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MEMORANDUM

TO : All Bureau Directors

The Directors
Legal Affairs Service
Policy and Planning Service

FROM : The Assistant Secretary
Field Operations-Mindanao and Legislative Affairs

SUBJECT : INVITATION FROM THE COMMITTEE ON ECONOMIC AFFAIRS

DATE : 19 February 2021

This pertains to the letter dated 16 February 2021, from **REP. TEODORICO T. HARESCO, JR.**, Chairperson, Committee on Economic Affairs, inviting the DENR to a TWG meeting on **National Competition Policy on 23 February 2021 (Tuesday), 9:30AM via Zoom Video conferencing with Meeting ID: 817 8222 8509 Password: 547776**, to share views and comments on the matter.

Kindly inform this Office of your attendance before the scheduled date of the meeting and submit presentation, comments and/or position paper in hard and soft copy at the Legislative Liaison Office at telephone number 8920-1761 and e-mail address denrlegislative@yahoo.com for consolidation.


JOANA A. LAGUNDA, D.M., D.P.A.

Encls: As Stated
/juo020

MEMO NO. 2021 - 157



House of Representatives
COMMITTEE ON ECONOMIC AFFAIRS

16 February 2021

Mr. Roy A. Cimatu
Secretary
Department of Environment and Natural Resources
Visayas, Avenue, Diliman
Quezon City

Dear **Secretary Cimatu**:

The Committee on Economic Affairs would like to invite you to a technical working group (TWG) meeting on **23 February 2021, 9:30 A.M. via Zoom**. Details of the meeting are as follows:

1. **HB No. 5906** - An Act Amending Provisions of Republic Act 10667, Otherwise Known as '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', introduced by **Hon. Stella Luz A. Quimbo**
2. **HB No. 6243** - An Act Strengthening the Powers of the Philippine Competition Commission and Legislating the National Competition Policy, Amending for the Purpose Republic Act No. 10667, Otherwise Known as 'The Philippine Competition Act', introduced by **Hon. Sharon S. Garin**

Join Zoom Meeting https://us02web.zoom.us/j/81782228509?pwd=Y3EveEhYcm1mSGgrRkgyKzIPK2FvZz09 Meeting ID: 817 8222 8509 Passcode: 547776

May we request for your comments and recommendations on these measures, if you have not submitted your position paper yet. Attached herewith are copies of the bills for your reference. The Committee Secretariat appreciates your confirmation of attendance on or before **18 February 2021** through committee.economicaffairs@house.gov.ph.

Thank you very much.

Very truly yours,

For the Chairperson:
HON. TEODORICO T. HARESCO, JR.


GLEN DALE J. CORNELIO
OIC - Committee Secretary



Office of the Secretary <osec@denr.gov.ph>

TWG INVITE ON 23FEB2021-PCA

1 message

House Committee on Economic Affairs <committee.economicaffairs@house.gov.ph>
To: osec@denr.gov.ph

Wed, Feb 17, 2021 at 2:45 PM

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3 attachments **HB05906.pdf**
2398K **HB06243.pdf**
3231K **SGD INVITE TWG FEB23DENR.pdf**
117K

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

EIGHTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 5906



Introduced by **Representative STELLA LUZ A. QUIMBO**

**AN ACT AMENDING PROVISIONS OF REPUBLIC ACT 10667,
OTHERWISE KNOWN AS "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"**

EXPLANATORY NOTE

In July 2015, the state enacted Republic Act No. 10667, otherwise known as the Philippine Competition Act (PCA), in line with its policy to ensure free and fair competition for the protection of consumer welfare and advancement of economic development. The PCA serves as the country's first comprehensive competition law, which prohibits anti-competitive agreements, abuse of dominant position, and anti-competitive mergers and acquisitions. The PCA also established the Philippine Competition Commission (PCC) as the national competition authority.

It is internationally recognized that effective market competition benefits consumers through lower prices, higher quality, and more choices. A study of various cases worldwide found that prices can be raised by as much as 50 percent due to overcharges by cartels.¹ Successful enforcement against such anti-competitive conduct immediately improves consumer welfare. Competition also promotes a dynamic business environment by improving market access, lowering the cost of inputs, and spurring innovation.

In the three years since its establishment in 2016, the PCC has been recognized as one of the most productive young competition authorities in the region and a model to fellow authorities in developing countries, having reviewed hundreds of merger cases, participated actively in policy advice, and rolled out key programs such as its Leniency Program. However, the agency's enforcement efforts have been hamstrung by provisions in the PCA which require revision.

¹ Ivaldi et. al. (2016)

This bill seeks to amend the PCA for purposes of enhancing the PCC's ability to enforce its mandate, particularly in investigating cartels, bid rigging, market foreclosure, and other anti-competitive conduct, as well as imposing various fines, penalties, and remedies. To allow the PCC to focus its resources towards competition enforcement, this bill also proposes a shift to a voluntary merger review regime.

The state recognizes that apart from businesses, there must also be a culture of competition among government agencies who shape the competitive landscape through regulation. The PCA provides for the establishment of a national competition policy (NCP), to be formulated by the National Economic and Development Authority with assistance from the PCC and implemented by all government agencies. This bill seeks to legislate principles of the NCP to ensure that competition considerations are included in the formulation and deliberation of government policies. It also proposes that the PCC be mandated to review fiscal incentives for anti-competitive effects. While incentives can be used to promote development goals, they can also give undue competitive advantage to certain entities and distort competition. The PCC's expertise in competition policy make it the most equipped to help the government avoid redundant incentives which are not only wasteful, but could stunt the growth of the economy.

Lastly, this bill also seeks to update the PCC's system and standards for remuneration, cognizant of the technical nature of competition policy and the need to hire and retain high-caliber personnel.

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



STELLA LUZ A. QUIMBO
Representative
Second District, Marikina City

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 5906

Introduced by HONORABLE STELLA LUZ A. QUIMBO

1 AN ACT AMENDING PROVISIONS OF REPUBLIC ACT 10667, OTHERWISE KNOWN AS
2 "AN ACT PROVIDING FOR A NATIONAL COMPETITION POLICY PROHIBITING ANTI-
3 COMPETITIVE AGREEMENTS, ABUSE OF DOMINANT POSITION AND ANTI-
4 COMPETITIVE MERGERS AND ACQUISITIONS, ESTABLISHING THE PHILIPPINE
5 COMPETITION COMMISSION AND APPROPRIATING FUNDS THEREFOR"

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

8 **SECTION 1.** Section 4 of Republic Act 10667 shall be amended to read as follows:

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

10 x x x

11 (g) *Dominant position* refers to a position of economic strength that an entity or entities
12 hold which makes it capable of controlling the relevant market independently from
13 any or a combination of the following: competitors, customers, suppliers, or
14 consumers. **FOR PURPOSES OF THIS ACT, DOMINANT POSITION SHALL ALSO**
15 **MEAN SIGNIFICANT MARKET POWER;**

16 x x x'

17 **SECTION 2.** A new Chapter II shall be added to Republic Act 10667 to read as follows, and
18 all subsequent sections are to be renumbered accordingly:

19 **"CHAPTER II NATIONAL COMPETITION POLICY**

20 **SEC. 5. KEY ELEMENTS OF THE NATIONAL COMPETITION POLICY. - IN THE**
21 **EXERCISE OF THEIR RESPECTIVE FUNCTIONS, ALL NATIONAL GOVERNMENT**
22 **AGENCIES, OFFICES, INSTRUMENTALITIES, LOCAL GOVERNMENT UNITS,**

1 AND GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS SHALL ADOPT
2 AND BE GUIDED BY THE FOLLOWING KEY ELEMENTS:

3 (A) ALL GOVERNMENT POLICIES, LAWS, RULES AND REGULATIONS,
4 ISSUANCES AND OTHER INTERVENTIONS SHALL PROMOTE MARKET
5 EFFICIENCY AND ENHANCE CONSUMER WELFARE, AND SHALL NOT DISTORT
6 COMPETITION BY CREATING BARRIERS TO ENTRY, PROMOTING COLLUSIVE
7 MARKET OUTCOMES, OR RESTRICTING TRADE, EXCEPT WHEN THE
8 RESTRICTIONS ARE PROVEN CONSISTENT WITH THE PROMOTION OF
9 CONSUMER WELFARE AND CANNOT BE ACHIEVED BY OTHER MEANS, OR
10 WHEN THE BENEFITS TO THE COMMUNITY OUTWEIGH THE COSTS; AND

11 (B) GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS AND PRIVATE
12 SECTOR BUSINESSES SHALL COMPETE ON A LEVEL PLAYING FIELD.
13 GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS SHALL BE HELD TO
14 THE SAME STANDARDS AS PRIVATE SECTOR BUSINESSES AND SHALL NOT
15 ENJOY NET COMPETITIVE ADVANTAGES OR DISADVANTAGES OVER PRIVATE
16 SECTOR BUSINESSES SIMPLY BY VIRTUE OF PUBLIC SECTOR OWNERSHIP,
17 UNLESS IT CAN BE CLEARLY DEMONSTRATED THAT THE GREATER PUBLIC
18 INTEREST WILL BE SERVED AND THERE IS LACK OF COMMERCIAL
19 VIABILITY.

