

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



Sixteenth Congress
First Regular Session

House Bill No. 4587

Introduced by **AKBAYAN** Representatives
Ibarra "Barry" M. Gutierrez III and Walden F. Bello

EXPLANATORY NOTE

The *1987 Philippine Constitution* in its Article XII (National Economy and Patrimony), Section 19 mandates the State to regulate or prohibit monopolies when public interest so requires, and contains an express prohibition against combinations in restraint of trade or unfair competition.

Indeed, policies and laws on competition are key economic issues that we, as a people, must address. Laying down rules and regulations on competition is fundamental in order for us to modernize our economy. Cartels, bid-rigging in public contracts, abuse of dominant position by big players in certain industries, monopolies, monopsonies and oligopolies continuously violate basic competition precepts but lack of clear and modern competition laws allow unscrupulous business entities to violate these precepts with impunity.

Particular attention must be given to the welfare of marginalized producers and service providers—mostly farmers and fisherfolk with regard to their agricultural products—who become victims of monopsonies or the nefarious practice whereby a single buyer dictates the price of products and services. Oftentimes, the monopsonist, as the creditor who advanced financial capital to the marginalized producer, does not give any bargaining power to marginalized producers and service providers. It is not surprising, therefore, that the harmful effects of unfair business conducts fall upon the shoulders of marginalized sectors and, unfortunately, fall so more heavily during times of calamities.

At present, Philippine laws that regulate business conduct, commerce and trade are confined to provisions of Act No. 3815 or the *Revised Penal Code of the Philippines*. These penal provisions lack teeth and are not effective to deter anti-competitive behavior in a modern setting.

The Philippines need competition laws that will better protect the marginalized consumers and producers. Businesses should be allowed to operate and compete solely on the basis of fairness, innovation, efficiency and competence instead through cartels, abuse of dominant position, monopolistic mergers and similar business practices.

Proposals in this bill would enable the State to provide greater protection to its people by prohibiting and penalizing unscrupulous and unfair business conducts.

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


IBARRA "BARRY" M. GUTIERREZ III


WALDEN F. BELLO

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AN ACT
PENALIZING ANTI-COMPETITIVE AGREEMENTS, ABUSE OF DOMINANT POSITION AND ANTI-COMPETITIVE MERGERS AND ACQUISITIONS, ESTABLISHING THE PHILIPPINE FAIR COMPETITION COMMISSION, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES

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

CHAPTER I
GENERAL PROVISIONS

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3
4 **SECTION 1. *Title.***—This Act shall be known and cited as the “*Fair Competition Act of 2014.*”

5
6 **SECTION 2. *Declaration of policy.***—Pursuant to Section 19, Article XII of the 1987
7 *Philippine Constitution*, which mandates the State to regulate or prohibit monopolies when the
8 public interest so requires and which contains an express prohibition against allowing
9 combinations in restraint of trade and unfair competition, it is hereby declared the policy of the
10 State to:

- 11
12 (a) Protect the interest of consumers, especially the economically marginalized sectors of
13 society;
- 14
15 (b) Promote and enhance economic efficiency and free, full and fair competition in trade,
16 industry and all commercial economic activities;

1
2 (c) Prevent the concentration of economic power in a few persons or firms which threaten to
3 control the production, trade, or commerce in goods and services in order to stifle
4 competition, distort, manipulate or constrict the discipline of free markets, increase market
5 prices in the Philippines; and

6
7 (d) Penalize all forms of anti-competitive agreements, abuse of dominant position, anti-
8 competitive mergers, and other forms of anti-competitive behavior, with the objective of
9 protecting consumer welfare and advancing domestic and international trade and economic
10 development.

11
12 **SECTION 3. *Scope and application.***—The provisions of this Act shall be enforced within
13 the territory of the Philippines and shall apply to all areas of manufacturing, services, trade,
14 industry and all kinds of commercial economic activity.

15
16 It shall also apply to international trade activities committed abroad that have direct, substantial
17 and reasonably foreseeable effects on trade, industry or commerce in the Philippines, including
18 those effects that result from acts done outside the territory of Republic of the Philippines.

19
20 The Act shall apply to:

21
22 (a) All firms and persons as defined hereunder and all their commercial agreements, actions or
23 transactions involving goods, services or intellectual property; and,

24
25 (b) All agents, officers, employees, partners, owners, directors, consultants, stockholders,
26 representatives, managers, supervisors, and all other natural persons who, acting on behalf of
27 juridical persons, shall authorize, engage or aid in the commission of restrictive practices
28 prohibited under this Act.

29
30 This Act does not apply to combinations, activities, agreements or arrangements of employees,
31 or between employees and employers, which are designed solely to facilitate collective bargaining
32 in respect of terms and conditions of employment.

33
34 **SECTION 4. *Definition of terms.***—As used in this Act:

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(a) “*Agreements*” refer to any type or form of contract, arrangement, understanding, undertaking or concerted action, whether formal or informal, written or verbal.

(b) “*Cartel*” refers to:

- (1) A combination of at least two (2) firms providing goods in a relevant market, acting or joined together in order to unduly affect or control production, sale and price, or in order to obtain control in any particular industry or commodity,
- (2) A group of firms that agree to restrict trade, or
- (3) Firms or sections of firms having common interest designed to promote the exchange of knowledge resulting from scientific and technical research, exchange of patent rights and standardization of products among themselves with the intent of preventing, restricting or distorting competition.

(c) “*Commission*” refers to the Philippine Fair Competition Commission.

(d) “*Competition*” shall mean the process by which economic agents, acting independently in a market, limit each other’s ability to control the prevailing conditions in the market.

(e) “*Conglomerate*” refers to:

- (1) A firm or business enterprise having different economic activities in different unrelated industries,
- (2) A group of separate corporations or firms engaged in different economic activities in unrelated industries and owned by a common parent or holding company, or
- (3) Different firms with interlocking ownership that allows them to act in concert, as if they were simply divisions of a single entity.

Conglomerate firms may emerge through mergers and acquisitions and/or investments across a diverse range of industries for a variety of reasons such as minimization of risk, increased access to financial and management resources, and more efficient allocation of resources.

1 (f) “Control” refers to at least twenty percent (20%) ownership, directly or indirectly, of a firm or
2 a group of firms by another firm or person.

3
4 (g) “Dominant position” refers to a situation where a firm, either by itself or acting in collusion
5 with other firms, is in a position to control a relevant market for the sale of a particular good
6 or service by fixing its prices, excluding competitor firms, or controlling the market in a
7 specific geographical area.

8
9 (h) “Firms” refers to any person, natural or juridical, partnership, combination or association in
10 any form, whether incorporated or not, domestic or foreign, including those owned or
11 controlled by the government, which is engaged directly or indirectly in any economic
12 activity: *Provided*, That two firms, one of which is controlled by the other, shall be treated as
13 one firm: *Provided, further*, That two or more firms that are controlled by a single firm shall be
14 treated as one firm.

15
16 (i) “Goods” refer to all types of tangible and intangible property that could be bought and sold,
17 and the possession of and/or rights over which could be transferred in whole or in part,
18 temporarily or permanently.

19
20 “Services” refer to provision of things of value or articles or items that could be used by one
21 person, whether natural or juridical, to another through human interaction or through the
22 use, without transfer of ownership, of the facilities of the provider by the client, or a
23 combination of both. It shall include all non-tangible goods. It is the non-material equivalent
24 of a good, consumed at the point of sale and which does not result in ownership.

25
26 (j) “Market” refers to a place or venue for commercial activity, which may be a city, province,
27 region, the whole area of the Philippines, or which may extend beyond the borders of the
28 Republic of the Philippines, where articles are bought or sold. *Market* also refers to the
29 geographical or economic extent of commercial demand.

30
31 “Relevant market” refers to the line of commerce in which competition has been restrained. It
32 also refers to the geographic area involved, including all reasonably substitutable goods, and
33 all competitors, to which consumers could turn if the restraint or abuse results in the
34 significant increase in prices.

1
2 (k) “*Mergers*” refer to situations where two or more undertakings, previously independent of one
3 another, join together.

