



Codification Project:

Exposure Draft on the Rules on Adjudication



Philippine Competition Commission

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1. GENERAL PROVISION

- 1.1. **Scope.** These Rules shall govern the proceedings before the Commission during adjudication. To the extent practicable and consistent with the 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.
- 1.2. **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 determine the imposition of appropriate penalties and remedies.
- 1.3. **Construction and application of these rules.** These rules shall be liberally applied and construed in order to promote its objective of securing a just and speedy adjudication and disposition of proceedings.

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 Commission may avail themselves of all reasonable means to speedily ascertain the facts of the controversy.

- 1.4. **Liberal application of evidentiary rules.** Technical rules of 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.
- 1.5. **Definitions.** For the purpose of these Rules, the following terms shall have the following meanings:
 - a. **Complaint** refers to the initiatory pleading filed with the Commission charging an Entity for a violation of the notification requirement under Sections 17 and 29 of the PCA, its implementing rules and regulations. The Complaint must be verified.
 - b. **Statement of Objections** refers to the initiatory pleading filed by the CEO with the Commission charging an Entity for any violation of Sections 14 and 15 of the PCA, its implementing rules and regulations. The Statement of Objections must be verified.
 - c. **Petition** refers to the initiatory pleading filed with the Commission charging an entity for any violation of Section 38 of the PCA, its implementing rules and regulations. The Petition must be verified.
- 1.6. **Votes; quorum.** The Commission shall be composed of the Chairperson and four (4) Commissioners. Three (3) members of the Commission shall constitute a quorum and the affirmative vote of three (3) members shall be necessary for the adoption of any matter submitted for its consideration.

2. Commencement of Adjudication

2.1. **Commencement.** Adjudication is commenced upon the filing by the MAO or by the CEO of the appropriate initiatory pleading, as defined in these Rules, with the Commission.

3. Filing

3.1. **Filing defined.** Filing is the act of submitting the pleading, paper, or other document to the Commission.

3.2. **Caption.** The caption sets forth the name of the Adjudication Services Division, the title of the action, and the case number, if already assigned.

The title of the action shall indicate the names of the parties. The parties shall all be named in full in the initiatory pleading; but in subsequent pleadings, should the parties be numerous, it shall be sufficient to indicate the party first named for each side, with an appropriate indication that there are other parties. Their respective participation in the case shall also be indicated.

3.3. **Body.** The initiatory pleading shall identify the Respondents, describe their alleged violations, and contain a summary of the facts, and the relevant factors that would reasonably tend to aggravate liability. All evidence supporting the alleged violations should be attached thereto. Any evidence not attached shall no longer be considered, unless otherwise allowed by the Commission.

The initiatory pleading may also include a recommendation on the impossible fines and remedies which, however, shall not be binding on the Commission.

3.4. **Electronic Filing.** The filing of pleadings, papers and other documents with the Commission shall be made electronically, by email, addressed to _____.

The original pleading, paper or other document electronically filed shall also be physically submitted to the Commission within five (5) days from the date of electronic filing. Such original pleading, paper or other document shall be printed on a 13-inch by 8.5-inch white bond paper and shall be in English. The size of the font shall not be smaller than 12.

Within one (1) business day from submission of the hard copies by registered mail or private courier, Parties must submit via email a scanned copy of the registry receipt or any proof that such document has been submitted by private courier.

3.5. **Exception to Electronic Filing.** Pleadings, papers, and other documents may be filed in person, by registered mail, or private courier, only under the following circumstances:

- a. When the appendices, exhibits, or other documents are not readily amenable to electronic scanning;

- b. When the pleadings, papers, or other documents contain sealed and confidential documents or records; or
- c. When the Commission so allows, for meritorious reasons.

3.6. **Schedule.** Electronic filings shall be made from Monday to Friday, 8:00 am to 5:00 pm, excluding holidays or the suspension of government work as declared by the Office of the President or the local government of Quezon City. Electronic filings received beyond 5:00 pm shall be considered filed or transmitted at 8:00 am of the next business day.

3.7. **Veracity and Completeness of Submissions.** Individuals whose names and signatures appear on pleadings, papers, and documents submitted to the Commission shall be accountable for the veracity and completeness of the submission. They may be held liable under Section 29 (c) of the Act for supplying incorrect or misleading information, without prejudice to other liabilities under applicable laws.

