

## **RULES AND REGULATIONS TO IMPLEMENT THE PROVISIONS OF REPUBLIC ACT NO. 10667 (PHILIPPINE COMPETITION ACT)**

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

### **RULE 1. TITLE AND SCOPE**

#### **SECTION 1. Title.**

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

#### **SECTION 2. Scope.**

- (a) These Rules shall apply to any entity engaged in trade, industry or commerce in the Republic of the Philippines or in international trade, industry or commerce having direct, substantial and reasonably foreseeable effects in the Philippines, including those that result from acts done outside the territory of the Philippines.
- (b) These Rules shall not apply to the combinations or activities of workers or employees nor to agreements or arrangements with their employers when such combinations, activities, agreements, or arrangements are designed solely to facilitate collective bargaining in respect of conditions of employment.

### **RULE 2. DEFINITION OF TERMS**

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

- (a) “Acquisition” refers to the purchase or transfer of securities or assets, through contract or other means, for the purpose of obtaining control by:
  - (1) One (1) entity of the whole or part of another;
  - (2) Two (2) or more entities over another; or
  - (3) One (1) or more entities over one (1) or more entities;

- (b) "Agreement" refers to any type or form of contract, arrangement, understanding, collective recommendation, or concerted action, whether formal or informal, explicit or tacit, written, or oral;
- (c) "Conduct" refers to any type or form of undertaking, collective recommendation, independent or concerted action or practice, whether formal or informal;
- (d) "Commission" refers to the Philippine Competition Commission created under the Act;
- (e) "Confidential business information" refers to information, which concerns or relates to the operations, production, sales, shipments, purchases, transfers, identification of customers, inventories, or amount or source of any income, profits, losses, expenditures, which are not generally known to the public or to other persons who can obtain economic value from its disclosure or use, or is liable to cause serious harm to the person who provided it, or from whom it originates, and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy;
- (f) "Control" refers to the ability to substantially influence or direct the actions or decisions of an entity, whether by contract, agency or otherwise;
- (g) "Dominant position" refers to a position of economic strength that an entity or entities hold which makes it capable of controlling the relevant market independently from any or a combination of the following: competitors, customers, suppliers, or consumers;
- (h) "Entity" refers to any person, natural or juridical, sole proprietorship, partnership, combination or association in any form, whether incorporated or not, domestic or foreign, including those owned or controlled by the government, engaged directly or indirectly in any economic activity;
- (i) "Joint venture" refers to a business arrangement whereby an entity or group of entities contribute capital, services, assets, or a combination of any or all of the foregoing, to undertake an investment activity or a specific project, where each entity shall have the right to direct and govern the policies in connection therewith, with the intention to share both profits and risks and losses subject to agreement by the entities;

- (j) “Market” refers to the group of goods or services that are sufficiently interchangeable or substitutable and the object of competition, and the geographic area where said goods or services are offered;
- (k) “Merger” refers to the joining of two (2) or more entities into an existing entity or to form a new entity, including joint ventures;
- (l) “Relevant market” refers to the market in which a particular good or service is sold and which is a combination of the relevant product market and the relevant geographic market, defined as follows:
  - (1) a relevant product market comprises all those goods and/or services which are regarded as interchangeable or substitutable by the consumer or the customer, by reason of the goods and/or services’ characteristics, their prices, and their intended use; and
  - (2) the relevant geographic market comprises the area in which the entity concerned is involved in the supply and demand of goods and services, in which the conditions of competition are sufficiently homogenous and which can be distinguished from neighboring areas because the conditions of competition are different in those area;
- (m) “Ultimate parent entity” is the juridical entity that, directly or indirectly, controls a party to the transaction, and is not controlled by any other entity.

### **RULE 3. PROHIBITED ACTS**

#### **SECTION 1. Anti-Competitive Agreements.**

- (a) The following agreements, between or among competitors, are *per se* prohibited:
  - (1) Restricting competition as to price, or components thereof, or other terms of trade;
  - (2) Fixing the price at an auction or in any form of bidding, including cover bidding, bid suppression, bid rotation and market allocation, and other analogous practices of bid manipulation.