20 SEC. 6. REVIEW OF RELEVANT POLICIES. - ALL NATIONAL GOVERNMENT
21 AGENCIES, OFFICES, INSTRUMENTALITIES, LOCAL GOVERNMENT UNITS,
22 AND GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS ARE
23 MANDATED TO REVIEW THEIR RESPECTIVE POLICIES, LAWS, RULES AND
24 REGULATIONS, ISSUANCES AND INTERVENTIONS AND OTHER RELEVANT
25 LAWS APPLICABLE TO THEIR RESPECTIVE OFFICES TO DETERMINE
26 WHETHER THEY RESTRICT, PREVENT OR LESSEN COMPETITION, IN
27 COMPLIANCE WITH THE PRINCIPLES ABOVE AND SUBJECT TO THE
28 GUIDELINES FORMULATED BY THE NATIONAL ECONOMIC AND

1 **DEVELOPMENT AUTHORITY AND THE PHILIPPINE COMPETITION**
2 **COMMISSION.**

3 **SEC. 7. ENFORCEMENT OF COMPETITION-RELATED LAWS AND ISSUANCES. --**
4 **TO ASSIST THE PHILIPPINE COMPETITION COMMISSION IN ENFORCING AND**
5 **ATTAINING THE OBJECTIVES AND PURPOSES OF THIS ACT, ALL NATIONAL**
6 **GOVERNMENT AGENCIES, OFFICES, INSTRUMENTALITIES, LOCAL**
7 **GOVERNMENT UNITS, AND GOVERNMENT-OWNED OR CONTROLLED**
8 **CORPORATIONS SHALL:**

9 **(A) COORDINATE WITH THE PHILIPPINE COMPETITION COMMISSION TO**
10 **IDENTIFY SPECIFIC ACTIONS THAT THEY CAN UNDERTAKE IN THEIR AREAS**
11 **OF RESPONSIBILITY TO PROMOTE COMPETITION, ELIMINATE ANTI-**
12 **COMPETITIVE BEHAVIOR AND UNDUE REGULATORY BURDENS ON**
13 **COMPETITION;**

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

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

20 **(D) CONSULT THE PHILIPPINE COMPETITION COMMISSION IN ESTABLISHING**
21 **A FAIR, PREDICTABLE AND TRANSPARENT PROCESS OF RESOLVING**
22 **COMPETITION-RELATED DISPUTES THAT ARE WITHIN THEIR**
23 **JURISDICTION."**

24 **SECTION 3.** Section 8 of Republic Act 10667 is hereby amended to read as follows:

25 **"SEC. 8. Prohibitions and Disqualifications. -- The CHAIRPERSON AND**
26 **Commissioners shall not, during their tenure, hold any other office or employment.**
27 **They shall not, during their tenure, directly or indirectly practice any profession,**
28 **except in a teaching capacity, participate in any business, or be financially interested**
29 **in any contract with, or any franchise, or special privileges granted by the government**

1 or any subdivision, agency, or instrumentality thereof, including government-owned
2 and-controlled corporations or their subsidiaries. They shall strictly avoid conflict of
3 interest in the conduct of their office. [They shall not be qualified to run for any office
4 in the election immediately succeeding their cessation from office. *Provided*, that the
5 election mentioned hereof is not a Barangay election or a Sangguniang Kabataan
6 election.] x x x”

7 **SECTION 4.** Section 9 of Republic Act 10667 is hereby amended to read as follows:

8 “SEC. 9. Compensation and Other Emoluments for Members [and Personnel] of the
9 Commission. – [The compensation and other emoluments for the members and
10 personnel of the Commission shall be exempted from the coverage of Republic Act No.
11 6758, otherwise known as the “Salary Standardization Act”. For this purpose,] [t]The
12 salaries and other emoluments of the Chairperson[,] **AND** the Commissioners[,] [and
13 personnel of the Commission] shall be set based on an objective classification system,
14 **AT A SUM COMPARABLE TO THE MEMBERS OF THE MONETARY BOARD AND**
15 taking into consideration the importance and responsibilities attached to the respective
16 positions, and shall be submitted to the President of the Philippines for his approval.”

17 **SECTION 5.** Section 11 of Republic Act 10667 is hereby amended to read as follows:

18 “SEC. 11. Staff. – The Commission shall appoint, fix the compensation, and determine
19 the status, qualifications, and duties of an adequate staff, which shall include an
20 Executive Director of the Commission.

21 The Executive Director shall be appointed by the Commission and shall have relevant
22 experience in any of the fields of law, economics, commerce, management, finance or
23 engineering for at least ten (10) years.

24 The members of the technical staff, except those performing purely clerical functions,
25 shall possess at least a Bachelor’s Degree in any of the following lines of specialization:
26 economics, law, finance, commerce, engineering, accounting, or management. **ALL**
27 **STAFF POSITIONS SHALL BE GOVERNED BY A COMPENSATION AND POSITION**

1 CLASSIFICATION SYSTEM AND QUALIFICATION STANDARDS APPROVED BY THE
2 COMMISSION, BASED ON COMPREHENSIVE JOB ANALYSIS AND AUDIT OF
3 ACTUAL DUTIES AND PERSONAL RESPONSIBILITIES. THE COMPENSATION
4 PLAN SHALL BE COMPARABLE WITH THE PREVAILING COMPENSATION PLAN IN
5 THE BANGKO SENTRAL NG PILIPINAS AND OTHER SIMILAR INSTITUTIONS AND
6 SHALL BE SUBJECT TO PERIODIC REVIEW BY THE COMMISSION NO MORE
7 THAN ONCE EVERY TWO (2) YEARS WITHOUT PREJUDICE TO YEARLY MERIT
8 REVIEW OR INCREASES BASED ON PRODUCTIVITY AND EFFICIENCY. THE
9 COMMISSION SHALL, THEREFORE, BE EXEMPT FROM LAWS, RULES, AND
10 REGULATIONS ON COMPENSATION, POSITION CLASSIFICATION AND
11 QUALIFICATIONS STANDARDS. THE COMMISSION SHALL, HOWEVER,
12 ENDEAVOR TO MAKE ITS SYSTEM CONFORM AS CLOSELY AS POSSIBLE WITH
13 THE PRINCIPLES UNDER THE COMPENSATION AND POSITION CLASSIFICATION
14 ACT OF 1989 (REPUBLIC ACT 6758, AS AMENDED)."

15 SECTION 6. Section 12 of Republic Act 10667 is hereby amended to read as follows:

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

20 (a) x x x

21 (b) Review [proposed] mergers and acquisitions **UPON REQUEST OR MOTU**
22 **PROPRIO**, [determine thresholds for notification,] determine the requirements and
23 procedures for notification **AND REVIEW**, and upon exercise of its powers to review,
24 prohibit mergers and acquisitions that [will] **HAVE OR ARE LIKELY TO** substantially
25 prevent, restrict, or lessen competition in the relevant market;

26 (c) x x x

27 (d) Upon finding, based on substantial evidence, that an entity has entered into an
28 anti-competitive agreement or has abused its dominant position after due notice and

1 hearing, stop or redress the same, by applying remedies, such as, but not limited to,
2 issuance of injunctions, requirement of divestment, **REQUIREMENT OF**
3 **MODIFICATION OR TERMINATION OF CONTRACTS, OPENING ACCESS TO**
4 **COMPETITORS, PROHIBITIONS ON RESTRICTIVE CONTRACTING PRACTICES,**
5 **SETTING UP OF INFORMATION FIREWALLS, MAKING INFORMATION AVAILABLE**
6 **TO THIRD PARTIES,** and disgorgement of excess profits under such reasonable
7 parameters that shall be prescribed by the rules and regulations implementing this
8 Act;

9 (e) x x x

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

16 (g) [Upon order of the court,] [u]Undertake **BY ITSELF OR THROUGH ITS DEPUTIZED**
17 **LAW ENFORCEMENT AGENCY, TO SEARCH AND INSPECT** [inspections of] business
18 premises and other offices, **STRUCTURES, SPACES,** land and vehicles, as used by
19 the entity, where it reasonably suspects that relevant [books, tax records, or other
20 documents] **DATA AND INFORMATION** which relate to any matter relevant to the
21 investigation are kept, [in order to prevent the removal, concealment, tampering with,
22 or destruction of the books, records, or other documents] **AND EXAMINE, COPY,**
23 **PHOTOGRAPH, RECORD OR PRINT THE SUCH INFORMATION;**

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

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

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

6 x x x

7 (o) Assist the National Economic and Development Authority, in consultation with
8 relevant agencies and sectors, in [the preparation and formulation of a] **CRAFTING**
9 **GUIDELINES FOR THE national competition policy AND PROVIDE TECHNICAL**
10 **ASSISTANCE TO NATIONAL GOVERNMENT AGENCIES, OFFICES,**
11 **INSTRUMENTALITIES, LOCAL GOVERNMENT UNITS, AND GOVERNMENT-**
12 **OWNED OR CONTROLLED CORPORATIONS IN ITS IMPLEMENTATION;**

13 (p) x x x

14 (q) x x x

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

16 (1) Reviewing economic and administrative regulations, *motu proprio* or upon request,
17 as to whether or not they adversely affect relevant market competition, and [advising
18 the concerned agencies against such regulations] **ISSUING GUIDANCE TO THE**
19 **RELEVANT AGENCY, INCLUDING BUT NOT LIMITED TO ISSUING ADVISORY**
20 **OPINIONS TO REMEDY COMPETITION CONCERNS, AS WELL AS NO OBJECTION**
21 **CERTIFICATES IN THE CASE WHERE NO COMPETITION CONCERN IS RAISED;**
22 [and]

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

25 **(3) REVIEWING PROPOSED LEGISLATION, MOTU PROPRIO OR UPON REQUEST,**
26 **AS TO WHETHER OR NOT IT MAY ADVERSELY AFFECT RELEVANT MARKET**
27 **COMPETITION, AND ISSUING GUIDANCE TO CONGRESS INCLUDING BUT NOT**
28 **LIMITED TO ISSUING ADVISORY OPINIONS TO REMEDY COMPETITION**

1 CONCERNS, AS WELL AS NO OBJECTION CERTIFICATES IN THE CASE WHERE
2 NO COMPETITION CONCERN IS RAISED;

3 (s) Charging reasonable fees to defray the administrative cost of the services rendered.
4 FOR THIS PURPOSE, AN ANTITRUST FUND IS HEREBY CONSTITUTED, WHICH
5 SHALL BE EXEMPT FROM SECTION 51 OF THIS ACT. THE USE OF SUCH FUND
6 SHALL BE SUBJECT TO THE AUDITING REQUIREMENTS, STANDARDS, AND
7 PROCEDURES UNDER EXISTING LAWS;

