agreement is ongoing, the PCC shall grant conditional leniency if, in its discretion, it determines that: (1) the information or evidence enables the PCC to carry out a targeted investigation on the alleged anti-competitive agreement; or (2) the entity provides the PCC with a sufficient basis for initiating adjudication through the filing of a Statement of Objection as provided under Section 2.11 of the 2017 Rules of Procedure of the PCC. However, if an investigation is ongoing, the PCC shall grant conditional leniency if, in its discretion, it determines that the information and evidence provided adds significant value to the same.

Within fifteen (15) days from notice of denial of an application for leniency the entity may appeal to the appeals committee to be established by the PCC.

Section 7. Revocation of the grant of conditional leniency. Should the entity that was granted conditional leniency be shown to have violated its obligations or any of the provisions herein, the PCC may revoke the grant of conditional leniency after giving the entity an opportunity to be heard. In case of revocation, any document and information provided by the entity may be used by the PCC as it deems necessary.

Within fifteen (15) days from notice of revocation, the entity may appeal to the appeals committee to be established by the PCC.

Section 8. Officers, directors, trustees, partners, employees, and agents. Officers, directors, trustees, partners, employees, and agents of an entity may apply under the Leniency Program independently of the juridical entity with which they are associated.

Where a juridical entity secures a marker, any and all of its former and current officers, directors, trustees, partners, employees, and agents who, at the time the information and evidence required under Section 5(b) are submitted, come forward and cooperate with the PCC, will be considered to have the same marker and may be granted conditional leniency together with the juridical entity.

Where the application made by the juridical entity is abandoned, withdrawn, or is denied, the individual directors, officers, trustees, partners, employees, and agents who came forward at the time the information and evidence under Section 5(b) are required to be submitted shall take the place of the juridical entity in the queue and they shall be considered to have applied under the Leniency Program independently of the juridical entity.

Where the grant of conditional leniency of the juridical entity is revoked, the grant of conditional leniency given to the officers, directors, trustees, partners, and employees will not necessarily be revoked, subject to Section 7 hereof.

Section 9. Joint applications. Joint applications between or among parties to an anti-competitive agreement shall not be considered under the Leniency Program. *Provided, however,* That, two or more officers, directors, trustees, partners, employees, and/or agents of the same juridical entity that is a participant to an anti-competitive agreement under Section 14(a) or 14(b) of the Act may jointly apply for the benefits of the Leniency Program.

Section 10. Confidentiality. The identity of an entity applying for leniency as well as those who have been granted leniency, conditional or otherwise, shall be confidential and shall not be disclosed by the PCC unless the PCC determines that such entity's sworn testimony or sworn statement is necessary for the administrative or criminal case(s), or the civil case filed by the PCC before the appropriate courts, in relation to the reported violation.

Section 11. Effect of denial, withdrawal, or abandonment of the application. In cases where the application is denied by the PCC or where the entity notifies the PCC that it will withdraw its application prior to the denial or grant of conditional leniency, any self-incriminating information and documents provided shall not be used against the entity or any of its current and former officers, directors, trustees, partners, employees, and agents who have come forward to the PCC at the time of the or denial or withdrawal of the application. However, nothing shall preclude the PCC from initiating or continuing an investigation on the basis of independently obtained information and documents or from using the same as evidence.

In cases where the application is considered abandoned prior to the denial or grant of conditional leniency and there is no written notification made by the applicant, the documents and information submitted may be used by the PCC as it deems necessary. The application will be considered abandoned if, prior to the denial or grant of conditional leniency: (1) the entity fails to appear at any meeting with the PCC; (2) the entity fails to submit information and evidence as required in Section 5(b) hereof; or (3) the applicant fails to cooperate with, or follow the Rules, guidelines, and other issuances of the PCC.

Section 12. Violations and Penalties. (a) *False information.* Nothing in these Rules shall preclude prosecution of entities that report to the PCC false, misleading, or malicious information, data or documents damaging to the business or integrity of an entity. An entity found to have reported false, misleading or malicious information, data, or documents may be subject to a penalty in the form of a fine of not less than the penalty imposed in the Section of the Act reported to have been violated by the entity complained of.

(b) *Reprisal.* Any entity that commits any form of reprisal or discrimination against anyone cooperating or furnishing information, documents, or data to the PCC in connection with an investigation or proceeding being conducted, shall, after due notice and hearing, be subject to a penalty in accordance with Section 6.12 of the 2017 Rules of Procedure of the PCC.

