



REPUBLIC OF THE PHILIPPINES  
PHILIPPINE COMPETITION COMMISSION  
**COMPETITION ENFORCEMENT OFFICE**

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**Revised Rules on Consent Order of the Philippine Competition Commission**

The Philippine Competition Commission (“PCC”) hereby promulgates the revisions to the Rules on Consent Order as provided in Article III, Rule III of the 2017 Rules of Procedure of the PCC:

**Section 3.17. Nature of Consent Order.** — A Consent Order is a remedy that allows an Entity, without in any manner admitting a violation of the Act, its implementing rules, or other competition laws, to avoid administrative prosecution by providing commitments acceptable to the Commission to address the competition issues and harm identified by the Enforcement Office: *Provided*, that an Entity may file an Application for Consent Order (“Application”) only once for the conduct or agreement subject of the Investigation. In granting an Application, the Commission resolves to terminate the Investigation, in whole or in part, in view of the commitments offered by the Applicant and approved by the Commission, without prejudice to any party claiming damages in the proper proceedings before the competent court.

The Application is non-adversarial, *ex parte* and summary in nature, and the Commission has full discretion to deny or grant the Application, or any subsequent revisions thereto, subject to the provisions in this Article. Considering its voluntary nature, the Application may be withdrawn at any time by the Applicant.

**Section 3.18. How to file an Application.** — At any time prior to the termination of an Investigation relating to Sections 14 and 15 of the Act, any Entity being investigated may, on its own, or jointly with another Entity (the “Applicant”), file an Application with the Commission. The Applicant shall comply with Rule IV, Article II of these Rules on the manner of filing.

**Section 3.19. Contents of the Application.** — The Application is deemed to be sufficient in form if it contains the following matters, as far as practicable, under appropriate headings:

- (a) Description of the conduct or agreement subject of the Investigation (“Description”);
- (b) The proposed commitments, which shall be complete, unambiguous, and self-executing. The proposals shall be considered self-executing if they are not dependent on the will of a third party. The proposed commitments must include a complete and adequate description of steps or measures which shall be undertaken by the Applicant to ensure the prevention or cessation of the conduct or agreement subject of the Investigation (“Proposed Commitments”);
- (c) A clear explanation of how each proposed commitment will resolve particular competition concerns (“Explanation”);
- (d) A statement of the amount that the Applicant is willing to pay and explanation justifying the same. The amount shall be within the range of fines provided for under the Act, its implementing rules, or other competition laws. (“Amount to be Paid”);
- (e) The proposed mandatory compliance reports as well as the identity of the Entity that will submit such reports. The proposal shall contain: (i) the proposed mechanism for monitoring the Applicant’s compliance with its commitments; (ii) details of the contents of the mandatory compliance reports, the frequency of the submission of the reports and the corresponding deadlines for submission; and (iii) the procedure for submission of the reports, including, if necessary, a compliance monitor, at the cost of the Applicant, to assist the Enforcement Office

when the monitoring of compliance requires extensive analysis or involves significant amount of data (“Compliance Reports”);

- (f) The Applicant shall identify any private party or parties who may have suffered injury and the amount of damages that it will pay, or if such parties are unidentified, the mechanism to identify them and effect payment of damages (“Private Parties”); and
- (g) Other terms and conditions that may be provided by the Commission.

If one or some requirements are deemed inapplicable to Applicant, the Application shall include an explanation justifying the same. Further, the Applicant shall attach to the Application a copy of its latest audited financial statements and indicate the e-mail address to which communications from the Commission shall be sent.

**Section 3.20. Verification.** — The Application must be properly verified. If the Applicant is a juridical entity, the Application must be verified by its duly authorized representative and must be accompanied with the relevant certification on the authority of the representative(s) to enter into stipulations or admissions of facts, negotiate, and make commitments that will be valid and binding on the Applicant.

**Section 3.21. Fees.** The Applicant shall pay at the time of the filing of the Application a non-refundable Application fee of one percent of one percent (1% of 1%) of the value of the Applicant's assets or annual revenues, whichever is higher, but shall in no case be less than P250,000.00 or more than P5,000,000.00. The value of assets or annual revenues shall be based on the latest audited financial statements of the Applicant available at the time of the filing.

**Section 3.22. Determination of sufficiency.** — Within five (5) days from receipt of the Application and payment of the required fee by the Applicant, the Commission shall determine if the Application complies with the formalities required in Section 3.19 and 3.20 and if the required fee has been paid in accordance with Section 3.21. A defective Application shall be considered not filed, without prejudice to the Applicant filing a compliant Application within fifteen (15) days from receipt of the notice of insufficiency in form. The fee paid on the defective Application shall be applied to the compliant Application.

