



**PHILIPPINE
COMPETITION
COMMISSION**

Ensuring businesses compete and consumers benefit

The
**PHILIPPINE
COMPETITION
ACT**

A PRIMER





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The PHILIPPINE COMPETITION ACT

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**Disclaimer: This document was written for an informational purpose. It is not a substitute for the Philippine Competition Act (PCA) or its Implementing Rules and Regulations (IRR). The PCC may revise this publication in the future. In explaining the law, generalizations were made, and the examples given do not in any way restrict the enforcement or other powers of the PCC.*

This document should not be taken as legal advice. If you have any doubt as to how you may be affected by the PCA, please consult with a lawyer or contact us.





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(R.A. 10667)





REPUBLIC OF THE PHILIPPINES

S E N A T E

METRO MANILA

SENATOR BAM AQUINO

Greetings from the Senate of the Philippines!

We would like to commend the Philippine Competition Commission, headed by Chairman Arsenio M. Balisacan, for their efforts to make the technically rigorous and comprehensive Philippine Competition Law accessible and better understood by more Filipinos.

Hopefully, greater public appreciation and support can facilitate the effective implementation of the Philippine Competition Act and promote a fair and robust culture of competition in the country.

We are very proud to have been able to finally steer this game-changing landmark policy into law and will continue to support the Philippine Competition Commission in ensuring the proper and timely implementation of the Philippine Competition Law.

We trust that the PCC will continue to pursue the vision embodied in the law and create a business environment that allows Filipino consumers and businesses alike to reach for greater standards in innovation, quality, and price of the goods and services we enjoy.

Maraming salamat po!

A handwritten signature in black ink that reads "Bam Aquino". The signature is written in a cursive, flowing style.

Bam Aquino



REPUBLIC OF THE PHILIPPINES
NATIONAL ECONOMIC AND
DEVELOPMENT AUTHORITY

The National Economic and Development Authority (NEDA) warmly congratulates the Philippine Competition Commission (PCC) on the publication of this Primer on the Philippine Competition Act (PCA). This is a significant resource for making the competition clear and comprehensible to the public. We hope that raising awareness and understanding of the PCA will help secure the public's support towards the successful implementation of the law.

On this note, we would also like to extend our appreciation of the PCC's valuable contribution in the preparation and formulation of the National Competition Policy, which, for the first time, will form part of the medium-term Philippine Development Plan, 2017-2022. The promotion of competition in the Philippine markets is a component of the government's continuing strategy to ensure that the sustained gains from the country's strong economic performance will benefit all Filipinos. Consumers are the ultimate beneficiaries of a policy environment where businesses can freely and openly compete. We believe that a forceful competition policy will help Filipinos realize their collective aspiration for a well-rooted, comfortable, and secure life over the next 25 years, as embodied in the country's long-term vision, the AmBisyonNatin2040.

As the PCC moves forward in enforcing the PCA, NEDA will be pleased to support PCC in fulfilling its mandate of promoting competition in the market for the benefit of consumers, businesses, and the economy in general.

Ernesto M. Pernia

Secretary of Socioeconomic Planning
National Economic and Development Authority

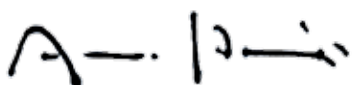
Inclusive growth remains at the core of the Philippine development agenda. As the Philippine economy traverses a higher growth trajectory, the challenge of ensuring that the country's economic gains are felt by all Filipinos becomes more evident.

One of the key components of the overall strategy to make economic growth more enduring and inclusive is the promotion of competition in the market. The enactment of the Philippine Competition Act (PCA) in 2015 and the subsequent establishment of the Philippine Competition Commission (PCC) are both a testament to the government's commitment to provide a conducive environment for all businesses and, at the same time, ensure that no Filipino is left behind.

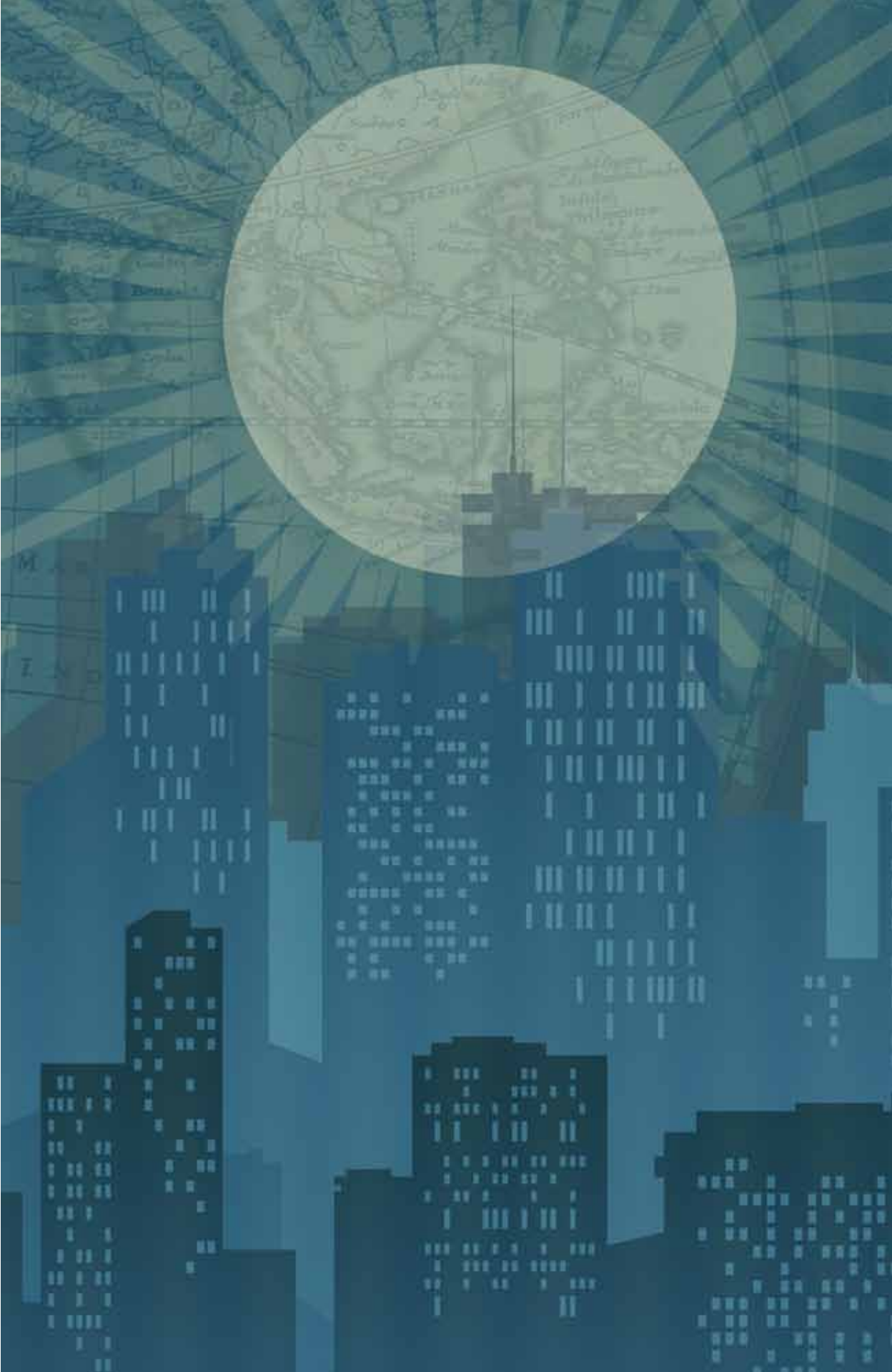
As a newly organized competition authority, the PCC recognizes that a vital part of our duty is to complement competition law enforcement with advocacy – to raise the public's awareness of competition, its benefits, and why it matters in the country's pursuit of inclusive growth.