3.8. **When filed.** Electronic filings shall be considered filed on the date they are received by the _____ Division.

The filing shall be acknowledged within a reasonable period of time from receipt.

3.9. **How filed.** Electronic filings shall be in the following form:

- a. **Format.** The file name of all pleadings, papers, and other documents submitted to the Commission 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.

To illustrate:

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".

The e-mail shall have the following format:

To:

From: (Filing party)

Subject: Case Title (if multiple electronic emails, indicate: 1 of x)

(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.

E-mails exceeding the allowable attachment size shall be sent in multiple parts.

- b. *Accessible.* The electronic submission shall be accessible, searchable, free of viruses and malware, and viewable by the Commission.
 - c. *Undertaking.* The electronic submission shall be accompanied by scanned copies of (i) an undertaking to submit the hard copies within five (5) days from electronic filing and (ii) an affidavit certifying that the electronic copies are the complete, accurate and exact copies of the hard copies.
 - d. *Proof of Service.* An Affidavit of service to other parties shall be attached to the pleading pursuant to Section 5.8 or 5.9 of these Rules. (proof of service)
- 3.10. *Effect of non-compliance.* A party that does not comply with any of the above requirements may be subject to the appropriate fines and penalties under Section 29 of the PCA.

4. **Correction, Amendments of Pleadings and Withdrawal of Initiatory Pleadings**

- 4.1. *Correction of Pleadings.* Any party may, upon motion, correct clerical or typographical errors in pleadings at any stage of the proceedings: Provided, that no prejudice is caused thereby to any party.
- 4.2. *Amendments before the service of summons.* Amendments are corrections other than clerical or typographical errors. The Complainant may, upon an ex parte motion, amend the initiatory pleading once, as a matter of right, at any time before summons are served.
- 4.3. *Amendments after service of summons.* After service of summons, any party may amend any pleading, paper or document by motion, only upon leave of the Commission.

The adverse party may file its comment to the motion within five (5) days from receipt of the motion.

- 4.4. *Corrections and Amendments; how made.* A new copy of the entire pleading incorporating the corrections or amendments, which shall be identified by appropriate marks, shall be attached to the motion.

4.5. *Withdrawal of Statement of Objections.* An initiatory pleading may be withdrawn by filing a notice of withdrawal with the Commission at any time before service of the initiatory responsive pleading. Upon such notice being filed, the Commission shall issue an order confirming the withdrawal. Unless otherwise stated in the notice, the withdrawal shall be with prejudice, unless otherwise indicated by the Commission.

5. Service

5.1. *Service.* Service is the act of providing a party with a copy of the pleading, paper, , document, or any other Commission-bound submission, and issuances emanating from the Commission.

5.2. *Pleadings, papers, and documents required to be served and filed.* Every pleading, paper, or other document subsequent to the initiatory pleading, motion, notice, appearance, demand, or similar papers, shall be filed with the Commission through the _____ Division, together with proof of service upon the parties affected.

5.3. *Modes of Service.* Service of pleadings, motions, notices, or documents, except summons, shall be made electronically by e-mail, or such other electronic means as may be authorized by the Commission.

Personal service, or service by registered mail, or private courier may only be availed of when expressly allowed by the Commission, or by these Rules.

5.4. *Electronic Service of Complaints, Pleadings, Orders and Decisions; How made.* Service of submissions electronically by email is done by sending a message to the email address of the party or counsel on file, with the submissions properly attached thereto. Parties or counsel must provide the email addresses where they may be served electronically.

a. *Service on counsel.* If a party has appeared by counsel, service upon such party shall be made upon his or her counsel, unless service upon the party and the party's counsel is ordered by the Commission. Where one counsel appears for several parties, such counsel shall only be entitled to one copy of any paper served. Where several counsels represent the Respondent, service may be made upon the lead counsel, or upon any of them when no lead counsel is indicated.

b. *Service of Commission issuances.* Service of issuances emanating from the Commission shall be issued electronically by email in accordance with the preceding paragraph.

5.5. *Change of email address during pendency of action.* A party who changes his or her email address while the action is pending must file within five (5) calendar days from such change, a notice of change of email address with the Commission. The party shall also, within the same period, serve the notice on all other parties. If a party fails to inform the Commission, or another party of a change of email

address within the period provided, service to the email address on record is considered valid.