Section 13. Computation of administrative fines for subsequent violation. An entity that has been granted the benefits, conditional or otherwise, under the Leniency Program shall not be considered to have committed an offense for the purpose of computing the administrative fine for a subsequent violation as provided under Sections 6.1 and 6.4 of the 2017 Rules of Procedure of the PCC: *Provided*, That this provision shall not apply to an entity whose benefits under the Leniency Program had been revoked.

Section 14. Incorporation Clause. All existing rules, guidelines, orders, issuances, or parts thereof which are not inconsistent with any of the above provisions are hereby adopted and incorporated as part of these Rules.

Section 15. Separability. If any part or provision of these Rules is declared unconstitutional or illegal, the other parts or provisions shall remain valid.

Section 16. Effectivity. These Rules shall take effect twenty (20) days after publication in a newspaper of general circulation.

Approved this 27th day of December 2018 in Quezon City, Philippines.

(Sgd.)
ARSENIO M. BALISACAN
Chairman

(Sgd.)
JOHANNES R. BERNABE
Commissioner

(Sgd.)
AMABELLE C. ASUNCION
Commissioner

(Sgd.)
MACARIO R. DE CLARO, JR
Commissioner



**RULE ON ADMINISTRATIVE
SEARCH AND INSPECTION
UNDER THE PHILIPPINE
COMPETITION ACT**



**Republic of the Philippines
Supreme Court
Manila**

**A.M. No. 19-08-06-SC
RULE ON ADMINISTRATIVE SEARCH AND INSPECTION
UNDER THE PHILIPPINE COMPETITION ACT**

RESOLUTION

WHEREAS, Republic Act No. 10667, otherwise known as the "Philippine Competition Act," defines anti-competitive agreements, abuse of dominant position, and anti-competitive mergers and acquisitions; prescribes fines and penalties therefor; and provides for their investigation, prosecution, and adjudication;

WHEREAS, Section 12(g) of the Philippine Competition Act provides that the Philippine Competition Commission shall have the power, "[u]pon order of the court, to undertake inspections of business premises and other offices, land and vehicles, as used by the entity, where it reasonably suspects that relevant books, tax records, or other documents which relate to any matter relevant to the investigation are kept, in order to prevent the removal, concealment, tampering with, or destruction of the books, records or other documents";

WHEREAS, the detection, investigation and prosecution of violations of the Philippine Competition Act, its implementing rules and regulations, and other competition laws, necessitate a rule of procedure for the application, issuance, and implementation of inspection orders suited to competition cases;

WHEREAS, pursuant to Section 5(5), Article VIII of the 1987 Constitution, the Supreme Court is vested with the power to promulgate rules concerning the pleading, practice, and procedure in all courts;

WHEREAS, through Memorandum Order No. 27-2019 dated May 9, 2019, the Special Committee for the rules on Inspection was created to draft and review the Philippine Competition Commission's proposed Rule on Inspection, and is composed of the following:

Chairperson: **Hon. Diosdado M. Peralta**
Associate Justice, Supreme Court

Vice Chairperson: **Hon. Alexander G. Gesmundo**
Associate Justice, Supreme Court

Members: **Hon. Ramon Paul L. Hernando**
Associate Justice, Supreme Court

Hon. Jose Midas P. Marquez
Court Administrator

Commissioner Amabelle C. Asuncion
Philippine Competition Commission

Commissioner Johannes R. Bernabe
Philippine Competition Commission

Commissioner Macario R. de Claro, Jr.
Philippine Competition Commission

Atty. Rigor R. Pascual
Representative, Office of the Chief Justice

Atty. Genevieve E. Jusi
Philippine Competition Commission

Atty. Gifany L. Tongohan
Philippine Competition Commission

Secretariat: **Atty. Ralph Jerome D. Salvador**
Office of Associate Justice Diosdado M. Peralta

Atty. Camille Sue Mae L. Ting
Office of the Court Administrator

Atty. Noreen B. Bragas
Representative, Office of the Chief Justice

WHEREAS, the Special Committee for the Rules on Inspection was created to ensure that the exercise of the power granted by the Philippine Competition Act is effective, objective and efficient, as well as to provide a balance between the

fundamental right to due process and the strong public interest in the enforcement of the said law;

NOW, THEREFORE, acting on the recommendation of the Chairperson of the Special Committee for the Rules on Inspection, the Court resolved to **APPROVE** the **“Rule on Administrative Search and Inspection under the Philippine Competition Act.”**

The Rule on Administrative Search and Inspection under the Philippine Competition Act shall take effect on November 16, 2019 following its publication in the Official Gazette or in two newspapers of national circulation.

