



Republic of the Philippines  
**PHILIPPINE COMPETITION COMMISSION**

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**RULES OF PROCEDURE OF THE  
PHILIPPINE COMPETITION COMMISSION**

Pursuant to Republic Act No. 10667, otherwise known as the “Philippine Competition Act” (“Act”), the Philippine Competition Commission (“PCC”) hereby promulgates the following rules of procedure:

**RULE I**

*General Provisions*

**Section 1.1. Title.** – These Rules shall be known as the “2017 Rules of Procedure of the Philippine Competition Commission.”

**Section 1.2. Scope and coverage.** – These Rules shall apply to investigations, hearings, and proceedings of the PCC, except to matters involving mergers and acquisitions unless otherwise provided in the issuances and guidelines governing the same.

**Section 1.3. Jurisdiction and powers.** – The PCC shall have original and primary jurisdiction over the enforcement and implementation of the provisions of the Act and its implementing rules. It has the power to conduct inquiry, investigate, and hear and decide on cases involving violations of the Act, its implementing rules, and other competition laws.

**Section 1.4. Prioritization of investigations.** – In initiating and conducting investigations, the PCC shall be guided by the enforcement priorities set by the Commission.

**Section 1.5. Definitions.** – For the purpose of these Rules, the following terms shall mean:

- (a) **Commission** refers to the Chairman and the Commissioners of the PCC;
- (b) **Complainant** refers to an Entity which files a verified complaint with the Commission;
- (c) **Confidential Information** refers to Confidential Business Information submitted and duly claimed as confidential by an Entity, and determined to be such by the PCC, and all other information that are considered confidential under Rule XI;
- (d) **Control** refers to the ability to substantially influence or direct the actions or decisions of an Entity, whether by contract, agency, or otherwise;
- (e) **Electronic Service** refers to the service by e-mail on an Entity, party, or its counsel of orders, decisions, and other papers emanating from the Commission;

- (f) *Electronically Stored Information* refers to any writings, drawings, graphs, charts, photographs, sound recordings, images and other data, metadata, or data compilations temporarily or permanently stored in any electronic medium from which information can be obtained either directly or, if necessary, after conversion into a reasonably usable form or in the form that it is ordinarily maintained;
- (g) *Enforcement Office* refers to the Competition Enforcement Office;
- (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) *Investigation* refers to Preliminary Inquiry or Full Administrative Investigation, or both;
- (j) *Relevant Market* refers to the market in which a particular good or service is sold and which is a combination of the relevant product market and the relevant geographic market, defined as follows:
  - (1) A *relevant product market* comprises all those goods and/or services which are regarded as interchangeable or substitutable by the consumer or the customer, by reason of the goods and/or services' characteristics, their prices and their intended use; and
  - (2) The relevant geographic market comprises the area in which the entity concerned is involved in the supply and demand of goods and services, in which the conditions of competition are sufficiently homogenous and which can be distinguished from neighboring areas because the conditions of competition are different in those areas;
- (k) *Respondent* refers to an Entity that is subject of the Statement of Objections; and
- (l) *Statement of Objections* refers to a document filed by the Enforcement Office with the Commission charging an Entity for any violation of the Act, its implementing rules, or other competition laws.

**Section 1.6. Construction and application of these Rules.** – These Rules shall be liberally construed and applied in order to promote their objective of securing a just and speedy conduct of investigations and disposition of proceedings.

For the purpose of these Rules:

- (a) Any term in the singular includes the plural, and any term in the plural includes the singular, if such use would be appropriate;

- (b) Any use of the masculine, feminine, or neutral gender encompasses such other genders as would be appropriate;
- (c) Specific rules shall prevail over rules of general applicability; and
- (d) *Days* mean calendar days, unless otherwise specified.

Subject to the requirements of due process, the technicalities of law and procedure and the rules obtaining in the courts of law shall not strictly apply. Accordingly, the PCC, its offices, and its officers may avail themselves of all reasonable means to ascertain the facts of the controversy speedily. The PCC may, in exceptional cases, also suspend these Rules or apply supplemental rules as may be necessary in the interest of expeditious dispensation of justice.

**Section 1.7. *Verification.*** – A pleading, motion, or any other document is verified by an affidavit that the affiant has read the same and that the allegations therein are true and correct of his personal knowledge or based on authentic records. A pleading, motion, or any other document required to be verified which contains a verification based on “information and belief,” or upon “knowledge, information and belief,” or lacks a proper verification, shall be considered as not filed.

If the Entity is a natural person, the verification shall be made by the person himself. In all other cases, it shall be made by the partner, officer, director, trustee, or executive head of the Entity with evidence of his authority.

**Section 1.8. *Service and filing.*** – Article II of Rule IV on *Service and Filing* shall apply, as far as practicable, and unless otherwise stated, to the service and filing of all pleadings, motions, notices, orders, decisions, and other papers under these Rules.

**Section 1.9. *Negative inference.*** – The destruction or concealment of adverse evidence may be considered as circumstantial evidence of violation of the Act in the absence of any credible explanation.

**Section 1.10. *Computation of period.*** – In computing any period of time prescribed or allowed by these Rules, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday where the Commission sits, the time shall not run until the next working day.

## RULE II

### *Preliminary Inquiry and Full Administrative Investigation*

#### **Article I. Preliminary Inquiry**

**Section 2.1. *Purpose and scope.*** – The purpose of fact-finding or preliminary inquiry (“Preliminary Inquiry”) is to ascertain whether there are reasonable grounds to conduct a

Full Administrative Investigation for any violation of the Act, its implementing rules, or other competition laws.

During Preliminary Inquiry, the potential adverse effect of a conduct or agreement on consumer welfare or competition in the relevant sector or industry, and the prejudice to public interest shall be considered. The following factors, among others, shall also be looked into:

- (a) The interest of the Entity filing the complaint;
- (b) The PCC's jurisdiction over the subject matter of the Preliminary Inquiry;
- (c) The specific provisions of the Act, its implementing rules, or other competition laws that may have been violated; or
- (d) The possible violators of the Act, its implementing rules, or other competition laws.

The conduct of Preliminary Inquiry shall not be limited by the allegations or contents of the verified complaint, referral by a regulatory agency, or the *motu proprio* directive, but may include other matters gathered in the course thereof.

**Section 2.2. *Who shall conduct; basis.*** – The PCC, through the Enforcement Office, shall conduct the Preliminary Inquiry on the basis of a verified complaint, referral by a regulatory agency, or *motu proprio* directive from the Commission based on reasonable grounds.

Other forms of complaints, referrals, or reports may be the basis of a *motu proprio* Preliminary Inquiry upon the discretion of the Commission.

**Section 2.3. *Commencement of Preliminary Inquiry.*** – The Preliminary Inquiry shall commence ten (10) days from receipt of a verified complaint or referral by a regulatory agency, or the latest amended, supplemental, or related complaint or referral, if any, unless the Commission resolves to deny due course to the said complaint or referral taking into consideration the following: (a) jurisdiction of the PCC; (b) public interest; (c) resource allocation; (d) likelihood of a successful outcome; (e) non-compliance with Section 2.4 of this Rule in the case of a verified complaint; or (f) absence of reasonable grounds to commence Preliminary Inquiry.

In the event that a verified complaint or referral from a regulatory agency is denied due course, the appropriate notice shall be issued to the Complainant or referring agency within ten (10) days from the adoption of the pertinent resolution.

**Section 2.4. *Verified complaint.*** – A verified complaint from an interested Entity shall contain the following:

- (a) Identity of the Entity complained of;
- (b) Acts constituting the violation of the Act, its implementing rules, or other competition laws;

- (c) Documents and other materials supporting the allegations; and
- (d) A statement of the present status of any other case or proceeding involving substantially similar facts, issues, and Entities, and an undertaking to inform the Commission of any such case or proceeding within five (5) days from knowledge thereof.

**Section 2.5. *Period.*** – The Preliminary Inquiry shall, in all cases, be completed by the Enforcement Office within ninety (90) days from the commencement thereof.

**Section 2.6. *Termination of Preliminary Inquiry.*** – The Enforcement Office shall terminate a Preliminary Inquiry by:

- (a) Issuing a resolution ordering its closure if no violation or infringement of the Act, its implementing rules, or other competition laws is found, subject to any other action that the Enforcement Office may consider proper or necessary under the circumstances;
- (b) Issuing a resolution to close the Preliminary Inquiry without prejudice, if the facts or information available at the end of the ninety (90)-day period are insufficient to proceed, on the basis of reasonable grounds, to the conduct of a Full Administrative Investigation; or
- (c) Issuing a resolution to proceed, on the basis of reasonable grounds, to the conduct of a Full Administrative Investigation.

**Section 2.7. *Notice to the Complainant or referring agency.*** – Appropriate notice shall be given to the Complainant or referring agency, as the case may be, within fifteen (15) days from the termination of the Preliminary Inquiry.

## **Article II. Full Administrative Investigation**

**Section 2.8. *Purpose.*** – A Full Administrative Investigation is conducted to ascertain whether there is sufficient basis to charge an Entity for violation of the Act, its implementing rules, or other competition laws.

**Section 2.9. *Notice of investigation; when and to whom issued; content.*** – Notice of investigation shall be given to the Entity under Full Administrative Investigation without compromising the conduct of the same. The notice shall state the provision of the Act, its implementing rules, or other competition laws, for which the Entity is being investigated.

After notice has been issued to the concerned Entities, the commencement of the Full Administrative Investigation shall be published on the PCC website. The publication shall provide a general description of the industry involved and the provision of the Act, its implementing rules, or other competition laws possibly violated.

**Section 2.10. Conference.** – Before concluding the Full Administrative Investigation, the Enforcement Office may, in its discretion, conduct a conference with the Entity under Full Administrative Investigation for purposes of clarifying or ascertaining facts, issues, and other matters necessary and relevant to the Full Administrative Investigation.

The Entity concerned may be accompanied by counsel who shall confine his activity to advising the Entity of its legal rights. The counsel shall not be permitted to answer questions for or argue on behalf of the Entity.

**Section 2.11. Termination of Full Administrative Investigation.** – After the Full Administrative Investigation, the Enforcement Office shall, if it finds sufficient basis, file with the Commission a Statement of Objections (“SO”) charging the Entity under Full Administrative Investigation for violation of the Act, its implementing rules, or other competition laws. Otherwise, the Enforcement Office shall close the Investigation.

*Sufficient basis* means the existence of such facts and circumstances that would engender reasonable belief that there is a violation of the Act, its implementing rules, or other competition laws, and that the Entity subject of the SO probably committed it.

**Section 2.12. Contents of the SO.** – The SO shall identify the Respondents, describe the violations, and shall contain a summary of the facts and relevant factors that would reasonably tend to aggravate liability. Evidence supporting the alleged violations shall also be attached thereto. The SO may also include a recommendation on the imposable fines and remedies which, however, shall not be binding on the Commission.

**Section 2.13. Closure without prejudice.** – Closure of the Full Administrative Investigation under Section 2.11 shall be without prejudice to the conduct of another Investigation if the circumstances so warrant. Appropriate notice shall be given to the Complainant or referring agency, as the case may be, within fifteen (15) days from the termination of the Full Administrative Investigation.