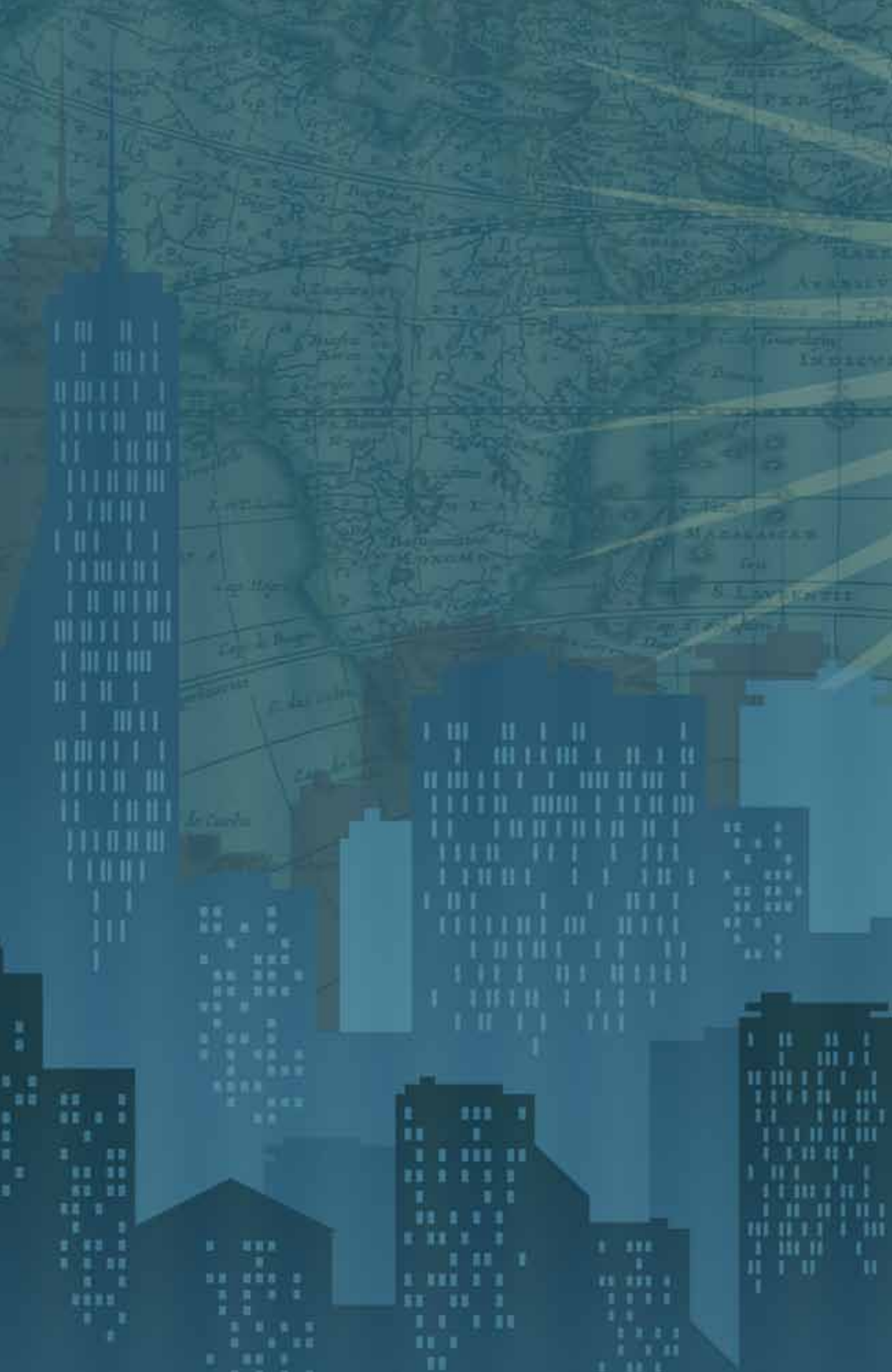
In line with this, the PCC developed this Primer as a primary resource on the PCA and PCC for the general public. Designed to advance the public's awareness and understanding of competition law and policy, this primer provides an overview of competition-related concepts and discusses the salient provisions of the PCA and the nature of work of the PCC.

Moving forward, we recognize that the PCC cannot do everything alone. The PCC needs the collective effort of various stakeholders – including the public – to help us fulfill our mandate of promoting competition in the market. It is our hope that our advocacy, through publications such as this, will empower and encourage the Filipino people to work hand in hand with us in fostering a culture of competition and in shaping the Philippine competition landscape.