The Commission, through the Adjudication Services Division, shall issue a notice via e-mail within the same 5-day period to inform the Applicant whether or not the Application is sufficient in form, copy furnished the Enforcement Office and the Economics Office.

**Section 3.23. Assessment of the Application.** — Within forty-five (45) days from notice of sufficiency of the Application under Section 3.22 of this Rule, the Commission shall complete an assessment of the Application whether it can render a decision or if further proceedings are needed. This period may be extended for another forty-five (45) days in consideration of the complexity of the matter involved. As part of the assessment, the Enforcement Office and the Economics Office, and other offices of the PCC that the Commission may direct, shall submit to the Commission, within thirty (30) days from receipt of the notice of sufficiency in form of the Application, all material and relevant information regarding the conditions of competition in the relevant markets, including competition concerns and recommended remedies to address them.

**Section 3.24. Decision after assessment.** — If the Commission determines that there is no need for further proceedings, the Commission shall, within fifteen (15) days after completing the assessment of the Application, decide to approve or deny the Application based on Section 3.28 of these Rules.

**Section 3.25. Further Proceedings.** —The Commission may conduct further proceedings and issue orders as may be necessary to aid in the just and expeditious resolution of the Application, including, but not limited to the following:

- a. Requiring the submission of additional information by the Applicant;
- b. Undertaking an in-depth market analysis, including developing where appropriate, economic models, quantitative or qualitative indicators or determinants, and examining pertinent variables that could guide the Commission in objectively assessing the effectivity of the proposed commitments and proposing alternative remedies to address the harm to competition and

consumers of the Applicant's acts. The Commission may also engage external experts in conducting the in-depth market analysis. The compensation of the external experts and all the costs and expenses that may be incurred in the course of the engagement, shall be shouldered by the Applicant;

- c. Conducting clarificatory or consultation hearings;
- d. Requiring the submission of position papers, memoranda or other documents; and
- e. Obtaining public comments and consulting with government agencies as provided in Section 3.26 of these Rules.

At its discretion, the Commission may hold hearings at such locations that will be practical and convenient to the Applicant and other attendees.

The Commission shall complete the conduct of further proceedings within sixty (60) days from concluding the Assessment of the Application under Section 3.23. When an external expert is engaged, the conduct of further proceedings is extendible up to a maximum additional period of one hundred twenty (120) days, at the discretion of the Commission.

**Section 3.26. *Public Comments and Consultations with Government Agencies.*** During the period for conducting further proceedings, the Commission may seek public comments, particularly from relevant stakeholders. The relevant stakeholders are those that are likely to be affected by the Applicant's proposed commitments and shall include, but not be limited to, consumers and competitors of the Applicant.

The Commission shall determine the manner of obtaining comments from the public such as through surveys, focus group discussions, and requests for written comments, among others. The costs necessary for obtaining comments from the public shall be shouldered by the Applicant. The Commission shall consult the Applicant regarding the costs relating to the manner of obtaining public comments as well as the information that might be disclosed.

After receipt of the comments and other information, the Commission shall provide a summary of the same to the Applicant to inform it of the general nature of the responses received and the required changes to the Applicant's commitments, if any.

The Commission may also, within the same period, consult sector regulators, relevant government agencies, as well as agencies from foreign jurisdictions.

**Section 3.27. *Decision*** — The Commission shall resolve an Application within thirty (30) days from the termination of further proceedings under Section 3.25. Such period may be extended for an additional period of thirty (30) days if warranted by the complexity of the subject matter involved.

The issuance of a Consent Order shall cause the termination, in whole or in part, of the Investigation involving the conduct or agreement subject of the Application: *Provided*, that any inquiry or investigation for the same or similar conduct or agreement, if continued or repeated, shall not be barred.

The denial of the Application, including one rendered under Section 3.24, shall be final. However, such denial shall not be construed as a prejudgment on the Investigation subject of the Application and shall be without prejudice to the availment of other non-adversarial remedies under these Rules.