### **Article III. Common Provisions**

**Section 2.14. Powers of the Enforcement Office.** – The Enforcement Office shall have, among others, the following powers:

- (a) Conduct an Investigation in accordance with these Rules;
- (b) Administer oaths, summon and examine witnesses, and receive evidence;
- (c) Request anyone who may have access to, possession, custody, or control of any documents, Electronically Stored Information, or other things, or may have knowledge of any information, which relate to any matter relevant to the Investigation or proceeding to: (1) submit or make available to the Enforcement Office such document, Electronically Stored Information, or other things, for inspection, copying, or reproduction; (2) file written reports or answers to questions; (3) give a statement

concerning documents or other information; or (4) submit the required information in a specified format such as lists, summaries, or tables;

- (d) Issue subpoena *duces tecum* and subpoena *ad testificandum* as provided in Rule XIII;
- (e) Apply for an inspection order with the court to undertake inspections of business premises and other offices, land, and vehicles, as used by the Entity to be inspected, where it reasonably suspects that relevant books, tax records, or other documents, including Electronically Stored Information that relate to any matter relevant to the Investigation are kept, and when it is necessary for the conduct of a full and thorough Investigation, to prevent the removal, concealment, tampering with, or destruction of the books, records, or other documents. Business premises include: (1) premises used in connection with the affairs of the Entity; and (2) premises where documents relating to the affairs of the Entity can be found;
- (f) Consult with resource persons;
- (g) Deputize any enforcement agency of the government, or enlist the aid and support of any private institution, corporation, Entity, or association;
- (h) Initiate proceedings for contempt and similar violations committed during Investigation;
- (i) Charge an Entity for violations of the Act, its implementing rules, or other competition laws; and
- (j) Exercise such other powers and functions that it may deem necessary and proper for the conduct of the Investigation.

**Section 2.15. Resolution of procedural issues.** — The Enforcement Office shall resolve issues relating to claims of privileged information and confidentiality, propriety of subpoenas, and other procedural issues arising during the Investigation.

**Section 2.16. Effect of withdrawal of a verified complaint or referral.** — Withdrawal of a verified complaint or referral does not automatically result in the termination of the Investigation, discharge the Entity complained of or under Investigation from complying with processes under the Act and its implementing rules, nor exempt the Entity from possible imposition of administrative sanction or penalty.

**Section 2.17. Proposal for settlement.** — At any time after the commencement of the Preliminary Inquiry but prior to the termination of the Full Administrative Investigation, the Entity subject thereof may submit to the Enforcement Office a proposal for settlement.

If submitted during the Preliminary Inquiry, the proposal for settlement shall not suspend the running of the ninety (90) day period within which to complete the same.

Upon the recommendation of the Enforcement Office, the Commission may approve a settlement under such terms and conditions that are fair and reasonable. The denial by the Commission of the proposed settlement shall not be construed as a prejudgment on the matters subject thereof.

**Section 2.18. Referral to the Department of Justice.** – At any time after termination of the Preliminary Inquiry and if the evidence so warrants, the PCC may file before the Department of Justice criminal complaints for violations of the Act or other competition laws for preliminary investigation and prosecution before the proper court.

### **RULE III**

#### *Non-Adversarial Remedies*

#### **Article I. Binding Ruling**

**Section 3.1. Binding Ruling; when availed.** – Any Entity that is in doubt as to whether a contemplated act, course of conduct, agreement, or decision (the “Subject Matter”) is in compliance with, exempt from, or in violation of any of the provisions of the Act, its implementing rules, or other competition laws, may request the Commission, in writing, to render a Binding Ruling thereon: *Provided*, That the Subject Matter has not been executed or implemented, and no prior verified complaint or referral from a regulatory agency has been filed, or Investigation has been initiated on the Subject Matter: *Provided, further*, That all acts preparatory to the Subject Matter should not be in violation of the Act, its implementing rules, or other competition laws: *Provided, finally*, That the Subject Matter does not involve a merger or an acquisition.

**Section 3.2. Contents of request for Binding Ruling.** – The written request for a Binding Ruling must be verified and shall contain the following:

- (a) Material facts and supporting documents and information relating to the Subject Matter;
- (b) Identity of the Entities involved in the Subject Matter;
- (c) The issue/s that the Entity seeks to be ruled upon;
- (d) Provision of law or rule under which the issue on the Subject Matter arises;
- (e) Statement that the Entity has the intention of engaging in the Subject Matter;
- (f) Documents necessary for evaluating the fees provided in Section 3.4; and



- (g) Other relevant matters that will aid in the evaluation of the request for a Binding Ruling.

Each request shall be limited to only one Subject Matter.

**Section 3.3. *Due course.*** – Within fifteen (15) days from receipt of the request, the Commission shall either give due course to the same and direct the Enforcement Office to file a comment thereon, or deny it based on any of the following, among others:

- (a) The information provided by the Entity which will form the basis of the ruling is insufficient or incomplete;
- (b) The request relates to a hypothetical or speculative matter;
- (c) The same issue involving the same Entity or a related Entity is subject of an Investigation or proceeding of the PCC;
- (d) Sufficient guidance on the same issue can be found in the Commission’s guidelines, rules, or clarificatory notes, if any, already issued by the Commission;
- (e) The Subject Matter is appropriate for a merger and acquisition review under Section 17 and 20 of the Act;
- (f) The request will require an inordinate amount of the PCC’s resources; and
- (g) The request is not in accordance with these Rules or is not appropriate for a binding ruling.

**Section 3.4. *Fees.*** – If the request is given due course, the Entity shall pay within five (5) days from notice thereof a fee of one to three percent (1%-3%) of the value of the Entity’s assets or annual revenues, whichever is higher. The value of assets shall be based on the last regularly prepared balance sheet or the most recent audited financial statements. The value of annual revenues shall be based on the last regularly prepared annual statement of income and expense of the Entity.

In assessing the fee to be paid by the Entity, the Commission shall take into consideration the complexity of the request and the nature of the business of the Entity, among others.

**Section 3.5. *Additional information.*** – The Commission or the Enforcement Office, as the case may be, may require the submission of additional information or documents, or the conduct of market studies, research, surveys, as well as call for a conference with the Entity in order to propound clarificatory questions and obtain more information relating to the request.

**Section 3.6. *Comment of the Enforcement Office.*** – The Enforcement Office shall submit its comment to the Commission on the request for a Binding Ruling within ninety (90) days,

extendible for another sixty (60) days, from the receipt of the directive of the Commission to comment and the payment by the Entity of the fee in Section 3.4: *Provided*, That the period may be shortened in consideration of the specific circumstances relating to the Subject Matter: *Provided, further*, That the running of the period shall stop when the Enforcement Office requests for additional information, and shall run again once the Enforcement Office determines that the Entity has submitted all the requested information.

**Section 3.7. *Action by the Commission.*** – The Commission shall issue a Binding Ruling within thirty (30) days from receipt of the Enforcement Office’s comment. A favorable Binding Ruling shall be for a specified period, subject to extension as may be determined by the Commission, and based on substantial evidence.

However, the Commission may terminate the proceedings without issuing a Binding Ruling if the Entity does not pay the fee under Section 3.4. The proceedings may also be terminated based on, among others, the same considerations provided in Section 3.3 should they become evident or manifest after the request has been given due course. Unless the termination is based on paragraphs (c), (d), and (e) of Section 3.3, the Entity may file a new request for Binding Ruling on the same Subject Matter in accordance with this Rule. The filing of such request shall be treated as a new proceeding.

**Section 3.8. *Compliance with an adverse Binding Ruling.*** – In the case of an adverse Binding Ruling that requires the performance of an act, the Entity shall be provided with a reasonable period, which in no case shall be more than ninety (90) days, to abide by the ruling of the Commission during which period the Entity shall not be subject to administrative, civil, or criminal action.

**Section 3.9. *Applicability.*** – The Binding Ruling shall only be applicable as regards the Entity that applied for it, the specific set of circumstances set forth therein, and within the period specified, if any, by the Commission.

## **Article II. Show Cause Order as a Non-Adversarial Remedy**

**Section 3.10. *Show Cause Order as a Non-Adversarial Remedy.*** – After Preliminary Inquiry or upon a preliminary finding that an Entity is conducting its business, in whole or in part, in a manner that may not be in accord with the provisions of the Act or other competition laws, the Enforcement Office may, in the interest of the public, issue a Show Cause Order to the Entity as a Non-Adversarial Remedy pursuant to Section 37(b) of the Act.

**Section 3.11. *Contents of Show Cause Order as a Non-Adversarial Remedy.*** – The Show Cause Order shall contain a written description of the anti-competitive conduct or agreement, a statement of relevant facts, data, and information, as well as a summary of the evidence thereof, with an order requiring the said Entity or Entities to file an explanation (“Explanation”) within a given period.

**Section 3.12. *Contents of Explanation.*** – In the Explanation, the Entity may either: (a) dispute, deny, or justify the anti-competitive conduct or agreement described in the Show

Cause Order, providing sufficient legal and evidentiary basis why it should not be required to cease and desist from continuing with its identified business conduct or agreement, pay an administrative fine, or adjust its business conduct, practice, or agreement; or (b) admit the anti-competitive conduct or agreement described in the Show Cause Order and provide a written proposal for addressing the same.

**Section 3.13. *Additional information.*** – After receiving the Explanation, the Enforcement Office may require the Entity to appear at a Show Cause conference and submit additional documents or information. The Show Cause conference may be continued at a later date as may be necessary to allow the Entity to submit or revise a written proposal.

**Section 3.14. *Termination of the Show Cause proceedings.*** – If the Entity fails to submit an Explanation, or if the same is found to be unsatisfactory, the proceedings shall be terminated and the Enforcement Office may continue with Investigation or issue an SO. If the Entity submits a satisfactory Explanation, the proceedings shall be terminated and the Enforcement Office may close the Investigation.

**Section 3.15. *Action on the written proposal.*** – If the Entity submits a written proposal for addressing the anti-competitive conduct or agreement described in the Show Cause Order, the Enforcement Office shall transmit the same to the Commission within ninety (90) days together with its comment thereon.

**Section 3.16. *Action by the Commission.*** – The Commission shall resolve the matter within thirty (30) days from receipt of the comment, unless an additional period is warranted. In case of a denial by the Commission of the written proposal, the Show Cause proceedings shall be terminated.

### **Article III. Consent Order**

**Section 3.17. *Consent Order.*** – At any time prior to the termination of an Investigation, any Entity subject thereof may, without in any manner admitting a violation of the Act, its implementing rules, or other competition laws, submit to the Commission a verified application for a Consent Order.

**Section 3.18. *Contents of the verified application.*** – In the verified application, the Entity shall specify the terms and conditions of the proposed Consent Order for addressing the anti-competitive conduct or agreement, and shall include, among others, the following:

- (a) The payment of an amount within the range of fines provided for under the Act, its implementing rules, or other competition laws;
- (b) The proposed mandatory compliance reports as well as the identity of the Entity that will submit such reports;
- (c) Payment of damages to any private party or parties who may have suffered injury; and

- (d) Other terms and conditions that may be considered appropriate and necessary for the effective enforcement of the Act, its implementing rules, or other competition laws.