- 5.6. ***Service other than electronic service.*** When personal service, or service by registered mail is allowed by the Commission or these Rules, the service shall be made in accordance with the Rules of Court.
- 5.7. ***Presumptive Notice.*** There shall be presumptive notice to a party of a Commission setting if such notice appears on the records to have been electronically mailed at least five (5) days prior to the scheduled date of hearing.
- 5.8. ***Proof of service.*** Proof of service through email shall be made by an affidavit of service executed by the person who sent the email together with a printed proof of transmittal. An electronic copy of the Affidavit of Service and proof of transmittal must be submitted together with the pleading, paper, or document in accordance with Section 3.4 of these Rules, while the hard copy must be filed within the period provided for under the same section.
- 5.9. ***Proof of service other than electronic means.*** 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 the preceding paragraph 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.

- 5.10. ***Completeness of service.*** Electronic service is complete at the time of the electronic transmission of the document, or when an electronic return receipt is available, at the time that the electronic notification of service of the document is sent.

If the party serving the document learns that it did not reach the addressee or person to be served, it shall serve the documents through other means as stated above, and such fact of failure of electronic service shall be alleged and attached in the proof of service.

Electronic service of issuances emanating from the Commission is deemed completed upon transmittal.

6. Summons

- 6.1. ***Commission to issue summons.*** Within fifteen (15) days from the filing of the initiatory pleading, the Commission may order the issuance of the corresponding summons with a copy of the initiatory pleading to the Respondent, or dismiss the initiatory pleading outright for failure to state a violation cognizable by the Commission. Service of summons shall be made within a reasonable time from the issuance of the Commission's order.
- 6.2. ***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;
 - b. An order that the Respondent attach to the verified answer proof of its representative's authority to enter into a settlement agreement, if applicable;
 - c. An order that the Respondent attach to the verified answer proof of its representative's authority to enter into a settlement agreement, if applicable;
 - d. 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; and
 - e. A notice requiring the Respondent to notify the Commission of any impending or consummated 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. Failure to notify, will subject Respondent to appropriate fines under Section 29 of the PCA.

A copy of the Complaint and its supporting evidence shall be attached to the summons, subject to the rules on confidentiality. 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.

- 6.3. ***Validity of summons and issuance of alias summons.*** Summons shall remain valid until duly served unless it is recalled by the Commission. In case of loss or destruction of summons, the court may, upon motion, issue an alias summons.
- 6.4. ***By whom served.*** The summons shall be served by the officer designated by the Commission.
- 6.5. ***Priorities in the mode of service of summons.*** Service of summons shall be made in the following order of priority:
- a. By personal service;
 - b. Substituted service;

- c. Service by registered mail or private courier;
- d. Publication.

6.6. *Service of summons.* Service of summons shall be made as follows:

- a. *To individuals.* Whenever practicable, the summons shall be served by handing a copy thereof to the Respondent in person and informing the Respondent that he or she is being served, or, if he or she refuses to receive and sign for it, by leaving the summons within the view and in the presence of the Respondent.
- b. *Substituted service.* If, for justifiable causes, the Respondent cannot be served personally after at least three (3) attempts on two (2) separate dates, service may be effected:
 - i. By leaving copies of the summons at the Respondent's residence with a person at least eighteen (18) years of age and of sufficient discretion residing therein;
 - ii. By leaving copies of the summons at the Respondent's office or regular place of business with some competent person in charge thereof. A competent person includes, but is not limited to, one who customarily receives correspondences for the Respondent;
 - iii. By leaving copies of the summons, if refused entry upon making his or her authority and purpose known, with any of the officers of the homeowners' association or condominium corporation, or its chief security officer in charge of the community or the building where the Respondent may be found; and
 - iv. By sending an electronic mail to the Respondent's electronic mail address, if allowed by the Commission.
- c. *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 Rule.
- d. *To foreign private juridical Entities.* When the Respondent is a foreign private juridical entity which has transacted or is doing business in the Philippines, as defined by law, service may be made on its resident agent designated in accordance with the law for that purpose, or, if there be no such agent, on the government official designated by law to that effect, or on any of its officers, agents, directors or trustees within the Philippines.