September 10, 2019, Manila, Philippines.

(Original Signed)
LUCAS P. BERSAMIN
Chief Justice

(Original Signed)
ANTONIO T. CARPIO
Associate Justice

(Original Signed)
HENRI JEAN PAUL B. INTING
Associate Justice

(Original Signed)
ESTELA M. PERLAS-BERNABE
Associate Justice

(Original Signed)
DIOSDADO M. PERALTA
Associate Justice

(Original Signed)
FRANCIS H. JARDELEZA
Associate Justice

(Original Signed)
MARVIC MARIO VICTOR F. LEONEN
Associate Justice

(Original Signed)
ANDRES B. REYES, JR.
Associate Justice

(Original Signed)
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

(Original Signed)
JOSE C. REYES, JR.
Associate Justice

(Original Signed)
ALEXANDER G. GESMUNDO
Associate Justice

(Original Signed)
ROSMARI D. CARANDANG
Associate Justice

(On Leave)
RAMON PAUL L. HERNANDO
Associate Justice

(Original Signed)
AMY C. LAZARO-JAVIER
Associate Justice

(Original Signed)
RODIL V. ZALAMEDA
Associate Justice

(A.M. No. 19-08-06-SC)

Rule on Administrative Search and Inspection under the Philippine Competition Act

Section 1. Coverage. – This Rule shall govern the application, issuance, and enforcement of inspection orders for administrative investigations of alleged violations of Republic Act No. 10667, otherwise known as the Philippine Competition Act, its implementing rules and regulations, and other competition laws.

Section 2. The inspection order. – An inspection order is an order in writing issued in the name of the Republic of the Philippines, signed by a judge, upon application of the Philippine Competition Commission (PCC), through its duly authorized officer, authorizing the PCC and any law enforcement agency that may be deputized by the PCC to assist in the execution of the order, to search and inspect business premises and other offices, land and vehicles, for information to be examined, copied, photographed, recorded, or printed, in order to prevent the removal, concealment, tampering with, or destruction of such information.

Information shall include, but shall not be limited to, books, tax records, documents, papers, accounts, letters, photographs, objects or tangible things, databases and means of accessing information contained in such databases, and electronically stored information as defined in the rules of procedure of the PCC, which relate to any matter relevant to the administrative investigation covered by this Rule. (see Annex “A”).

Section 3. Where application is filed; Special Commercial Courts with authority to issue inspection orders. – Special Commercial Courts in Quezon City, Manila, Makati, Pasig, Cebu City, Iloilo City, Davao City and Cagayan De Oro City shall have authority to act on applications for the issuance of inspection orders, which shall be enforceable nationwide.

Within their respective territorial jurisdictions, the Special Commercial Courts in the judicial regions where the place to be inspected is located shall have concurrent jurisdiction to act on the applications for the issuance of inspection orders. Where inspection of multiple locations is sought relative to the same investigation, an application may be made with any of the Special Commercial Courts in Quezon City, Manila, Makati, Pasig, Cebu City, Iloilo City, Davao City and Cagayan De Oro City and Special Commercial Courts in the judicial regions of the places to be inspected.

Section 4. Contents of verified application. – The verified application for an inspection order shall contain a particular description of: (1) the subject of the administrative investigation; (2) the premises, other offices, land or vehicles, as used by the entity, sought to be searched or inspected; and (3) the information sought to be examined, copied, photographed, recorded, or printed, and their relevance and necessity to the investigation. (see Annex "B").

Section 5. Examination of applicant; record; confidentiality of proceedings. – The application shall be acted upon within twenty-four (24) hours from its filing. The judge must, before issuing the inspection order, examine in the form of searching questions and answers, in writing and under oath or affirmation, the applicant and the witnesses he may produce on facts personally known to them; or on facts based on (1) the applicant's or witnesses' training and/or experience; (2) authentic records; (3) verifiable data; or (4) economic analysis. The examination of the applicant and his witnesses shall be recorded. Their sworn statements and their affidavits shall form part of the record of the case.

The hearing on the application for the inspection order shall be conducted *ex parte* and held in the chambers of the judge. Court personnel shall maintain the confidentiality of the application proceeding.