Arsenio M. Balisacan, PhD.
Chairman







◆◆◆◆

WHY COMPETITION MATTERS

◆◆◆◆

COMPETITION *in a* MARKET IS GOOD ◆◆◆◆ *for the* ◆◆◆◆ CONSUMERS

Imagine living in a town that has only one store where people buy everything they need, like food, clothing, toys, medicines, household supplies, and fuel.

Being the only store, the people have no choice but to buy from that store. Knowing that it will not lose customers, the store owner can choose to make a lot of money by raising its prices.

The store owner can also choose to sell inferior products as it has no incentive to provide better, more convenient and effective service.

Now, suppose that a second store opens in that same town. To attract customers, its owner may offer more products at lower prices and better service. As more residents buy from the second store, the first store has to compete to keep its customers. Competition intensifies as more stores open. Each establishment will try to outdo the others to attract more customers. They will be creative and innovative in the delivery of services, and they will compete for the loyalty of customers.

In the end, customers benefit from an expanded range of products and services available at reasonable prices.



Without genuine competition, a handful of products and suppliers could end up controlling the market through anti-competitive practices such as fixing prices, restricting supplies, and abusing a position of market dominance.

A competitive market is one with multiple buyers and sellers. It drives market prices lower and offers consumers a wider range of choices. A truly competitive market encourages efficiency and innovation, motivating businesses to excel.



PROTECTING CONSUMERS & ENTERPRISES



Competition ensures that no single entity controls the price of commodities. Without competition, consumers are left with no other choice but to continue buying products or services that they may not really be happy with, simply because nobody else sells or offers an alternative.

In contrast, competition leads to lower prices and higher quality of products as businesses strive for efficiency and continued improvement to capture and increase market share.

Fair market competition benefits the broader economy as well. Businesses are pushed to excel to retain their existing customers, gain new ones, and set themselves above the rest of their competitors. More money and investments flow to markets that are characterized by greater innovation and increased efficiency, where there is a level playing field, and where competition is protected.

COMPETITION MATTERS to the POOR

Markets with enough competition directly benefit the poor. First, competitive markets offer a wider variety of goods and services at the lowest possible prices. This means that the poor, with their limited income, have expanded choices and can afford to buy more with the same amount of money. Second, it protects small business owners, including farmers and other small-scale entrepreneurs, from unfair and predatory business practices that bigger businesses might implement. A farmer will be able to sell his products on fairer terms, and will have more options for purchasing supplies like fertilizer and equipment.

SOURCE: "Why Is Competition Important For Growth and Poverty Reduction?" by Nick Godfrey. Global Forum VII on International Investment, OECD (27-28 March 2008).

PROTECTING COMPETITION *leads to* ECONOMIC COMPETITIVENESS ◆◆◆◆

Competition is related to, but different from, competitiveness.

Competition in the marketplace means having a market where there are multiple businesses offering competing products and services. These companies seek to attract customers and gain larger market shares by improving price, quality, and service.

Economic competitiveness, on the other hand, is determined by a country's business environment. A country's competitiveness is enhanced when it fosters an environment that supports the growth of industries; institutionalizes a fair, transparent and effective legal system; establishes a level playing field; and, adopts a system that eases the process of starting a business and doing business. An economically competitive country attracts more domestic and foreign investments, produces high quality jobs, and charts a sustained robust growth.

*A strong legal framework for competition, such as the **Philippine Competition Act (PCA)**, enhances the country's overall competitiveness.*

COMPETITION ECONOMIC



“Competition plays a crucial role, which is also theoretically well-founded, in promoting productivity and innovation as drivers of economic growth. This means that competition policy, which intensifies competition, will stimulate growth.”

- Competition drives firms to use their inputs in the most efficient way in order to supply goods and services at the lowest possible costs. Competition will drive inefficient companies out of business and allow efficient companies to enter markets and/or gain market share. Hence, competition replaces inefficient with efficient

production through an entry/exit channel.

- Competition drives companies to innovate and create new products and services to gain market share. Hence, competition leads to technological progress.

SOURCE: Excerpts from “The Contribution of Competition Policy to Growth and the EU 2020 Strategy,” Policy Department A: Economic and Scientific Policy, European Parliament. (July 2013)

MATTERS *to* GROWTH

It is worth quoting the scale of the benefits of competition compiled in a recent World Bank Investment Climate working paper:

- *price drops of 20-40 percent after international cartels are broken up;*
- *employment rates boosted by 2.5-5.0 percentage points by reforms to state controls and barriers to competition;*
- *GDP gains of 2.5 percent from competition policy reforms in Australia;*
- *consumer savings from cartel enforcement in the US over 8 years of some \$1.85 billion.*

SOURCE: "Competition Policy and Economic Growth" by David Currie, UK Office of Fair Trading. (26 June 2013)

CULTURE *of* COMPETITION



To be fully effective, competition policy must be reflected by a “culture of competition” that is shared by everyone – from government to the private sector to civil society and the consuming public. All stakeholders understand and support the objectives and benefits of competition.

Civil society and a vigorous consumer movement, in particular, can play a constructive and valuable role in the development of a culture of competition.

Vested interests—those who have benefitted from the absence of true competition and who oppose reforms and fair competition—must be overcome.

The media and the judiciary must be well-informed and technically competent in order for competition policy and law to be fully effective.

They must understand the government’s roles, responsibilities and commitment to the protection of competition. Relevant agencies and regulators must be equipped with the mandate, resources, and technical capacity needed for these tasks.



A wider understanding and deeper appreciation – at all levels of decision making in government, in the business sector, and by consumers – of the beneficial impact of effective competition and of competition policy on an economy, are critical and indispensable to creating and maintaining a culture of competition in the Philippines.



The image features a golden, sunburst-patterned background. The word "FAIR" is written in a large, serif font, centered horizontally and slightly tilted upwards. The background consists of numerous thin, golden lines radiating from the center, creating a sunburst effect. The overall color palette is warm and golden, with varying shades of yellow and gold. The text "FAIR" is rendered in a dark gold or brownish-gold color, providing a strong contrast against the lighter background.