8 (T) ISSUE ADVISORY OPINIONS TO THE RELEVANT AGENCY ON FISCAL AND
9 OTHER INDUSTRY-SPECIFIC INCENTIVES OF THE GOVERNMENT THAT MAY
10 ADVERSELY AFFECT COMPETITION IN THE RELEVANT MARKET;

11 (U) REVIEW FISCAL AND OTHER INDUSTRY-SPECIFIC INCENTIVES OF THE
12 GOVERNMENT, MOTU PROPRIO OR UPON REQUEST, AS TO WHETHER THEY
13 HAVE ADVERSELY AFFECTED RELEVANT MARKET COMPETITION, AND
14 RECOMMEND REMEDIES TO THE FISCAL INCENTIVES REVIEW BOARD;

15 (V) ISSUE WARNINGS FOR ANY POTENTIAL VIOLATIONS OF THIS ACT; AND

16 (W) ISSUE AND IMPOSE INTERIM MEASURES”

17 SECTION 7. Section 15 of Republic Act 10667 is hereby amended to read as follows:

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

21 x x x

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

26 *Provided, further,* That any conduct which contributes to improving production or
27 distribution of goods or services within the relevant market, or promoting technical

1 and economic progress while allowing consumers a fair share of the resulting benefit
2 may not necessarily be considered an abuse of dominant position:

3 *Provided, finally,* That the foregoing shall not constrain the Commission or the
4 relevant regulator from pursuing measures that would promote fair competition or
5 more competition as provided in this Act, **INCLUDING THE IMPOSITION OF**
6 **SIGNIFICANT MARKET POWER OBLIGATIONS.”**

7 **SECTION 8.** Section 17 of Republic Act 10667 is hereby amended to read as follows:

8 **“SEC. 17. REQUESTS TO REVIEW ANTICIPATED MERGERS AND ACQUISITIONS.**

9 **- A PARTY TO THE AGREEMENT MAY REQUEST THE COMMISSION TO REVIEW**
10 **AN ANTICIPATED MERGER OR ACQUISITION WHICH, IF CONSUMMATED, MAY**
11 **SUBSTANTIALLY PREVENT, RESTRICT, OR LESSEN COMPETITION.**

12 **A PARTY INVOLVED IN A MERGER OR ACQUISITION WHICH REQUESTS FOR THE**
13 **SAME TO BE REVIEWED BY THE COMMISSION SHALL:**

14 **(1) NOTIFY THE COMMISSION OF THE ANTICIPATED MERGER OR ACQUISITION**
15 **PRIOR TO ITS CONSUMMATION;**

16 **(2) PROVIDE REQUIRED DOCUMENTS AND INFORMATION FOR REVIEW AS**
17 **DETERMINED BY THE COMMISSION; AND**

18 **(3) APPLY TO THE COMMISSION FOR A DECISION.**

19 [Compulsory Notification. -] Parties to the merger or acquisition agreement [referred to
20 in the preceding section wherein the value of the transaction exceeds one billion pesos
21 (P1,000,000,000.00)] are prohibited from consummating their agreement until thirty
22 (30) days after providing notification to the Commission in the form and containing the
23 information specified in the regulations issued by the Commission]: Provided, That the
24 Commission shall promulgate other criteria, such as increased market share in the
25 relevant market in excess of minimum thresholds, that may be applied specifically to

1 a sector, or across some or all sectors, in determining whether parties to a merger or
2 acquisition shall notify the Commission under this Chapter].

3 [An agreement consummated in violation of this requirement to notify the Commission
4 shall be considered void and subject the parties to an administrative fine of one percent
5 (1%) to five percent (5%) of the value of the transaction.]

6 Should the Commission deem it necessary, it may request further information that are
7 reasonably necessary and directly relevant to the prohibition under Section 20 hereof
8 from the parties to the agreement before the expiration of the thirty (30)-day period
9 referred. The issuance of such a request has the effect of extending the period within
10 which the agreement may not be consummated for an additional sixty (60) days,
11 beginning on the day after the request for information is [received] **COMPLIED WITH**
12 by the parties: Provided, That, in no case shall the total period for review by the
13 Commission of the subject agreement exceed ninety (90) days from initial notification
14 by the parties.

15 When the above periods have expired and no decision has been promulgated for
16 whatever reason, the merger or acquisition shall be deemed approved and the parties
17 may proceed to implement or consummate it. All notices, documents and information
18 provided to or emanating from the Commission under this section shall be subject to
19 confidentiality rule under Section 34 of this Act except when the release of information
20 contained therein is with the consent of the notifying entity or is mandatorily required
21 to be disclosed by law or by a valid order of a court of competent jurisdiction, or of a
22 government or regulatory agency, including an exchange.

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

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

4 **SECTION 9.** A new Section 18 is added to Republic Act 10667 as follows:

5 **“SEC. 18. MOTU PROPRIO REVIEW. — THE COMMISSION MAY INITIATE A MOTU**
6 **PROPRIO REVIEW OF A MERGER OR ACQUISITION WHICH IT REASONABLY**
7 **SUSPECTS MAY SUBSTANTIALLY PREVENT, RESTRICT, OR LESSEN**
8 **COMPETITION.**

9 **THE COMMISSION SHALL ISSUE A NOTICE TO THE PARTIES TO THE**
10 **AGREEMENT UPON INITIATION OF REVIEW, INCLUDING INTERIM ORDERS AND**
11 **A REQUEST FOR INFORMATION IT DEEMS REASONABLY NECESSARY TO THE**
12 **CONDUCT OF ITS REVIEW.**

13 **FOR PURPOSES OF EFFECTIVELY MONITORING ANTICIPATED MERGERS AND**
14 **ACQUISITIONS, THE COMMISSION SHALL BE AUTHORIZED TO GAIN TIMELY**
15 **AND IMMEDIATE ACCESS TO PERTINENT INFORMATION AND**
16 **DOCUMENTATION OF THE PARTIES TO THE AGREEMENT THAT WERE OR WILL**
17 **BE SUBMITTED BY THE PARTIES TO THE SECURITIES AND EXCHANGE**
18 **COMMISSION (SEC) FOR PURPOSES OF INCORPORATION AND OPERATIONS IN**
19 **THE PHILIPPINES. THE SEC SHALL BE REQUIRED TO COOPERATE WITH THE**
20 **COMMISSION IN THE PROVISION OF INFORMATION AND DOCUMENTATION,**
21 **SUBJECT TO THE APPLICABLE LAWS, AS WELL AS PERTINENT SEC ISSUANCES**
22 **AND RULES.**

23 **IF PARTIES RECEIVE NOTICE FROM THE COMMISSION PRIOR TO**
24 **CONSUMMATION OF THEIR AGREEMENT, THEY ARE THEREBY PROHIBITED**
25 **FROM CONSUMMATING THEIR AGREEMENT UNTIL THE SAME HAS BEEN**
26 **CLEARED BY THE COMMISSION.”**

27 **SECTION 10.** Section 18 of Republic Act 10667 is hereby renumbered and amended to read
28 as follows:

1 “SEC. 1{8}9 [Effect of Notification.] **ISSUANCE OF A DECISION BY THE**
2 **COMMISSION.** – If [within the relevant periods stipulated in the preceding Section],
3 the Commission determines that such agreement is prohibited under Section 20 and
4 does not qualify for exemption under Section 21 of this Chapter, the Commission may:

5 (a) Prohibit the implementation of the agreement;

6 (b) Prohibit the implementation of the agreement unless and until it is modified by
7 changes specified by the Commission;

8 (c) Prohibit the implementation of the agreement unless and until the pertinent party
9 or parties enter into legally enforceable agreements specified by the Commission.”

10 **SECTION 11.** Section 19 of Republic Act 10667 is hereby repealed.

11 **SECTION 12.** Section 20 of Republic Act 10667 is hereby amended to read as follows:

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

16 **A MERGER OR ACQUISITION THAT IS DEEMED PROHIBITED EX-POST SHALL**
17 **BE SUBJECT TO THE NECESSARY REMEDIES AS MAY BE DETERMINED BY THE**
18 **COMMISSION.”**

19 **SECTION 13.** A new Chapter VI is added to Republic Act 10667 to read as follows, and all
20 subsequent provisions are to be renumbered accordingly:

21 **“CHAPTER VI GOVERNMENT INCENTIVES**

22 **SEC. 24. REVIEW OF GOVERNMENT INCENTIVES.** – **THE COMMISSION SHALL**
23 **HAVE THE POWER TO REVIEW POSSIBLE ANTI-COMPETITIVE EFFECTS OF**
24 **INCENTIVE SCHEMES OF THE GOVERNMENT BASED ON THE FOLLOWING**
25 **FACTORS:**

- 1 (1) WHETHER THE INCENTIVE SCHEME GRANTS UNDUE COMPETITIVE
2 ADVANTAGE TO AN ENTITY OR ENTITIES;
3 (2) WHETHER THE INCENTIVE SCHEME IS PROPORTIONATE AND NECESSARY
4 TO ACHIEVE A GIVEN EFFICIENCY OR EQUITY OBJECTIVE;
5 (3) WHETHER THE ACTUAL BENEFIT ACHIEVED THROUGH THE INCENTIVE
6 SCHEME OUTWEIGHS THE COST OF DISTORTING COMPETITION; AND
7 (4) OTHER FACTORS THAT MAY BE DETERMINED BY THE COMMISSION.