4
5 *Mergers* include transactions whereby:

- 6
7 (1) Two companies legally merge into one (mergers),
8 (2) One firm takes sole control of the whole or part of the stock or assets of another
9 (acquisitions or takeovers),
10 (3) Two or more firms acquire joint control over the stock or assets of another firm (joint
11 ventures), and
12 (4) Similar transactions, whereby one or more undertakings acquire control over one or
13 more undertakings, such as interlocking directorates.

14
15 It shall also include acquisition of all or substantially all of the assets of one or more firms by
16 one or more firms.

17
18 (l) “*Monopoly*” refers to a privilege or undue advantage of one or more firms, consisting in the
19 exclusive right to carry on a particular business or trade, and/or manufacture a particular
20 product, article or object of trade, commerce or industry. *Monopoly* is a market structure in
21 which one or only a few firms dominate the total sales of a product or service.

22
23 **CHAPTER II**
24 **PROHIBITION AGAINST CARTELS**
25 **AND OTHER ANTI-COMPETITIVE AGREEMENTS**

26
27 **SECTION 8. *Cartels and other anti-competitive agreements.***—All agreements, collective
28 decisions and recommendations, and concerted practices, which have for their object, result in,
29 translate into, or have the possibility to restrict, impede, distort, or reduce competition in the
30 relevant market in the Philippines or any part thereof shall be prohibited.

31
32 (a) *Price fixing.*—Any agreement among competitors to raise, suppress, fix or otherwise maintain
33 the purchase or selling prices of goods and services such as, but not limited to, establishing or
34 adhering to price discounts, holding prices firmly, eliminating or reducing discounts, adopting

1 a standard or formula for computing prices, maintaining certain price differentials between
2 different types, sizes or quantities of products, adhering to a minimum fee or schedule and
3 other analogous schemes, is hereby prohibited.

4
5 (1) Particular importance shall be given to protecting marginalized farmers, fishers, service
6 providers, small or individual contractors, and other marginalized sectors from price-fixing
7 agreements that impose unfair prices paid for their products and/or services.

8 (2) The implementing rules and regulations of this Act shall provide for enforcement
9 mechanisms to promote the interest of marginalized farmers, fishers, service providers,
10 small or individual contractors.

11
12 (b) *Predatory behavior towards competitors.*—Any agreement, including, but not limited to, selling goods
13 and/or services at below relevant cost with the intent of driving other competitors out of the
14 market, or creating barriers to entry, is hereby prohibited.

15
16 (c) *Limitation and control of markets, production, technical development, or investment.*—Any agreement to
17 limit or control production, markets, technical development, or investment is hereby
18 prohibited.

19
20 (d) *Market allocation.*—Any agreement to divide the market, whether by volume of sales or
21 purchase or by territory, by type of goods sold or purchased, by customers or sellers/suppliers
22 or by any other means, is hereby prohibited.

23
24 (e) *Arrangements to share markets or sources of supply.*—Any agreement to share markets or sources of
25 supply of raw materials is hereby prohibited.

26
27 (f) *Price and other forms of discrimination.*—Any agreement to apply dissimilar conditions to equivalent
28 transactions with other trading parties, thereby placing them at a competitive disadvantage,
29 including price discrimination, or an agreement prescribing or charging, directly or indirectly,
30 discriminatory pricing terms or conditions in the supply or purchase of goods of like grade and
31 quality is hereby prohibited: *Provided*, That nothing in this Act shall be interpreted to prohibit
32 permissible price differentials unless the same shall have the effect of preventing, restricting or
33 distorting competition: *Provided, further*, That for the purpose of this Section, the following shall
34 be considered permissible price differentials:

1
2 (1) Socialized pricing for the less fortunate sectors and areas of the economy.

3 (2) Changes in prices in response to changing conditions affecting the market or the
4 marketability of the goods and/or services concerned such as, but not limited to, actual or
5 imminent deterioration of perishable goods, technological improvements in new
6 substitutable products and/or services, lower prices of new products and/or services,
7 obsolescence of goods and/or services, distress sales under court process, or sale on good
8 faith in discontinuance of business.

9
10 (g) *Exclusivity arrangement*.—Any agreement imposing restrictions upon the buyer-distributor,
11 client, or lessee concerning where, to whom, or in what forms goods may be sold or traded by
12 the latter, such as, but not limited to, fixing prices, or giving preferential discounts, or rebate
13 upon such price, or imposing conditions not to deal with competing firms, is hereby
14 prohibited; *Provided*, That nothing in this Act shall be interpreted as a prohibition against
15 permissible franchising, licensing or exclusive distributorship agreements.

16
17 (h) *Tie-in arrangement*.—Any agreement making the supply of particular goods and/or the rendering
18 of services dependent upon the purchase or lease of other goods and/or services from the
19 supplier or its consignee, and all other acts, obligations, and conditions that make the
20 conclusion of contracts subject to acceptance by the other party of supplementary obligations
21 which, by their nature or according to commercial usage, have no connection with or could be
22 separate from the subject of such contracts, is hereby prohibited.

23
24 Reasonable exemptions from the prohibited acts in subparagraphs (a) to (h) of this Section should
25 be provided for in the implementing rules and regulations.

26
27 (i) *Boycott*.—Any concerted refusal to sell or conspiracy not to sell or to stop doing business on
28 the part of the suppliers of any kind of goods, unless for a legitimate purpose, is hereby
29 prohibited.

30
31 (j) *Bid rigging*.—Any agreement to fix price at auctions or in any other form of bidding, with the
32 purpose and effect of creating a monopoly or cartel, or lessening competition such as, but not
33 limited, to cover bidding, bid suppression, bid rotation and market allocation and other
34 analogous practices of bid manipulation is hereby prohibited.

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In determining whether there is *price fixing* or *bid rigging*, as prohibited under subparagraphs (a) and (j) of this Section, the following circumstances may be considered:

- (1) Generally, any considered evidence that two sellers of similar goods have agreed to set the price of their goods, to sell only a certain amount of their goods, or to sell only to a limited number of buyers or consumers.
- (2) Unjustifiable drastic change in prices of goods and services involving more than one seller of similar goods of different brands, particularly if the changes in prices take place in equal amount and about the same time.
- (3) Whenever a seller refuses to sell by reason of an agreement with a competitor.
- (4) That a firm has repeatedly been the low bidder and has been awarded contracts for a certain service, or that a particular bidder wins bids on a fixed-rotation.
- (5) Unusual and unexplainable difference between the winning bid and all other bids.
- (6) That the same bidder bids substantially higher on some bids than on others, and there is no logical cost reason to explain the difference.

SECTION 9. The prohibited acts of cartel and other anti-competitive agreements as enumerated in this Chapter may consist of horizontal or vertical agreements, or both, that prevent, distort or restrict competition.

“Horizontal agreement” means an agreement entered into between two or more enterprises operating at the same level in the market. *“Vertical agreement”* means an agreement entered into between two or more enterprises, regardless of ownership thereof, each of which operates as separate entities for the purposes of the agreement, at a different level of the production or distribution chain, and relating to the conditions under which the parties may purchase, sell or resell certain goods or services.

Findings by the Commission that (1) two or more firms which are ostensibly competing for the same relevant market are actually performing uniform or complementary acts between themselves, which acts tend to bring artificial and unreasonable increase, decrease or fixing in the price of goods, or (2) two or more firms simultaneously and unreasonably increase, decrease or fix the prices of their seemingly competing goods, which increased, decreased or fixed price lessens

1 competition in the relevant market, shall be considered *prima facie* evidence of an anti-competitive
2 agreement.

3
4 The Commission shall provide guidelines that may be used to determine that anti-competitive
5 behavior caused changes in prices of goods or services.

6
7 **CHAPTER III**
8 **PROHIBITION AGAINST MONOPOLY, MONOPSONY AND ABUSE OF**
9 **DOMINANT POSITION**
10

11 **SECTION 10.** Notwithstanding the provisions of Article 186 of Act No. 3815 otherwise known
12 as the *Revised Penal Code of the Philippines* which penalizes monopolies and combinations in restraint
13 of trade, any abuse by one or more firms of a dominant position within the relevant market or a
14 substantial part of the relevant market, including acts which constitute monopsony, is hereby
15 prohibited.