**Section 3.28. *Evaluating the Application.*** In evaluating the Application, the Commission may take into consideration the following, among others:

- (a) Whether the proposed commitments sufficiently address the possible competition concerns identified by the Enforcement Office;

- (b) Whether the proposed commitments will put an end to the conduct or agreement subject of the Investigation, prevent its recurrence, and deter similar conduct;
- (c) Whether the commitments are unambiguous and self-executing;
- (d) The costs and benefits of pursuing the Investigation against the Applicant. The Commission may consider the following types of costs and benefits:
  - (1) Direct costs and benefits which are those arising directly out of granting the Application. These may include the economic value to the relevant market of the continuation or cessation of an identified anti-competitive conduct, fines and penalties, administrative expenses, and damages paid to injured parties.
  - (2) Pecuniary and non-pecuniary externalities arising out of granting the Application.  
  
Pecuniary externalities refer to effects on prices through markets, while non-pecuniary externalities refer to effects outside markets.
  - (3) Incommensurable costs and benefits which are those not easily measured in monetary terms.
  - (4) Intangible costs and benefits, which refer to the non-economic costs and benefits which cannot be measured in monetary terms.
- (e) Whether the issuance of a Consent Order is consistent with the government's industrial policy in the concerned sector; and
- (f) Whether the issuance of a Consent Order would be in the interest of the public, considering, among others, the following factors:
  - 1) The instructive value to the public of having a case investigated and decided on the merits;
  - 2) Whether the Application involves any of the priority sectors identified by the PCC;
  - 3) Whether the conduct or agreement subject of the Investigation involves possible widespread consumer detriment in the relevant market; or
  - 4) Whether the conduct or agreement subject of the Investigation involves misuse of public funds.

**Section 3.29. Contents of the Consent Order.** Should the Application be approved, the Consent Order shall contain the following:

- (a) a description of the Investigation that is being terminated, which shall include the conduct or agreement subject of the Investigation and the competition concerns identified by the Enforcement Office;
- (b) the commitments submitted by the Applicant, with an explanation on how these commitments resolve the identified competition concerns;
- (c) the terms and conditions by which the commitments will be implemented;
- (d) the amount which the Applicant will pay, and the schedule for such payment;
- (e) the procedure for monitoring and reporting by the Applicant of its compliance with the commitments, including the manner and frequency of the submission of the mandatory compliance reports and its contents;
- (f) the effectivity date and the duration of effectivity of the Consent Order and the conduct of periodic review of compliance with the commitments;

- (g) the mechanism to identify the private parties who may have suffered injury in relation to the identified competition concerns and the mechanism to effect the payment of damages, if applicable; and
- (h) other terms and conditions that may be considered appropriate and necessary by the Commission.

Without prejudice to any party claiming damages in the proper proceedings before the competent court, the Consent Order shall include the amount of damages to be paid only where such damages are apparent based on the acknowledgement of the Applicant, or where there is clear evidence of the injuries sustained by private parties.

**Section 3.30. *Notice to complainant or sector regulator*** — If the subject matter of the Application is the subject of a verified complaint or a referral from a sector regulator, the Commission shall furnish the complainant or sector regulator, as the case may be, a copy of the Consent Order or the denial thereof.

**Section 3.31. *Breach of commitments***. The Commission may assign the Enforcement Office to monitor the Applicant's compliance with its commitments in the Consent Order. If the Entity is found to have committed a breach, the Commission shall, after due notice and hearing, impose appropriate sanctions or revoke the grant of the Consent Order.

In case of revocation of the Consent Order, the Commission shall order the opening of an Investigation on the conduct or agreement subject of the Application, in accordance with Rule II of these Rules. The Entity shall not be entitled to the return of any amount paid pursuant to the Application and the Consent Order.

**Section 3.32. *Confidential Information***. The Commission shall handle confidential information in accordance with Rule XI of these Rules.

**Section 3.33. *Prohibited documents***. Only the documents required under this Article or by the Commission shall be allowed and will be given consideration. Any motion or request for reconsideration shall not be entertained.

**Section 3.34. *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 3.35. *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 3.36. *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 3.37. 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 3.38. Investigation not suspended.** — The proceedings under this Rule shall not suspend the conduct of an ongoing Investigation.

**Section 3.39. Powers of the Enforcement Office.** — The Enforcement Office may exercise the powers provided in Section 2.14 when appropriate.

Approved this 31<sup>st</sup> May 2022 in Quezon City, Philippines.

(sgd.) **ARSENIO M. BALISACAN**  
Chairman

(sgd.) **JOHANNES BENJAMIN R. BERNABE**  
Commissioner

(sgd.) **EMERSON B. AQUENDE**  
Commissioner

(sgd.) **MARAH VICTORIA S. QUEROL**  
Commissioner

(sgd.) **MICHAEL B. PELOTON**  
Commissioner