8 **SEC. 25. RECOMMENDATION ON GOVERNMENT INCENTIVES. - FOR**
9 **INCENTIVES WHICH THE COMMISSION DEEMS TO HAVE ADVERSELY**
10 **AFFECTED COMPETITION IN THE RELEVANT MARKET OR IN THE MARKET**
11 **FOR GOODS AND SERVICES ACCORDING TO SECTION 24, THE COMMISSION**
12 **SHALL ISSUE A RULING TO THE FISCAL INCENTIVES REVIEW BOARD,**
13 **INCLUDING A RECOMMENDATION FOR REMEDIES SUCH AS THE REVISION OR**
14 **REVOCATION OF SUCH INCENTIVE SCHEME AND THE RECOVERY OF**
15 **INCENTIVES WITH INTEREST."**

16 **SECTION 14.** Section 29 of Republic Act 10667 is hereby amended to read as follows:

17 "SEC. 29. Administrative Penalties. -

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

22 First offense: Fine of up to One Hundred Million Pesos (P100,000,000.00) **OR A FINE**
23 **EQUIVALENT TO 10 PERCENT OF RELEVANT TURNOVER OF THE BUSINESS,**
24 **FOR THE YEAR(S) OF INFRINGEMENT, WHICHEVER IS GREATER;**

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

1 **EQUIVALENT TO 15 PERCENT OF RELEVANT TURNOVER FOR THE YEAR(S) OF**
2 **INFRINGEMENT, WHICHEVER IS GREATER.**

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

5 (b) Failure to Comply With An Order of the Commission. – An entity which fails or
6 refuses to comply with a ruling, order, **CONDITION** or decision issued by the
7 commission shall pay a penalty of not less than [Fifty] **ONE HUNDRED** Thousand
8 Pesos [(P50,000.00)] **(P100,000.00)** up to [Two] **FIVE** Million Pesos [(P2,000,000.00)]
9 **(P5,000,000.00) OR 1 PERCENT OF RELEVANT TURNOVER, WHICHEVER IS**
10 **GREATER**, for each violation and a similar amount of penalty for each day thereafter
11 until the said entity fully complies. Provided that these fines shall only accrue daily
12 beginning forty five (45) days from the time that the said decision, order or ruling was
13 received.

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

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

25 Provided that the schedule of fines indicated in this Section shall be [increased]
26 **REVIEWED AND MAY BE ADJUSTED** by the Commission every five (5) years [to
27 maintain their real value from the time it was set].”

28 **SECTION 15.** Section 30 of Republic Act 10667 is hereby amended to read as follows:

1 “SEC. 30. Criminal Penalties. – An entity that enters into any anti-competitive
2 agreement as covered by Chapter III, Section 14(a) and 14(b) under this Act shall, for
3 each and every violation, be penalized by imprisonment from two (2) to seven (7) years,
4 and a fine of not less than fifty million pesos (P50,000,000.00) but not more than two
5 hundred fifty million pesos (P250,000,000.00) **OR A FINE EQUIVALENT TO 10% OF**
6 **RELEVANT TURNOVER FOR THE YEAR(S) OF INFRINGEMENT, WHICHEVER IS**
7 **GREATER.** The penalty of imprisonment shall be imposed upon the responsible
8 officers, and directors of the entity. When the entities involved are juridical persons,
9 the penalty of imprisonment shall be imposed on its officers, directors, or employees
10 holding managerial positions, who are knowingly and willfully responsible for such
11 violation.”

12 **SECTION 16.** Section 35 of Republic Act 10667 is hereby amended to read as follows:

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

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

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

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

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

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

3 Even after the Commission has received information about the illegal activity after a
4 fact finding or preliminary inquiry has commenced, the reporting entity [will] **MAY** be
5 granted leniency, provided preceding conditions (b) and (c) and the following
6 additional requirements are complied with:

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

8 [(2)] **(1)** At the time the entity comes forward, the Commission does not have evidence
9 against the entity that is likely to result in a sustainable conviction; and

10 [(3)] **(2)** The Commission determines that granting leniency would not be unfair to
11 others.

12 **THE COMMISSION SHALL DEVELOP SPECIFIC CRITERIA FOR QUALIFICATION**
13 **FOR THE LENIENCY PROGRAM AS IT DEEMS APPROPRIATE.**

14 x x x"

15 **SECTION 17.** Section 37 of Republic Act 10667 is hereby amended to read as follows:

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

22 x x x

23 (c) Consent Order. – At any time prior to the conclusion by the Commission of its
24 inquiry **RELATING TO SECTIONS 14(c) AND 15 OF THIS ACT**, any entity under
25 inquiry may, without in any manner admitting a violation of this Act or any other
26 competition laws, submit to the commission a written proposal for the entry of a

1 consent order, specifying therein the terms and conditions of the proposed consent
2 order which shall include among others the following:

- 3 (1) The payment of an amount within the range of fines provided for under this Act;
4 (2) The required compliance report as well as an entity to submit regular compliance
5 reports;
6 (3) [Payment of] **AN UNDERTAKING TO PAY** damages to any private party/parties who
7 may have suffered injury; and
8 (4) Other terms and conditions that the Commission deems appropriate and
9 necessary for the effective enforcement of this Act or other Competition Laws.

10 x x x

11 (e) Inadmissibility of Evidence in Criminal Proceedings. – The request for a binding
12 ruling[,] **OR** the show cause order[, or the proposal for consent order]; the facts, data,
13 and information therein contained or subsequently supplied by the entity or entities
14 concerned; admissions, oral or written, made by them against their interest; all other
15 documents filed by them, including their evidence presented in the proceedings before
16 the Commission; and the judgment or order rendered thereon; shall not be admissible
17 as evidence in any criminal proceedings arising from the same act subject of the
18 binding ruling[,] **OR** show cause order [or consent order] against such entity or
19 entities, their officers, employees, and agents.”

20 **SECTION 18.** Section 52 of Republic Act 10667 is hereby amended to read as follows:

21 “SEC. 52. Transparency Clause. — Final decisions, orders and rulings of the
22 Commission **AND THE INITIATION OF A MOTU PROPRIO REVIEW OF A MERGER**
23 **OR ACQUISITION** shall be published on the official website **OF THE COMMISSION,**
24 subject to Section 34 of this Act.”

25 **SECTION 19.** *Separability Clause.* – Should any provision of this Act or any part hereof be
26 declared unconstitutional, the other provisions or parts not affected thereby shall remain
27 valid and effective.

1 **SECTION 20. *Repealing Clause.*** – All laws, presidential decrees, executive orders,
2 resolutions, rules and regulations or parts thereof which are inconsistent with the provisions
3 of this Act are hereby repealed, amended or modified accordingly.

4 **SECTION 21. *Effectivity Clause.*** – This Act shall take effect after fifteen (15) days following
5 its publication in the *Official Gazette* or in two (2) newspapers of general circulation.

6 Approved.

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

EIGHTEENTH CONGRESS
First Regular Session

House Bill No. 6243



Introduced by Representative SHARON S. GARIN

AN ACT STRENGTHENING THE POWERS OF THE PHILIPPINE COMPETITION COMMISSION AND LEGISLATING THE NATIONAL COMPETITION POLICY, AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 10667, OTHERWISE KNOWN AS THE "PHILIPPINE COMPETITION ACT"

EXPLANATORY NOTE

Since its enactment in July 2015, Republic Act No. 10667, otherwise known as the Philippine Competition Act ("PCA"), has been regarded to be revolutionary and game-changing. Almost three decades in the making, the PCA is the country's first comprehensive legal framework on competition. It codifies the government's adoption of the recognized principle that genuine and effective market competition encourages innovation among market players, rewards efficient and productive use of resources, and ultimately redounds to the benefit of consumers by lowering prices and enhancing their right of choice over goods and services offered in the market.

Taking the lead in the promotion of the PCA's policy objectives is the Philippine Competition Commission ("PCC"), the country's first central competition authority. Formally established in 2016, the PCC has dutifully served its statutory role of leveling the playing field across all markets by enforcing the three pillars of competition law provided for under the PCA: anti-competitive agreements, abuse of dominant position, and anti-competitive mergers and acquisitions.

Within four years after its establishment, PCC has undertaken the implementation of competition law in the country, and stands shoulder-to-shoulder with its fellow competition authorities in other jurisdictions with a far more advanced level of competition enforcement. Despite being a relatively young agency, PCC has been recognized by global peers and practitioners for its active and advanced merger control regime. From 2016 to 31 December 2019, the PCC had received 204 notifications for M&A transactions, cumulatively worth PHP 3.3 trillion, of which 188 had been approved.

The PCC had also intensified its enforcement activities across a broad range of industries in 2019. As a result of its greater public visibility, the PCC had received a total of 309 queries to date, 135 of which are informal complaints on possible cartels and abuses of dominance. Recognizing that market competition can also be stifled by existing laws and regulations, the PCC has also increased its competition research and policy advocacy efforts, especially in priority sectors identified by the Commission.

Despite all these efforts, however, mainstreaming a culture of competition in the country remains to be a gargantuan undertaking. While the Philippines' competition regime is a marked improvement from its previous state prior to the passage of the PCA, the PCC has experienced constraints in carrying out some enforcement activities due to the current wording of its charter that prevents full potential of detecting and prosecuting anti-competitive activities.

Hence, this measure aims to improve the PCC's ability to investigate cartels, market foreclosure activities, and other types of monopolistic conduct. It also seeks to amend relevant the provisions of the PCA to strengthen the organizational and administrative structure of the PCC to ensure a more effective and efficient exercise of its mandate.

Finally, in recognition of the vital role that the government plays in ensuring fair competition, this measure seeks to institutionalize and legislate the principles of the National Competition Policy. A whole-of-government approach towards imbibing competition policy can be achieved by applying the principle of competitive neutrality in government-owned and controlled corporations, as well as in the entire gamut of government activities and interventions.