Section 6. Issuance of inspection order. – The inspection order shall be issued if the court finds that there is a reasonable ground to suspect: (1) that the information is kept, found, stored, or accessible at the premises indicated in the application; (2) the information relates to any matter relevant to the investigation; and (3) the issuance of the order is necessary to prevent the removal, concealment, tampering with, or destruction of the books, records, or other documents to be inspected.

Section 7. Effective period of inspection order. – An inspection order shall only be effective for the length of time as determined by the court, which shall not exceed fourteen (14) days from its issuance. The court may, upon *ex parte* motion, extend the effectivity of an inspection order for a period not exceeding fourteen (14) days from the expiration of the original period.

Section 8. When order shall be served. – The order shall be served in the presence of a duly designated officer of the court, during business hours of the premises, or at any time on any day, as may be determined by the court for compelling reasons stated in the application.

Section 9. Person whose presence is required during inspection. – The premises shall be inspected in the presence of the person designated by the entity, either a compliance officer or a legal counsel, who shall be given the opportunity to read the order before its enforcement.

Any unreasonable delay, failure, or refusal to designate a representative by the entity shall not prevent the PCC officers, deputies and agents from implementing the inspection order.

Section 10. Manner of inspection. – Upon securing an inspection order under this Rule, the PCC officers, deputies, and agents, shall enter, search and inspect the premises indicated in the order, and examine, copy, photograph, record, or print information described in the order.

Electronically stored information, databases, and means of accessing information contained in such databases that are kept, found, stored or accessed in the premises indicated in the order may be examined and copied by copying the information, whether through forensic imaging or other means of copying,

photographing or recording the electronically stored information, or by printing out its contents. The PCC officers, deputies, and agents may likewise require that such electronically stored information and databases be produced in a form that is visible and legible, and may be copied, photographed, recorded, or printed out. Such copies, photographs, recordings, or printouts shall be considered and treated as original documents.

The PCC officers, deputies, and agents may ask explanations on facts or documents relating to the subject and purpose of the inspection and record the answers. An individual, who may be assisted by counsel, must answer questions, although the answer may tend to establish a claim against him/her. However, such individual has the right not to give an answer which will tend to subject him/her to a criminal penalty for an offense, unless otherwise provided by law.

As may be reasonably necessary for the conduct of the inspection, the PCC officers, deputies or agents may secure or seal the area and equipment, gadgets or devices where the information is located or stored, and attach to them a tag or label warning all persons from tampering with them, until the examination, copying, photographing, recording, or printing is completed, but in no case beyond the effectivity of the inspection order. The act of tampering with, breaking or removing the seal affixed shall subject the offender to contempt of court, which procedures shall be governed by Rule 71 of the Rules of Civil Procedure, insofar as they are applicable.

The person designated by the entity under Section 9 shall disclose to the PCC officers, deputies, and agents the location where the information subject of the inspection order is stored and provide them with all reasonable facilities and assistance for the conduct of the inspection.

The PCC officer shall prepare a list of the information copied, photographed, recorded, or printed. He/she shall give a copy of the same to the person designated by the entity. Such person shall have the opportunity to check the information against those described in the list and shall acknowledge receipt by affixing his/her signature.

Such person shall likewise certify that the copies, photographs, recordings, or printouts made by PCC officers, deputies or agents are faithful reproductions of their respective originals. Once certified, the copies, photographs, recordings, or printouts shall be admissible as evidence for the purpose of the administrative proceedings.

If the entity delays, fails, or refuses to designate a representative, the copies, photographs, recordings, or printouts shall be certified by the highest ranking officer or employee of the entity present in the premises.

If the PCC officers, deputies, or agents, in the course of implementing the inspection order, inadvertently discover other relevant information in plain view that they believe on reasonable grounds to be evidence of a violation of the Philippine Competition Act, its implementing rules, or other competition laws, then they may examine, copy, photograph, record, or print such information and use the same as evidence of said violation.

Section 11. Use of reasonable force to effect order. – The PCC officers, deputies, and agents, if refused admittance to the premises after giving notice of their purpose and authority, may use reasonable force to gain entry to the premises, land, vehicle, or any part of the building or anything therein, to enforce the inspection order or to liberate themselves or any person lawfully aiding them when unlawfully detained therein.

Section 12. Return. – Within three (3) days from the enforcement of the inspection order or after the expiration of the period provided under the inspection order, whichever comes first, the authorized officer of the PCC shall make a verified return to the court which issued the order.