16
17 Abuse of dominant position may consist of any of the following:

- 18
19 (a) Directly or indirectly imposing unfairly low selling prices directed at driving out competition or
20 preventing new firms from entering the market or unfairly imposing unusually high selling
21 prices in order to exploit the absence of choices available to consumers, buyers and clients.
22
23 (b) Directly or indirectly imposing unfairly low purchase prices for the goods and/or services of,
24 among others, marginalized agricultural producers, fisherfolk, micro-, small- and medium-scale
25 enterprises, and other marginalized service providers and producers, by taking advantage of
26 their inability to bargain for fair prices for their products and services.
27
28 (c) Limiting production, markets or technical development to the prejudice of consumers.
29
30 (d) Applying dissimilar conditions to equivalent transactions with other trading parties, thereby
31 placing them at a competitive disadvantage.
32

1 (e) Making the conclusion of contracts subject to acceptance by the other parties of
2 supplementary obligations which, by their nature or according to commercial usage, have no
3 connection with or could be made separable from the subject of such contracts.
4

6 CHAPTER IV

7 PROHIBITION AGAINST ANTI-COMPETITIVE MERGERS AND ACQUISITIONS

8
9 **SECTION 11. *Anti-competitive mergers and acquisitions.***—No firm engaged in commerce or
10 trade shall acquire, directly or indirectly, the whole or any part of the stock or other share capital,
11 or the whole or any part of the assets, of one or more firms engaged in any line of commerce or
12 trade where the effect of such acquisition of such stocks, share capital, or assets, or of the use of
13 such stock by voting or granting of proxies or otherwise may be to substantially lessen
14 competition, or tend to create a monopoly, or allows an entity, whether alone or with related
15 entities, to obtain a dominant position within the relevant market.
16

17 (a) Nothing in this Act shall be interpreted to prohibit:

- 18
19 (1) A firm from purchasing the stock or other share capital of one or more corporations solely
20 for investment and not using the same by voting or otherwise to bring about, or in
21 attempting to bring about, the substantial lessening of competition; or
22 (2) A corporation from causing the formation of subsidiary corporations, or from owning and
23 holding all or part of the stock of such subsidiary corporations, for the actual carrying on
24 of their immediate lawful business, or the natural and legitimate branches or extensions
25 thereof.
26

27 (b) No firm shall acquire, directly or indirectly, the shares of stock or assets of any other firm, if as
28 a result of the acquisition, the acquiring firm would own twenty percent (20%) or more of the
29 shares of stock or assets of the acquired firm, unless both the acquiring and selling firm have
30 notified the Commission of such proposed acquisition. Such notification shall be made prior
31 to the conclusion of the agreement for such acquisition and shall be accepted only if made in
32 compliance to the required form of the Commission.
33

34 Only the acquiring firm is required to make the notification in a tender offer.

1
2 The contemplated acquisition shall be deemed approved, unless the Commission, within thirty
3 (30) calendar days from receipt of the notification, orders the acquiring firm to show cause
4 why the proposed acquisition would not violated any of the provisions of this Act. The show
5 cause order shall set forth the facts upon which it is based. The acquiring or selling firm may
6 contest the show cause order, in which case, the proposed acquisition shall be considered
7 enjoined until the Commission shall have rendered a decision on the proposed acquisition after
8 due notice and hearing, in accordance with the procedure prescribed herein for the disposition
9 of a show cause order.
10

11 (c) The following classes of transactions are exempt from the prior notice requirement under this
12 Section:
13

- 14 (1) Acquisition of goods or realty transferred in the ordinary course of business.
- 15 (2) Acquisitions of bonds, mortgages, deeds of trust, or other obligations which are not voting
16 securities.
- 17 (3) Acquisitions of an issuer's voting securities by an acquiring firm which owns at least fifty
18 percent (50%) of the voting securities of the issuer prior to such acquisition.
- 19 (4) Transactions expressly exempted and not covered by this Act and other laws.
- 20 (5) Acquisitions, solely for the purpose of investment, of voting securities, if as a result of such
21 acquisition the securities acquired or held do not exceed ten percent (10%) of the
22 outstanding voting securities of the issuer.
- 23 (6) Acquisitions of voting securities pursuant to the preemptive rights of the acquiring firm.
- 24 (7) Acquisitions of voting securities which do not result to an increase, directly or indirectly, of
25 the acquiring firm's per centum share of outstanding voting securities of the issuers.
- 26 (8) Such other acquisitions, transfers, or transactions which the Commission may declare as
27 are not likely to violate this Act or other laws.
28

29 CHAPTER V

30 PROHIBITION AGAINST OTHER FORMS OF ANTI-COMPETITIVE BEHAVIOR

31
32 **SECTION 11. *Other prohibited acts.***—The absence of dominant position or monopoly power
33 notwithstanding, the following acts are prohibited and made unlawful:
34

- 1 (a) For a lessor or landowner to compel the lessee, sub-lessee or tenant to obtain one or more
2 goods and/or services only from sources determined or specified by the former.
- 3 (b) For a lessor or landowner to unduly influence the sourcing of inventory of the tenant, lessee
4 or sub-lessee, or the latter's choice of suppliers and service providers.
- 5 (c) For a creditor to compel the debtor to buy or sell goods and/or services only from the former,
6 or persons designated by the said creditor.
- 7 (d) Other acts of similar nature.
- 8

9 **SECTION 12. *Conglomerates.***—The use by a conglomerate, or any of its member firms, of
10 economic power in order to impede or frustrate fair competition or in order to take advantage of
11 consumers is hereby prohibited.

12

13 CHAPTER VI

14 PHILIPPINE FAIR COMPETITION COMMISSION

15

16 **SECTION 13. *Philippine Fair Competition Commission.***—An independent Commission,
17 which shall be known as the Philippine Fair Competition Commission, referred to in this Act as
18 Commission, is hereby created. It shall be under the Office of the President for budgetary
19 purposes.

20

21 The Commission shall implement the national policy and shall enforce the provisions of this
22 Act. It shall be organized within one hundred eighty (180) days after the approval of this Act.

23

24 (a) *Composition of the Commission*

25

26 The Commission shall be composed of a Chairperson and four (4) Associate
27 Commissioners.

28

29 The Commissioners shall be citizens and residents of the Philippines, at least forty (40) but
30 not more than sixty-five (65) years of age, of good moral character and of recognized probity
31 and independence.

32

33 The Chairperson and two (2) of the Associate Commissioners shall be members of the
34 Philippine Bar and the remaining two (2) shall be of recognized competence in the field of

1 economics preferably in industrial organization economics, or finance, commerce,
2 accounting or management. They must have been in the active practice of their professions
3 for at least ten (10) years, and must not have been losing candidates for any elective national
4 or local office in the immediately preceding elections, whether regular or special.

5
6 (b) *Term of Office*

7
8 The Chairperson and the Associate Commissioners shall be appointed by the President of
9 the Philippines.

10
11 The term of office of the Chairperson and the Associate Commissioners shall be six (6) years
12 without reappointment. The Chairperson shall hold office for six years and of the first four
13 (4) Associate Commissioners, two (2) shall hold office for a term of four (4) years and two
14 (2) for a term of two (2) years.

15
16 In case a vacancy occurs before the expiration of the term of office, the appointment to such
17 vacancy shall be only for the unexpired term of the predecessor.

18
19 (c) *Prohibition and Disqualifications*

20
21 The Commissioners shall not, during their tenure, hold any other office of employment.
22 They shall not, during their tenure, directly or indirectly practice any profession, participate
23 in any business, or be financially interested in any contract with, or any franchise, or special
24 privileges granted by the government or any subdivision, agency, or instrumentality thereof,
25 including government-owned and controlled corporations of their subsidiaries. They shall
26 strictly avoid conflict of interest in the conduct of their office. They shall not be qualified to
27 run for any office in the election immediately succeeding their cessation from office. They
28 shall not be allowed to appear or practice before the Commission for two (2) years following
29 their cessation from office.