**Section 3.19. *Due course.*** – Within fifteen (15) days from receipt of the application, the Commission shall decide whether to give due course to the same. Should the application be given due course, the Commission shall direct the Enforcement Office to submit its comment on the said application.

**Section 3.20. *Additional information.*** – The Commission or the Enforcement Office, as the case may be, may request the submission of additional information or documents or call for a conference with the applicant in order to propound clarificatory questions and obtain more information relating to the application.

**Section 3.21. *Comment by the Enforcement Office.*** – The Enforcement Office shall submit its comment to the Commission on the application within ninety (90) days, extendible for another sixty (60) days, from receipt of the directive of the Commission to comment: *Provided*, That the period may be shortened in consideration of the specific circumstances of the application: *Provided, further*, That the running of the period shall stop when the Enforcement Office requests for additional information, and shall run again once the Enforcement Office determines that the Entity has submitted all the requested information.

**Section 3.22. *Action by the Commission.*** – The Commission shall resolve the application for Consent Order within thirty (30) days from receipt of the Enforcement Office’s comment, unless an additional period is warranted. Should the Commission deny the application, the Consent Order proceedings shall be terminated and the Enforcement Office may continue with the Investigation or issue an SO. The denial by the Commission of the application shall not be construed as a prejudgment on the matters subject thereof. Should the Commission approve the application by issuing a Consent Order, any inquiry or investigation for the same or similar conduct or agreement if continued or repeated shall not be barred.

#### **Article IV. Common Provisions**

**Section 3.23. *Effectivity of the approval of written proposals.*** – The order by the Commission approving the written proposal or granting the application in the Show Cause and Consent Order proceedings, as the case may be, shall be final and immediately executory.

**Section 3.24. *Monitoring of compliance.*** – The Commission shall monitor the compliance by the Entity or Entities concerned, their officers, directors, trustees, partners, and employees, with the Binding Ruling, order based on a Show Cause proceeding, or Consent Order. Upon motion of an interested party, the Commission shall issue a certification or resolution to the effect that the Entity or Entities concerned have, or have not, as the case may be, complied with the ruling or order.

**Section 3.25. *Inadmissibility of evidence in criminal proceedings.*** – The request for a Binding Ruling, the Show Cause Order, or the application for Consent Order; the facts, data, and information therein contained or subsequently supplied by the Entity or Entities concerned; admissions, oral or written, made by them against their interest; all other documents filed by them, including their evidence presented in the proceedings before the Commission; and the judgment or order rendered thereon; shall not be admissible as evidence in any criminal proceedings arising from the same act subject of the Binding Ruling, Show Cause Order, or Consent Order against such Entity or Entities, their officers, employees, and agents.

This Section shall not apply to requests for Binding Ruling, applications for Consent Order, facts, data and information, oral and written admissions, evidence, documents, judgments, or orders which: (a) do not relate to the matter under Investigation or the Subject Matter of the request for a Binding Ruling, Show Cause Order, or a Consent Order application; (b) are already in the possession of the PCC prior to the initiation of the non-adversarial proceedings; (c) are independently obtained; or (d) are false or fraudulent.

**Section 3.26. *Void ruling or order.*** – Upon application by the Enforcement Office or upon *motu proprio* determination by the Commission, and subject to the requirements of due process, a Binding Ruling, order based on a Show Cause proceeding, or Consent Order found to be obtained on the basis of fraud, or incorrect or misleading or information as described in Section 6.11, shall be void.

**Section 3.27. *Investigation not suspended.*** – The proceedings under this Rule shall not suspend the conduct of an ongoing Investigation.

**Section 3.28. *Powers of the Enforcement Office.*** – The Enforcement Office may exercise the powers provided in Section 2.14 when appropriate.

## **RULE IV** *Adjudication*

### **Article I. General Provisions**

**Section 4.1. *Scope; expedition of adjudication.*** – This Rule shall govern the proceedings before the Commission during adjudication. To the extent practicable and consistent with objectives of the Act or other competition laws, the Commission’s policy is to conduct such proceedings expeditiously. Every effort shall be made at each stage of the proceedings to avoid delay.

**Section 4.2. *Purpose of adjudication.*** – Adjudication is conducted by the Commission to determine whether there exists substantial evidence of a violation of the Act, its implementing rules, or other competition laws, and to justify the imposition of appropriate penalties and remedies relative thereto.

**Section 4.3. *Liberal application of evidentiary rules.*** — Technical rules of procedure and evidence shall not be strictly applied. The Commission shall have the discretion to determine the relevance, materiality, weight, and sufficiency of all evidence presented. Evidence willfully suppressed by an Entity may be presumed to be adverse if produced.

**Section 4.4. *Public hearings; record of proceedings.*** — All hearings shall be public unless otherwise ordered by the Commission, *motu proprio* or upon motion. The proceedings shall be recorded.

**Section 4.5. *Role of the Enforcement Office.*** — The Enforcement Office shall prosecute the case in the manner provided for under these Rules and as the Commission may direct.

**Section 4.6. *Participation of Complainant.*** — The Complainant may be allowed by the Commission to participate in the proceedings in the manner that the latter may allow.

**Section 4.7. *Appearance of counsel.*** — The Respondent may be represented by counsel, who shall file a written entry of appearance.

The written entry of appearance may include the express consent of the counsel to the Electronic Service of orders, decisions, and other papers emanating from the Commission. In such case, the counsel shall provide the e-mail address at which he agrees to accept such service.

**Section 4.8. *Votes; quorum.*** — The Commission shall be composed of the Chairman and four (4) Commissioners. Three (3) members of the Commission shall constitute a quorum. The affirmative vote of three (3) members shall be necessary for the adoption of any ruling, order, resolution, or decision of the Commission.

**Section 4.9. *Prohibited Motions.*** — A motion to dismiss, motion for bill of particulars, or any similar submission filed or made under a different guise or title shall be prohibited. Should any of the foregoing be filed, the reliefs prayed for therein shall be considered denied, but the prohibited motion or submission will be allowed to remain on record insofar as the contents thereof may be taken as an admission or confession.

A motion to amend pleadings, a motion for extension of time to file pleadings, affidavits or any other paper, or a motion for postponement of hearings or proceedings, and any other motions of similar intent shall also be prohibited, except those filed due to clearly compelling reasons, in which case such motion must be verified.

**Section 4.10. *Dispositions of businesses, shareholdings, business units, or assets during adjudication.*** — The Respondent shall notify the Commission of any sale, donation, disposition, or any other transfer, whether absolute or otherwise, made during adjudication, of its interest in businesses, shareholdings, business units, assets, or any other interest related to matters under adjudication. Otherwise, the Respondent shall be liable for the administrative fines imposed under Rule VI.

## Article II. Service and Filing

### Section 4.11. *Manner, completeness, and proof of service.* —

- (a) **Modes of service.** — Service of pleadings, motions, notices, orders, decisions, and other papers (“Papers”) shall be made personally, by mail, or private courier.
- (b) **Personal service.** — Service may be made by delivering personally a copy to Respondent or by leaving the Papers at Respondent’s office with its clerk or with a person having charge thereof. If no person is found at the office, or the Respondent’s office is not known, or the Respondent has no office, then by leaving the copy, between the hours of eight in the morning and six in the evening, at Respondent’s residence, if known, with a person of sufficient age and discretion then residing therein.
- (c) **Service by mail.** — Service by registered mail or private courier shall be made by depositing the copy in the post office or courier in a sealed envelope, plainly addressed to the Respondent, if known, otherwise at Respondent’s residence, if known, and with instructions to the postmaster or private courier to return the mail to the sender after ten (10) days if undelivered.
- (d) **Substituted service.** — If service of Papers cannot be made under the two preceding paragraphs, the office and place of residence of the Respondent or its counsel being unknown, service may be made by delivering the copy to the PCC, with proof of failure of both personal service and service by mail. The service is complete at the time of such delivery.
- (e) **Service of Papers emanating from the Commission.** — The Commission may serve Papers through personal service, registered mail, private courier, or, if the Respondent or its counsel consents, through Electronic Service.
- (f) **Service on counsel.** — When any Respondent has appeared by counsel, service shall be made upon its counsel of record, unless the Commission has ordered service upon the Respondent. Where one counsel appears for several Respondents, he shall only be entitled to one copy of the Papers served upon him. Where several counsels represent the Respondent, service may be made upon any of them.
- (g) **Completeness of service.** — Service shall be considered complete when: (1) the Paper is personally received by Respondent, or its authorized agent; (2) the Paper is received by the clerk or some other person in charge thereof at Respondent’s principal office or regular place of business; (3) the Paper is received by some person of suitable age and discretion then residing at Respondent’s dwelling house or residence; (4) the Paper is received by Respondent in a sealed envelope by registered mail or by private courier at its office or residence address, or after five (5) days from the date Respondent received the first notice of the postmaster or the private courier, whichever date is earlier; or (5) in the case of Electronic Service of Papers emanating from the Commission, service is completed upon transmission.

- (h) **Proof of service.** – Proof of service may consist of a written admission of the party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place, and manner of service. It shall specify the Papers served and the name of the person who received them, and shall be sworn to when made by a person other than the server of the Commission.

If the service is by registered mail or by private courier, proof thereof shall consist of an affidavit of the person who undertook the mailing stating facts showing compliance with paragraph (c) of this Section, and the registry receipt issued by the mailing office, or the acknowledgement receipt issued by the private courier, as the case may be. The registry return card or any other proof of delivery shall be filed immediately upon its receipt by the sender, or in lieu thereof, the unclaimed mail together with the certified or sworn copy of the notice given by the postmaster to the addressee.

**Section 4.12. Filing of pleadings, motions, affidavits, and other submissions. –**

- (a) **Manner of Filing.** – All Papers, and other submissions to the Commission shall be written, printed, or typed on a 13-inch by 8.5-inch white bond paper and shall be in the official language. The size of the font shall not be smaller than 12. All Papers filed shall contain the title of the case and the case number, where appropriate.

The filing of pleadings, motions, affidavits, and other submissions shall be done by filing one (1) original copy thereof, plainly indicated as such, and five (5) photocopies to the Commission personally, by registered mail, or private courier.

In either case, soft copies of all pleadings, motions, affidavits, and other submissions, together with their annexes, must be submitted simultaneously with the hard copy via a USB flash drive or similar storage device, or via e-mail within twenty-four (24) hours from the filing of the hard copy.

The soft copies of the Papers must be in PDF and, as far as practicable, in editable word-processing format. Each Paper as well as their annexes, must be individually saved in the USB flash drive or similar storage device, or attached to the e-mail, as the case may be. The file name of the soft copy must be the same as the title of the document and must indicate the date of the document. Moreover, the file name of the soft copies shall be numbered in the manner that they appear in the hard copy filed.

To illustrate:

- (1) The soft copy of the *Answer* dated 01 January 2017 must have a file name: “1. Answer dated 01 January 2017.pdf”.