FAIR

THE PHILIPPINE COMPETITION ACT



*“I believe competition reform
is the only way to ensure
economic growth and to see
that national living standards
are sustained in the long term.”*

– Rod Sims, Australian Competition
and Consumer Commission,
World Bank Forum on
“Making Markets Work for Development:
A Reform Agenda on Competition,”
23 April 2013



A LAW TO PROTECT FAIR MARKET COMPETITION



The Philippine Competition Act (PCA) or R.A. 10667 is the primary law of the Philippines for promoting fair market competition. It is based on the premise that efficient market competition is an effective mechanism for allocating goods and services, and that safeguards

are needed to maintain competitive conditions. It is a game-changing law that is expected to improve consumer protection and help accelerate investment and job creation in the country, consistent with the national government's goal of creating more inclusive economic growth.

Anti-competitive conduct and agreements can be challenged under the law. In effect, the PCA promotes and maintains an environment where businesses compete based on the quality and price of their goods and services.



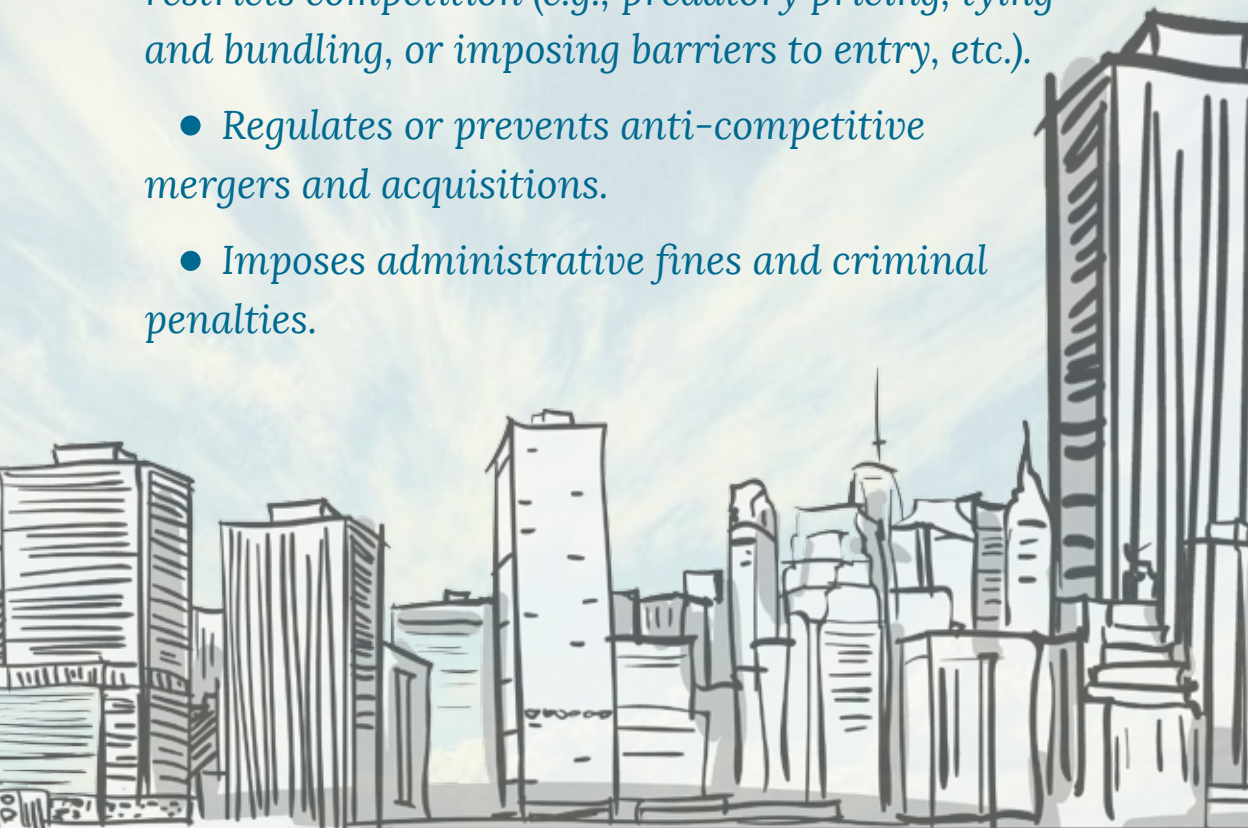
The primary concern of the Philippine Competition Act is to protect the well-being of consumers and preserve the efficiency of competition in the marketplace.



HIGHLIGHTS of the PHILIPPINE COMPETITION ACT



- *Prohibits entities from entering into anti-competitive horizontal and vertical agreements especially those that substantially prevent or restrict competition or fix prices at an auction or any form of bid-rigging.*
- *Proscribes abuse of dominant position, which refers to conduct by dominant players that restricts competition (e.g., predatory pricing, tying and bundling, or imposing barriers to entry, etc.).*
- *Regulates or prevents anti-competitive mergers and acquisitions.*
- *Imposes administrative fines and criminal penalties.*