30
31 No spouse or relative by consanguinity or affinity within the fourth civil degree and no
32 former law, business, or professional partner or associate of any of the Commissioners and
33 of the Chairperson may be allowed to (1) appear as counsel or agent on any matter pending

1 before the Commission or (2) transact business directly or indirectly therein during their
2 incumbency and within one (1) year from his/her cessation of office.

3
4 (d) *Compensation of Commissioners*

5 The Chairperson shall hold the rank of and shall have the privileges and compensation
6 equivalent to that of a Presiding Justice of the Court of Appeals. The Associate
7 Commissioners shall each hold the rank of and shall have the privileges and compensation
8 equivalent to that of an Associate Justice of the Court of Appeals.

9
10 (e) *Quorum*

11
12 Three (3) members of the Commission shall constitute a quorum and the affirmative vote of
13 three members (3) shall be necessary for the adoption of any rule, ruling, order, resolution,
14 decision or other acts of the Commission *en banc*.

15
16 (f) *Principal office, branch and venue*

17
18 The Commission shall hold its principal office in Metro Manila but it is allowed conduct
19 hearings outside of Metro Manila upon prior notice for inquiries, studies or any other
20 proceedings required for the proper and efficient exercise of its power and the discharge of
21 its duties. It may establish branch offices outside of Metro Manila as may be necessary for
22 the effective discharge of its functions.

23
24 (g) *Staff*

25
26 The Commission shall appoint, fix the compensation in accordance with the *Revised*
27 *Compensation and Position Classification Law*, determine the status, qualifications, and duties of
28 an adequate staff, which shall include an Executive Director of the Commission.

29
30 The Executive Director shall be appointed by the President and shall have relevant
31 experience in any of the fields of law, economics, commerce, management or finance for at
32 least ten (10) years: *Provided, That*, he shall be a Career Executive Service Officer.

1 The members of the technical staff, except those performing purely clerical functions shall
2 possess at least a Bachelor Degree in the following lines of specialization: economics
3 preferably in industrial organization, law, finance, commerce, accounting or management.
4

5 **SECTION 14. *Original and exclusive jurisdiction.***—The Commission shall have original and
6 exclusive jurisdiction to enforce and implement the administrative provisions of this Act and
7 other competition laws. It shall also have the power and duty to promulgate the necessary
8 implementing rules and regulations for the efficient implementation of this Act.
9

10 In particular, the powers of the Commission include those powers upon prior notice and hearing
11 and those which can be exercised even without hearing.
12

13 (a) *Powers of the Commission upon prior notice and hearing*
14

- 15 (1) To issue binding rules and regulations and Commission rulings;
- 16 (2) To issue cease and desist orders, *status quo ante* orders, preliminary injunctions,
17 preliminary mandatory injunctions, and other interlocutory orders;
- 18 (3) To approve or disapprove proposals for consent judgment;
- 19 (4) To conduct the required preliminary inquiry of cases involving violations of this Act and
20 other competition laws;
- 21 (5) To sign and file a criminal complaint with the Department of Justice for prosecution, if
22 the Commission deems it appropriate and necessary after the conduct of a preliminary
23 inquiry; and
- 24 (6) To impose the appropriate administrative fines or penalties.
25

26 (b) *Powers of the Commission even without hearing*
27

- 28 (1) To investigate, on its own initiative or upon the complaint of any person, any and all
29 violations of this Act and other competition laws prior to the commencement of a
30 preliminary investigation, or the issuance of a show cause order, or the institution of a
31 civil or administrative action;
- 32 (2) To attest and file on behalf of the State, civil complaints for damages to business or
33 property of the State, arising from a violation of this Act and other competition laws;

- 1 (3) To attest and file all complaints for appropriate administrative relief from, or against,
2 violations of this Act or other trade competition laws;
- 3 (4) To require and deputize any government agency to lend assistance and information
4 necessary in the discharge of its responsibilities under this Act, and examine if necessary,
5 pertinent records and documents in the possession of such government agency;
- 6 (5) To gather and compile information and investigate, from time to time, the way a given
7 industry is structured or organized whether as a monopoly, oligopoly, or competitive; the
8 way the firms within that industry act, behave, or conduct themselves in such matters as
9 setting prices, determining output, and the resulting performance of the industry as a
10 whole; the organization, business, conduct, practices and management of any person,
11 partnership, or corporation engaged in trade, commerce, or industry and its relation to
12 individuals, partnerships, associations, corporations, firms and other business enterprises;
- 13 (6) To issue *subpoena*, *subpoena duces tecum* and *subpoena ad testificandum* in the exercise of its
14 functions, powers and duties under this Act, subject to the following:
15
- 16 (i) No *subpoena* shall be issued to require the production or disclosure of trade
17 secrets as defined in subparagraph (7) hereof;
- 18 (ii) A *subpoena* may be quashed only by means of a motion duly set for hearing and
19 on the grounds prescribed by the Rules of Court;
- 20 (iii) A person appearing before the Commission, or any of its Divisions, in obedience
21 to a *subpoena* shall be advised, before he is required to testify or produce any
22 documentary or real evidence of his right to be assisted or represented by a
23 counsel of his choice, or if he has none, the Commission shall appoint a *de officio*
24 counsel for him and of his rights to avail of the immunity from prosecution
25 privilege herein prescribed;
26
- 27 (7) To require, by general or special orders, firms engaged in trade, commerce, or industry to
28 file with the Commission in such form as the Commission may prescribe, annual or
29 special reports, or answers in writing to specific questions, furnishing the Commission
30 such information as it may require as to the organization, business, conduct, practices,
31 management and relation to other persons of the respective natural or juridical persons
32 or entities filing such reports or answers in writing. The Commission shall not require,
33 either by a specific order or by a *subpoena*, the disclosure or production of trade secrets
34 such as a secret formula, pattern, device or compilation of information, including names

1 of customers, which is used in one's business and which gives one an opportunity to
2 obtain advantage over competitors who do not know or use it. Trade secrets shall
3 include a plan or process, tool, mechanism, or compound known only to the owner and
4 his employees to whom it is necessary to confide it;

5 (8) To make public, from time to time, such portions of the information obtained by it
6 under this Act, except trade secrets and names of customers, as it shall deem expedient in
7 the public interest;

8 (9) To submit annual and special reports to Congress, including proposed legislation for the
9 regulation of trade, commerce, or industry, and provide for the publication of its reports
10 and resolutions in such form and manner as may be best adopted for public information
11 and transparency; and

12 (10) To study, from time to time, trade conditions in and with foreign countries where
13 associations, combinations, or practices of manufacturers, merchants, or traders, or other
14 conditions, may affect the foreign trade of the Philippines, and report to Congress its
15 findings and recommendations thereon as it may deem advisable.

16
17 **SECTION 15. *Jurisdiction of regional trial courts.***—The regional trial courts shall have
18 original and exclusive jurisdiction, regardless of the penalties and fines herein imposed, of all
19 criminal and civil cases involving violations of this Act and other trade competition laws. The
20 venue shall be based on the provisions of the Rules of Court.

21
22 **CHAPTER VII**
23 **FINES AND PENALTIES**
24

25 **SECTION 16. *Administrative penalties.***—

26
27 (a) Without prejudice to the provisions of other laws, any person found to have violated
28 Sections 8, 9, 10 and 11 of this Act or any combination thereof, shall, for each and every
29 violation, be punished by:

30
31 (1) A fine of not less than ten million Philippine pesos (PhP10,000,000.00) but not more
32 fifty million Philippine pesos (PhP50,000,000.00) if the violator is a natural person, at the
33 discretion of the Commission.

1 (2) A fine of not less than two hundred fifty million Philippine pesos (PhP250,000,000.00)
2 but not more than seven hundred fifty million Philippine pesos (PhP750,000,000.00) if
3 the violator is a juridical person or a firm as the latter is defined in this Act, at the
4 discretion of the Commission.

5 (3) In the alternative, a fine in an amount double the gross proceeds gained by the violator
6 or double the gross loss suffered by the private complainants.