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


Rep. SHARON S. GARIN

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

Eighteenth Congress
First Regular Session

House Bill No. 6243

Introduced by Representative SHARON S. GARIN

AN ACT
STRENGTHENING THE POWERS OF THE PHILIPPINE COMPETITION
COMMISSION AND LEGISLATING THE NATIONAL COMPETITION POLICY,
AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 10667,
OTHERWISE KNOWN AS THE "PHILIPPINE COMPETITION ACT"

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

1 **SECTION 1.** Section 4 of Republic Act No. 10667 shall be amended to read as follows:

2 "Sec. 4. *Definition of Terms.* – As used in this Act:

3 "X x x

4 "(g) *Dominant position* refers to a position of economic strength that an entity or entities hold
5 which makes it capable of controlling the relevant market independently from any or a
6 combination of the following: competitors, customers, suppliers, or consumers. **FOR**
7 **PURPOSES OF THIS ACT, DOMINANT POSITION SHALL ALSO MEAN SIGNIFICANT**
8 **MARKET POWER;**

9 "(h) *Entity* refers to any person, natural or juridical, sole proprietorship, partnership, combination
10 or association in any form, whether incorporated or not, **INCLUDING JOINT VENTURE**
11 **AGREEMENTS OR CORPORATIONS WHETHER REGISTERED OR NOT,** domestic or
12 foreign, including those owned or controlled by the government[;] engaged directly or
13 indirectly in any economic activity;

14 "X xx

15 "**(L) JOINT VENTURE REFERS TO A BUSINESS ARRANGEMENT WHEREBY AN ENTITY**
16 **OR GROUP OF ENTITIES CONTRIBUTE CAPITAL, SERVICES, ASSETS, OR A**
17 **COMBINATION OF ANY OR ALL OF THE FOREGOING, TO UNDERTAKE AN**

1 INVESTMENT ACTIVITY OR A SPECIFIC PROJECT, WHERE EACH ENTITY SHALL
2 HAVE THE RIGHT TO DIRECT AND GOVERN THE POLICIES IN CONNECTION
3 THEREWITH, WITH THE INTENTION TO SHARE BOTH PROFITS AND RISKS AND
4 LOSSES SUBJECT TO AGREEMENT BY THE ENTITIES.

5 **SECTION 2.** A new chapter shall be inserted, and the numbering of sections shall be
6 revised accordingly:

7 "CHAPTER ____

8 "NATIONAL COMPETITION POLICY

9 "SEC. __. KEY ELEMENTS OF NATIONAL COMPETITION POLICY. – IN THE EXERCISE
10 OF THEIR RESPECTIVE FUNCTIONS, ALL NATIONAL GOVERNMENT AGENCIES,
11 OFFICES, INSTRUMENTALITIES, LOCAL GOVERNMENT UNITS AND GOVERNMENT-
12 OWNED OR CONTROLLED CORPORATIONS (GOCCs) SHALL ADOPT AND BE GUIDED
13 BY THE FOLLOWING KEY ELEMENTS:

14 (A) ALL GOVERNMENT POLICIES, LAWS, RULES AND REGULATIONS, ISSUANCES
15 AND OTHER INTERVENTIONS SHALL PROMOTE MARKET EFFICIENCY AND
16 ENHANCE CONSUMER WELFARE, AND SHALL NOT DISTORT COMPETITION BY
17 CREATING BARRIERS TO ENTRY, PROMOTING COLLUSIVE MARKET
18 OUTCOMES, OR RESTRICTING TRADE, EXCEPT WHEN THE RESTRICTIONS ARE
19 PROVEN CONSISTENT WITH THE PROMOTION OF CONSUMER WELFARE AND
20 CANNOT BE ACHIEVED BY OTHER MEANS, OR WHEN THE BENEFITS TO THE
21 COMMUNITY OUTWEIGH THE COSTS; AND

22 (B) GOCCS AND PRIVATE SECTOR BUSINESSES SHALL COMPETE ON A LEVEL
23 PLAYING FIELD. GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS
24 SHALL BE HELD TO THE SAME STANDARDS AS PRIVATE SECTOR BUSINESSES
25 AND SHALL NOT ENJOY NET COMPETITIVE ADVANTAGES OR DISADVANTAGES
26 OVER PRIVATE SECTOR BUSINESSES SIMPLY BY VIRTUE OF PUBLIC SECTOR
27 OWNERSHIP, UNLESS IT CAN BE CLEARLY DEMONSTRATED THAT THE
28 GREATER PUBLIC INTEREST WILL BE SERVED AND THERE IS LACK OF
29 COMMERCIAL VIABILITY.

30 "SEC. __. REVIEW OF RELEVANT POLICIES. – ALL NATIONAL GOVERNMENT
31 AGENCIES, OFFICES, INSTRUMENTALITIES, LOCAL GOVERNMENT UNITS, AND
32 GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS ARE MANDATED TO
33 REVIEW THEIR RESPECTIVE POLICIES, LAWS, RULES AND REGULATIONS,
34 ISSUANCES AND INTERVENTIONS AND OTHER RELEVANT LAWS APPLICABLE TO
35 THEIR RESPECTIVE OFFICES TO DETERMINE WHETHER THEY RESTRICT, PREVENT
36 OR LESSEN COMPETITION, IN COMPLIANCE WITH THE PRINCIPLES ABOVE AND
37 SUBJECT TO THE GUIDELINES FORMULATED BY THE NATIONAL ECONOMIC AND
38 DEVELOPMENT AUTHORITY AND THE PHILIPPINE COMPETITION COMMISSION.

39 "SEC. __. ENFORCEMENT OF COMPETITION-RELATED LAWS AND ISSUANCES. –

40 "TO ASSIST THE PHILIPPINE COMPETITION COMMISSION IN ENFORCING AND
41 ATTAINING THE OBJECTIVES AND PURPOSES OF THIS ACT, ALL
42 NATIONAL GOVERNMENT AGENCIES, OFFICES, INSTRUMENTALITIES, LOCAL

1 **GOVERNMENT UNITS, AND GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS**
2 **SHALL:**

3 **(A) COORDINATE WITH THE PHILIPPINE COMPETITION COMMISSION TO**
4 **IDENTIFY SPECIFIC ACTIONS THAT THEY CAN UNDERTAKE IN THEIR AREAS**
5 **OF RESPONSIBILITY TO PROMOTE COMPETITION, ELIMINATE ANTI-**
6 **COMPETITIVE BEHAVIOR AND UNDUE REGULATORY BURDENS**
7 **ON COMPETITION;**

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

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

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

17 **SECTION 3.**The following sections of Chapter II, entitled "Philippine Competition
18 Commission" of Republic Act No. 10667 shall be amended to read as follows:

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

31 X xx

32 "*Sec. 8. Prohibitions and Disqualifications.* – The Commissioners shall not, during their tenure,
33 hold any other office or employment. They shall not, during their tenure, directly or indirectly
34 practice any profession, except in a teaching capacity, participate in any business, or be
35 financially interested in any contract with, or any franchise, or special privileges granted by the
36 government or any subdivision, agency, or instrumentality thereof, including government-owned
37 and - controlled corporations or their subsidiaries. They shall strictly avoid conflict of interest in
38 the conduct of their office. ~~[They shall not be qualified to run for any office in the election~~
39 ~~immediately succeeding their cessation from office: *Provided*, That the election mentioned~~
40 ~~hereof is not a Barangay election or a Sangguniang Kabataan election.]~~ *Provided*, they shall not
41 be allowed to personally appear or practice as counsel or agent on any matter pending before
42 the Commission for ~~two (2))~~ **ONE (1)** years following their cessation from office.

1 "No spouse or relative by consanguinity or affinity within the fourth civil degree of any of the
2 Commissioners, the Chairperson and the Executive Director of the Commission may appear as
3 counsel nor agent on any matter pending before the Commission or transact business directly
4 or indirectly therein during incumbency and within ~~two (2)~~ **ONE (1)** years from cessation of
5 office.

6 "*Sec. 9. Compensation and Other Emoluments for Members and Personnel of the*
7 *Commission.*—~~[The compensation and other emoluments for the members and personnel of the~~
8 ~~Commission shall be exempted from the coverage of Republic Act No. 6758, otherwise known~~
9 ~~as the "Salary Standardization Act". For this purpose, the salaries and other emoluments of the~~
10 ~~Chairperson, the Commissioners, and personnel of the Commission shall be set based on an~~
11 ~~objective classification system, taking into consideration the importance and responsibilities~~
12 ~~attached to the respective positions, and shall be submitted to the President of the Philippines~~
13 ~~for his approval.]~~ **ALL POSITIONS FOR THE MEMBERS AND PERSONNEL OF THE**
14 **COMMISSION SHALL BE GOVERNED BY A COMPENSATION AND POSITION**
15 **CLASSIFICATION SYSTEM AND QUALIFICATION STANDARDS APPROVED BY THE**
16 **COMMISSION BASED ON A COMPREHENSIVE JOB ANALYSIS AND AUDIT OF ACTUAL**
17 **DUTIES AND PERSONAL RESPONSIBILITIES. THE COMPENSATION PLAN SHALL BE**
18 **COMPARABLE WITH THE PREVAILING SALARIES, BENEFITS AND EMOLUMENTS OF**
19 **THAT OF THE BANGKO SENTRAL NG PILIPINAS, AND SHALL BE SUBJECT TO**
20 **PERIODIC REVIEW BY THE COMMISSION NO MORE THAN ONCE EVERY TWO (2)**
21 **YEARS, WITHOUT PREJUDICE TO YEARLY MERIT REVIEW OR INCREASES BASED ON**
22 **PRODUCTIVITY AND EFFICIENCY. THE COMMISSION SHALL, THEREFORE, BE EXEMPT**
23 **FROM LAWS, RULES, AND REGULATIONS ON COMPENSATION, POSITION**
24 **CLASSIFICATION, AND QUALIFICATIONS STANDARDS PROMULGATED BY THE CIVIL**
25 **SERVICE COMMISSION.**

26 "*Sec. 10. Quorum.* —Three (3) members of the Commission shall constitute a quorum, provided
27 however, that the affirmative vote of **AT LEAST** three (3) members shall be necessary for the
28 adoption of any rule, ruling, order, resolution, decision or other acts of the Commission.

29 "*Sec. 11. Staff.* — The Commission shall appoint, fix the compensation, and determine the
30 status, qualifications, and duties of an adequate staff, which shall include an Executive Director
31 of the Commission. The Executive Director, **WHO SHALL HAVE A TERM OF FIVE (5) YEARS,**
32 **RENEWABLE FOR ANOTHER FIVE-YEAR PERIOD,** shall be appointed by the Commission
33 and shall have relevant experience in any of the fields of law, economics, commerce,
34 management, finance or engineering for at least ten (10) years. The members of the technical
35 staff, except those performing purely clerical functions, shall possess at least a Bachelor's
36 Degree in any of the following lines of specialization: economicslaw, finance, commerce,
37 engineering, accounting, or management.