- (b) The following agreements, between or among competitors, which have the object or effect of substantially preventing, restricting, or lessening competition shall be prohibited:
  - (1) Setting, limiting, or controlling production, markets, technical development, or investment;
  - (2) Dividing or sharing the market, whether by volume of sales or purchases, territory, type of goods or services, buyers or sellers, or any other means.
- (c) Agreements other than those specified in (a) and (b) of this Section, which have the object or effect of substantially preventing, restricting, or lessening competition shall also be prohibited. *Provided*, that those which contribute to improving the production or distribution of goods and services or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefits, may not necessarily be deemed a violation of the Act.
- (d) For purposes of this Section, entities that control, are controlled by, or are under common control with another entity or entities, have common economic interests, and are not otherwise able to decide or act independently of each other, shall not be considered competitors.

## **SECTION 2. Abuse of Dominant Position.**

- (a) It shall be prohibited for one or more entities to abuse their dominant position by engaging in conduct that would substantially prevent, restrict, or lessen competition, including:
  - (1) Selling goods or services below cost with the object of driving competition out of the relevant market. *Provided*, that in the Commission's evaluation of this fact, it shall consider whether such entity or entities had no such object and that the price established was in good faith to meet or compete with the lower price of a competitor in the same market selling the same or comparable product or service of like quality.
  - (2) Imposing barriers to entry or committing acts that prevent competitors from growing within the market in an anti-competitive manner, except those that develop in the market as a result of or arising from a superior product or process, business acumen, or legal rights or laws;

- (3) Making a transaction subject to acceptance by the other parties of other obligations which, by their nature or according to commercial usage, have no connection with the transaction;
- (4) Setting prices or other terms or conditions that discriminate unreasonably between customers or sellers of the same goods or services, where such customers or sellers are contemporaneously trading on similar terms and conditions, where the effect may be to lessen competition substantially; *Provided*, that the following shall be considered permissible price differentials:
  - i. Socialized pricing for the less fortunate sector of the economy;
  - ii. Price differentials which reasonably or approximately reflect differences in the cost of manufacture, sale, or delivery resulting from differing methods, technical conditions, or quantities in which the goods or services are sold or delivered to the buyers or sellers;
  - iii. Price differential or terms of sale offered in response to the competitive price of payments, services, or changes in the facilities furnished by a competitor; and
  - iv. Price changes in response to changing market conditions, marketability of goods or services, or volume.
- (5) Imposing restrictions on the lease or contract for sale or trade of goods or services concerning where, to whom, or in what forms goods or services may be sold or traded, such as:
  - i. fixing prices, or
  - ii. giving preferential discounts or rebate upon such price, or
  - iii. imposing conditions not to deal with competing entities,where the object or effect of the restrictions is to prevent, restrict or lessen competition substantially: *Provided*, that nothing contained in the Act shall prohibit or render unlawful:
  - 1) Permissible franchising, licensing, exclusive merchandising, or exclusive distributorship agreements, such as those which give each party the right to unilaterally terminate the

agreement, unless found by the Commission to have substantial anti-competitive effect;

- 2) Agreements protecting intellectual property rights, confidential information, or trade secrets;
  - (6) Making supply of particular goods or services dependent upon the purchase of other goods or services from the supplier which have no direct connection with the main goods or services to be supplied;
  - (7) Directly or indirectly imposing unfairly low purchase prices for the goods or services of, among others, marginalized agricultural producers, fisherfolk, micro-, small-, medium-scaled enterprises, and other marginalized service providers and producers;
  - (8) Directly or indirectly imposing unfair purchase or selling price on their competitors, customers, suppliers, or consumers, *Provided* that prices that develop in the market as a result of or due to a superior product or process, business acumen or legal rights or laws shall not be considered unfair prices; and
  - (9) Limiting production, markets, or technical development to the prejudice of consumers, *Provided*, that limitations that develop in the market as a result of or due to a superior product or process, business acumen, or legal rights or laws shall not be a violation of this Act.
- (b) Nothing in the Act or these Rules shall be construed or interpreted as a prohibition on having a dominant position in a relevant market, or on acquiring, maintaining, and increasing market share through legitimate means that do not substantially prevent, restrict, or lessen competition.
  - (c) Any conduct which contributes to improving production or distribution of goods or services within the relevant market, or promoting technical and economic progress, while allowing consumers a fair share of the resulting benefit may not necessarily be considered an abuse of dominant position.
  - (d) The foregoing shall not constrain the Commission or the relevant regulator from pursuing measures that would promote fair competition or more competition as provided in the Act.