The return shall be accompanied by a list of information copied, photographed, recorded, or printed, and by the affidavit of the authorized officer of the PCC containing:

1. The date and time of examination and copying of the documents, electronically stored information, databases, or means of accessing information contained in such databases;

2. The particulars of the documents, electronically stored information, databases, or means of accessing information contained in such databases, including its hash value; and
3. The manner by which the documents, electronically stored information, databases, or means of accessing information contained in such databases was copied, including a list of all actions taken to enforce the inspection order.

The return on the inspection order shall be filed and kept by the custodian of the logbook on inspection orders who shall enter therein the date of the return, the name of the affiant, and other actions of the judge.

It is the duty of the issuing judge to ascertain if the return has been made, and if none, to summon the duly authorized officer to whom the inspection order was issued and require him to explain why no return was made. (see Annex "C").

Section 13. When an inspection order is improperly issued or implemented. – Before a return is filed, the person or entity whose premises were inspected may file a written motion with the issuing court to quash the inspection order on the ground that it was improperly issued or implemented.

The motion shall be resolved in a summary hearing by the issuing court after due notice to the PCC.

Section 14. Duty to keep distinct and separate logbook. – The court which issued the inspection order shall keep a distinct and separate logbook therefor.

The logbook shall be under the custody of the Clerk of Court wherein the filing of applications for inspection orders and other particulars thereof shall be docketed and entered within twenty-four (24) hours after issuance of the inspection order or denial of the application therefor. All the subsequent proceedings concerning the inspection order, including the return on the inspection order, shall be faithfully recorded in the separate logbook.

Section 15. Effect of violation. – Any person or entity who fails or refuses to comply with an inspection order or any provision of this Rule shall be cited for contempt of court, which procedures shall be governed by Rule 71 of the Rules of Civil Procedure, insofar as they are applicable.

Section 16. Inspection order not a bar to other measures. – The availment of an inspection order under this Rule shall not prevent the PCC from exercising its powers under existing laws and rules, including applying for search warrants under relevant rules. Nothing in this Rule shall be read as suspending the need of a warrant that may be required by Article III, Section 2 and 3(a) of the Constitution and the Rule on Search Warrants, when applicable.

Section 17. Limited use of information collected. – The information collected pursuant to the inspection order shall be used only in administrative proceedings for violations under the Philippine Competition Act and other competition laws.

Section 18. Effectivity. – This Rule shall take effect on November 16, 2019 following its publication in the Official Gazette or in two (2) newspapers of national circulation.

ANNEX "A" - SAMPLE INSPECTION ORDER

Republic of the Philippines
Regional Trial Court
Branch __, _____

*Re: Application for an Inspection
Order under Section 12(g) of the
Philippine Competition Act*

Inspection Order No.

**NAME OF THE DULY AUTHORIZED OFFICER
for The Philippine Competition Commission (PCC),
Applicant.**

INSPECTION ORDER

To the PCC officers, deputies, and agents:

Greetings:

It appearing to the satisfaction of the undersigned after examining *(name of applicant), (his/her witness/es), (and/or sworn statements, if applicable)* that there is reasonable ground to suspect that the information to be examined, copied, photographed, recorded, and/or printed, which relates to any matter relevant to the investigation, is kept, found, stored, or accessible at the *(business premises and other offices, land and vehicles, as used by the entity)* to be inspected, an Inspection Order is hereby **ISSUED**, in accordance with the provisions of A.M. No. 19-08-06-SC entitled "Rule on Administrative Search and Inspection under the Philippine Competition Act," in order to prevent the removal, concealment, tampering with, or destruction of the information.

WHEREFORE, by virtue of the Inspection Order, you are hereby **AUTHORIZED** to search and inspect the *(name/description of the business premises and other offices, land and vehicles, as used by the entity sought to be inspected)* and examine, copy, photograph, record, and/or print *(description of*

the information), seal and secure the premises, as well as conduct the allowable activities to obtain the information under the "Rule on Administrative Search and Inspection under the Philippine Competition Act."

(Name of entity) is hereby ordered to designate representative/s who shall assist the PCC officers, deputies and agents in carrying out the inspection order. Such designated individual/s shall be required to:

- (a) Cooperate and provide PCC officers, deputies, and agents with all reasonable facilities and assistance for the conduct of the inspection; and
- (b) Certify information copied, photographed, recorded, and/or printed pursuant to this Order.

(Name of designated officer of the court) is hereby appointed as the duly designated officer of the Court who shall be required to be present during the service of this Inspection Order.