38 "*Sec. 12. Powers and Functions.* — The Commission shall have original and primary jurisdiction
39 over the enforcement and implementation of the provisions of this Act, and its implementing
40 rules and regulations. The Commission shall exercise the following powers and functions:

41 "(a) x xx

42 "(b) Review proposed mergers and acquisitions, determine thresholds for notification, determine
43 the requirements and procedures for notification, and upon exercise of its powers to review,
44 prohibit mergers and acquisitions that **willHAVE OR ARE LIKELY TO** substantially prevent,
45 restrict, or lessen competition in the relevant market

1 "(c) x xx

2 "(d) Upon finding, based on substantial evidence, that an entity has entered into an anti-
3 competitive agreement or has abused its dominant position after due notice and hearing, stop or
4 redress the same, by applying remedies, such as, but not limited to, issuance of injunctions,
5 requirement of divestment, **REQUIREMENT OF MODIFICATION OR TERMINATION OF**
6 **CONTRACTS, OPENING ACCESS TO COMPETITORS, PROHIBITIONS ON RESTRICTIVE**
7 **CONTRACTING PRACTICES, SETTING UP OF INFORMATION FIREWALLS, MAKING**
8 **INFORMATION AVAILABLE TO THIRD PARTIES,** and disgorgement of excess profits under
9 such reasonable parameters that shall be prescribed by the rules and regulations implementing
10 this Act;

11 "(e) x xx

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

17 "(g) ~~[Upon order of the court, u]~~ Undertake, **BY ITSELF OR THROUGH ITS DEPUTIZED LAW**
18 **ENFORCEMENT AGENCY, TO SEARCH AND** ~~inspections of~~ **INSPECT** business premises and
19 other offices, **STRUCTURES, SPACES,** land and vehicles, as used by the entity, where it
20 reasonably suspects that relevant ~~[books, tax records or other documents]~~ **INFORMATION** which
21 relate to any matter relevant to the investigation are kept, ~~[in order to prevent the removal,~~
22 ~~concealment, tampering with, or destruction of the books, records, or other documents;]~~ **AND**
23 **EXAMINE, COPY, PHOTOGRAPH, RECORD OR PRINT SUCH INFORMATION;**

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

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

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

34 "(i) x xx

35 "(j) x xx

36 "(k) x xx

37 "(l) x xx

38 "(m) x xx

- 1 "(n) x xx
2 "(o) x xx
3 "(p) x xx
4 "(q) x xx
5 "(r) Advocate pro-competitive policies of the government by:
6 (1) Reviewing economic and administrative regulations, *motu proprio* or upon request, as to
7 whether or not they adversely affect relevant market competition, and advising the
8 concerned agencies against such regulations; and
9 (2) Advising the Executive Branch on the competitive implications of government actions,
10 policies and programs; [and]
11 "(s) Charging reasonable fees to defray the administrative cost of the services rendered;:
12 "(T) ISSUE WARNINGS FOR ANY POTENTIAL VIOLATIONS OF THIS ACT;
13 "(U) ISSUE AND IMPOSE INTERIM MEASURES;
14 "(V) ISSUE, AFTER DUE NOTICE AND HEARING, CEASE AND DESIST ORDERS; AND
15 "(W) DEVELOP AND UTILIZE A RESEARCH AND INVESTIGATION FUND FOR PURPOSES
16 OF ENFORCEMENT OPERATIONS, INFORMANT'S BENEFITS OR PROTECTION.
17 "SEC. 12 - A . POWERS AND FUNCTIONS OF THE CHAIRPERSON. - THE
18 CHAIRPERSON OF THE COMMISSION SHALL ACT AS THE CHIEF EXECUTIVE OFFICER
19 OF THE COMMISSION. THE MANAGEMENT OF THE PCC SHALL BE VESTED IN THE
20 CHAIRPERSON WHO SHALL HAVE THE FOLLOWING POWERS AND DUTIES:
21 (A) PRESIDE OVER THE MEETINGS OF THE COMMISSION;
22 (B) SUBJECT TO THE APPROVAL OF THE COMMISSION, DETERMINE THE STAFFING
23 PATTERN AND THE NUMBER OF PERSONNEL OF THE COMMISSION AND
24 DEFINE THEIR DUTIES AND RESPONSIBILITIES;
25 (C) SUBJECT TO THE APPROVAL OF THE COMMISSION, APPOINT, REMOVE,
26 SUSPEND, OR OTHERWISE DISCIPLINE FOR CAUSE, ANY EMPLOYEE OF THE
27 COMMISSION; AND
28 (D) PERFORM SUCH OTHER DUTIES AS MAY BE DELEGATED OR ASSIGNED TO
29 HIM/HER BY THE COMMISSION FROM TIME TO TIME.
30 "Sec. 13. Office for Competition (OFC), Powers and Functions. — The OFC under the
31 Department of Justice (DOJ-OFC) shall only conduct preliminary investigation and undertake
32 prosecution of all criminal offenses arising under this Act and other competition-related laws in
33 accordance with Section 31 of Chapter VI of this Act, UPON THE FILING OF A CRIMINAL
34 COMPLAINT BY THE PCC WITH THE DOJ. The OFC shall be reorganized and allocated
35 resources as may be required therefor to effectively pursue such mandate.

1 **SECTION 4.** The following sections of Chapter III, entitled "Prohibited Acts" of Republic
2 Act No. 10667 shall be amended to read as follows:

3 "Sec. 14. *Anti-Competitive Agreements.* –

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

5 (1) **DIRECTLY OR INDIRECTLY FIXING PURCHASE OR SELLING PRICES.** [Restricting
6 competition as to price], or components thereof, or other terms of trade;

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

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

12 [~~(4)](3) Setting, limiting, or controlling production, markets, technical development, or~~
13 investment;

14 [~~(2)](4) Dividing or sharing the market, whether by volume of sales or purchases, territory,~~
15 type of goods or services, buyers or sellers or any other means;

16 [~~(e)](B) Agreements other than those specified in (a) and (b) of this section which have the~~
17 object or effect of substantially preventing, restricting or lessening competition shall also be
18 prohibited: *Provided*, Those which contribute to improving the production or distribution of
19 goods and services or to promoting technical or economic progress, while allowing
20 consumers a fair share of the resulting benefits, may not necessarily be deemed a violation
21 of this Act.

22 x xx

23 "SEC. 15. *Abuse of Dominant Position.* – It shall be prohibited for one or more entities to abuse
24 their dominant position by engaging in conduct that would substantially prevent, restrict or
25 lessen competition **SUCH AS BUT NOT LIMITED TO THE FOLLOWING:**

26 x xx

27 x xx

28 x xx

29 (e) Imposing restrictions on the lease or contract for sale or trade of goods or services
30 concerning where, to whom, or in what forms goods or services may be sold or traded, such as
31 fixing prices, giving preferential discounts or rebate upon such price, or imposing conditions not
32 to deal with competing entities, where the object or effect of the restrictions is to prevent, restrict
33 or lessen competition substantially: *Provided*, That nothing contained in this Act shall
34 **NECESSARILY** [~~prohibit or~~] render unlawful:

35 (1) [~~Permissible franchising, licensing, exclusive merchandising or exclusive distributorship~~
36 ~~agreements such as those which give each party the right to unilaterally terminate the~~

1 agreement) **THOSE AGREEMENTS OR PRACTICES WHICH CONTRIBUTE TO**
2 **IMPROVING THE PRODUCTION OR DISTRIBUTION OF GOODS OR TO**
3 **PROMOTING TECHNICAL OR ECONOMIC PROGRESS, WHILE ALLOWING**
4 **CONSUMERS A FAIR SHARE OF THE RESULTING BENEFIT, AND WHICH DOES**
5 **NOT:**

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

8 **(B) AFFORD SUCH ENTITIES THE POSSIBILITY OF ELIMINATING COMPETITION**
9 **IN RESPECT OF A SUBSTANTIAL PART OF THE PRODUCTS IN QUESTION; or**

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

12 X XX

13 X X X

14 X XX

15 *“Provided, finally,* That the foregoing shall not constrain the Commission [~~or the relevant~~
16 ~~regulator]~~ from pursuing measures that would promote fair competition or more competition as
17 provided in this Act, **INCLUDING THE IMPOSITION OF SIGNIFICANT MARKET POWER**
18 **OBLIGATIONS.**

19 **“SEC. 18. *Effect of Notification.* —** If within the relevant periods stipulated in the preceding
20 section, the Commission determines that such agreement ~~prohibited~~ **HAS OR IS LIKELY TO**
21 **SUBSTANTIALLY PREVENT, RESTRICT, OR LESSEN COMPETITION** [~~under Section 20]~~ and
22 does not qualify for exemption under Section 21 of this Chapter, the Commission may:

23 (a) Prohibit the implementation of the agreement;

24 (b) Prohibit the implementation of the agreement unless and until it is modified by changes
25 specified by the Commission-;

26 (c) Prohibit the implementation of the agreement unless and until the pertinent party or parties
27 enter into legally enforceable agreements specified by the Commission-; OR

28 **(D) APPROVE OR TAKE NO FURTHER ACTION ON THE AGREEMENT, SUBJECT TO**
29 **COMPLIANCE WITH SPECIFIC CONDITIONS.”**

30 **Section 5.** A new chapter is hereby inserted and numbering of sections adjusted
31 accordingly to read as follows:

32 **“CHAPTER ____**

33 **“GOVERNMENT INCENTIVES**

1 "SEC. ____ REVIEW OF GOVERNMENT INCENTIVES. – THE COMMISSION SHALL HAVE
2 THE POWER TO REVIEW POSSIBLE ANTI-COMPETITIVE EFFECTS OF INCENTIVE
3 SCHEMES OF THE GOVERNMENT BASED ON THE FOLLOWING FACTORS:

4 (1) WHETHER THE INCENTIVE SCHEME GRANTS UNDUE COMPETITIVE ADVANTAGE
5 TO AN ENTITY OR ENTITIES;

6 (2) WHETHER THE INCENTIVE SCHEME IS PROPORTIONATE AND NECESSARY TO
7 ACHIEVE A GIVEN EFFICIENCY OR EQUITY OBJECTIVE;

8 (3) WHETHER THE ACTUAL BENEFIT ACHIEVED THROUGH THE INCENTIVE SCHEME
9 OUTWEIGHS THE COST OF DISTORTING COMPETITION; AND

10 (4) OTHER FACTORS THAT MAY BE DETERMINED BY THE COMMISSION.