### **SECTION 3. Determination of exceptions.**

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

## **RULE 4. MERGERS AND ACQUISITIONS**

### **SECTION 1. Review of mergers and acquisitions.**

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

- (a) In conducting this review, the Commission shall:
  - (1) Assess whether a proposed merger or acquisition is likely to substantially prevent, restrict, or lessen competition in the relevant market or in the market for goods and services as may be determined by the Commission; and
  - (2) Take into account any substantiated efficiencies put forward by the parties to the proposed merger or acquisition, which are likely to arise from the transaction.
- (b) In evaluating the competitive effects of a merger or acquisition, the Commission shall endeavor to compare the competitive conditions that would likely result from the merger or acquisition with the conditions that would likely have prevailed without the merger or acquisition.
- (c) In its evaluation, the Commission may consider, on a case-to-case basis, the broad range of possible factual contexts and the specific competitive effects that may arise in different transactions, such as:
  - (1) the structure of the relevant markets concerned;
  - (2) the market position of the entities concerned;
  - (3) the actual or potential competition from entities within or outside of the relevant market;

- (4) the alternatives available to suppliers and users, and their access to supplies or markets;
- (5) any legal or other barriers to entry.

## **SECTION 2. Notifying entities.**

- (a) Parties to a merger or acquisition that satisfy the thresholds in Section 3 of this Rule are required to notify the Commission before the execution of the definitive agreements relating to the transaction.
- (b) If notice to the Commission is required for a merger or acquisition, then all acquiring and acquired pre-acquisition ultimate parent entities or any entity authorized by the ultimate parent entity to file notification on its behalf must each submit a Notification Form (the "Form") and comply with the procedure set forth in Section 5 of this Rule. The parties shall not consummate the transaction before the expiration of the relevant periods provided in this Rule.
- (c) In the formation of a joint venture (other than in connection with a merger or consolidation), the contributing entities shall be deemed acquiring entities, and the joint venture shall be deemed the acquired entity.

## **SECTION 3. Thresholds for compulsory notification.**

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

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

and

- (b) The value of the transaction exceeds One Billion Pesos (PhP1,000,000,000.00), as determined in subsections (1), (2), (3) or (4), as the case may be.
  - (1) With respect to a proposed merger or acquisition of assets in the Philippines if either

- i. the aggregate value of the assets in the Philippines being acquired in the proposed transaction exceeds One Billion Pesos (PhP1,000,000,000.00); or
  - ii. the gross revenues generated in the Philippines by assets acquired in the Philippines exceed One Billion Pesos (PhP1,000,000,000.00).
- (2) With respect to a proposed merger or acquisition of assets outside the Philippines, if
  - i. the aggregate value of the assets in the Philippines of the acquiring entity exceeds One Billion Pesos (PhP1,000,000,000.00); and
  - ii. the gross revenues generated in or into the Philippines by those assets acquired outside the Philippines exceed One Billion Pesos (PhP1,000,000,000.00).
- (3) With respect to a proposed merger or acquisition of assets inside and outside the Philippines, if
  - i. the aggregate value of the assets in the Philippines of the acquiring entity exceeds One Billion Pesos (PhP1,000,000,000.00); and
  - ii. the aggregate gross revenues generated in or into the Philippines by assets acquired in the Philippines and any assets acquired outside the Philippines collectively exceed One Billion Pesos (PhP1,000,000,000.00).
- (4) With respect to a proposed acquisition of (i) voting shares of a corporation or of (ii) an interest in a non-corporate entity
  - i. If the aggregate value of the assets in the Philippines that are owned by the corporation or non-corporate entity or by entities it controls, other than assets that are shares of any of those corporations, exceed One Billion Pesos (PhP1,000,000,000.00); or
  - ii. The gross revenues from sales in, into, or from the Philippines of the corporation or non-corporate entity or by entities it controls, other than assets that are shares of any of