If the foreign private juridical entity is not registered in the Philippines, or has no resident agent but has transacted or is doing business in it, as defined by law, such service may, with leave of the Commission, be effected outside of the Philippines through any of the following means:

- i. By personal service coursed through the appropriate court in the foreign country with the assistance of the Department of Foreign Affairs;
 - ii. By publication once in a newspaper of general circulation in the country where the entity may be found and by serving a copy of the summons and the court order by registered mail at the last known address of the entity;
 - iii. By facsimile;
 - iv. By electronic means with the prescribed proof of service; or
 - v. By such other means as the Commission, in its discretion, may direct.
- e. ***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:
- i. Upon any one of them;
 - ii. Upon the person in charge of the office or place of business maintained in such name;
 - iii. Upon the government official designated in accordance with law for that purpose;
 - iv. Upon any of the Entity's officers or agents within the Philippines;
 - v. Through the appropriate court in the foreign country with the assistance of the Department of Foreign Affairs;
 - vi. 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;
 - vii. By facsimile or any recognized electronic means that could generate proof of service; or
 - viii. 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.
- f. ***To an Entity that is a resident of the Philippines but whose 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

- g. *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.
- h. *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.

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

Should substituted service have been effected, the return shall state:

- a. The impossibility of prompt personal service within a period of thirty (30) calendar days from issue and receipt of summons;
- b. The date and time of the three (3) attempts on at least (2) two separate dates to cause personal service and the details of the inquiries made to locate the defendant residing thereat; and
- c. The name of the person at least eighteen (18) years of age and of sufficient discretion residing thereat; name of competent person in charge of the Respondents' office or regular place of business, or name of the officer of the homeowners' association or condominium corporation or its chief security officer in charge of the community or building where the Respondent may be found.

6.8. ***Proof of Service.*** The proof of service of summons shall be made in the same manner indicated in Section ____.

If summons was served by electronic mail, a printout of said e-mail, with a copy of the summons as served, and the affidavit of the person mailing, shall constitute as proof of service.

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.

6.9. ***Voluntary Appearance.*** The Respondent's voluntary appearance before the Commission shall be equivalent to service of summons for purposes of acquiring jurisdiction over Respondent's person.

6.10. ***Duty of counsel of record.*** Where the summons is improperly served and a lawyer makes a special appearance on behalf of the Respondent to, among others, question the validity of service of summons, the counsel shall be deputized by the Commission to serve summons on his or her client.

6.11. ***Order to effect service.*** Upon determination of the Commission that the address of the parties indicated in the Complaint is incomplete or incorrect, the Commission may direct the MAO or CEO to correct or complete such information within five (5) days from receipt of the order, or it may issue such other order to effect the service of summons.

Failure to serve summons upon a party due to failure by the Complainant to complete or correct the information required by the Commission shall result in the dismissal of the case as against the party not served, without prejudice to refileing.

7. **Verified Answer**

7.1. ***Verified Answer or Comment.*** A verified answer is a pleading in response to a Statement of Objection and Complaint. A verified Comment is a pleading in response to a Petition or Show Cause Order. In both cases, the Respondent shall set forth all its defenses and all supporting evidence. Any evidence not attached shall no longer be considered unless otherwise allowed by the Commission.

7.2. ***Period to file a Verified Answer or Comment.*** The Respondent shall file a verified answer or comment within thirty (30) days, but not more than sixty (60) days from service of summons.

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 more than sixty (60) days from the date of last publication.

7.3. ***Contents of Verified Answer or Comment.*** The verified answer shall contain the following:

- a. Facts or circumstances relevant and necessary to explain why the Respondent should not be held liable for the alleged violation stated in the Complaint or Statement of Objections;
- b. Legal grounds on which such answer is based;
- c. Evidence to support Respondent's claims or arguments;
- d. If applicable, a manifestation of Respondent's willingness to enter into settlement in accordance with Section 9.1 of these Rules; and
- e. Such other matters the Respondent deems necessary to include.

7.4. ***Effect of failure to file a Verified Answer or Comment.*** If the Respondent fails to answer or comment within the time allowed therefore, the Respondent shall be considered to have waived its right to file a Verified Answer or Comment.

Such party shall be entitled to notice of subsequent proceedings, but not to take part in the same, except for Section 9 hereof.