11 "SEC. ____ RECOMMENDATION ON GOVERNMENT INCENTIVES. – FOR INCENTIVES
12 WHICH THE COMMISSION DEEMS TO HAVE ADVERSELY AFFECTED COMPETITION IN
13 THE RELEVANT MARKET OR IN THE MARKET FOR GOODS AND SERVICES
14 ACCORDING TO SECTION 24, THE COMMISSION SHALL ISSUE A RULING TO THE
15 FISCAL INCENTIVES REVIEW BOARD, INCLUDING A RECOMMENDATION FOR
16 REMEDIES SUCH AS THE REVISION OR REVOCATION OF SUCH INCENTIVE SCHEME
17 AND THE RECOVERY OF INCENTIVES WITH INTEREST."

18 **Section 6.** The following provisions under Chapter V, entitled "Disposition of Cases" of
19 R.A. No. 10667 are hereby amended to read as follows:

20 "SEC. 26. *Determination of Anti-Competitive Agreement or Conduct.* – In determining whether
21 an anti-competitive agreement or conduct [~~has been committed~~] SUBSTANTIALLY
22 PREVENTS, RESTRICTS, OR LESSENS COMPETITION, the Commission, IN
23 APPROPRIATE CASES, shall, *INTER ALIA*:

24 X XX

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

28 X XX

29 "The Commission's order exempting the relevant [~~entity or~~] group of entities under this section
30 shall be made public. Conditions may be attached to the forbearance if the Commission deems
31 it appropriate to ensure the long-term interest of consumers."

32 **Section 7.** The provisions found under Chapter VI, entitled "Fines and Penalties" of R.A.
33 No. 10667 shall be amended to read thus and renumbered accordingly:

34 "Sec. 29. *Administrative Penalties.* –

35 (a) *Administrative Fines.* – In any investigation under Chapter III, Sections 14 and 15, and
36 Chapter IV, Sections 17 and 20 of this Act, after due notice and hearing, the Commission

1 may impose the following schedule of administrative fines EQUIVALENT UP TO TEN
2 PERCENT OF THE TOTAL GLOBAL TURN-OVER OF THE ULTIMATE PARENT
3 ENTITY ~~on any~~ OF THE entity found to have violated the said sections[.].

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

5 ~~Second offense: Fine of not less than one hundred million pesos (P100,000,000.00) but not~~
6 ~~more than two hundred fifty million pesos (P250,000,000.00).]~~

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

9 (b) Failure or Refusal to Comply with a Ruling, Order, or Decision of the Commission.— An
10 entity which fails or refuses to comply with a ruling, order or decision issued by the Commission
11 shall pay a penalty of not less than ~~[fifty]~~ **ONE HUNDRED** thousand pesos
12 ~~((P50,000.00)P100,000.00)~~ up to ~~[two]~~ **FIVE** million pesos ~~((P2,000,000.00)P5,000,000.00)~~ for
13 each violation and a similar amount of penalty for each day thereafter until the said entity fully
14 complies. Provided that these fines shall only accrue daily beginning forty-five (45) days from
15 the time that the said decision, order or ruling was received.

16 (c) Supply of Incorrect, **INCOMPLETE** or Misleading Information. – The Commission may
17 likewise impose upon any entity fines of up to ~~[one]~~ **TWO** million pesos (P~~[1]~~2,000,000.00) where,
18 intentionally or negligently, they supply incorrect, **INCOMPLETE** or misleading information in
19 any document, application or other paper filed with or submitted to the Commission or supply
20 incorrect or misleading information in an application for a binding ruling, a proposal for a
21 consent judgment, proceedings relating to a show cause order, or application for modification of
22 the Commission's ruling, order or approval, as the case may be.

23 (d) Any other violations not specifically penalized under the relevant provisions of this Act **OR**
24 **ITS IMPLEMENTING RULES OR REGULATIONS** shall be penalized by a fine of not less
25 than ~~[fifty]~~ **ONE HUNDRED** thousand pesos (P~~[5]~~100,000.00) up to ~~[two]~~ **FIVE** million pesos
26 (P52,000,000.00).

27 **(E) OBSTRUCTION. – THE COMMISSION MAY IMPOSE A FINE OF NOT LESS THAN ONE**
28 **HUNDRED THOUSAND PESOS (P100,000.00) UP TO FIVE MILLION PESOS**
29 **(P5,000,000.00) ON ANYONE WHO COMMITS ANY OBSTRUCTION OF ANY**
30 **INVESTIGATION OR PROCEEDINGS OF THE COMMISSION, THE IMPLEMENTATION OF**
31 **THE ORDERS, RULINGS, OR DECISIONS OF THE COMMISSION, OR THE**
32 **ENFORCEMENT OF THE ACT, ITS IMPLEMENTING RULES, OR OTHER COMPETITION**
33 **LAWS**

34 **(F) REPRISAL OR DISCRIMINATION. — ANY PERSON THAT COMMITS ANY FORM OF**
35 **REPRISAL OR DISCRIMINATION AGAINST ANYONE COOPERATING OR FURNISHING**
36 **INFORMATION, DOCUMENT, OR DATA TO THE COMMISSION IN CONNECTION WITH AN**
37 **INVESTIGATION OR PROCEEDING BEING CONDUCTED, SHALL BE PENALIZED WITH A**
38 **FINE OF NOT LESS THAN ONE HUNDRED THOUSAND PESOS (P100,000.00) UP TO FIVE**
39 **MILLION PESOS (P5,000,000.00).**

40 **REPRISAL OR DISCRIMINATION SHALL INCLUDE REMOVAL, DISCHARGE, DEMOTION,**
41 **SUSPENSION, THREATS, HARASSMENT, OR ANY FORM OF RETALIATION IN THE**

1 TERMS AND CONDITIONS OF EMPLOYMENT, AGENCY, OR ENGAGEMENT, AS THE
2 CASE MAY BE.

3 (G) FAILURE TO NOTIFY THE COMMISSION OF SALE, DISPOSITION, OR ANY OTHER
4 TRANSFER DURING ADJUDICATION. — A RESPONDENT THAT FAILS TO NOTIFY THE
5 COMMISSION OF ANY SALE, DONATION, DISPOSITION, OR ANY OTHER TRANSFER,
6 WHETHER ABSOLUTE OR OTHERWISE, MADE DURING ADJUDICATION, OF ITS
7 INTEREST IN BUSINESSES, SHAREHOLDINGS, BUSINESS UNITS, ASSETS, OR ANY
8 OTHER INTEREST RELATED TO MATTERS UNDER ADJUDICATION SHALL BE
9 PENALIZED WITH A FINE OF NOT LESS THAN ONE HUNDRED THOUSAND PESOS
10 (P100,000) UP TO FIVE MILLION PESOS (P5,000,000.00).

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

13 "SEC. 30. *Criminal Penalties.* — An entity that enters into any anti-competitive agreement as
14 covered by Chapter III, Section 14(a) and 14(b) under this Act shall, for each and every
15 violation, be penalized by imprisonment from two (2) to seven (7) years, and a fine of not less
16 than fifty million pesos (P50,000,000.00) but not more than two hundred fifty million pesos
17 (P250,000,000.00). The penalty of imprisonment shall be imposed upon the responsible
18 officers, and directors of the entity.

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

22 "SECTION ____ . *LIABILITY OF FACILITATORS.* — ANY PERSON THAT:

23 (A) HAS AIDED, ABETTED, OR PROCURED A PERSON TO CONTRAVENE A SECTION OF
24 THE PCA;

25 (B) HAS INDUCED A PERSON, WHETHER BY THREATS OR PROMISES OR OTHERWISE,
26 TO CONTRAVENE SUCH A SECTION;

27 (C) HAS BEEN IN ANY WAY, DIRECTLY OR INDIRECTLY, KNOWINGLY CONCERNED IN,
28 OR PARTY TO, THE CONTRAVENTION BY A PERSON OF SUCH SECTION; OR

29 (D) HAS CONSPIRED WITH OTHERS TO CONTRAVENE SUCH A SECTION

30 "SHALL BE LIABLE FOR VIOLATION OF THE SAID SECTION."

31 *Section 8.* The following provisions of Chapter VII, entitled "Enforcement" of R.A. No.
32 10667, shall be amended to read as follows and renumbered accordingly:

33 "Sec. 32. *Relationship With Sector Regulators.* — The Commission shall have original and
34 primary jurisdiction in the enforcement OF THIS ACT and THE regulation of all competition-
35 related issues.

36 "THE COMMISSION SHALL EXERCISE ORIGINAL AND EXCLUSIVE JURISDICTION OVER
37 THE ADJUDICATION OF ALL COMPETITION-RELATED CASES.