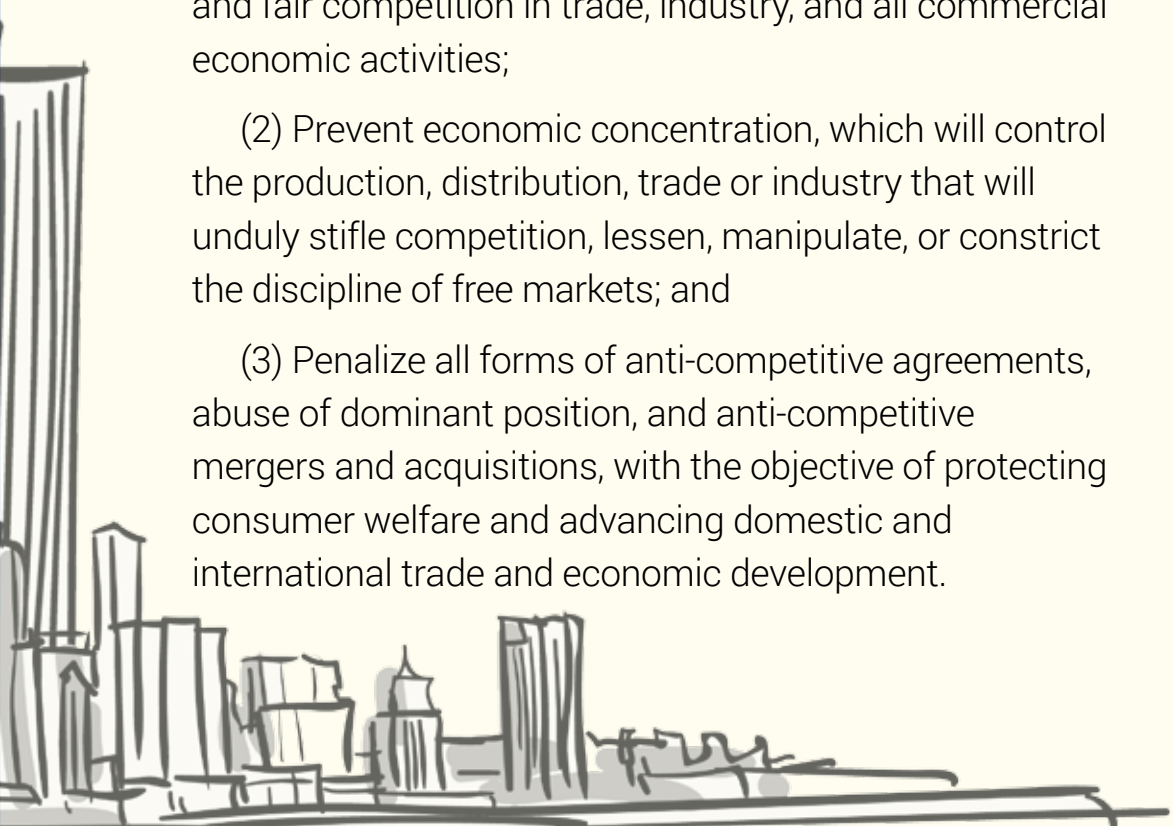
PROTECTING THE MARKET ♦♦♦♦♦ *from* ♦♦♦♦♦ ANTI-COMPETITIVE PRACTICES

The PCA defines, prohibits, and penalizes anti-competitive agreements, abuse of dominant position, and anti-competitive mergers and acquisitions. Section 2 of the PCA provides that the State shall:

(1) Enhance economic efficiency and promote free and fair competition in trade, industry, and all commercial economic activities;

(2) 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

(3) 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.



KEY PROVISIONS of the COMPETITION ACT



Anti-Competitive Agreements and Acts. *The law provides for (cf. page 34) per se violations, namely:*

- *Restricting competition as to price, or components thereof, or other terms of trade; and*
- *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.*

Other anti-competitive agreements whose “object or effect of substantially preventing, restricting or lessening competition” may be prohibited. The PCC balances the efficiency benefits of the questioned act against its anti-competitive implications to determine whether or not such act should be prohibited.

These include:

- *Setting, limiting, or controlling production, markets, technical development, or investment; and*
- *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.*

Mergers or Acquisitions. *Merger or acquisition agreements that substantially prevent, restrict or lessen competition are prohibited.*

Parties to the merger or acquisition agreement where the value of the transaction exceeds One Billion Pesos (P1,000,000,000.00) are required to notify the PCC of such

agreement. They cannot consummate the same without the approval of the PCC. The PCC is also empowered to promulgate other criteria (e.g., increased market share in the relevant market in excess of minimum thresholds) that would trigger this notification requirement.

Abuse of Dominant Position. Entities (whether companies or individuals) are prohibited from abusing their dominant position by engaging in conduct that would substantially prevent, restrict or lessen competition. Such conduct includes predatory pricing, imposing barriers to entry in an anti-competitive manner, and unfair exercise of monopsony¹ power, among others.

Fines and Penalties. Administrative fines of up to P250 million pesos can be imposed. This amount is subject to an inflation-based adjustment every five years. Criminal penalties for anti-competitive agreements are punishable by imprisonment of 2 to 7 years and a fine of P50 million pesos to P250 million pesos. In addition, the PCC is empowered to impose significant fines and penalties for contempt, failure to comply with its orders, or for supplying misleading or false information.

Confidentiality of Information. The law protects confidential business information submitted to the PCC. The identity of the persons who provide information to the PCC under condition of anonymity, as a rule, would likewise remain confidential.

Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Injunctions, and Preliminary Mandatory Injunctions. Only the Court of Appeals and the Supreme Court may issue a temporary restraining order, preliminary injunction or preliminary mandatory injunction against the PCC in the exercise of its duties or functions.

¹ Monopsony means there is one buyer and many sellers.

The PHILIPPINE COMPETITION COMMISSION



The PCA is being implemented and enforced by the Philippine Competition Commission (“PCC” or the “Commission”). The PCC is an independent quasi-judicial body being given original and primary jurisdiction over issues related to competition. It is the main authority on all matters related to competition in the country.

Following its mandate, the PCC investigates anti-competitive agreements and abuses of market dominance, conducts inquiries, decides on mergers and acquisitions, and imposes sanctions and penalties. It establishes rules and guidelines to foster competition as well as mitigate, if not prevent, anti-competitive behavior.

The PCC monitors and analyzes the state of competition in markets, and issues advisory opinions

and guidelines on competition matters for the effective enforcement of the PCA. It conducts, publishes, and disseminates studies and reports on anti-competitive behavior and agreements to inform and guide the industry and consumers.

The PCC is composed of a Chairman and four (4)

Commissioners who serve for a fixed term of seven (7) years.²

To ensure their independence and to insulate the Commission from undue external influence, all Commissioners have security of tenure and shall not be reappointed. Appointments are made by the President, and the PCA requires that s/he appoints senior experts in economics, law, finance, commerce, or engineering.

²For the first set of appointments to the PCC, the Chairman and two Commissioners will serve for 7 years, and the other two for 5 years. Subsequent appointees will then have fixed terms of 7 years.

THE PHILIPPINE COMPETITION COMMISSION AND THE SECTOR REGULATORS



While the PCC has original and primary jurisdiction in the enforcement and regulation of all competition-related issues, it is expected to work with the relevant sector regulators. The PCC will consult with sector regulators and provide them with opportunities to submit opinions and recommendations on matters where the regulators' innate expertise and knowledge in the sector are critical.

Where appropriate, PCC and sector regulators are expected to 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.