those corporations, exceed One Billion Pesos (PhP1,000,000,000.00);

and

iii. If

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

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

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

or

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

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

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

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

entity will exceed 50% threshold after making a further acquisition of either voting shares or an interest in a non-corporate entity.

- (d) In a notifiable joint venture transaction, an acquiring entity shall be subject to the notification requirements if either (i) the aggregate value of the assets that will be combined in the Philippines or contributed into the proposed joint venture exceeds One Billion Pesos (PhP1,000,000,000.00) or (ii) the gross revenues generated in the Philippines by assets to be combined in the Philippines or contributed into the proposed joint venture exceed One Billion Pesos (PhP1,000,000,000.00). In determining the assets of the joint venture, the following shall be included:
  - 1) All assets which any entity contributing to the formation of the joint venture has agreed to transfer, or for which agreements have been secured for the joint venture to obtain at any time, whether or not such entity is subject to the requirements of the act; and
  - 2) Any amount of credit or any obligations of the joint venture which any entity contributing to the formation has agreed to extend or guarantee, at any time.
- (e) A merger or acquisition consisting of successive transactions, or acquisition of parts of one or more entities, which shall take place within a one-year period between the same parties, or any entity they control or are controlled by or are under common control with another entity or entities, shall be treated as one transaction. If a binding preliminary agreement provides for such successive transactions or acquisition of parts, the entities shall provide notification on the basis of such preliminary agreement. If there is no binding preliminary agreement, notification shall be made when the parties execute the agreement relating to the last transaction which, when taken together with the preceding transactions, satisfies the thresholds under this Section.
- (f) For purposes of calculating notification thresholds:
  - (1) The aggregate value of assets in the Philippines shall be as stated on the last regularly prepared balance sheet or the most recent audited financial statements in which those assets are accounted for.
  - (2) The gross revenues from sales of an entity shall be the amount stated on the last regularly prepared annual statement of income and expense of that entity.

- (g) A transaction that meets the thresholds and does not comply with the notification requirements and waiting periods set out in Section 5 shall be considered void and will subject the parties to an administrative fine of one percent (1%) to five percent (5%) of the value of the transaction.
- (h) In the case of a merger or acquisition of banks, banking institutions, building and loan associations, trust companies, insurance companies, public utilities, educational institutions, and other special corporations governed by special laws, a favorable or no-objection ruling by the Commission shall not be construed as dispensing with the requirement for a favorable recommendation by the appropriate government agency under Section 79 of the Corporation Code of the Philippines.
- (i) A favorable recommendation by a governmental agency with a competition mandate shall give rise to a disputable presumption that the proposed merger or acquisition is not violative of the Act or these Rules, *Provided*, that the recommendation must arise directly from the exercise of the agency's mandate to determine any anti-competitive effect of the proposed merger or acquisition.

#### **SECTION 4. Consultations preceding the submission of notification.**

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

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

- (1) the names and business contact information of the entities concerned;
  - (2) the type of transaction; and
  - (3) the markets covered or lines of businesses by the proposed merger or acquisition.
- (b) During such pre-notification consultations, the parties may seek non-binding advice on the specific information that is required to be in the notification.