- 1 "The Commission shall still have jurisdiction if the issue involves both competition and
2 noncompetition issues, but the concerned sector regulator shall be consulted and afforded
3 reasonable opportunity to submit its own opinion and recommendation on the matter before the
4 Commission makes a decision on any case.
- 5 "Where appropriate, the Commission and the sector regulators shall work together to issue rules
6 and regulations to promote competition, protect consumers, and prevent abuse of market power
7 by dominant players within their respective sectors.
- 8 "Sec. 35. *Leniency Program.* – The Commission shall develop a Leniency Program to be
9 granted to any entity in the form of immunity from suit or reduction of any fine which would
10 otherwise be imposed on a participant in an anti-competitive agreement as provided in Section
11 14(a) and 14(b) of this Act in exchange for the voluntary disclosure of information regarding
12 such an agreement which satisfies specific criteria prior to or during the fact-finding or
13 preliminary inquiry stage of the case.
- 14 "Immunity from suit will be granted to an entity reporting illegal anti-competitive activity before a
15 fact-finding or preliminary inquiry has begun if the following conditions are met:
- 16 (a) At the time the entity comes forward, the Commission has not received information about the
17 activity from any other source;
- 18 (b) Upon the entity's discovery of illegal activity, it took prompt and effective action to terminate
19 its participation therein, **UNDERTAKEN IN CONSULTATION AND WITH THE APPROVAL**
20 **OF THE COMMISSION;**
- 21 (c) The entity reports the wrongdoing with candor and completeness and provides full,
22 continuing, and complete cooperation throughout the investigation; and
- 23 (d) The entity did not coerce another party to participate in the activity [~~and clearly was not the~~
24 ~~leader in, or the originator of, the activity].~~
- 25 "Even after the Commission has received information about the illegal activity after a fact-finding
26 or preliminary inquiry has commenced, the reporting entity will be granted leniency, provided
27 preceding conditions (b) and (c) and the following additional requirements are complied with:
- 28 (1) The entity is the first to come forward and qualify for leniency;
- 29 (2) At the time the entity comes forward, the Commission does not have evidence against the
30 entity that is likely to result in a sustainable conviction; and
- 31 (3) The Commission determines that granting leniency would not be unfair to others.
- 32 "Such program shall include the immunity from any suit or charge of affected parties and third
33 parties, exemption, waiver, or gradation of fines and/or penalties giving precedence to the entity
34 submitting such evidence. [~~An entity cooperating or furnishing information, document or data to~~
35 ~~the Commission in connection to an investigation being conducted shall not be subjected to any~~
36 ~~form of reprisal or discrimination. Such reprisal or discrimination shall be considered a violation~~
37 ~~of this Act subject to the sanctions provided in this Act.]~~
- 38 "Nothing in this section shall preclude prosecution for entities that report to the Commission

1 false, misleading, or malicious information, data or documents damaging to the business or
2 integrity of the entities under inquiry as a violation of said section. An entity found to have
3 reported false, misleading or malicious information, data, or document may be penalized by a
4 fine not less than the penalty imposed in the section reported to have been violated by the entity
5 complained of.

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

8 X xx

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

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

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

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

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

42 (1) ~~{The payment of an amount within the range of fines provided for under this~~
43 ~~Act}~~ **PAYMENT OF DAMAGES TO ANY PRIVATE PARTY/PARTIES WHO MAY**

1 HAVE SUFFERED INJURY;

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

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

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

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

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

13 (d) x xx

14 (e) Inadmissibility of Evidence in Criminal Proceedings. – The request for a binding ruling, [
15 ~~the show cause order,~~] or the proposal for consent order; the facts, data, and information
16 therein contained or subsequently supplied by the entity or entities concerned;
17 admissions, oral or written, made by them against their interest; all other documents filed
18 by them, including their evidence presented in the proceedings before the Commission;
19 and the judgment or order rendered thereon; shall not be admissible as evidence in any
20 criminal proceedings arising from the same act subject of the binding ruling, show cause
21 order or consent order against such entity or entities, their officers, employees, and
22 agents.

23 "Sec. 38. *Contempt*.— The Commission may [~~summarily~~] punish for contempt [~~by imprisonment~~
24 ~~not exceeding thirty (30) days or by a fine not exceeding one hundred thousand pesos (P~~
25 ~~100,000.00), or both, any entity guilty of such] ANY OF THE FOLLOWING ACTS COMMITTED
26 AGAINST OR BEFORE THE COMMISSION OR AGENCY, OFFICER, OR PERSON VESTED
27 WITH AUTHORITY OR DEPUTIZED BY THE COMMISSION:~~

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

34 (A) MISCONDUCT THAT SERIOUSLY INTERRUPTS ANY HEARING, SESSION, OR
35 PROCEEDING.

36 (B) REFUSAL TO BE SWORN AS A WITNESS OR TO ANSWER QUESTIONS OR TO
37 FURNISH INFORMATION WHEN LAWFULLY REQUIRED TO DO SO, AT A HEARING,
38 PROCEEDING, SESSION, OR INVESTIGATION;

1 (C) WILLFUL FAILURE OR REFUSAL, WITHOUT JUST CAUSE, TO COMPLY WITH A
2 SUMMONS OR SUBPOENA; AND

3 (D) FAILURE OR REFUSAL TO COMPLY WITH ANY ORDER, RULING OR DECISION OF
4 THE COMMISSION.

5 "CONTEMPT SHALL, AFTER DUE NOTICE AND HEARING, BE PUNISHED BY
6 imprisonment not exceeding thirty (30) days or by a fine not exceeding one hundred thousand
7 pesos (P100,000.00), or both: **PROVIDED, THAT WHEN THE PERSON COMMITS ANY OF**
8 **THE ACTS UNDER (A) AND (B) IN THE PRESENCE OF THE COMMISSION, THE PERSON**
9 **SHALL BE PUNISHED SUMMARILY.**

10 "WHEN THE CONTEMPT CONSISTS IN THE REFUSAL OR OMISSION TO DO AN ACT
11 WHICH IS YET IN THE POWER OF THE PERSON TO PERFORM, HE MAY BE
12 IMPRISONED BY ORDER OF THE COMMISSION UNTIL HE PERFORMS IT.

13 "*Sec. 39. Appeals of the Decisions of the Commission.* — Decisions of the Commission shall be
14 appealable to the Court of Appeals in accordance with [the] **RULE 65 OF THE Rules of Court.**
15 The appeal shall not stay the order, ruling or decision sought to be reviewed, unless the Court of
16 Appeals shall direct otherwise upon such terms and conditions it may deem just. In the appeal,
17 the Commission shall be included as a party respondent to the case."

18 **Section 9.** Sections 46 and 47 of Chapter VIII entitled "Other Provisions" of R.A. No.
19 10667 are hereby amended to read as:

20 "*Sec. 46. Statute of Limitations.* — Any action arising from a violation of any provision of this Act
21 shall be forever barred unless commenced within five (5) years from:

- 22 • For criminal actions, the time the violation is discovered by the offended party, the
23 authorities, or their agents;
- 24 • For ~~administrative and~~ civil actions, the time the cause of action accrues.
- 25 • For administrative actions, ~~[the time the cause of action accrues]~~ **THE TIME THE**
26 **VIOLATION IS DISCOVERED BY THE COMMISSION.**

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

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

5 **Section 10.** Sections 51 and 55 of Chapter IX entitled "Final Provisions" of R.A. No.
6 10667 are hereby amended to read as follows:

7 "Sec. 51. *Appropriations and Use of Fees, Charges and Penalties.* – The initial budgetary
8 requirements of the Commission of three hundred million pesos (P300,000,000.00) is hereby
9 appropriated.

10 ~~"[All fees, fines, penalties collected by the Commission shall not be retained by the Commission,~~
11 ~~but will be remitted to the National Treasury and shall accrue to the general funds.]~~ **THE**
12 **COMMISSION SHALL BE AUTHORIZED TO RETAIN 50% OF ALL FEES, FINES, AND**
13 **PENALTIES COLLECTED BY THE COMMISSION FOR THE PURPOSE OF CREATING THE**
14 **ANTITRUST FUND, WHICH SHALL BE USED TO DEVELOP AND UTILIZE A RESEARCH**
15 **AND INVESTIGATION FUND FOR PURPOSES OF ENFORCEMENT OPERATIONS,**
16 **INFORMANT'S BENEFITS OR PROTECTION, FUND STAFF DEVELOPMENT AND**
17 **SCHOLARSHIPS, REWARDS FOR REPORTING VIOLATIONS OF THE PCA, THE**
18 **ESTABLISHMENT OF A COMPLIANCE PROGRAM, RESEARCH AND DEVELOPMENT,**
19 **EDUCATION AND ADVOCACY, AND OTHER NECESSARY EXPENDITURES TO PROMOTE**
20 **FAIR MARKET COMPETITION AND THE OBJECTIVES OF THIS ACT. THE USE OF SUCH**
21 **ADDITIONAL AMOUNT SHALL BE SUBJECT TO THE AUDITING REQUIREMENTS,**
22 **STANDARDS, AND PROCEDURES UNDER EXISTING LAWS.**

23 "Such funds necessary for the continuous and effective operation of the Commission shall be
24 included in the annual General Appropriations Act.

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

28 (a) ArticleS 185 AND 186 of Act No. 3815, otherwise known as the Revised Penal Code:
29 *Provided, That* violations of ArticleS 185 AND 186 of the Revised Penal Code committed
30 before the effectivity of this Act may continue to be prosecuted unless the same have been
31 barred by prescription, and subject to the procedure under Section 31 of this Act;

32 (b) xxx

33 (c) Section 43 (K), (R), (S), (u) on Functions of the ERC and SECTION 45 of Republic Act No.
34 9136, entitled "An Act Ordaining Reforms in the Electric Power Industry, Amending for the
35 Purpose Certain Laws and for Other Purposes", otherwise known as the "Electric Power
36 Industry Reform Act of 2001", insofar as the provisionS thereof ARE inconsistent with this
37 Act;

38 (d) xxx

39 (e) xxx

40 (F) SECTION 5(3) OF REPUBLIC ACT NO. 7581, OTHERWISE KNOWN AS THE PRICE

1 **ACT, AS AMENDED; AND**

2 **(G) SECTIONS 87 AND 91 OF REPUBLIC ACT NO. 8293, OTHERWISE KNOWN AS THE**
3 **INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES.”**

4 **Section 11. Separability Clause.** – Should any provision of this Act or any part hereof
5 be declared unconstitutional, the other provisions or parts not affected thereby shall
6 remain valid and effective.

7 **Section 12. Repealing Clause.** – All laws, presidential decrees, executive orders,
8 resolutions, rules and regulations or parts thereof which are inconsistent with the
9 provisions of this Act are hereby repealed, amended or modified accordingly.

10 **Section 13. Effectivity Clause.** – This Act shall take effect after fifteen (15) days
11 following its publication in the Official Gazette or in two (2) newspapers of general
12 circulation.

13 Approved,