7
8 (b) Any person who fails or neglects to comply with any term or condition of a binding ruling,
9 any interlocutory order, including a cease and desist order or an order for readjustment, duly
10 issued by the Commission, shall pay a fine of not less than fifty thousand Philippine pesos
11 (PhP50,000.00) but not more than one million Philippine pesos (PhP1,000,000.00) for each
12 violation.

13
14 Each violation shall be deemed a separate offense: *Provided*, That in the case of a violation
15 through a continuing failure or neglect to comply, each day of continuance of such failure or
16 neglect shall be deemed a separate offense.

17
18 (c) The Commission may likewise impose upon persons or entities fines of not less than five
19 thousand Philippine pesos (PhP5,000.00) to not more than one hundred thousand Philippine
20 pesos (PhP100,000.00) where, intentionally or negligently, they supply incorrect or
21 misleading information in any document, application or other paper filed with or submitted
22 to the Commission or supply incorrect or misleading information in an application or other
23 paper filed with or submitted to the Commission or supply incorrect or misleading
24 information in an application for a binding ruling, a proposal for a consent judgment,
25 proceedings relating to a show cause order, or application for modification of the
26 Commission's ruling, order or approval, as the case may be.

27
28 **SECTION 17. *Criminal penalties.***—Without prejudice to the provision of other laws, any
29 person that shall be found to have violated Sections 8, 9, 10 and 11 of this Act, or any
30 combination thereof, shall, for each and every violation, be punished by life imprisonment or a
31 fine, or both, at the discretion of the court.

32
33 The fine shall be:
34

- 1 (a) Not less than ten million Philippine pesos (PhP10,000,000.00) but not exceeding fifty million
2 Philippine pesos (PhP50,000,000.00) if the violator is a natural person, at the discretion of
3 the court.
- 4 (b) Not less than two hundred fifty million Philippine pesos (PhP250,000,000.00) but not
5 exceeding seven hundred fifty million Philippine pesos (PhP750,000,000.00) if the violator is
6 a juridical person or a firm as the latter is defined in this Act, at the discretion of the court.
- 7 (c) In the alternative, in an amount double the gross proceeds gained by the violator or double
8 the gross loss suffered by the private complainants.

9
10 **CHAPTER VIII**
11 **ENFORCEMENT**
12

13 **SECTION 18. *Preliminary Inquiry.***—The Commission shall *motu proprio*, or upon the filing of
14 a verified complaint by an interested party or upon referral by the concerned regulatory agency,
15 initiate a preliminary inquiry under this Act.
16

17 **SECTION 19. *Powers of other regulatory agencies.***—Notwithstanding the provisions of
18 Section 18 of this Act, the exercise of regulatory powers by different government agencies,
19 including local government units, over an industry or a subsector of an industry shall be
20 cumulative. The provisions of this Act shall not be interpreted as a hindrance of the exercise of
21 such power and authority of the concerned agency.
22

23 For this purpose, the government agencies shall cooperate and coordinate with one another in
24 the exercise of their powers in order to prevent overlap of efforts, to facilitate and share
25 confidential information, or for other effective measures. The Commission can seek technical
26 assistance from other regulators.
27

28 The Commission shall have primary and sole jurisdiction over competition issues, while the
29 regulatory body shall continue to exercise jurisdiction over all matters with regard to the firms'
30 operation and existence: *Provided, however,* That before issuing any ruling, opinion, issuance,
31 regulation or decision, the Commission must first coordinate with the concerned regulatory
32 agency, if any, and shall request for a written opinion of the latter.
33

1 **SECTION 20. *Power to investigate and to enforce orders and resolutions.***—The
2 Commission shall conduct preliminary inquiries by administering oaths, issuing *subpoena duces*
3 *tecum* and summoning witnesses, and commissioning consultants or experts. It shall determine if
4 any provision of this Act has been violated, enforce its orders and carry out its resolutions by
5 making use of any available means, provisional or otherwise, under existing laws and procedures
6 including the power to punish for contempt and to impose fines.

7
8 **SECTION 21. *Self-incrimination.***—Pursuant to the preceding Section, a person subject of
9 any preliminary inquiry or investigation by the Commission shall produce the specified
10 document or information when so required by written notice: *Provided*, That no person shall be
11 excused from producing any document or disclosing any information to the inquiring officer on
12 the ground that the disclosure of the information or document may be incriminating: *Provided*,
13 *further*, That such document or information produced by the person subject of investigation shall
14 not be admissible as evidence against him in criminal proceedings: *Provided, finally*, That such
15 document or information shall be admissible in evidence in civil proceedings including those
16 arising from or in connection to the implementation of this Act.

17
18 **SECTION 22. *Privileged communication, exclusion.***—Nothing in Sections 20 and 21 shall
19 compel the disclosure of privileged communication: *Provided*, That the person who refuses to
20 disclose the information or produce the document or other material required by the inquiring
21 officer in relation to the preliminary inquiry being conducted shall nevertheless be obliged to
22 give the name and address of the firm to whom, or by whom, or on whose behalf, such
23 privileged communication was made.

24
25 **SECTION 23. *Confidentiality of information.***—Any document or information submitted by
26 firms, as determined and marked confidential by the Commission, relevant to any investigation
27 being conducted pursuant to this Act shall not, in any manner, be directly or indirectly disclosed,
28 published, transferred, copied, or disseminated. The identity of persons who provide
29 information to the Commission and who need confidentiality to protect themselves against
30 economic retaliation, and any Commission deliberations in regard to current or still uncompleted
31 matters, shall remain confidential.

1 Any violation of this provision shall be punished with a fine of not less than one hundred
2 thousand Philippine pesos (PhP100,000.00) but not more than five hundred thousand Philippine
3 pesos (PhP500,000.00).

4
5 **SECTION 24. *Leniency.***—Any person or firm which cooperates or furnishes any information,
6 document or data to the Commission before or during the conduct of the preliminary inquiry
7 that constitutes material evidence as determined by the under this Act shall be immune from any
8 suit or charge including from affected parties and third parties: *Provided*, That the person or firm
9 is not the most guilty. *Provided, further*, That any person or firm which cooperates or furnishes
10 information, document or data to the Commission in connection to an investigation being
11 conducted shall not be subjected to any form of reprisal or discrimination: *Provided, finally*, That
12 such reprisal or discrimination shall be considered a violation of this Act and subjected to the
13 penalties provided for under Section 16.

14
15 Nothing in this Section shall preclude prosecution for persons and firms who reported to the
16 Commission with malicious information, data and falsified documents which is damaging to the
17 business and integrity of the persons and firms under inquiry, which shall likewise be considered
18 as an unfair trade practice punishable under this Act.

19
20 **SECTION 25. *Termination and action on preliminary inquiry.***—The Commission, after
21 considering the statements made, or documents or articles produced, in the course of an inquiry
22 conducted by it, shall terminate the preliminary inquiry by issuing a resolution:

- 23
24 (a) Ordering its closure if no violation or infringement of this Act is found; or
25 (b) Which has the effect of a *nolo contendere* resolution as provided in Section 26 of this Act;
26 or
27 (c) To, singly or cumulatively:
28 (1) Impose penalties in the range provided under Section 16 hereof;
29 (2) Order the rectification of certain acts or omissions; or
30 (3) Order the restitution to the affected parties.

31
32 When determined by the facts and circumstances, the Commission shall institute a civil action by
33 class suit in the name of the Republic of the Philippines, as *parens patriae*, on behalf of persons

1 residing in the Philippines, to secure treble damages for any injury sustained by such persons by
2 reason of any violation of this Act, plus the cost of suit and reasonable attorney's fee.

3
4 If the evidence so warrants, the Commission shall file criminal cases for violation of this Act or
5 relevant laws before the Department of Justice pursuant to Section 17 of this Act.