The soft copy of the succeeding document, Annex “A”, which is a Board Resolution dated 01 January 2017, must have a file name “2. Annex A Board Resolution dated 01 January 2017.pdf”.



(2) The e-mail shall have the following format:

To: \_\_\_\_\_  
From: (Filing party)  
Subject: *Docket Number Case Title*

(Sample body of e-mail)

Case Number:  
Case Title:  
Name of Filing Party:  
Contact Numbers:  
Other e-mail addresses:  
Title of Attached Documents (arranged in the sequence that they appear in the hard copy):

- (a) Answer dated 01 January 2017
- (b) Annex "A" Board Resolution dated 01 January 2017
- (c) Etc.

The filer shall also file with the USB flash drive, or attach to the e-mail a verified declaration that the pleadings, motions, affidavits, and other submissions submitted electronically are complete and true copies of the printed document and annexes filed with the Commission.

(3) The declaration shall use the following format:

I, \_\_\_\_\_, hereby declare that the document(s) (and annexes thereof) hereto submitted electronically are complete and true copy(-ies) of the document(s) (and annexes) filed with the Commission.

Signature  
Printed Name  
Position  
Date

[Jurat]

- (b) **Proof of Filing.** — The filing of a Paper shall be proved by its existence in the record of the case. If it is not in the record, but it is claimed to have been filed personally, the filing shall be proved by the written or stamped acknowledgement of its filing by the PCC on a copy of the same; if filed by registered mail or through private courier, by the registry receipt or the acknowledgement receipt issued by the private courier, as the case may be, and by the affidavit of the person who did the mailing, containing a full statement of the date and place of depositing the mail in the post office or private courier in a sealed envelope addressed to the PCC, and with instructions to the postmaster or private courier company to return the mail to the sender after ten (10) days if not delivered.

**Section 4.13. Priorities in modes of service and filing.** — Whenever practicable, the service and filing of Papers shall be done personally. Except with respect to Papers emanating from

the Commission or Enforcement Office, a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally. A violation of this Rule may be basis to consider such Papers as not filed.

### **Article III. Commencement of Adjudication**

**Section 4.14. *Commencement of proceedings.*** – Adjudication is commenced upon the filing by the Enforcement Office of the SO with the Commission.

**Section 4.15. *Commission to issue summons.*** – Within fifteen (15) days from the filing of the SO, the Commission may issue the corresponding summons with a copy of the SO to the Respondent, or dismiss the SO outright on the ground that the same failed to state a violation cognizable by the Commission.

On the same date of the issuance of a summons, or as soon as practicable thereafter, the Commission shall publish on its website that an SO has been issued, the provisions of the Act, its implementing rules, or other competition laws possibly violated, and such other information that the Commission may deem appropriate.

**Section 4.16. *Contents of summons.*** – The summons shall be addressed to the Respondent and must contain:

- (a) A direction that the Respondent file a verified answer, and not a motion to dismiss, within the time fixed by the Commission, which shall not be less than thirty (30) days but not more than sixty (60) days; and
- (b) A notice that unless the Respondent files a verified answer, the Commission may render a decision granting such relief as the records and evidence may warrant and impose the appropriate penalties and remedies.

A copy of the SO and its supporting evidence shall be attached to the summons, subject to Rule XI. To prevent the loss of documents in the course of the service of the summons, or whenever necessary under the circumstances, the Commission may require the Respondent to appear at a designated date, time, and place to receive or view the evidence against it.

**Section 4.17. *By whom served.*** – The summons shall be served by the officer designated by the Commission.

**Section 4.18. *Service of summons.*** –

- (a) **To individuals.** – Summons issued by the Commission shall be served to the individual or to his authorized agent. Service to an individual or his authorized agent shall be made or effected through any of the following means: (1) by handing a copy thereof to him or his authorized agent in person; (2) by leaving a copy at his principal office or regular place of business with a clerk or some other person in charge thereof; (3) by leaving a copy at his dwelling house or residence with some person of suitable

age and discretion then residing therein; or (4) by sending a copy thereof addressed to him in a sealed envelope by registered mail or by private courier at his last known office or residence.

- (b) **To corporations, partnerships, associations, or other Entities with juridical personality.** – Summons shall be served to a person other than a natural person upon its president, executive head, managing partner, general manager, corporate secretary, treasurer, compliance officer, in-house counsel, director or trustee, managing or general agent or any other authorized agent, or such other officer as may be found in official documents, in the manner provided in paragraph (a) of this Section.
- (c) **To foreign corporations, partnerships, associations, or other foreign Entities with juridical personality.** – Service of summons issued by the Commission to a foreign corporation, partnership, association, or Entity may be made on its resident agent designated in accordance with law for that purpose, on the government official designated by law to that effect, or on any of its officers or agents within the Philippines.

If the foreign private juridical Entity is not registered in the Philippines, summons may be served: (1) on its officers or agents in the Philippines; (2) through the appropriate court in the foreign country with the assistance of the Department of Foreign Affairs; (3) by publication once in a newspaper of general circulation in the country where the Respondent may be found as well as in such places as the Commission may order, posting the summons on the PCC website, and serving a copy of the summons by registered mail at the last known address of the Respondent; (4) by facsimile or any recognized electronic means that could generate proof of service; or (5) by such other means as the Commission may in its discretion direct.

- (d) **To an Entity without juridical personality.** – When persons associated in an Entity without juridical personality are sued under the name by which they are generally or commonly known, service may be effected upon all the Respondents by serving: (1) upon any one of them; (2) upon the person in charge of the office or place of business maintained in such name; (3) upon the government official designated in accordance with law for that purpose; (4) upon any of the Entity's officers or agents within the Philippines; (5) through the appropriate court in the foreign country with the assistance of the Department of Foreign Affairs; (6) by publication once in a newspaper of general circulation in the country where any of the Respondents may be found as well as in such places as the Commission may order, posting the summons on the PCC website, and serving a copy of the summons by registered mail at the last known address of any of the Respondents; (7) by facsimile or any recognized electronic means that could generate proof of service; or (8) by such other means as the Commission may in its discretion direct. Such service shall not bind individually anyone whose connection with the Entity has, upon due notice, been severed before the initiation of the proceedings.

- (e) **To an Entity that is a resident of the Philippines but the whereabouts are unknown.** – If the address of the Respondent who is a resident of the Philippines is unknown or, even if known, his whereabouts cannot be ascertained by diligent inquiry, service of summons may be effected on him: (1) by publication of the summons once in a newspaper of general circulation in the Philippines, posting on the PCC website, and service by registered mail to the last known address of the Respondent; or (2) through such other modes that the Commission may in its discretion direct.
- (f) **To an Entity that is not a resident of but is present in the Philippines.** – If the Respondent is not a resident of but is present in the Philippines, service may be effected as follows: (1) in the manner provided for in paragraph (a) of this Section; (2) if Respondent's whereabouts cannot be ascertained by diligent inquiry, by publication of the summons once in a newspaper of general circulation in the Philippines, posting on the PCC website, and service by registered mail to the last known address of the Respondent; or (3) through such other modes that the Commission may in its discretion direct.
- (g) **To an Entity that is not a resident of and is not found in the Philippines.** – If the Respondent does not reside or is not found in the Philippines, summons may be effected: (1) out of the Philippines by publication once in a newspaper of general circulation in the country where the Respondent may be found as well as in such places as the Commission may order, posting the summons on the PCC website, and serving a copy of the summons by registered mail at the last known address of the Respondent, if any; (2) through the appropriate court in the foreign country with the assistance of the Department of Foreign Affairs; (3) by facsimile or any recognized electronic means that could generate proof of service; or (4) through such other modes that the Commission may in its discretion direct.

**Section 4.19. Return.** – When the service has been completed, the server shall, within five (5) days therefrom, return the summons to the Commission, accompanied by proof of service.

**Section 4.20. Proof of service.** – The proof of service of summons shall be made in the same manner indicated in Section 4.11.

Service by publication in a newspaper of general circulation or PCC website may be proven by the respective affidavit of the editor, business or advertising manager, or PCC website administrator, to which affidavit a copy of the publication shall be attached, and if applicable, by an affidavit showing the deposit of a copy of the summons or order for publication, or both, in the post office directed to the party by registered mail to Respondent's last known or address.

**Section 4.21. Voluntary appearance.** – The Respondent's voluntary appearance or that of its counsel before the Commission shall be equivalent to service of summons for purposes of acquiring jurisdiction over Respondent's person.

## Article IV. Verified Answer

**Section 4.22. *Verified answer.*** – An answer is a pleading in which the Respondent shall set forth its defenses. The answer must be verified.

**Section 4.23. *Period to file a verified answer.*** – The Respondent shall file a verified answer within the time indicated in the summons which shall not be less than thirty (30) days but not more than sixty (60) days.

In case of service of summons by publication, the summons shall state the reasonable time within which the Respondent must answer, which shall not be less than forty-five (45) days but not more than sixty (60) days from the date of last publication.

**Section 4.24. *Contents of verified answer.*** – The verified answer shall contain the following:

- (a) Admissions and denials, if any, of material facts alleged in the SO. Denials shall be made with particularity and, whenever practicable, the Respondent shall state the substance of the matters supporting its denial;
- (b) Facts or circumstances relevant and necessary to explain why the Respondent should not be held liable for the alleged violation stated in the SO;
- (c) Legal grounds on which such answer is based;
- (d) Evidence to support Respondent's claims or arguments;
- (e) The express consent, if any, of the Respondent or its counsel to the Electronic Service of Papers emanating from the Commission, and the e-mail address at which he agrees to accept such service; and
- (f) Such other matters the Respondent deems necessary to include.

**Section 4.25. *Access to Confidential Information.*** – A Respondent who seeks to access information treated provisionally confidential or otherwise considered to be confidential under Rule XI, may file a motion for the purpose and show that the same is essential for Respondent's defense. The Enforcement Office and the Entity which claimed confidentiality may comment on the motion. The Commission, in resolving the motion and when giving access to Confidential Information under this Section, shall be guided by Rule XI and shall implement such means as may be necessary to protect the confidentiality of the information.

**Section 4.26. *Effect of failure to file a verified answer.*** – If the Respondent fails to answer within the time allowed therefor, the Commission may, upon motion by the Enforcement Office with notice to the Respondent and proof of such failure, declare the Respondent in default. If the Respondent files a comment or opposition to the motion, it shall also attach a verified answer to the SO. Should the Respondent be declared in default, the Commission may require the Enforcement Office to submit additional evidence *ex parte* or proceed to

render judgment as the allegations in the SO and evidence may warrant. A party in default shall be entitled to notice of subsequent proceedings but not to take part in the same.

**Section 4.27. Reply.** – The Enforcement Office and the other Respondents, if any, may file a reply to a Respondent’s verified answer within twenty (20) days from their receipt thereof. If a party does not file a reply, all the new matters alleged in the answer are considered controverted.

**Section 4.28. Compulsory processes and interim measures not precluded.** – Failure of the Respondent to file a verified answer within the time provided shall not preclude the Commission from ordering interim measures and issuing compulsory processes, including subpoena *duces tecum* and subpoena *ad testificandum*, before entering a decision.