Examples of sector regulators include:

- Bangko Sentral ng Pilipinas
- Energy Regulatory Commission
- Securities and Exchange Commission
- National Telecommunications Commission
- Insurance Commission





BUSINESS PRACTICES MONITORED BY THE PCC



“Antitrust laws... are the Magna Carta of free enterprise. They are as important to the preservation of economic freedom... as the Bill of Rights is to the protection of our fundamental personal freedoms.”

– (United States v. Topco Associates Inc.)



ANTI-COMPETITIVE MERGERS & ACQUISITIONS



A merger refers to the joining of two (2) or more entities into an existing entity or to form a new entity. Acquisition, on the other hand, refers to the purchase of one firm by another.

Mergers and Acquisitions (M&As) can benefit consumers because these may lead to businesses that operate more efficiently, resulting in lower prices.

M&As can result in economies of scale and scope, enable the transfer of technologies, broaden access to capital, and increase productivity.

There are M&As, however, that harm competition and can be disadvantageous to consumers. Anti-competitive M&As especially those that create companies with dominant market power could potentially lessen, restrict, or prevent market competition.

The PCC reviews M&As to determine if these will result in a significant reduction of competition. The PCA gives the PCC the authority to regulate business transactions to protect competition in a market.

Mergers and acquisitions that substantially prevent, restrict or lessen competition in the relevant market or in the market for goods or services are prohibited.

Under the PCA, parties to the merger or acquisition agreement where the value of the transaction exceeds One Billion Pesos (P1,000,000,000.00) must notify the PCC of such agreement before consummating the transaction. The PCC may also promulgate other criteria that may be applied to determine when parties to a merger or acquisition shall notify the PCC.

An agreement consummated in violation of this requirement to notify the PCC will be considered void and may subject the parties to an administrative fine of one percent (1%) to five percent (5%) of the value of the transaction.

See the Implementing Rules and Regulations (IRR) of the PCA, particularly Rule 4 (Mergers and Acquisitions), for the other requirements.

HOW ARE MERGERS REVIEWED?



Merger reviews involve rigorous economic analysis and investigation to determine whether a transaction might harm consumers.

A comprehensive review includes a determination of the “relevant market,” whether there will be substantial changes to the market structure, and the potential impact of the transaction on public welfare.

Some key factors that may be considered when determining the effect of a merger or acquisition on competition in a relevant market include:

Number of competitors in a market: A market with only a handful of players may raise a red flag. Fewer players in the market could have an implication on the level of competition. Mergers that significantly decrease the number of competitors in the market require a closer review of possible anti-competitive effects that could harm consumers.

Entry barriers: Mergers among competitors need thorough review for potential lessening of competition especially when costs of entering a market are high.

Examples of barriers to entry include high cost of infrastructure investments and regulatory barriers.

Switching cost for consumers: Both actual and perceived switching costs can be a barrier to entry and growth of existing competitors. The higher the switching cost for consumers, the more concerns a merger will raise, as the flexibility of the market and the potential for new entrants are limited. An example for high switching cost can be long-term agreements with consumers that apply “exit-fines” such as contracts with cellular service suppliers or cable providers.

Potential for collusion: If a result of a merger is the emergence of a market with fewer competitors who have similar market shares, the potential for collusion and therefore, the threat to competition, is much higher.

Eliminating a “Maverick”: In markets where a new entrant has developed to be a “maverick” – a creator of competition – established players may try and remove the maverick by simply buying it. The result of such transactions is a reduction or elimination of competition in the concerned market. Large players may find that buying the new entrant will be an easy way to get back lost customers and market share without having to invest or improve their services. In markets with few players, a merger between a large player and a maverick can be destructive to competition.

◆◆◆◆ WHAT ARE ◆◆◆◆ ANTI-COMPETITIVE AGREEMENTS?

Anti-competitive agreements are those that substantially prevent, restrict, or lessen competition. It is illegal for business rivals to act together in ways that can limit competition, lead to higher prices, or hinder other businesses from entering the market.

Under the PCA, agreements between or among competitors (also called horizontal agreements) that:

- (a) Restrict competition in terms of price or other terms of trade; or*
- (b) Fix price at an auction or in any form of bidding including cover bidding, bid suppression, bid rotation and market allocation and other similar practices of bid manipulation are prohibited outright.*

Other horizontal agreements which substantially prevent, restrict or lessen competition are also prohibited. These include:

- (1) Setting, limiting, or controlling production, markets, technical development, or investment; and*
- (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.*

In these cases, further review is required before PCC makes a decision. The review entails balancing the efficiency benefits of the questioned act against its anti-competitive implications.



EXAMPLES OF ANTI-COMPETITIVE AGREEMENTS INCLUDE:

- **PRICE-FIXING** Competitors collude with one another to fix prices for goods or services, rather than allowing prices to be determined by market forces.
- **BID-RIGGING** Parties participating in a tender process coordinate their bids, rather than submit independent bid prices.
- **OUTPUT-LIMITATIONS** Competitors agree to limit production or set quotas, or else to coordinate investment plans.
- **MARKET-SHARING** Competitors agree to restrict their sales to specific geographic areas, effectively creating local monopolies for each of them.



CARTELS & COLLUSIVE AGREEMENTS



A **cartel** is an organization formed by competitors in a specific industry to enable them to set prices and control levels of production. Instead of competing, members of cartels cooperate in order to jointly manipulate the market. They can artificially increase demand for products by cooperating to lower supply and raise prices.

Collusion is either an explicit or tacit agreement among competing firms in an industry to take steps that will enable them to illegally manipulate the market and control the market price. This anti-competitive agreement allows them to exercise control over a large share of the market.

Agreements to collude or to form cartels are considered anti-competitive agreements and are punished accordingly under antitrust laws all over the world.

A cartel can artificially increase demand for products by working in concert to lower supply and raise prices.

CRIMINALIZING CARTELS

A pair of blue handcuffs is positioned to the right of the title. Below the title, there is a decorative horizontal line consisting of a row of red diamonds of varying sizes.

The global trend towards increased criminalization of cartels, as well as more robust enforcement, includes collaboration among national antitrust authorities through informal transgovernmental networks.