#### **SECTION 5. Procedure for notification and review.**

- (a) Each party to a merger or acquisition required to give notification to the Commission shall submit the Notification Form and pay such applicable fees as may be determined by the Commission. An electronic copy of the Form and a scanned copy of the certification referred to in subparagraph (b) of this Section, contained in a secure electronic storage device, shall likewise be submitted to the Commission, simultaneous with the filing of the aforementioned hard copy.
- (b) The Form must be signed by a general partner of a partnership, an officer or director of a corporation, or in the case of a natural person, the natural person or his/her legal representative, and certified that the contents of the Form are true and accurate of their own personal knowledge and/or based on authentic records. In all cases, the certifying individual must possess actual authority to make the certification on behalf of the entity filing the notification.
- (c) The parties may notify, on the basis of a binding preliminary agreement in any form, such as a memorandum of agreement, term sheet, or letter of intent. Each of the acquired and acquiring entities must submit an affidavit with their Forms, attesting to the fact that a binding preliminary agreement has been executed and that each party has an intention of completing the proposed transaction in good faith.
- (d) Both the certification and the affidavit must be notarized or otherwise authenticated.
- (e) Except as described below, the waiting period begins after all notifying entities have filed their respective Forms, together with the corresponding certifications and affidavits, and have been notified by the Commission that the Forms are complete.
  - (1) In voting securities acquisitions, such as tender offers, third party and open market transactions, in which the acquiring entity proposes to buy voting securities from shareholders of the acquired entity, rather than from the entity itself:
    - i. the acquiring entity is required to serve notice on the issuer of those shares to ensure the acquired entity is aware of its reporting obligation;
    - ii. only the acquiring entity must submit an affidavit. The acquiring entity must state in the affidavit that it has an intention of completing the proposed transaction in good faith, and that it has served notice on the acquired entity as

to its potential reporting obligations (and in tender offers, the acquiring entity also must affirm that the intention to make the tender offer has been publicly announced); and

- iii. the waiting period begins after the acquiring entity files a complete Form.
- (f) Upon submission of the Form, the Commission shall determine within fifteen (15) days whether the Form and other relevant requirements have been completed in accordance with applicable rules or guidelines, and shall inform the parties of other information and/or documents it may have failed to supply, or issue a notice to the parties that the notification is sufficient for purposes of commencing Phase I review of the merger or acquisition.
  - (g) The waiting period under this Section shall commence only upon the Commission's determination that the notification has been completed in accordance with applicable rules and guidelines.
  - (h) Within thirty (30) days from commencing Phase I review, the Commission shall, if necessary, inform the parties of the need for a more comprehensive and detailed analysis of the merger or acquisition under a Phase II review, and request other information and/or documents that are relevant to its review.
  - (i) The issuance of the request under the immediately preceding paragraph has the effect of extending the period within which the agreement may not be consummated for an additional sixty (60) days. The additional sixty (60) day period shall begin on the day after the request for information is received by the parties; *Provided*, that, in no case shall the total period for review by the Commission of the subject agreement exceed ninety (90) days from the time the initial notification by the parties is deemed complete as provided under paragraph (f) of this Section; *Provided further*, that should the parties fail to provide the requested information within fifteen (15) days from receipt of the said request, the notification shall be deemed expired and the parties must refile their notification. Alternatively, should the parties wish to submit the requested information beyond the fifteen (15) day period, the parties may request for an extension of time within which to comply with the request for additional information, in which case, the period for review shall be correspondingly extended.
  - (j) Parties to a proposed transaction under review shall inform the Commission of any substantial modifications to the transaction. On the

basis of the information *provided*, the Commission shall determine if a new notification is required.

- (k) Where notification of a transaction is not required, then the periods provided above for the Commission to conclude its review shall not apply.
- (l) The Commission, in its discretion, may terminate a waiting period prior to its expiration.
- (m) When either waiting period set out ends on a Saturday, Sunday or holiday, the waiting period is extended until the next business day.
- (n) When the above periods have expired and no decision has been promulgated for whatever reason, the merger or acquisition shall be deemed approved and the parties may proceed to implement or consummate it.
- (o) All notices, documents, and information provided to or emanating from the Commission under Sections 4 and 5 of this Rule shall be subject to the confidentiality rule under Section 34 of the Act and Section 13 of this Rule, except for the purpose of enforcing the Act or these Rules, or when the release of information contained therein is with the consent of the notifying entity or is mandatorily required to be disclosed by law or by a valid order of a court of competent jurisdiction, or of a government or regulatory agency, including an exchange.