#### **Article V. Proceedings After the Filing of Verified Answer**

**Section 4.29. Notice of preliminary conference.** – Upon its receipt of the verified answer and reply, if any, the Commission, as appropriate, may submit the case for decision and shall render a decision within forty-five (45) days therefrom. Otherwise, the Commission shall hold further proceedings and issue a notice of preliminary conference directing the Respondent and Enforcement Office to:

- (a) Appear before a designated case officer at a preliminary conference at the place and on the date specified therein; and
- (b) File a preliminary conference brief which shall contain, among others:
  - (1) A summary of admitted facts and a proposed stipulation of facts;
  - (2) The factual and legal issues to be tried or resolved;
  - (3) The list of documents or exhibits as well as the purpose thereof; and
  - (4) As far as practicable, any request for the issuance of subpoena *duces tecum* or *ad testificandum*.

The Respondent may also include in the preliminary conference brief a statement of its willingness to enter into a settlement.

**Section 4.30. Filing of preliminary conference brief.** – The Respondent and Enforcement Office shall ensure receipt by the other party as well as by the Commission of the preliminary conference brief at least ten (10) days before the date of the preliminary conference.

Failure of the Respondent to file a preliminary conference brief shall have the same effect as failure to attend the preliminary conference as provided in Section 4.33.

**Section 4.31. *Preliminary conference.*** – At the preliminary conference, the following shall be taken up:

- (a) The issues to be tried or resolved;
- (b) Deadline for filing of position papers, affidavits and other submissions;
- (c) Amenability of the Respondent to Electronic Service of Papers emanating from the Commission, if he has not consented to such service;
- (d) Consideration of confidentiality issues or protection of sensitive information;
- (e) Propriety of settlement; and
- (f) Other matters that may aid in the just and expeditious disposition of the proceeding.

**Section 4.32. *Extension of conference.*** – Where additional time is needed to complete the preliminary conference, the Commission shall set additional dates for the conduct thereof.

**Section 4.33. *Failure to Appear at the Preliminary Conference.*** – If the sole Respondent or if all the Respondents fail to appear at the preliminary conference, the Commission may render a decision based on the records, or allow the Enforcement Office to present evidence *ex parte*.

In a case with multiple Respondents, failure of any but not all of the Respondents to appear at the preliminary conference shall not prevent the conduct of the same.

In either case, the Respondent that failed to appear shall be entitled to notice of subsequent proceedings but not to take part in same.

**Section 4.34. *Preliminary Conference Order.*** – Not later than fifteen (15) days from termination of the preliminary conference, a preliminary conference order shall be issued containing the matters taken up at the preliminary conference and the actions taken thereon. The contents of the preliminary conference order shall bind the parties, whether or not they participated in the preliminary conference, and shall control the subsequent course of the proceeding unless modified to prevent manifest injustice.

**Section 4.35. *Submission of position papers.*** – Within the period provided in the preliminary conference order, the parties shall submit their respective position papers setting forth the law and the facts relied upon by them, attaching thereto the supporting affidavits and other evidence.

## Article VI. Correction, Revision, and Withdrawal of the SO

**Section 4.36. *Correction of clerical errors in SO.*** – Clerical or typographical errors in the SO may be corrected at any stage of the proceedings, upon motion by the Enforcement Office: *Provided*, That no prejudice is caused thereby to any party.

**Section 4.37. *Revised SO.*** – Before the case is submitted for decision, a revised SO may be issued, upon motion by the Enforcement Office, where there is evidence acquired after the issuance of the SO which tends to support a violation or facts not contained in the SO but which violation or facts arise from the same transactions, occurrences, or events subject of the SO. The Respondent shall be given an opportunity to respond to the Revised SO.

**Section 4.38. *Withdrawal of SO.*** – Before the case is submitted for decision, an SO or a violation indicated therein may be ordered withdrawn by the Commission upon motion of the Enforcement Office. Unless otherwise stated in the order, granting the withdrawal shall be without prejudice.

**Section 4.39. *Ex parte motion.*** – Before service of summons, motions under this article shall be filed *ex parte*.

## Article VII. Resource Person

**Section 4.40. *Resource person.*** – A resource person may, at any time before the case is submitted for decision, be called on or allowed by the Commission to submit a brief or to make an oral presentation for the purpose of aiding in the determination of the issues in the case. The Commission may allow the resource person to present via video conference.

**Section 4.41. *Comment to the brief or presentation.*** – The Enforcement Office and the Respondent may file a comment to the brief or presentation within fifteen (15) days from receipt of the brief or from the date of the presentation, as the case may be, unless a longer period is allowed.

## Article VIII. Settlement

**Section 4.42. *Benefits of settlement.*** – Settlement may, among others, result in a reduction of fines or modification of charges, taking into account the following factors:

- (a) Stage of the proceedings at which the motion for settlement is filed;
- (b) Number of Respondents moving for settlement;
- (c) Number, nature, and gravity of alleged violations;
- (d) Likelihood of addressing the alleged anti-competitive conduct at the soonest possible time; and



- (e) Other procedural efficiencies and resource savings that can be achieved by a settlement.

**Section 4.43. *Joint motion for settlement.*** – If the Enforcement Office finds the Respondent’s proposed settlement to be proper and reasonable, the Enforcement Office and Respondent shall file a joint motion for approval with the Commission, stating therein the terms of the settlement, including the consequences for non-compliance therewith. The joint motion shall be filed before the case is submitted for decision.

Should the Respondent have a representative, the joint motion shall contain the representative’s written authority to enter into stipulations or admissions of facts and of documents, and to enter into a settlement.

**Section 4.44. *Period to file a verified answer when joint motion is denied or proceedings terminated.*** – In case of a denial of a joint motion for settlement that was filed prior to the filing of a verified answer or the termination of the settlement proceedings arising therefrom, the Respondent shall file its verified answer within the balance of the period allowed in the summons, but which period shall not be less than ten (10) days in any event, computed from its receipt of the notice of the denial or termination of the settlement proceedings, or the expiration of the sixty (60)-day period provided in Section 4.45, whichever is earlier.

**Section 4.45. *Action by the Commission.*** – The Commission has full discretion to approve a joint motion for settlement. The settlement must contain, among others, such terms and conditions that the Commission finds appropriate or necessary for the effective enforcement of the Act, its implementing rules, or other competition laws.

Should the Commission deny the joint motion for settlement, the Commission may nevertheless appoint a mediator or provide for such other means to facilitate further discussions between the Enforcement Office and the Respondent, and may indicate the terms and conditions that it requires for the approval of a settlement: *Provided,* That the settlement discussions shall be concluded within a period of not more than sixty (60) days from initiation of the same.

If the Enforcement Office and the Respondent agree on the terms of the settlement in compliance with the Commission’s requirements, if any, they shall file another joint motion within the period provided in the preceding paragraph, stating therein the terms of the settlement they agreed upon. Otherwise, the settlement proceedings shall be considered terminated.

**Section 4.46. *Effect of denial of a joint motion for settlement.*** – The denial by the Commission of the joint motion for settlement shall not be construed as a prejudgment on the matters subject thereof.

**Section 4.47. *Effect of settlement.*** – An order approving a settlement shall be final and immediately executory.

Should the Respondent not comply with the terms of the settlement, the Commission shall issue an order enforcing the provisions of the settlement on the consequences of non-compliance as provided in Section 4.43.

## Article IX. Decision

**Section 4.48. *Before rendition of decision.*** — At any time before the case is submitted for decision, the Commission may perform such acts or issue orders to aid in the expeditious and judicious resolution of the case, such as:

- (a) Conduct a clarificatory hearing for the purpose of ascertaining facts, issues, and other matters necessary and relevant to the resolution of the case;
- (b) Require the submission of additional documents;
- (c) Issue an order requiring the Respondent or the Enforcement Office, or both, to: (1) answer in writing any clarificatory question; (2) submit a position paper on any issue; (3) appear before the Commission to make an oral presentation on any issue; or (4) submit a memorandum summarizing the facts, issues, and arguments, provided that no evidence which has not been previously submitted or presented to the Commission may be attached or referred to; and
- (d) Consult a sector regulator, relevant government agency, as well as agencies from foreign jurisdictions, if appropriate.

**Section 4.49. *Submission for decision.*** — After the filing of the last pleading or the expiration of the period to file the same, or the conduct of the last hearing, as the case may be, the Commission shall issue an order submitting the case for decision.

**Section 4.50. *Rendition of decision.*** — The Commission shall render its decision within sixty (60) days from the time the case is submitted for decision, unless an additional period is warranted.

**Section 4.51. *Partial, several, or separate decision.*** — Upon motion or *motu proprio*, the Commission may render a partial, several, or separate decision at any stage of the proceedings.

**Section 4.52. *Form and content of decision.*** — All decisions of the Commission shall contain a concise statement of its findings, legal basis, the penalties or remedies imposed, and such other appropriate matters.

**Section 4.53. *Publication.*** — The decision shall be published on the PCC website subject to Rule XI.

**Section 4.54. *Motion for reconsideration.*** – A motion for reconsideration of a decision, order, or resolution may be filed pursuant to Rule X.

**Section 4.55. *Finality of decisions and final orders of the Commission.*** – If no appeal or motion for reconsideration is filed within the period fixed in these rules, the decision or final order of the Commission, as the case may be, shall become final.

## **RULE V**

### *Appeal*

**Section 5.1. *Appeals of final orders or decisions of the Commission.*** – Final orders or decisions of the Commission shall be appealable to the Court of Appeals in accordance with the Rules of Court. The appeal shall not stay the final order or decision sought to be reviewed, unless the Court of Appeals shall direct otherwise. In the appeal, the Commission shall be included as a party respondent to the case.

## **RULE VI**

### *Fines, Penalties, and Final Remedies*

#### **Article I. Fines and Penalties**

**Section 6.1. *Administrative fines.*** – After due notice and hearing, the Commission may impose the following schedule of administrative fines on any Entity found by the Commission to have violated Sections 14 or 15 of the Act:

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

Second offense: Fine of not less than one hundred million pesos (P100,000,000.00) but not more than two hundred fifty million pesos (P250,000,000.00); and

Third and succeeding offenses: Fine of not less than one hundred fifty million pesos (P150,000,000.00) but not more than two hundred fifty million pesos (P250,000,000.00).

Any previous finding of violation under Sections 14 or 15 of the Act by the Commission shall be counted for purposes of determining the minimum imposable penalty according to the above schedule.

**Section 6.2. *Relevant turnover.*** –

- (a) The relevant turnover (“Relevant Turnover”) shall be the sales of the Respondent in the Philippines in the Relevant Market/s affected by the violation (“Sales”) for the applicable financial year (“Applicable Financial Year”), after deduction of the output

value-added taxes and excise taxes only: *Provided*, That the taxes to be deducted shall be limited to those directly related to the Respondent's Sales.

Applicable Financial Year shall be the financial year with the highest Sales among the years during which the infringement lasted: *Provided*, That the Applicable Financial Year cannot be earlier than three (3) financial years preceding the date when the violation ended or when the Preliminary Inquiry was commenced, whichever is earlier: *Provided, further*, That financial year shall mean calendar year unless the Respondent has adopted a different accounting period of twelve (12) consecutive months in documents required to be filed before government agencies, or in the Respondent's accounting records.