The leaders in the move towards enhancing sanctions against cartels have been the United States and the European Union. More recently, other Organization for Economic Cooperation and Development (OECD) countries have followed suit, as have the BRICS—Brazil, Russia, India, China, and South Africa.

While in the past, cartel activity was not viewed as that problematic, and in some cases even seen as conducive to national economic development, most leading economies have now significantly stiffened sanctions against cartels. Moreover, international venues such as the International Competition Network (ICN) now play an important role in offering guidance to national competition agencies, and in providing a forum for policy deliberation, information sharing, cooperation, and professional socialization.

Source: Shaffer, Gregory and Nesbitt, Nathaniel H. and Waller, Spencer Weber, Criminalizing Cartels: A Global Trend? (July 2, 2013). Chapter in "Research Handbook on Comparative Competition Law," eds. John Duns, Arlen Duke, and Brendan Sweeney (Edgar Elgar, 2015)

Case Study:

THE VITAMINS CASES



In the late 1990s, the United States took the lead in a landmark case that had a significant impact on global anti-cartel practices. In a conspiracy stretching over nine years, vitamin manufacturers fixed prices and allocated sales affecting more than \$5 billion in commerce.

In May 1999, the U.S. Department of Justice announced plea agreements with major pharmaceutical manufacturer F. Hoffmann-LaRoche Ltd and the German chemical manufacturer BASF Aktiengesellschaft. The government’s sentencing recommendation detailed an “extremely well-organized operation,” involving quarterly meetings and once-a-year-meetings among high-level corporate officials to set an annual “budget,” and project global sales volumes and prices. Efforts to conceal the plot were extensive: identities were disguised in documents, and many of these documents were destroyed after meetings.

Prosecutions in other countries followed. The cartelists paid unprecedented fines, globally totaling well over \$3 billion in criminal fines and civil settlements to the US, the European Union, Canada, Australia, and Brazil. The U.S. Justice Department criminally prosecuted 12 corporations and 14 individuals. Eleven executives – including six Europeans – went to prison in the United States.

U.S. Deputy Assistant Attorney General Scott Hammond observed that “the prosecution of the vitamin cartel ... helped [to] trigger a rethinking of the adequacy of competition laws around the world.”

The vitamins case was captured on live video, thanks to the informant Mark Whitaker, later portrayed by Matt Damon in the 2009 motion picture *The Informant*.

Source: Shaffer, Gregory and Nesbitt, Nathaniel H. and Waller, id.

EXAMPLES OF CARTELS & COLLUSIVE AGREEMENTS:



- **Bid-rigging by automotive headlamp and tail-lamp manufacturers** in Japan. The companies were fined JPY4.678 billion by the Japan Fair Trade Commission (JFTC).
- **Price-fixing of 19 garlic supply companies.** They were tried by the Indonesian Competition Authority (KPPU).
- **Bid-rigging by 12 motor vehicle traders,** which was investigated by the Competition Commission of Singapore (CCS).
- **Sharing of price information** between two ferry operators, who were fined by the CCS.
- **Cartel behavior of six (6) Korean and Taiwanese LCD panel makers.** The companies were fined with monetary sanctions totaling RMB 353 million, imposed by the National Development and Reform Commission (NDRC) and State Administration for Industry Commerce (SAIC) in China.
- **Price-fixing agreement between five (5) gold retailers,** through a local industry association, which the NDRC and SAIC of China penalized and imposed with the maximum allowable fines.

Source: *Herbert Smith Freehills (June 2014)*. Presentation to the Republic of the Philippines House of Representatives.

ABUSE of DOMINANCE



Markets that are dominated by a single or handful of large companies are particularly vulnerable to anti-competitive practices. In the conduct of their business, dominant companies - considering their size, scope, and position of economic strength - may have a disproportionately severe effect on the market and its companies.

In other words, dominant companies are in a position to unreasonably restrict fair competition in the market, whether deliberate or otherwise. An anti-competitive act by a dominant company or companies can adversely offset competitors in a way that would be difficult to remedy.

*It is not illegal
to be dominant.
It is illegal to abuse
one's dominance.*



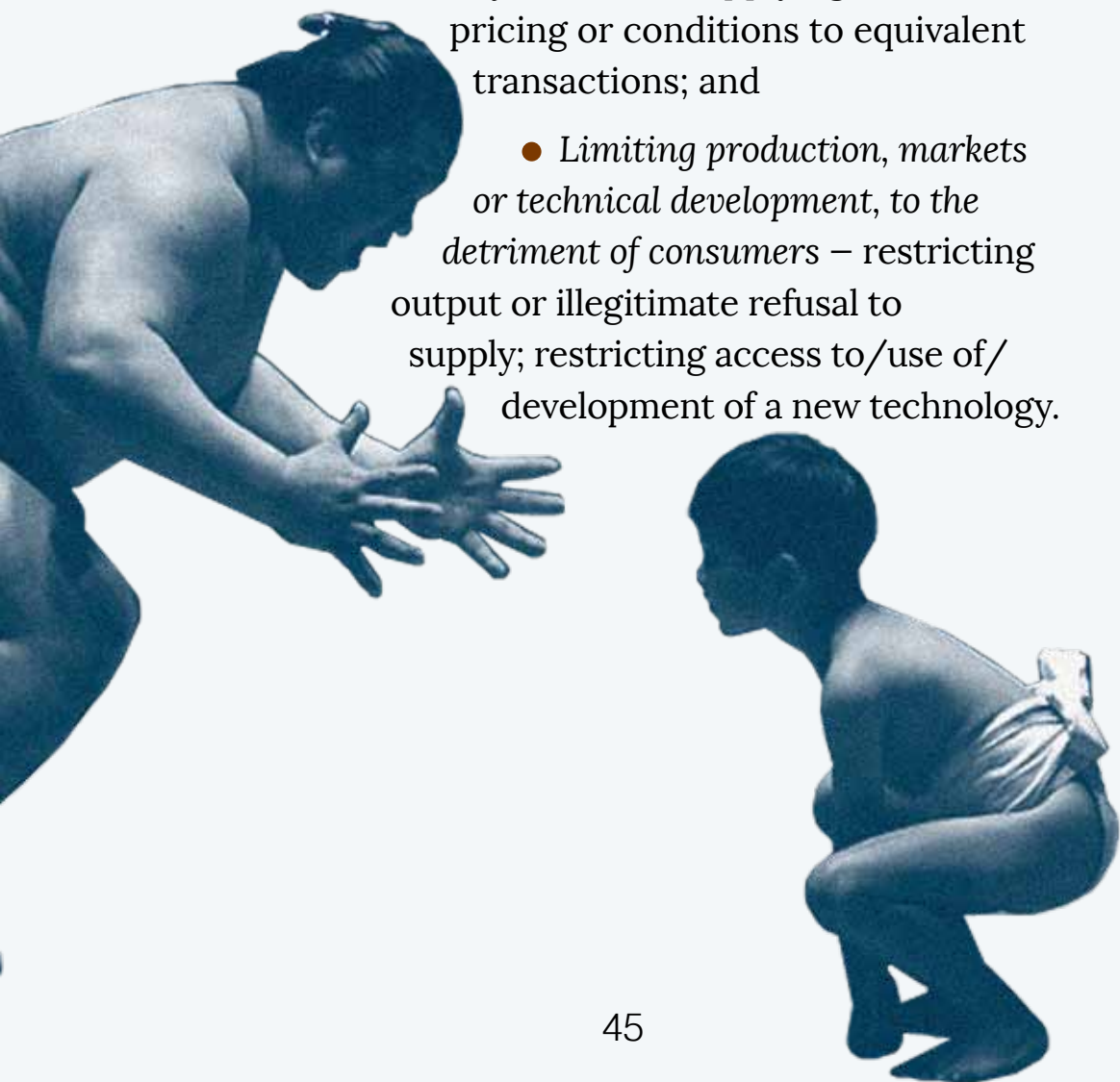
Abuses of dominance prohibited by the PCA include:

- *Predatory pricing* – a dominant firm deliberately incurs losses in the short term by setting prices so low in order to force its competitors out of the market;

- *Exploitative behavior towards consumers, customers, and/or competitors* – excessive or unfair purchase or sales prices or other unfair trading conditions;

- *Discriminatory behavior* – applying different pricing or conditions to equivalent transactions; and

- *Limiting production, markets or technical development, to the detriment of consumers* – restricting output or illegitimate refusal to supply; restricting access to/use of/ development of a new technology.



PREVENTING ABUSE *of* DOMINANCE BEFORE *it* OCCURS



“Dominance in a market means having a high degree of market power. Abuse of dominant position is defined by the law as behavior that would substantially prevent, restrict, or lessen competition.

For example, if the largest supplier of bicycles in a market were big enough, it could temporarily sell at a price that is below its cost. This would attract more customers to its store, and after some time, cause the closure of smaller bicycle stores that have lost market share.

This practice is called predatory pricing. Without safeguards against predatory pricing, the large bicycle store can eventually drive its competitors out of



business, and then, as a monopoly, raise prices to exorbitant levels.

The PCA does not only punish abuses of dominant position. It also empowers the PCC to impose rules and obligations designed to prevent abuses by a player with significant market power in the first place.

Ex-ante (or “before the event”) rules such as these are considered global best practices.

They are preventive measures that can help big businesses avoid unintentionally engaging in anti-competitive practices, and provide safeguards for non-dominant players.

EVALUATING DOMINANCE



When the PCC investigates whether an abuse of dominance has occurred; or when it is considering the imposition of special obligations on dominant players, it must first determine whether the concerned company or player is, in fact, dominant.

Some of the questions to consider in determining whether a company has significant market power include the following:

- What is the overall size of the company?

- Does the company have control of infrastructure not easily duplicated?

Example: If an operator owns the local loop (i.e., copper cables to every household) or a company owns a nationwide mobile network.

- Does the company have technological advantages or superiority compared to other competitors?

Example: If an operator has a large research and development department and owns intellectual property rights in, or to, the services; or if an operator has a superior human capital (i.e. skilled workforce).

- Does the market show an absence of or low countervailing buying power from buyers of the relevant products/services?

Example: If relatively large customers exist and these customers are able to demand lower prices by threatening to move to a competitor.

- Does the company have easy or privileged access to capital markets/financial resources?

Example: If a company has an excellent credit rating and therefore the ability to borrow money; or if the owners have vast financial abilities; or if the company has large reserve funds, or high cash flow.

- Does the company offer several diverse products/ services that enable the company to bundle products or services in a manner that competitors cannot achieve?

Example: Ownership of access lines and provision of fixed voice and mobile telephony services.

- Does the company enjoy economies of scale?

Example: If the operator has an existing large customer base and is able to produce services with a lower marginal cost.

- Does the company enjoy economies of scope?

Example: If the operator has several different products or services that can utilize the same underlying technology or infrastructure which could result in lower marginal cost for the relevant service.

- Is the company vertically integrated?

Example: If the operator owns the infrastructure that the service is depending on (as compared to a service provider that does not have a large network, but only provides services on the other operators' network).

- Does the company have a highly developed distribution and sales network?

Example: If the undertaking has a well-established organization or agents that distribute the services (i.e. sales outlets). Many operators seek exclusive distribution agreements so that agents can only sell one service.

- Is there an absence of potential competition?

Example: If it is not likely that new entrants will come into the market and offer services in the event prices remain high.

- How easy is it for other players/competitors to enter the market?

- Absence of barriers to entry may mean potential competition.

- Barriers could mean extremely high capital investment requirements (e.g. to build the necessary infrastructure).

- Barriers could also refer to legal barriers (e.g., an operator needs to obtain a license or franchise before it can offer services).

ANNEX :
PHILIPPINE
COMPETITION
ACT

.....
Republic Act No. 10667
.....

**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**

SECTION 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 granted leniency, provided preceding 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.

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.

CHAPTER IX FINAL PROVISIONS

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 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.

Approved,

FELICIANO BELMONTE JR.
Speaker of the House
of Representatives

FRANKLIN M. DRILON
President of the Senate

This Act which is a consolidation of Senate Bill No. 2282 and House Bill No. 5286 was finally passed by the Senate and the House of Representatives on July 10, 2015.

The bill was signed and approved into law by President Benigno S. Aquino III on July 21, 2015.



**PHILIPPINE
COMPETITION
COMMISSION**

Ensuring businesses compete and consumers benefit.