#### **SECTION 6. Effect of notification.**

If within the relevant periods stipulated in the preceding section, the Commission determines that the merger or acquisition agreement is prohibited under Section 20 of the Act and Section 9 of this Rule, and does not qualify for exemption under Section 21 of the Act and Section 10 of this Rule, the Commission may:

- (a) Prohibit the implementation of the agreement;
- (b) Prohibit the implementation of the agreement unless and until it is modified by changes specified by the Commission; or
- (c) Prohibit the implementation of the agreement unless and until the pertinent party or parties enter into legally enforceable agreements specified by the Commission.

## **SECTION 7. Publication of notification summary.**

- (a) When additional information or documents requested by the Commission for the purpose of a Phase II review of a notified merger or acquisition has been submitted by the parties, the Commission shall publish on its website the following information related to the notification on the basis of the Form submitted by the parties:
  - (1) the name of the involved entities;
  - (2) the type of the transaction;
  - (3) the markets covered or lines of businesses by the proposed merger or acquisition; and
  - (4) the date when the complete notification was received.
- (b) When publishing this information, the Commission shall take into account the legitimate interest of the entities regarding the protection of their trade secrets and other confidential information.

## **SECTION 8. Modifications to thresholds on compulsory notification.**

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

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

## **SECTION 9. Prohibited mergers and acquisitions.**

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

## **SECTION 10. Exemptions from prohibited mergers and acquisitions.**

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

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

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

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

#### **SECTION 11. Burden of proof.**

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

#### **SECTION 12. Finality of rulings on mergers and acquisitions.**

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

#### **SECTION 13. Treatment of confidential information.**

- (a) Information, including documents, shall not be communicated or made accessible by the Commission, insofar as it contains trade secrets or other

confidential information, the disclosure of which is not considered necessary by the Commission for the purpose of the review.

- (b) Any entity or party that supplies information, including documents, to the Commission, shall clearly identify any material that it considers to be confidential, provide a justification for the request of confidential treatment of the information supplied and the time period within which confidentiality is requested, and provide a separate non-confidential version by the date set by the Commission.
- (c) The Commission may require the parties to the merger or acquisition and other interested parties to identify any part of a decision or case summary adopted by the Commission, if any, which in their view contains trade secrets or other confidential information. Where trade secrets or other confidential information are identified, the parties to the merger or acquisition and other interested parties shall provide a justification for the request of confidential treatment and provide a separate non-confidential version by the date set by the Commission.
- (d) Whenever the Commission, pursuant to Section 13(c) of this Rule, deems that the justification for confidential treatment provided by the party is insufficient or not grounded, it shall inform the interested party of its decision to make the information accessible.
- (e) If a merger or acquisition is under review in multiple jurisdictions, parties to the transaction may waive the confidentiality protections contained in this Rule, so as to allow the Commission to exchange otherwise protected information with competition authorities in other countries.

## **RULE 5. DETERMINATION OF THE RELEVANT MARKET**

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

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

- (b) The cost of distribution of the good or service, its raw materials, its supplements and substitutes from other areas and abroad, considering freight, insurance, import duties, and non-tariff restrictions; the restrictions imposed by economic agents or by their associations; and the time required to supply the market from those areas;
- (c) The cost and probability of users or consumers seeking other markets; and
- (d) National, local or international restrictions which limit the access by users or consumers to alternate sources of supply or the access of suppliers to alternate consumers.

## **RULE 6. DETERMINATION OF CONTROL**

### **SECTION 1. What constitutes control of an entity.**

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

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

- (a) Control is presumed to exist when the parent owns directly or indirectly, through subsidiaries, more than one half (1/2) of the voting power of an entity, unless in exceptional circumstances, it can clearly be demonstrated that such ownership does not constitute control.
- (b) Control also exists even when an entity owns one half (1/2) or less of the voting power of another entity when:
  - (1) There is power over more than one half (1/2) of the voting rights by virtue of an agreement with investors;
  - (2) There is power to direct or govern the financial and operating policies of the entity under a statute or agreement;
  - (3) There is power to appoint or remove the majority of the members of the board of directors or equivalent governing body;
  - (4) There is power to cast the majority votes at meetings of the board of directors or equivalent governing body;

- (5) There exists ownership over or the right to use all or a significant part of the assets of the entity; or
- (6) There exist rights or contracts which confer decisive influence on the decisions of the entity.