- (b) Where the geographic scope of an infringement extends beyond the Philippines ("Relevant Geographic Area"), the Commission may, as it deems appropriate, determine Relevant Turnover of each Respondent in the following manner: (1) firstly, assess the total value of the sales of goods or services to which the infringement relates in the Relevant Geographic Area of all Entities which participated in the infringement; (2) secondly, determine the share of the sales of each Entity in that Relevant Geographic Area; and (3) finally, multiply each Respondent's share to the total value of sales in the Philippines of the goods or services to which the infringement relates. The result may be taken as the Relevant Turnover for the purpose of setting the basic fine ("Basic Fine"): *Provided*, That it is not lower than the figure determined under paragraph (a) of this Section.
- (c) The Relevant Turnover as described in paragraphs (a) and (b) of this Section shall be based on figures from pertinent financial documents of the Respondent, including, but not limited to, audited or unaudited financial statements, books of accounts, internal sales reports, and other source documents. Nevertheless, the Relevant Turnover may be determined on the basis of any other information which the Commission regards as relevant and appropriate where, among others:
- (1) The Respondent is suspected of providing incomplete or unreliable information for purposes of computing the Relevant Turnover in the abovementioned financial documents; or
  - (2) The abovementioned financial documents are not available or do not reflect the true scale of the Respondent's activities in the Relevant Market/s.
- (d) Where the Respondent involved is a trade association or professional organization, its Relevant Turnover shall be based on the sum of the Relevant Turnover of each member in the Relevant Market/s. Nevertheless, the Relevant Turnover of the trade association or professional organization may be determined on the basis of any other information which the Commission regards as relevant and appropriate if computing the sum of the Relevant Turnover of each member is impracticable or will require excessive resources. The Relevant Turnover of each member shall be determined in the manner prescribed in the preceding paragraphs under this Section.

**Section 6.3. Computation of the fine.** – Unless otherwise provided in this Section, the Basic Fine shall be up to thirty percent (30%) of the Relevant Turnover of the Respondent, depending on the gravity of the violation, multiplied by the duration of the infringement in years: *Provided*, That a fraction of a year shall be considered as one year.

Where the Respondent does not compete in the Relevant Market/s affected by the violation, the Basic Fine shall be up to twenty percent (20%) of the average of the Basic Fines of the Respondents in the Relevant Market/s, depending on the gravity and duration of the violation.

In assessing the gravity of the violation, the Commission may, in its discretion, consider any of the following, among others:

- (a) Nature of the infringement;
- (b) Combined market share of all Entities involved;
- (c) Geographic scope of the violation;
- (d) In case of violations of Section 14(a) of the Act, implementation of the agreement; and
- (e) Direct or indirect impact and effect of the violation on the Relevant Market/s.

The final fine (“Final Fine”) shall be determined by increasing or decreasing the Basic Fine, on a case-by-case basis, taking into account the relevant factors of the case: *Provided*, That the Final Fine imposed for each offense for each Respondent shall be within the limits provided in Section 6.1.

**Section 6.4. Factors affecting the Final Fine.** –

- (a) **Aggravating factors.** – The Commission may consider the following as aggravating factors, among others:
  - (1) That the Respondent is the leader or instigator of the violation;
  - (2) That the Respondent’s officers, directors, trustees, partners, or employees holding managerial positions are involved in the commission of the violation;
  - (3) That the Respondent is a repeat offender;

A Respondent shall be considered a repeat offender if it was previously found by the Commission to have violated: (i) any Section of the Act or its implementing rules, except Sections 14 or 15 of the Act; or (ii) either Sections 14 or 15 of the Act at least three times.

- (4) That the Respondent engaged in any of the acts under Sections 6.9 to 6.16 of these Rules in the same Investigation or proceedings, unless penalized as an independent offense.
- (b) **Mitigating factors.** – The Commission may consider the following as mitigating factors, among others:
- (1) That the Respondent voluntarily desisted from continuing the infringement: *Provided*, That this factor shall not apply for violations of Sections 14(a) or 14(b) of the Act;
  - (2) That the Respondent took adequate steps during the Investigation or proceeding to comply with the prohibitions under Sections 14 or 15 of the Act; and
  - (3) That the Respondent cooperated with the PCC during the Investigation or proceeding beyond what is required under the Act and its implementing rules.
- (c) **Other relevant factors.** – The amount of fine to be imposed may be adjusted, on a case-by-case basis, to deter the Respondents as well as other Entities from engaging in anti-competitive practices.

**Section 6.5. *Violations involving basic necessities and prime commodities.*** – If the violation involves the trade or movement of basic necessities and prime commodities as defined by Republic Act No. 7581, as amended, the Final Fine imposed by the Commission shall be tripled.

**Section 6.6. *Application to other proceedings.*** – The methodology for the setting of fines provided in the preceding Sections under this Rule may be applied in the determination of the amount to be paid by an Entity in proceedings involving non-adversarial remedies and settlement.

**Section 6.7. *Alternative computation of fines.*** – The Commission may, in its discretion, depart from the general methodology for the setting of the Basic Fine and Final Fine in the interest of substantial justice, equity, or fairness.

**Section 6.8. *Acts of directors, trustees, partners, officers, employees, and agents.*** – For violations of Sections 14 or 15 of the Act, acts committed by directors, trustees, partners, officers, employees, or agents of an Entity are considered acts of the Entity if: (a) they are acting within the scope of their authority or contracted obligation; or (b) their acts are in furtherance of the interests or for the benefit of, or benefitted the Entity.

**Section 6.9. *Failure to notify the Commission of sale, donation, disposition, or any other transfer during adjudication.*** – A Respondent that fails to notify the Commission of any sale, donation, disposition, or any other transfer, whether absolute or otherwise, made during adjudication, of its interest in businesses, shareholdings, business units, assets, or any

other interest related to matters under adjudication shall, after due notice and hearing, be penalized with a fine of not less than fifty thousand pesos (P50,000.00) up to two million pesos (P2,000,000.00).

**Section 6.10. Failure or refusal to comply with a ruling, order, or decision of the Commission.** – An Entity that fails or refuses to comply with a ruling, order, or decision issued by the Commission within the period provided therein shall, after due notice and hearing, pay a penalty of not less than fifty thousand pesos (P50,000.00) up to two million pesos (P2,000,000.00) for each violation. In addition, a similar amount of penalty shall accrue for each day of non-compliance beginning forty-five (45) days from the time that the said ruling, order, or decision was served until the said Entity fully complies.

**Section 6.11. Supply of incorrect or misleading information.** – The Commission may, after due notice and hearing, likewise impose upon any Entity fines of up to one million pesos (P1,000,000.00) where, intentionally or negligently, it supplies incorrect or misleading information in:

- (a) Any document, application, or other paper filed with or submitted to the PCC;
- (b) A request for a Binding Ruling;
- (c) An application for a Consent Order;
- (d) Proceedings relating to a Show Cause Order; or
- (e) Application for modification of any ruling, order, or approval, as the case may be.

Supply of incorrect or misleading information shall mean: (a) providing information that is false, inaccurate, or erroneous; or (2) omitting, concealing, or failing to make known information reasonably likely to be relied upon by the PCC in the performance of its official functions: *Provided*, That such omission, concealment, or failure may mislead, tend to mislead, or otherwise create a false impression on the PCC.

Where the incorrect or misleading information is supplied in written or printed form, supply thereof in any single document shall constitute one violation under this Section.

**Section 6.12. Reprisal or discrimination.** – Any Entity that commits any form of reprisal or discrimination against anyone cooperating or furnishing information, document, or data to the PCC in connection with an Investigation or proceeding being conducted, shall, after due notice and hearing, be penalized with a fine of not less than fifty thousand pesos (P50,000.00) up to two million pesos (P2,000,000.00).

Reprisal or discrimination shall include removal, discharge, demotion, suspension, threats, harassment, or any form of retaliation in the terms and conditions of employment, agency, or engagement, as the case may be.

**Section 6.13. Disclosure, publication, transfer, copying, or dissemination of Confidential Information.** – Unless otherwise allowed under the Act, its implementing rules, or other issuances of the PCC, the direct or indirect disclosure, publication, transfer, copying, or dissemination of the following information shall, after due notice and hearing, be penalized with a fine of not less than one million pesos (P1,000,000.00) but not more than five million pesos (P5,000,000.00):

- (a) Confidential Business Information submitted and duly claimed as confidential by an Entity and determined to be such by the PCC, as well as Confidential Business Information provisionally treated as confidential in accordance with Rule XI; or
- (b) Identity of persons who provide information to the PCC under condition of anonymity.

If the direct or indirect disclosure, publication, transfer, copying, or dissemination involves other forms of Confidential Information, the fine shall be from fifty thousand pesos (P50,000.00) up to two million pesos (P2,000,000.00).

**Section 6.14. Contempt.** – The Commission may punish for contempt any of the following acts committed against or before the Commission, Enforcement Office, or designated case officer:

- (a) Misconduct that seriously interrupts any hearing, session, or proceeding;
- (b) Refusal to be sworn as a witness or to answer questions or to furnish information when lawfully required to do so, at a hearing, proceeding, session, or Investigation; or
- (c) Willful failure or refusal, without just cause, to comply with a summons or subpoena.

Contempt shall, after due notice and hearing, be punished by imprisonment not exceeding thirty (30) days or by a fine not exceeding one hundred thousand pesos (P100,000.00), or both: *Provided*, That when the Entity commits any of the acts under (a) and (b) in the presence of the Commission, the Entity shall be punished summarily.

When the contempt consists in the refusal or omission to do an act which is yet in the power of the Entity to perform, he may be imprisoned by order of the Commission until he performs it.



**Section 6.15. Obstruction.** – The Commission may, after due notice and hearing, impose a fine of not less than fifty thousand pesos (P50,000.00) up to two million pesos (P2,000,000.00) on anyone who commits any of the following acts constituting obstruction of any Investigation or proceedings of the PCC, the implementation of the orders, rulings, or decisions of the PCC, or the enforcement of the Act, its implementing rules, or other competition laws:

- (a) Altering, destroying, suppressing, or concealing papers, records, documents, Electronically Stored Information, other things, or information which relate to any matter relevant to the Investigation or proceeding;
- (b) Disobedience of or resistance to a lawful writ or process of the PCC, other than acts covered by Section 6.14;
- (c) Disobedience of or resistance to any agency, officer, or person vested with authority or deputized by the Commission, while acting within the scope of his authority or engaged in the performance of his official duties;
- (d) Making a motion solely for the purpose of delay or in order to gain undue access to Confidential Information, filing a motion in bad faith, or making a motion that is patently frivolous;
- (e) Knowingly making a false oral statement, other than acts covered by Section 6.11;
- (f) Inviting reliance on any document or information that is false, forged, altered, misleading, or otherwise lacking in authenticity;
- (g) Making, presenting, or submitting any object evidence that is misleading in a material respect; or
- (h) Engaging in any act that interferes with, impedes, degrades, or frustrates, or tends, directly or indirectly, to interfere with, impede, degrade, or frustrate the speedy or orderly administration of the Act, its implementing rules, or other competition laws.