The Commission may render a decision on the evidence submitted.

7.5. ***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.

8. Proceedings After the Filing of a Verified Answer

8.1. ***Further Proceedings.*** Thirty (30) days from receipt of the last verified answer, the Commission, as appropriate, may consider the case submitted for decision and render a decision within sixty (60) days therefrom. Otherwise, the Commission may:

- a. Conduct a hearing;
- b. Require the submission of additional documents;
- c. Issue an order requiring any party to submit a position paper, answer in writing any clarificatory question, appear before the Commission to make an oral presentation on any issue, or 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;

- d. Consult a resource person, sector regulator, relevant government agency, as well as agencies from foreign jurisdictions, if appropriate; or
- e. Enter into settlement proceedings, upon manifestation of the parties and submission of the Settlement Proposal.

Any or all proceedings may be availed of, however, in case of settlement between the parties, the settlement proceedings shall take precedents over all other further proceedings.

Hearings

8.2. **Notice of hearing.** The Commission may issue a notice of hearing directing the parties to:

- a. a) Appear before the presiding Commissioner or the Commission En Banc, as determined by the Commission, at the place and on the date specified therein; and
- b. File a hearing brief which shall contain, among others
 - i. A summary of admitted facts and a proposed stipulation of facts;
 - ii. The factual and legal issues to be tried or resolved; and
 - iii. The list of documents or exhibits as well as the purpose thereof;
 - iv. As far as practicable, any request for the issuance of subpoena duces tecum or ad testificandum.

8.3. **Filing of hearing brief.** The parties shall ensure receipt by the other party as well as by the Commission of the hearing brief at least ten (10) days before the date of the hearing.

Failure of the Respondent to file a hearing brief shall have the same effect as failure to attend the hearing as provided in Section __.

8.4. **Hearing.** At the hearing, 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. Consideration of confidentiality issues or protection of sensitive information;
- d. Propriety of settlement; and
- e. Other matters that may aid in the just and expeditious disposition of the proceeding.

8.5. **Witnesses.** During hearings, unless otherwise allowed by the Commission, only the Commission may propound questions to the parties, or their witnesses, to clarify or ascertain facts, issues, and other matters necessary and relevant to the

resolution of the case. Opposing parties may, however, submit their questions to the Commission for its consideration

8.6. *Conduct via videoconference.* Hearings may be conducted via videoconference as follows:

- a. The Commission shall determine whether to conduct the proceedings by videoconference.
- b. Should the need arise, the Commission shall notify the parties through their authorized representatives that the proceedings, including, but not limited to, preliminary conferences, hearings, and trials, are to be conducted remotely via videoconferencing. The parties shall provide the Commission and the opposing party with contact details for official communication. These contact details shall include a mobile number and an email address.
- c. The Commission shall schedule the proceedings by email. The parties shall be notified of the date and time of the proceedings and shall be provided a link to the videoconference. The email shall also contain the instructions by which the parties are to join the said videoconference, as well as a reminder that hearings shall be recorded by the PCC in accordance with Sec.____. (public hearings; record of proceedings)
- d. All participants must be visible at all times during the proceedings. The parties are reminded that the proceedings shall mirror, as far as practicable, regular Commission proceedings. All participants shall be in appropriate attire and observe proper decorum.
- e. In the event that a witness is required to testify, the party offering said testimony may be required to provide multiple angles supplying a full view of the surroundings of the said witness to prevent coaching. Once the Commission is satisfied that there is no likelihood of coaching, the Commission can administer the oath remotely. Alternatively, an oath taken by an officer authorized to administer oaths present with the witness will suffice. The said officer authorized to administer oaths should not be present in the vicinity of the witness once the witness has begun his/her testimony to prevent coaching.
- f. If, during the proceedings, the Commission issues or promulgates an order or a decision, a copy thereof shall be furnished to the parties by email. Hard copies of any such orders or decisions shall be kept on file as part of the records of the case. Parties may secure certified true copies thereof upon proper request.
- g. The Commission, at its own discretion, may suspend the videoconferencing proceedings when technical or other issues are encountered that would affect the fairness of the proceedings, or based on any other reasonable ground as may be determined by the Commission.

h. The recording of the proceedings shall be stored and filed to form part of the case files.