6
7 **SECTION 26. *Nolo contendere resolution.***—Any firm under inquiry by reason of the
8 implementation and enforcement of the provisions of this Act may submit to a *nolo contendere*
9 resolution at any time before the termination of the preliminary inquiry by:

- 10
11 (a) Paying an amount within the range of penalties provided for under Section 16;
12 (b) Entering into an undertaking to effectively stop and rectify the acts complained of, make
13 restitution to the affected parties, who may be private complainants or witnesses; and
14 (c) Submitting regular compliance reports as may be directed.

15
16 *Provided, That, ten percent (10%) of the amounts paid under this Section shall equitably accrue to*
17 *the Commission: Provided, further, That a nolo contendere resolution shall not bar any inquiry for the*
18 *same or similar acts if continued or repeated.*

19
20 **SECTION 27. *Non-adversarial administrative remedies.***—As an implementing and
21 enforcement policy, the Commission shall, under such rules and regulations it may prescribe,
22 encourage voluntary compliance with this Act and other competition laws by making available to
23 the parties concerned the following and other analogous non-adversarial and non-adjudicatory
24 administrative remedies, before the institution of administrative, civil or criminal action:

- 25
26 (a) *Request for binding ruling*

27
28 Any person who is in doubt as to whether his contemplated or existing act, course of
29 conduct, agreement, decision or practice is in compliance with, is exempt from, or in
30 violation of any of the provisions of this Act, other trade competition laws, or implementing
31 rules and regulations thereof, may request the Commission, in writing, to render a binding
32 ruling thereon.

- 33
34 (b) *Show cause order*

1
2 Upon preliminary findings *motu proprio* or on written complaint under oath by an interested
3 party, that any person is conducting his business, in whole or in part, in a manner that may
4 not be in accord with the provisions of this Act or other trade competition laws, and it finds
5 that the issuance of a show cause order would be in the interest of the public, the
6 Commission shall issue and serve upon such person or persons a written description of its
7 business conduct complained of, a statement of the facts, data, and information together
8 with a summary of the evidence thereof, with an order requiring the said person or persons
9 to show cause, within the period therein fixed, why no order shall issue requiring such
10 person or persons to cease and desist from continuing with the identified business conduct,
11 or pay the administrative fine therein specified, or readjust its business conduct or practices;

12
13 (c) *Proposal for consent judgment*

14
15 At any time prior to the issuance of a binding ruling, the promulgation of a cease and desist
16 judgment under a show cause order or the promulgation of a decision of judgment in any
17 administrative, civil, or criminal case, the person or persons, whose business conduct is
18 under inquiry in the particular proceedings may, without in any manner admitting a violation
19 of this Act or any other trade competition laws, submit to the Commission a written
20 proposal for the entry of a consent judgment, specifying therein the terms and conditions of
21 the proposed consent judgment.

22
23 (d) *Consultations*

24
25 Prior to the filing of a request for a binding ruling or the submission of a proposal for
26 consent judgment, the person or persons concerned may communicate, in writing, with the
27 Commission on matters that should be included or excluded in such request or proposal,
28 which the Commission may consider necessary for the effective enforcement of this Act or
29 other trade competition laws.

30
31 (e) *Binding ruling, cease and desist order, and consent judgment*

32
33 Based upon the facts, data, and information disclosed or supplied by the persons concerned,
34 or established by substantial evidence during the hearing, the Commission shall issue a

1 binding ruling, a cease and desist order or an approval of the proposal for a consent
2 judgment, as the case may be, with or without conditions, to the effect that the particular act,
3 course of conduct, agreement, decision or practice is in accord with this Act or other trade
4 competition laws, or is exempt therefrom, or is constitutive of a violation thereof. If the
5 Commission finds that there is substantial evidence tending to show that the act, course of
6 conduct, agreement, decision or practice of the person or persons concerned is prohibited, it
7 shall include in its decision an order requiring the person or persons concerned:

8
9 (1) To cease and desist from continuing with the identified act, course or conduct,
10 agreement, decision, or practice found to be in violation of any of the provisions of this
11 Act.

12 (2) To pay the administrative penalty or fine therein fixed; and

13 (3) To readjust, within a reasonable period therein fixed, its method of doing business,
14 including a corporate reorganization or divestment in the manner and under the terms
15 and conditions prescribed by the Commission, as it may deem proper for the protection
16 of the public interest.

17
18 (f) *Suspension of administrative, civil or criminal proceedings*

19
20 No pending administrative, civil or criminal proceedings or those filed thereafter, against any
21 person, corporation or any other juridical entity or its officers and employees, shall be
22 suspended, except upon order of the Commission on proper motion, on the ground of the
23 filing of a request for binding ruling, the issuance of a show cause order or the filing of a
24 proposal for a consent judgment based, in whole or in part, on the same set of facts and
25 issues as that of the proceedings sought to be suspended.

26
27 No temporary injunction, restraining order, cease and desist order or other similar
28 injunctions shall be issued by any court, except by the Supreme Court, to stop any
29 proceeding of the Commission.

30
31 (g) *Monitoring of compliance*

32
33 The Commission shall monitor the compliance by the person or persons concerned, their
34 officers, and employees, with the final and executory binding ruling, cease and desist order,

1 or approval of a consent judgment. Upon motion of an interested party, the Commission
2 shall issue a certification to the effect that the person or persons concerned have, or have
3 not, as the case may be, complied with a final and executory ruling, order, or approval.
4

5 (h) *Inadmissibility in Evidence*
6

7 The request for a binding ruling, the show cause order, or the proposal for consent
8 judgment; the facts, data, and information therein contained or subsequently supplied by the
9 person or persons concerned; admissions, oral or written, made by them against their
10 interest; all other documents filed by them including their evidence presented in the
11 proceedings before the Commission; and the judgment rendered thereon, shall not be
12 admissible as evidence in any administrative, civil or criminal proceedings against such
13 person or persons, their officers, employees, and agents nor constitute a basis for the
14 introduction of the binding ruling, the cease and desist order, or the consent judgment as
15 prima facie evidence against such persons in any such action of proceeding.
16

17 (i) *Modification or reversal of ruling, order or approval*
18

19 The Commission may *motu proprio* or upon petition of an interested party, after notice and
20 hearing, reopen and alter, modify, or set aside, in whole or in part, a binding ruling, a cease
21 and desist order, or an approved consent judgment:
22

- 23 (1) Whenever conditions of material fact or law have so changed as to require such action;
24 (2) When the concerned person or persons fail or refuse, without justifiable cause therefore,
25 to comply with any condition attached to such ruling, order, or approval, including an
26 order to readjust their method of doing business; or
27 (3) When the ruling, order, or approval was based on deliberately falsified material fact, data,
28 or information supplied by an interested party benefited by such ruling, order, or
29 approval.
30

31 The modification or reversal of a binding ruling, a cease and desist order, or an approved
32 consent judgment shall have no retroactive effect and shall not affect or impair any right
33 legally acquired prior to the modification or reversal thereof, except, that the party who is
34 guilty of unjustified failure or refusal to comply as specified in paragraph (2) hereof, or have

1 deliberately supplied such falsified material fact, data or information as specified in paragraph
2 (3) above, is barred from claiming any vested right therein.