**Section 6.16. Other violations.** – Any other violations not specifically penalized under the relevant provisions of the Act shall be penalized by a fine of not less than fifty thousand pesos (P50,000.00) up to two million pesos (P2,000,000.00).

**Section 6.17. Liability of officers, directors, trustees, and partners.** – Responsible officers, directors, trustees, and partners shall be solidarily liable with the infringing Entity.

**Section 6.18. Solidary liability for violations.** – There shall be solidary liability for violations of the Act, its implementing rules, or other competition laws in any of the following cases:

- (a) Controlling and controlled Entities, for violations committed by the latter;

- (b) Controlling and controlled Entities, for violations committed by the former: *Provided*, That controlled Entities shall be liable only if they benefitted from the controlling Entity's violation or committed acts in furtherance or implementation thereof;
- (c) Infringing Entity and Entities that are under common control with said Infringing Entity: *Provided*, That the other Entity or Entities shall be liable only if they benefitted from the infringing Entity's violation or committed acts in furtherance or implementation thereof; and
- (d) Infringing Entity, and its successors, assignees, or transferees that: (1) control, are controlled by, or are under common control with the infringing Entity; or (2) acquire all or substantially all of the assets of the infringing Entity and continue the latter's business. Any sale, donation, disposition, or any other transfer that renders the infringing Entity incapable of continuing its business or accomplishing the purpose for which the infringing Entity was incorporated shall be considered a sale, donation, disposition, or transfer of substantially all of its assets.

**Section 6.19. Satisfaction of fines imposed on trade associations.** – Fines imposed on trade associations may also be collected from any of its members active in the Relevant Market/s affected by the violation.

**Section 6.20. Satisfaction of fines imposed on professional organizations.** – Fines imposed on professional organizations may also be collected from any of its members who participated in the violation.

**Section 6.21. Criminal penalties.** – An Entity that enters into any anti-competitive agreement as covered by Sections 14(a) and 14(b) under the Act shall, for each and every violation, be penalized by imprisonment of two (2) to seven (7) years, and a fine of not less than fifty million pesos (P50,000,000.00) but not more than two hundred fifty million pesos (P250,000,000.00). The penalty of imprisonment shall be imposed upon the responsible officers, directors, or partners of the Entity.

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

## **Article II. Final Remedies**

**Section 6.22. Purpose of remedies.** – Remedies seek to address anti-competitive conduct or agreements and other competition concerns to the extent reasonably necessary to maintain, enhance, or restore competition in the Relevant Market/s, or to promote public welfare.

The imposition of any remedy shall be without prejudice to the imposition of administrative fines.

**Section 6.23. Behavioral remedy.** — A behavioral remedy is a measure that obliges the Entity concerned to act in a specific way, or to cease or refrain from engaging in specific conduct.

**Section 6.24. Structural remedy.** — A structural remedy is a measure that effectively changes the structure of the market in order to maintain, enhance, or restore the competitive structure thereof.

**Section 6.25. Injunction.** — Injunction is a remedy that orders the Entity to: (a) perform a particular act; or (b) stop or refrain from doing an act or continuing a particular activity or course of action.

**Section 6.26. Disgorgement.** — Disgorgement is a remedy that requires the Entity to disgorge: (a) excess profits; or (b) any other form of benefit or gain reasonably connected to any violation of the Act, its implementing rules, or other competition laws.

**Section 6.27. Divestiture.** — Divestiture is a remedy that requires the Entity to change its structure through partial or full disposal of businesses, shareholdings, business units, or tangible or intangible assets by sale, exchange, or any other means recognized by law.

**Section 6.28. Imposition of divestiture.** — Adjustment or divestiture orders, which are structural remedies, should only be imposed:

- (a) Where there is no equally effective behavioral remedy; or
- (b) Where any equally effective behavioral remedy would be more burdensome for the enterprise concerned than the structural remedy.

**Section 6.29. Changes to structure of the enterprise as it existed before the infringement.** — Changes to the structure of an enterprise as it existed before the infringement was committed would only be proportionate where there is a substantial risk of a lasting or repeated infringement that derives from the very structure of the enterprise.

**Section 6.30. Divestiture process.** — The Commission shall issue a divestiture order (“Divestiture Order”) specifying the period within which to complete the divestiture and directing the Entity to propose a divestiture package (“Divestiture Package”), which shall contain, among others, the businesses, shareholdings, business units, or assets to be divested, and other matters incident or corollary to the divestiture. The Commission shall set out in the Divestiture Order the qualifications of an oversight party (“Oversight Party”) and of a suitable purchaser. The Divestiture Order may provide that in cases where the Entity fails to complete divestiture within the period indicated in the order, businesses, shareholdings, business units, or assets not included in the Divestiture Package shall also be divested.

The Commission shall approve the proposed Divestiture Package if it finds that the same is adequate to enable a buyer to maintain or restore competition. If it finds otherwise, it shall direct the Entity to amend its proposed Divestiture Package.

The businesses, shareholdings, business units, or assets to be divested shall be sold to a suitable purchaser. Prior to completion of the divestiture, the Commission shall approve or appoint an Oversight Party in accordance with Section 6.31.

Failure to comply with the Divestiture Order within the indicated period shall be subject to administrative fines in accordance with Section 6.10. Amendment of the proposed Divestiture Package does not suspend the period for completion of divestiture as indicated in the Divestiture Order, unless the Commission directs otherwise.

**Section 6.31. *Approval or appointment of an Oversight Party.*** – The Commission may approve an Oversight Party nominated by the Entity or appoint one, *motu proprio*. The Oversight Party shall have oversight functions relating to the divestiture and must have the qualifications specified in the Divestiture Order.

**Section 6.32. *Prohibition on reacquisition of divested businesses, shareholdings, business units, or assets.*** – The Entity ordered to divest its businesses, shareholdings, business units, or assets shall be prohibited from subsequently purchasing or acquiring material influence over the same, or any part thereof, or any shareholdings connected thereto, within the period specified by the Commission. The prohibition shall also apply to Entities that are directly or indirectly related to, or are not otherwise independent from the Entity concerned.

## **RULE VII**

### *Enforcement of Decisions and Orders*

**Section 7.1. *Execution of decision or final order.*** – To implement its decision or final order, the Commission shall issue a writ of execution requiring the proper officer, personnel, or sheriff of the Commission, or such other duly deputized officer, to execute the same. A writ of execution shall be effective until fully satisfied.

**Section 7.2. *No stay of execution pending appeal.*** – An appeal shall not stay the execution of the Commission’s decision or order sought to be reviewed, unless otherwise directed by the Court of Appeals.

**Section 7.3. *Return of writ of execution.*** – The officer, personnel, sheriff, or such other duly deputized officer implementing the writ of execution shall submit his return to the Commission immediately after the full satisfaction thereof. In case of partial satisfaction or non-satisfaction, he shall submit periodic reports updating the Commission on the status of the execution until fully satisfied.

## **RULE VIII**

### *Monitoring of Compliance*

**Section 8.1. *Power of the Commission to monitor and ensure compliance.*** – The Commission shall monitor and ensure compliance with its decisions or orders.

The Commission shall adopt effective monitoring mechanisms, including the appointment of compliance monitors, trustees, or external experts.

**Section 8.2. *Compliance report.*** – Where the filing of compliance report is required, the Entity concerned shall file with the Commission, within the period fixed in the decision or order, a verified written report setting forth in detail the manner and form of its compliance with the decision or order. The Entity shall thereafter file with the Commission written reports of compliance as may be further required.

**Section 8.3. *Extension of time to file compliance report.*** – The Commission may, upon motion by the Entity concerned, extend the time within which the required compliance report may be filed. However, a motion for extension or the filing of a report that does not show full compliance shall not relieve the Entity concerned from the obligation to comply with the decision or order.

**Section 8.4. *Publication of compliance report.*** – The Commission may, in its discretion, publish on the PCC website the compliance reports submitted by the Entity concerned, subject to Rule XI.

**Section 8.5. *Effect of non-compliance.*** – If the Entity is proven, after due notice and hearing, to have failed to comply with a decision or order of the Commission, such Entity shall be liable for the administrative fines imposed under Rule VI. This is without prejudice to any other administrative, civil, and criminal liability arising from such non-compliance, as well as the imposition of new measures or conditions for compliance monitoring.

**Section 8.6. *Applicability.*** – This Rule shall apply to the Commission’s decisions, final orders, resolutions, and rulings, as well as interim measures.

## **RULE IX**

### *Motions*

**Section 9.1. *Applicability.*** – This Rule shall apply to proceedings involving adjudication, non-adversarial remedies, and interim measures, unless otherwise provided in these Rules.

**Section 9.2. *Motion.*** – All motions shall be in writing, except those made in the course of a conference or hearing. Written motions shall not be set for hearing and must be served on concerned parties.

A motion shall state the relief sought to be obtained and the grounds upon which it is based, and if required by these Rules or necessary to prove the facts alleged therein, shall be accompanied by supporting affidavits and other evidence.

A motion to amend pleadings, a motion for extension of time to file pleadings, affidavits or any other paper, or a motion for postponement of hearings or proceedings, and any other motions of similar intent shall be prohibited, except those filed due to clearly compelling reasons, in which case such motion must be verified.

**Section 9.3. *Comment or opposition to a motion.*** — A comment or opposition to a motion may be filed within ten (10) days from receipt. The comment or opposition may be accompanied by supporting affidavits and other evidence, and shall specify the relevant date of receipt of the motion.

**Section 9.4. *Resolution of motions.*** — Motions shall be resolved as soon as practicable. Written motions may be resolved without need of a hearing. If a hearing is necessary, a notice shall be issued therefor.

Oral motions made in the course of a conference or hearing shall be resolved immediately, unless additional time is needed to study the merits of the motion.

**Section 9.5. *Motions made in bad faith.*** — A motion made solely for the purpose of delay, is patently frivolous, was done in order to gain undue access to Confidential Information, or was otherwise filed in bad faith, may be basis to hold the movant, his counsel, or both liable for obstruction, in accordance with Rule VI.

## **RULE X**

### *Motion for Reconsideration*

**Section 10.1. *Applicability.*** — This Rule shall apply to proceedings involving adjudication, non-adversarial remedies, and interim measures, unless otherwise provided in these Rules.

**Section 10.2. *Period to file motion for reconsideration.*** — A motion for reconsideration of any decision, order, or ruling may be filed within fifteen (15) days from receipt thereof and must be served on concerned parties.

**Section 10.3. *Grounds for reconsideration.*** — A motion for reconsideration shall only be based on any of the following grounds:

- (a) The evidence on record is insufficient to justify the decision, order, or ruling; or
- (b) The decision, order, or ruling is contrary to law.

**Section 10.4. *Form and content of a motion for reconsideration.*** — The motion shall be in writing, specifically identifying the findings of fact or conclusions of law in the decision, order, or ruling which are not supported by evidence, or which are contrary to law.

**Section 10.5. *Comment or opposition to the motion.*** — A comment or opposition to the motion may be filed within ten (10) days from receipt and shall specify the date of receipt thereof.