8.7. ***Submission of documentary evidence.*** Submission by the parties of documentary evidence for presentation, or those at issue during or relating to the videoconferencing hearing, must be received by the Commission at least three (3) days prior to the scheduled videoconferencing hearing.

During the course of a hearing, the Commission may order the submission of additional documentary evidence. Unless otherwise provided, the documentary evidence must be received by the Commission within three (3) days from an order of the Commission requiring such submission.

All parties must be furnished with the copies of such documentary evidence via email. The documentary evidence must be received by the Adjudication Division through the email address adjudication@phcc.gov.ph and be accompanied by proof of service to all parties at the email addresses provided by the receiving parties. The Adjudication Office shall inform the concerned party of the date of receipt.

8.8. ***Presentation of documentary evidence, witnesses, and resource persons during hearings.*** Unless the Commission gives permission to any other person, only the Clerk of the Commission may present the documents on the screen.

8.9. ***Admissibility of Electronic Documents.*** An electronic copy of an original document is admissible to the same extent as an original unless: (1) a genuine question is raised as to the authenticity of the original, or (2) given the circumstances, the Commission finds it unjust or inequitable to admit the electronic copy in lieu of the original.

8.10. ***Extension of hearing.*** Where additional time is needed to complete the hearing, the Commission shall set additional dates for the conduct thereof.

8.11. ***Failure to appear at the hearing.*** Should all Respondent(s) fail to appear at the hearing, the Commission may render a decision based on the records, or allow the Complainant 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.

8.12. ***Hearing order.*** Not later than twenty (20) days from termination of the hearing, a hearing order shall be issued containing the matters taken up at the hearing and the actions taken thereon. The contents of the hearing order shall bind the parties, whether or not they participated in the hearing, and shall control the subsequent course of the proceeding unless modified to prevent manifest injustice. The preliminary conference order shall also direct the CEO and other offices as the

Commission may deem appropriate to comment on the Respondent's settlement proposal within a specified period.

Submission of Position Papers

8.13. ***Submission of position papers.*** Within thirty (30) days from the end of the hearing, or from the issuance of an order if no hearing is conducted, 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.

Resource Persons

8.14. ***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.

8.15. ***Comment to the brief or presentation.*** The Complainant and the Respondent may file a comment to the brief or presentation within twenty (20) days from receipt of the brief or from the date of the presentation, as the case may be, unless a longer period is allowed.

9. Settlement

9.1. ***Settlement;*** How commenced. Settlement shall commence by the filing of a Manifestation for Settlement together with the Verified Answer or Comment.

9.2. ***Settlement after the filing of an Answer or Comment.*** At any time after the lapse of the period to file the Verified Answer or Comment, but before the case is submitted for decision, a respondent may still file a Motion indicating its intention to enter into settlement. The granting of the motion shall be discretionary upon the Commission's determination that such motion is filed under exceptional circumstances, provided that the filing of the motion was not made with intent to delay the proceedings.

9.3. ***Proposal for Settlement.*** The Manifestation or Motion for Settlement shall include the proposal, which shall contain:

- a. A description of the conduct or agreement subject of the Statement of Objections ("Description");
- b. A clear and unequivocal proposal to admit the business conduct or agreement determined to substantially prevent, restrict, or lessen competition. ("Proposal to Admit"). Provided, that admissions made against interest shall not be admissible in criminal proceedings arising from the same act subject of the complaint or Statement of Objections;

- c. The proposed commitments, which shall be complete, unambiguous, and self-executing. The proposals shall be considered self-executing if they are not dependent on the will of a third party. The proposed commitments must include a complete and adequate description of steps or measures which shall be undertaken within a specific timeline by the proponent to ensure the prevention or cessation of the conduct or agreement subject of the proceedings (“Proposed Commitments”);
- d. A clear discussion of how each proposed commitment will resolve the competition concern arising from the business conduct identified in the Order (“Discussion”);
- e. A statement of the amount that the proponent is willing to pay and an explanation justifying the same;
- f. The proposed mandatory compliance reports as well as the identity of the Entity that will submit such reports. The proposal shall contain:
 - i. the proposed mechanism for monitoring the proponent’s compliance with its commitments;
 - ii. details of the contents of the mandatory compliance reports, the frequency of the submission of the reports and the corresponding deadlines for submission; and
 - iii. the procedure for submission of the reports, including, if necessary, a compliance monitor, at the cost of the proponent, to assist the CEO or the MAO when the monitoring of compliance requires extensive analysis or involves significant amount of data (“Compliance Reports”).