3
4 **SECTION 28. Standards.**—In the exercise of its powers or the discharge of its duties under
5 this Cct, the Commission shall consider the following:

- 6
7 (a) The way a given industry is structured or organized whether monopolistic, oligopolistic, or
8 competitive;
- 9 (b) The ways the persons engaged in business within a given industry act, behave or conduct
10 themselves in such matters as setting prices, determining output, and other relevant factors
11 and the resulting performance of the industry as a whole;
- 12 (c) The supply and demand situation for the relevant goods or services;
- 13 (d) Whether or not the particular market conduct has an appreciable impact on market
14 conditions;
- 15 (e) The need to bring together complimentary skills to avoid duplication and promote efficiency
16 in the industry;
- 17 (f) Whether or not the anticompetitive effect of a particular market conduct may be offset by
18 increased efficiency and reduction of excessive or unnecessary expenses;
- 19 (g) The cost and profit levels of the industry;
- 20 (h) The need to increase productivity in the particular industry involved;
- 21 (i) The state of the industry, including the need to develop it or to save it from its distressed
22 state;
- 23 (j) The need of the industry to work more rationally and increase their productivity and
24 competitiveness on a larger market;
- 25 (k) The need to respond to international competition and other developments in the
26 international market;
- 27 (l) The need to encourage or develop small and medium-sized industries;
- 28 (m) The impact of the market conduct on the economy and on the consuming public,
29 particularly low income groups;
- 30 (n) The need to pool capital resources;
- 31 (o) The extent to which the consumers have a possibility of choice of the product or service
32 involved;
- 33 (p) The economic and financial power of the parties concerned;

1 (q) The attainment of the objectives which are given priority interest in the general interest of
2 the country, including the need for accelerated industrialization; and

3 (r) The extent to which less restrictive practices are available.
4

5 **SECTION 29. Contempt.**—The Commission or any of its Divisions may summarily punish
6 for contempt by imprisonment not exceeding thirty (30) days or by fine, or both, any person
7 guilty of such misconduct in the presence of the Commission or any of its Divisions in its
8 vicinity as to seriously interrupt any hearing, session or any proceedings before it, including cases
9 in which a person willfully fails or refuses, without just cause, to comply with a summons,
10 *subpoena* or *subpoena duces tecum* legally issued by the Commission or any of its Division, being
11 present at a hearing, proceeding, session or investigation, refused to be sworn as a witness or to
12 answer questions or to furnish information when lawfully required to do so.
13

14 **SECTION 30. Decisions of the Commission.**—Decisions of the Commission *en banc* shall be
15 appealable to the Supreme Court. The appeal shall not stay the order, ruling or decision sought
16 to be reviewed, unless the Supreme Court shall direct otherwise and upon such terms and
17 conditions it may deem just.
18

19 **SECTION 31. Appeal to the Supreme Court.**—Any party who has actively participated in the
20 proceedings before the Commission and is adversely affected by a binding ruling, order, or
21 resolution, decision, judgment, rule or regulation promulgation after notice and hearing by the
22 Commission sitting *en banc*, may appeal, by means of a notice of appeal and a verified petition
23 for review served upon the Commission and other parties who actively participated in the
24 proceedings, to the Supreme Court within thirty (30) days from receipt thereof, upon the
25 grounds that the appealed action of the Commission is:
26

27 (a) Arbitrary to constitutional rights, powers, privileges, or immunities;

28 (b) Contrary to constitutional rights, power, privilege, or immunity;

29 (c) Made in excess of statutory jurisdiction, authority, or limitations, or is contrary to law;

30 (d) Without observance of the procedure required by law; and

31 (e) Not supported by substantial evidence.
32

33 The Commission shall be included as a party respondent to the case and shall be represented by
34 its own legal staff.

1
2 **SECTION 32. *Reception of additional evidence.***—Any party in the appellate proceedings
3 may apply for leave with the Supreme Court to adduce additional evidence before the
4 Commission. The Court may, under such terms and conditions as it may prescribe, order the
5 Commission to receive such additional evidence upon showing that it is material and there are
6 reasonable grounds for the failure to present said evidence in the proceedings before the
7 Commission. The Commission, sitting *en banc*, may modify its findings as to the facts, or make
8 new findings, by reason of the additional evidence taken, and it shall file with the appellate court
9 such modified or new findings and its recommendations for the affirmance, modification, or
10 setting aside of the appealed binding ruling, order, resolution, decision, judgment, rule or
11 regulation.

12
13 **SECTION 33. *Writ of execution.***—Upon the finality of its binding ruling, order, resolution,
14 decision, judgment, or rule or regulation, the Commission may issue a writ of execution to
15 enforce its decision and the payment of the administrative fines provided in the preceding
16 Sections.

17
18 **SECTION 34. *Violation by corporation, partnership, association, and other entity.***—
19 Whenever a corporation, partnership, association, firm or other entity, whether domestic or
20 foreign, shall commit any of the acts declared to be unlawful under this Act, the chairperson of
21 the board of directors, the president, the general manager of the corporation, the general
22 partners of a partnership, and the officers and employees directly responsible, shall be jointly and
23 severally liable with the firm for the fine imposed therein.

24
25 Should a foreign corporation licensed to do business in the Philippines commit the offense, the
26 person or persons directly responsible in the Philippines for the management and operation
27 thereof, shall be liable. In addition, its license to do business in the Philippines shall be
28 cancelled.

29
30 It shall not be a defense for the chairperson of the board of directors, the president or the
31 general manager of the corporation or the general partners of a partnership, or the persons
32 responsible for the management and operation of a foreign corporation licensed to do business
33 in the Philippines, that he was unaware of the violation, unless, he shall have established to the

1 satisfaction of the court that even with the exercise of due diligence and proper supervision, he
2 could not have avoided or prevented the violation.

3
4 Any agreement between an officer, partner or any other officer and a corporation or partnership
5 whereby the latter directly or indirectly agrees to assume, satisfy or indemnify, in whole or in
6 part, the fine of civil obligation imposed under this Act of such corporate officer, partner,
7 manager or other officer found guilty of violating this Act, shall be void.

8
9 **SECTION 35. *Alien violators.***—If the person violating any provision of this Act is a foreigner,
10 he shall, in addition to the other penalties imposed herein, be deported after service of sentence
11 without need of any further proceedings.

12
13 **SECTION 36. *Essential commodities.***—If the violation involves the trade or movement of
14 prime commodities such as rice, corn, sugar, chicken, pork, beef, fish, vegetables, and other
15 articles or commodities of prime or basic necessity as declared by the appropriate government
16 agency, through publication, the fine imposed by the Commission or the courts, as the case may
17 be, shall automatically be tripled and the offender shall pay such threefold fine.

18
19 **SECTION 37. *Private action.***—Regardless of the status or pendency of any proceedings, any
20 firm that suffers injury by reason of any violation of this Act may institute a separate and
21 independent civil action, irrespective of the amount involved in the controversy against the
22 defendant or defendants and shall recover treble damages sustained, the costs of suit and
23 reasonable attorney's fees: *Provided, however,* That no filing fees shall be collected: *Provided, further,*
24 That filing fees shall constitute a first lien in the award of damages.

25
26 **SECTION 38. *Effect of final judgment.***—Any final judgment in a civil or criminal action
27 brought by the Commission on behalf of the People of the Philippines under this Act to the
28 effect that a defendant has violated any or all of the provisions of this Act shall be *res judicata* as
29 to any claim by any person on whose behalf such action was brought: *Provided,* That such person
30 notifies the court having jurisdiction of the case within the period given by the court: *Provided,*
31 *further,* That such period shall not be less than ninety (90) days.

1 It shall be *prima facie* evidence against such defendant in any civil action brought by any other
2 party against such defendant under this Act as to all matters respecting which said judgment
3 would be an estoppel as between the parties concerned.
4

5 **SECTION 39. *Distribution of damages recovered***—The damages recovered in a civil action
6 under Section 24 of this Act shall be distributed in the following manner:
7

- 8 (1) As determined and to be authorized by the Court having jurisdiction of the case;
- 9 (2) Ten percent (10%) of the total amount of damages shall accrue to the Commission and/or
10 regulatory agency to be used exclusively in the enforcement of this Act; and,
- 11 (3) The remainder of which total amount of damages shall be deemed a civil penalty by the
12 court and shall be deposited to the National Treasury as part of the general fund of the
13 government:
14

15 *Provided*, That any distribution procedure adopted by the court shall give preference to individual
16 consumers and afford each person having an interest a reasonable opportunity to secure his
17 appropriate portion of the net damages obtained.
18

19 **SECTION 40. *Measurement of damages***—Damages may be proved and assessed in the
20 aggregate by statistical or sampling methods, by the computation of illegal overcharges, or by
21 such other reasonable system of estimating aggregate damages as the court in its discretion may
22 permit without the necessity of separately proving the individual claim, of, or amount of damage
23 to, persons on whose behalf the suit was brought.
24

25 **SECTION 41. *Immunity from suit***—The Commissioners and staff of the Commission shall not
26 be subject to any action, claim or demand in connection with any act done or omitted by them in
27 the performance of their duties and exercise of their powers, except for those acts and omissions
28 done in evident bad faith or gross negligence.
29

30 The Commission shall indemnify each Commissioner and staff of the Commission for all costs
31 and expenses reasonably incurred by such persons in connection with any civil or criminal
32 actions, suits or proceedings to which they may be or made a party by reason of the performance
33 of their duties or exercise of their powers, unless they are finally adjudged in such actions or
34 proceedings to be liable for evident bad faith or gross negligence.