The PCC authorized officer is **COMMANDED** to submit a return on the Inspection Order within the period and terms prescribed under the "Rule on Administrative Search and Inspection under the Philippine Competition Act."

Fail not under penalty of law.

Witness my hand this __ day of __, in the City of _____, Philippines.

Signed.
NAME OF ISSUING JUDGE

ANNEX "B" - SAMPLE VERIFIED APPLICATION

Republic of the Philippines
Regional Trial Court
Branch __, _____

*Re: Application for an Inspection
Order under Section 12(g) of the
Philippine Competition Act*

Inspection Order No.

**NAME OF THE DULY AUTHORIZED OFFICER
for The Philippine Competition Commission (PCC),**
Applicant.

APPLICATION FOR AN INSPECTION ORDER

The Applicant, *(Name of Applicant), (Position)* of the Philippine Competition Commission (PCC), after having been duly sworn, states that there are reasonable grounds to suspect that the following information: *(identify list of information sought to be examined, copied, photographed, recorded, or printed)*

which relate to any matter relevant to the ongoing investigation being conducted by the PCC, are kept, found, stored or accessible in *(identify the premises, other offices, land or vehicles)*.

The application is based on the following:

- 1. *Provide information on the entities whose premises shall be inspected;*
- 2. *Provide a brief description of the investigation;*
- 3. *State the allegations of facts; and*
- 4. *State the basis or evidence, [e.g. personal knowledge, based on the applicant's or witnesses' training and/or experience, authentic records, verifiable data, or economic analysis].)*

PRAYER

WHEREFORE, the Applicant respectfully prays that this Honorable Court issue an Inspection Order ordering the PCC and any law enforcement agency that may be deputized by the PCC to search and inspect *(premises)* located at *(address)* to examine, copy, photograph, record, or print above-listed information kept, found, stored or accessed in the said premises.

Other just and equitable reliefs are likewise prayed for.

(Date), Quezon City, Philippines.

Applicant

VERIFICATION

I, *(Name of Applicant)*, of legal age, Filipino, with office address at 25/F Vertis North Corporate Center I, North Avenue, Quezon City, 1105, after having been duly sworn in accordance with law, state that I have read and understood the contents of the Application for Inspection Order, which are true and correct of *(my own personal knowledge or based on applicant's or witnesses' training and/or experience, authentic records, verifiable data, or economic analysis)*.

Applicant

Subscribed and sworn to before me this *(Date)*.

Notary Public

ANNEX "C" - SAMPLE VERIFIED RETURN

Republic of the Philippines
Regional Trial Court
Branch __, _____

*Re: Inspection Order under
Section 12(g) of the Philippine
Competition Act*

Inspection Order No.

RETURN OF INSPECTION ORDER

The applicant, *(Name of Applicant)* of the Philippine Competition Commission, respectfully returns the original copy of **Inspection Order No.** _____¹ issued by the Honorable Judge *(Name of Judge)*, Branch __, RTC____ and manifest the following:

1. On _____, the Philippine Competition Commission, led by the undersigned, implemented the Inspection Order No. ____ at the premises of ____ located at ____.
2. As a result thereof, the following information were copied, photographed, recorded or printed: *(list all information copied, photographed, recorded or printed).*
3. The inspection was conducted in the presence of *(name)*. A corresponding list of information copied, photographed, recorded or printed was provided to the representative of the entity. In addition, the following actions were taken during the inspection: *(list all actions taken to enforce the inspection order)*

¹ The original copy of the Inspection Order is attached and made an integral part hereof as Annex " _."

WHEREFORE, the applicant respectfully prays that the return of the original copy of Inspection Order No. _____ and its annexes be accepted.

Other just and equitable reliefs are likewise prayed for.

(Date), Quezon City, Philippines.

Applicant

VERIFICATION

I, *(Name of Applicant)*, of legal age, Filipino, with office address at 25/F Vertis North Corporate Center I, North Avenue, Quezon City, 1105, after having been duly sworn in accordance with law, state that I have read and understood the contents of the Application for Inspection Order, which are true and correct of my own personal knowledge and/or based on authentic records.

Applicant

Subscribed and sworn to before me this *(Date)*.

Notary Public

Contact Us

The Philippine Competition Commission is open Mondays through Fridays, from 8:00 a.m. to 5:00 p.m.

Submissions of notifications and complaints are accepted during these hours.



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Quezon City 1105



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Philippine Competition Commission



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