**Section 10.6. *Second motion for reconsideration not allowed.*** — A second or subsequent motion for reconsideration shall be prohibited.

**Section 10.7. *Effect of pending motion for reconsideration.*** – A pending motion for reconsideration shall stay the order or decision sought to be reconsidered, unless otherwise provided in these Rules.

## **RULE XI** *Confidentiality*

**Section 11.1. *Confidentiality of Information.*** – Confidential Information shall not be disclosed to any person not authorized to have access thereto.

**Section 11.2. *Confidential Business Information.*** – 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.

**Section 11.3. *Other Confidential Information.*** – The Enforcement Office or the Commission may, *motu proprio*, extend confidential treatment to information other than Confidential Business Information, if such information is not generally known to the public, is subject of reasonable efforts under the circumstances to maintain its secrecy, and the disclosure of such information is prejudicial to, or may compromise or adversely affect any Investigation or proceeding conducted for the enforcement of the Act, its implementing rules, or other competition laws.

**Section 11.4. *Confidentiality of identity.*** – The Enforcement Office and the Commission shall keep confidential the identity of persons providing information under condition of anonymity, unless such confidentiality is expressly waived by the latter. The Enforcement Office and the Commission may, even without request of anonymity, treat as confidential the identity of any persons providing information when necessary for the enforcement of the Act, its implementing rules, or other competition laws.

**Section 11.5. *Procedure for claiming confidential treatment.*** – An Entity that claims confidentiality under Section 11.2 shall, upon the submission of such information to the Commission or Enforcement Office:

- (a) Provide at the time of the submission of the pleading, motion, or any document containing the information it claims as Confidential Business Information, both confidential and non-confidential versions thereof as follows:
  - (1) In the confidential versions of submissions, confidential information must be marked by enclosing it in square brackets or underlining the text; and

- (2) In the non-confidential version of submissions, redactions must be marked by square brackets containing the word "CONFIDENTIAL".
- (b) Specifically identify the information it claims as Confidential Business Information. Blanket claims for confidentiality shall not be accepted; and
- (c) Provide a written statement justifying and substantiating the request for confidential treatment over each piece of information, and the period within which confidentiality is requested.

Failure to comply with the foregoing shall result in the waiver of the Entity's claim for confidentiality.

Confidential Business Information claimed to be confidential in accordance with the foregoing shall be provisionally treated as such until said claim for confidentiality is determined to be unjustified as provided for in Section 11.7 of this Rule. The provisional treatment of confidentiality shall not be construed as an evaluation of the merits of the claim for confidentiality.

**Section 11.6. Confidentiality not a ground for non-submission.** – A claim for confidentiality is not a ground for the non-submission of information. Any Entity that fails or refuses to comply with the Commission's order requiring submission of information on the ground of confidentiality shall be liable for the penalty provided in Rule VI.

**Section 11.7. Notice to disclose.** – Should the Enforcement Office find the claim for confidentiality unjustified, it shall, prior to any disclosure of such information, notify the Entity which claimed confidentiality that the information shall be treated as non-confidential. The Entity concerned may petition the Commission to reverse such determination by the Enforcement Office within five (5) days from notice.

If such determination is made by the Commission, the Entity concerned may file a motion for reconsideration in accordance with Rule X.

**Section 11.8. Disclosure of Confidential Information.** – Notwithstanding Section 11.1, the Commission may disclose Confidential Information in any of the following circumstances:

- (a) When consent is obtained from the Entity claiming confidentiality;
- (b) When disclosure is required by law;
- (c) When disclosure is required by a valid order of a court of competent jurisdiction or pursuant to a lawful writ or process of a government agency;
- (d) When disclosure is based on an agreement with a government agency: *Provided*, That the information shall be treated by the agency as confidential, and used for law enforcement purposes; or



- (e) When necessary for enforcing the Act, its implementing rules, or other competition laws.

**Section 11.9. *Disclosure to government agencies outside the Philippines.*** – Disclosure of Confidential Information to government agencies outside the Philippines shall be made only upon waiver of the Entity claiming confidentiality or pursuant to a cooperation or an information sharing arrangement between the government agencies concerned.

**Section 11.10. *Publication of decisions, orders, and rulings.*** – Prior to the publication on the PCC website of any decision, order, or ruling of the Commission, an Entity may be allowed to request for the redaction of any undisclosed Confidential Business Information contained therein on the ground that they have been previously claimed to be confidential. The Commission however has full discretion to determine what information is confidential.

## **RULE XII**

### *Interim Measures*

**Section 12.1. *Interim measures.*** – The Commission may issue an order against an Entity or Respondent for the temporary cessation of or desistance from the performance of certain acts, the continued performance of which would result in a material and adverse effect on consumers or competition in the Relevant Market/s, or impose such other interim measures to protect the integrity of the investigatory or adjudicatory process, or where there is an urgent need to prevent harm to competition. Such orders or measures are without prejudice to any decision of the Commission which finally disposes of the case on the merits.

**Section 12.2. *Authority to impose interim measures.*** – The Commission may, on its own or upon application by a Respondent or the Enforcement Office, impose interim measures in accordance with this Rule.

**Section 12.3. *Contents of the application.*** – Applications for interim measures shall set forth, among others, the relief sought, the factual and legal grounds for the granting thereof, and supporting evidence. The application shall be verified if filed by a Respondent.

**Section 12.4. *Order to explain.*** – Upon receipt of the application sufficient in form and substance, the Commission shall issue an order against whom the interim measure is sought to explain why the application should not be granted.

The explanation must be written and verified, and may include alternative measures that will address the concerns raised in the application.

**Section 12.5. *Duration of interim measure.*** – An interim measure shall be immediately effective from issuance, unless otherwise ordered by the Commission, and shall remain in effect until expiration of the period indicated in the order, or until the Commission has lifted the same or rendered a decision on the merits.

The filing of a motion for reconsideration, if any, shall not stay the implementation of an interim measure.

**Section 12.6. *Motion to lift the interim measure.*** – A verified motion to lift an interim measure may be filed on the ground that the factual and legal bases for which it was issued no longer exist.

**Section 12.7. *Publication.*** – The order imposing an interim measure may be published on the PCC website, subject to Rule XI.

### **RULE XIII**

#### *Subpoena*

**Section 13.1. *Subpoena ad testificandum and subpoena duces tecum.*** – Subpoena *ad testificandum* is a process that directs the giving of a testimony before the PCC at any Investigation or proceeding.

Subpoena *duces tecum* is a process that directs anyone who may have access to, possession, custody, or control of documents, Electronically Stored Information, other things, or information which relate to any matter relevant to the Investigation or proceeding to submit or make available to the PCC such documents, Electronically Stored Information, or other things for inspection, copying, or reproduction, file written reports or answers to questions, or submit the required information in a specified format such as lists, summaries, or tables.

**Section 13.2. *Contents.*** – The subpoena shall state, among others, the following:

- (a) The purpose for which it is issued;
- (b) Name and address of the Entity or individual to whom the subpoena is directed; and
- (c) The period within which to comply.

In the case of a subpoena *duces tecum*, it shall also contain a reasonable description of the documents, Electronically Stored Information, other things, or other information subject thereof.

**Section 13.3. *Service.*** – Service of a subpoena shall be made in the same manner as service of summons as provided in Section 4.18, except through publication.

**Section 13.4. *Motion to reconsider subpoena.*** – A subpoena may be reconsidered upon motion on the ground that the subject of the subpoena *duces tecum* is not related to a matter relevant to the Investigation or proceeding, or when the person subject of the subpoena *ad testificandum* cannot comply therewith on the ground that doing so would violate a law, issuance, or valid order.

**Section 13.5. *Compliance.*** – Based on compelling reasons, a motion may be filed praying for an alternative date or manner by which to comply with the subpoena, or for a modification of the scope thereof.

The motion shall be considered denied if the same is not resolved within five (5) days from filing.

In complying with a subpoena *duces tecum*, a certification shall be made stating that all the documents, Electronically Stored Information, other things, or information in any other format required by the subpoena and in one’s possession, custody, or control, or to which he has access to, have been made available or submitted, and that there is nothing required in the subpoena that is in one’s possession, custody, or control, or to which he has access to, that has not been made available or submitted.

**Section 13.6. *Period to comply not tolled.*** – In the absence of any resolution directing otherwise, motions filed under Sections 13.4 and 13.5 shall not toll the period for complying with a subpoena.

**Section 13.7. *Failure or refusal to comply with subpoenas.*** – Willful failure or refusal, without just cause, to comply with a subpoena shall constitute contempt in accordance with Rule VI.

**Section 13.8. *Costs.*** – Except for the Enforcement Office, the requesting party shall pay the costs of service and compliance with the subpoena.

## **RULE XIV**

### *Enlistment and Deputization*

**Section 14.1. *Enlistment.*** – The Commission may enlist the aid and support of any private institution, corporation, Entity, or association, in the implementation of the PCC’s powers and functions.

**Section 14.2. *Deputization.*** – The Commission may, in the implementation of the PCC’s powers and functions, deputize enforcement agencies of the government to perform specific acts in representation or on behalf of the PCC, such as the enforcement of its rulings, orders, issuances, resolutions, or decisions. The deputized enforcement agency shall have the authority to perform all acts necessary and proper to carry out the said order.

Nothing in these Rules shall prevent the PCC and the deputized enforcement agencies from directly and fully exercising their respective powers and functions under the law.

**Section 14.3. Contents of the deputization order.** – The deputization order shall, among others, contain the following:

- (a) The enforcement agency being deputized and when practicable, the specific division, bureau, or office within the agency;
- (b) The scope of the deputization, with sufficient information to enable the enforcement agency to effectively carry out the order;
- (c) The period of effectivity of the order; and
- (d) Such other provisions that the Commission deems appropriate and necessary for the effective enforcement of the order.

**Section 14.4. Obstruction.** – Disobedience of or resistance to any deputized enforcement agency or its officers, acting within the scope of their authority under the deputization order, shall be subject to administrative fines under Rule VI.

**Section 14.5. Non-binding effect of service.** – Service of legal processes on the deputized enforcement agency or its officers shall not be considered service on the PCC.

**Section 14.6. Effectivity and termination.** – The deputization order shall become effective immediately upon issuance. Unless sooner terminated or further extended, the deputization is valid for the period stated in the order.

## **RULE XV**

### *Miscellaneous Provisions*

**Section 15.1. Applicability.** – These Rules shall apply to pending Investigations and proceedings, and to those commenced after they take effect. These Rules shall supersede the *Interim Rules on Preliminary Inquiry and Full Administrative Investigation*.

**Section 15.2. Separability.** – If any part or provision of these Rules is declared unconstitutional or illegal, the other parts or provisions shall remain valid.

**Section 15.3. Effectivity.** – These Rules shall take effect fifteen (15) days after publication in two (2) newspapers of general circulation.

Approved this 11<sup>th</sup> day of September 2017 in the City of Pasig, Philippines.

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

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

**(sgd.) STELLA LUZ A. QUIMBO**  
Commissioner

**(sgd.) AMABELLE C. ASUNCION**  
Commissioner