## **RULE 7. DETERMINATION OF ANTI-COMPETITIVE AGREEMENT OR CONDUCT**

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

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

- (a) Define the relevant market allegedly affected by the anti-competitive agreement or conduct, following the principles laid out in Section 24 of the Act and Rule 5 of these Rules;
- (b) Determine if there is actual or potential adverse impact on competition in the relevant market caused by the alleged agreement or conduct, and if such impact is substantial and outweighs the actual or potential efficiency gains that result from the agreement or conduct;
- (c) Adopt a broad and forward-looking perspective, recognizing future market developments, any overriding need to make the goods or services available to consumers, the requirements of large investments in infrastructure, the requirements of law, and the need of our economy to respond to international competition, but also taking account of past behavior of the parties involved and prevailing market conditions;
- (d) Balance the need to ensure that competition is not prevented or substantially restricted and the risk that competition efficiency, productivity, innovation, or development of priority areas or industries in the general interest of the country may be deterred by overzealous or undue intervention; and
- (e) Assess the totality of evidence on whether it is more likely than not that the entity has engaged in anti-competitive agreement or conduct, including whether the entity's conduct was done with a reasonable commercial purpose, such as but not limited to, phasing out of a product or closure of a business, or as a reasonable commercial response to the market entry or conduct of a competitor.

## **RULE 8. DETERMINATION OF DOMINANCE**

### **SECTION 1. Existence of dominance.**

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

### **SECTION 2. Assessment of dominance.**

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

- (a) The share of the entity in the relevant market and the ability of the entity to fix prices unilaterally or to restrict supply in the relevant market;
- (b) The share of other market participants in the relevant market;
- (c) The existence of barriers to entry and the elements which could foreseeably alter both the said barriers and the supply from competitors;
- (d) The existence and power of its competitors;
- (e) The credible threat of future expansion by its actual competitors or entry by potential competitors (expansion and entry);
- (f) Market exit of actual competitors;
- (g) The bargaining strength of its customers (countervailing power);
- (h) The possibility of access by its competitors or other entities to its sources of inputs;
- (i) The power of its customers to switch to other goods or services;
- (j) Its recent conduct;
- (k) Its ownership, possession or control of infrastructure which are not easily duplicated;
- (l) Its technological advantages or superiority, compared to other competitors;

- (m) Its easy or privileged access to capital markets or financial resources;
- (n) Its economies of scale and of scope;
- (o) Its vertical integration; and
- (p) The existence of a highly developed distribution and sales network.

### **SECTION 3. Presumption of dominance.**

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

### **SECTION 4. Setting the thresholds for dominance.**

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

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

### **SECTION 5. Exceptions.**

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

indispensable and natural result of the superior product or process, business acumen, or legal rights or laws.

## **RULE 9. FORBEARANCE**

### **SECTION 1. Forbearance of the Commission.**

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

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

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

### **SECTION 2. Public hearing.**

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

## **RULE 10. FINAL PROVISIONS**

### **SECTION 1. Revisions of these Rules.**

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

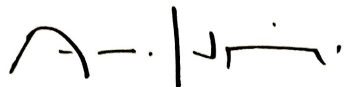
### **SECTION 2. Separability clause.**

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

### **SECTION 3. Effectivity.**

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

**Approved,** this 31<sup>st</sup> day of May 2016.



**ARSENIO M. BALISACAN**  
Chairman



**JOHANNES BENJAMIN R. BERNABE**  
Commissioner



**STELLA LUZ A. QUIMBO**  
Commissioner



**MENARDO I. GUEVARRA**  
Commissioner



**EL CID R. BUTUYAN**  
Commissioner