1 violates this Section shall be penalized by suspension of at least one (1) year without pay in
2 addition to other criminal, civil or administrative penalties.

3
4 The Supreme Court may designate regional trial courts to act as commissioners with the sole
5 function of receiving facts of the case involving the acts of the regulatory agency. The designated
6 regional trial court shall, within thirty (30) days from the date of receipt of the referral, forward
7 its findings of facts to the Supreme Court for appropriate action.

8
9 **SECTION 44. *Intellectual property rights.***—The implementation of the provisions of this
10 Act shall be without prejudice to the rights, liabilities and remedies under Republic Act No.
11 8293, otherwise known as the *Intellectual Property Code of the Philippines*. *Provided*, That, the exercise
12 of intellectual property rights shall not in any way be used to justify violations of this Act.

13
14 **SECTION 45. *Trade associations.***—Nothing contained in this Act shall be construed to
15 prohibit the existence and operation of trade associations organized to promote quality standards
16 and safety issues: *Provided*, That, these associations shall not in any way be used to justify any
17 violation of this Act.

18
19 **SECTION 46. *Implementing rules and regulations.***—The Commission shall prepare the
20 necessary rules and regulations within one hundred twenty (120) days from the effectivity of this
21 Act: *Provided*, That, where the same would apply to an industry or a sub-sector of industry that is
22 subject to the jurisdiction of a regulatory agency, the Commission shall, in preparing the
23 guidelines, consult with the concerned regulatory agency and stakeholders: *Provided, further*, That
24 the Commission may revise such guidelines as it deems necessary: *Provided, however*, That such
25 revised guidelines shall only take effect following its publication in two newspapers of general
26 circulation.

27
28 **SECTION 47. *Congressional oversight committee.***—To oversee the implementation of this
29 Act, there shall be created a Congressional Oversight Committee on Fair Competition to be
30 composed of the Chairpersons of the Senate Committees on Trade and Commerce, Economic
31 Affairs, and Finance; the Chairpersons of the House of Representatives Committees on Trade
32 and Industry, Economic Affairs and Appropriations; and two members each from the Senate
33 and the House of Representatives who shall be designated by the Senate President and the
34 Speaker of the House of Representatives: *Provided*, That one of the two Senators and one of the

1 two House Members shall be nominated by the respective Minority Leaders of the Senate and
2 the House of Representatives. The Congressional Oversight Committee shall be jointly chaired
3 by the Chairpersons of the Senate Committee on Trade and Commerce and the House of
4 Representatives Committee on Trade and Industry. The Vice-Chairperson of the Congressional
5 Oversight Committee shall be jointly held by the Chairpersons of the Senate Committee on
6 Economic Affairs and the House of Representatives Committee on Economic Affairs.

7
8 The Secretariat of the Congressional Oversight Committee on Fair Competition shall be drawn
9 from the existing personnel of the Senate and House of Representatives committees comprising
10 the Congressional Oversight Committee.

11
12 **SECTION 48. Appropriations.**—The amount necessary to implement the provisions of this
13 Act shall be included in the annual General Appropriations Act. However, for the initial
14 budgetary requirements of the Commission, the amount of one hundred million Philippine pesos
15 (P100,000,000) is hereby appropriated: *Provided*, That all moneys recovered or charges or
16 composition sums collected under this Act, other than financial penalties, shall be paid into and
17 form part of the moneys of the Commission.

18
19 **CHAPTER X**
20 **FINAL PROVISIONS**

21
22 **SECTION 49. Transitory provision.**—For the purpose of ensuring that the Commission is
23 organized within the mandated period of one hundred eighty (180) days after the approval of
24 this Act, an Inter-Agency Task Force shall be created and composed of the following agencies:

25
26 (a) For administrative support to the Commission:

27
28 (1) Office of the President to be represented by the Executive Secretary with the Deputy
29 Executive Secretary for Legal Affairs as alternate;

30 (2) Department of Budget and Management to be represented by the Secretary with the
31 Undersecretary in charge of organization of new offices and position classifications as
32 alternate;

1 (b) Agencies which currently perform functions germane or are related to the purposes of the
2 Commission:

- 3
- 4 (1) Tariff Commission to be represented by the Chairperson and with an Associate
5 Commissioner permanently designated as alternate;
 - 6 (2) Department of Trade and Industry to be represented by the Secretary with the Director
7 of the Bureau of Trade Regulation and Consumer Protection as alternate representative;
 - 8 (3) Department of Justice to be represented by the Secretary with an officer holding at least
9 an Assistant Secretary rank as alternate.
- 10

11 The Inter-Agency Task Force shall ensure that the organizational structure of the Commission
12 will be completed within one hundred eighty (180) days from the effectivity of this Act. The
13 Task Force shall also meet in Executive Session all the agency heads to deliberate on possible
14 appointees for the position of Chairman and Associate Commissioners of the Commission for
15 submission to and consideration of the President of the Philippines.

16

17 The Task Force shall also commence the coordinated advocacy for this Act within ninety (90)
18 days from the effectivity thereof. It shall also implement a broad-based consultation on inputs
19 for the implementing rules and regulations of this Act which must be completed within one
20 hundred fifty (150) days from the effectivity of this Act. The report on the consultations shall be
21 submitted to the Commission within fifteen (15) days from its establishment a copy of which
22 will be furnished to the Congressional Oversight Committee on Fair Competition.

23

24 **SECTION 50. *Separability clause.***—If any clause, sentence, section or part of this Act shall be
25 adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect,
26 impair or invalidate the remainder of this Act, but shall be confined in its operation to the clause,
27 sentence, paragraph, section, or part thereof directly involved in the controversy.

28

29 **SECTION 51. *Suppletory application.***—For purposes of this Act, Act No. 3815 (*Revised Penal*
30 *Code*), as amended, and other applicable laws shall be applied in a suppletory character.

31

32 **SECTION 52. *Repealing clause.***—The following laws, insofar as they are inconsistent with
33 any of the provisions of this Act are hereby repealed, amended or otherwise modified
34 accordingly:

- 1
2 (a) Section 5(3) of Republic Act No. 7581 (*The Price Act*);
3 (b) Section 5(f) of Republic Act No. 7925 (*The Public Telecommunications Policy Act*);
4 (c) Section 11(a) and (b) of Republic Act No. 8479 (*The Downstream Oil Industry Deregulation Act*);
5 (d) Section 45 of Republic Act No. 9136 (*The Electric Power Industry Reform Act*);
6 (e) Section 13 of Republic Act No. 9295 (*The Domestic Shipping Development Act*);
7 (f) Sections 24 and 25 of Republic Act No. 9502 (*The Universally-Accessible Cheaper and Quality*
8 *Medicines Act*).

9
10 *Provided,* That in case of conflict between this Act and such provisions of existing competition
11 laws and regulations, the provisions of this Act shall prevail.

12
13 **SECTION 53. Effectivity clause.**—This Act shall take effect fifteen (15) days following its
14 publication in the *Official Gazette* or in at least two (2) national newspapers of general circulation.
15 *Provided, however,* That in order to allow affected parties time to renegotiate agreements or
16 restructure their business to comply with the new competition law, the penal provisions of this
17 Act shall be imposed one (1) year after its effectivity.

18
19 In order to allow affected parties time to renegotiate agreements or restructure their business to
20 comply with the provisions of this Act, Sections 15 and 16 of this Act shall be imposed one (1)
21 year after the effectivity of the implementing rules and regulations of this Act. During the said
22 one (1) year period, the Philippine Fair Competition Commission shall undertake an advocacy
23 program in order to discuss the provisions of this Act to the stakeholders and the general public.

Approved,