The proposal for settlement shall only be attached to the Manifestation or Motion filed with the Commission.

9.4. Action on the Motion. The Commission has full discretion to approve or deny the motion for settlement proposal.

Should the motion be granted, the Commission may adopt the proceedings in Sections 9.5, as it may deem appropriate.

9.5. Action on the Manifestation for Settlement. Upon receipt of the Commission of the Manifestation for Settlement, the Commission shall issue an Order:

- a. Directing the CEO or the MAO to file a comment or opposition to the Manifestation for Settlement within ten (10) days from receipt of the Order; and
- b. Directing all other Respondents, to inform the Commission of their intent to avail of settlement, and to attach their respective Manifestation for Settlement. Should any other respondent(s) submit a Manifestation for Settlement, the Commission shall issue an order requiring the CEO or the MAO to submit its comment or opposition thereto within ten (10) days from receipt of the Order.

9.6. **Decision by the Commission.** Within thirty (30) days from receipt by the Commission of the settlement proposal(s) and the last Comment of the CEO, the Commission may render a decision on the proposal.

Otherwise, The Commission may conduct further proceedings and issue orders as may be necessary to aid in the just and expeditious resolution of the settlement proposal, including, but not limited to the following:

- a. Requiring the submission of additional information by the Respondent;
- b. Undertaking an in-depth market analysis, including developing where appropriate, economic models, quantitative or qualitative indicators or determinants, and examining pertinent variables that could guide the Commission in objectively assessing the effectivity of the proposed commitments and proposing alternative remedies to address the harm to competition and consumers of the Respondent's acts. The Commission may also engage external experts in conducting the in-depth market analysis.
- c. Conducting clarification or consultation hearings;
- d. Requiring the submission of position papers, memoranda or other documents; and
- e. Obtaining public comments and consulting with government agencies as provided in Section 9.7 of these Rules.

Only parties who have submitted a proposal for settlement shall be allowed to participate in the proceedings, which shall be conducted within sixty (60) days from issuance of the Order, unless an additional period is warranted by the Commission.

9.7. **Public Comments and Consultations with Government Agencies.** During the period for conducting further proceedings, the Commission may seek public comments, particularly from relevant stakeholders. The relevant stakeholders are those that are likely to be affected by the Respondent's settlement proposal and shall include, but not be limited to, consumers and competitors of the Respondent. The Commission shall determine the manner of obtaining comments from the public such as through surveys, focus group discussions, and requests for written comments, among others. The Commission shall consult the Respondent regarding the costs relating to the manner of obtaining public comments as well as the information that might be disclosed.

After receipt of the comments and other information, the Commission shall provide a summary of the same to the Respondent to inform it of the general nature of the responses received and the required changes to the Respondent's commitments, if any.

The Commission may also, within the same period, consult sector regulators, relevant government agencies, as well as agencies from foreign jurisdictions.

9.8. **Revised Settlement Proposal.** Until 10 days from the conclusion of the hearing, submission of position paper or other proceeding, the respondent(s) may file a revised settlement proposal taking into consideration the comments of the Commission, if any.

9.9. *Termination of Settlement Proceedings.* Upon termination of further proceedings or submission of revised settlement proposal, as applicable, the Commission shall have fifteen (15) days to render a decision.

Matters discussed during the settlement proceedings shall be confidential and cannot be used by a party against any other party to the case.

9.10. *Effect of denial of proposal for settlement.* The denial by the Commission of the proposal for settlement shall not be construed as a prejudgment on the matters subject thereof.

9.11. *Effect of settlement.* An order approving a settlement shall be final and immediately executory.

Should the Respondent fail or refuse to comply with the decision on the settlement, the Commission shall impose a fine in accordance with Section 29(b) of the Philippine Competition Act.

Should the Commission approve the settlement proposal, any inquiry or investigation for the same or similar conduct or agreement if continued or repeated shall not be barred.

10. Decision

10.1. *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 a notice that the case is submitted for decision.

10.2. *Rendition of decision.* The Commission shall render its decision within sixty (60) days from the time the case is submitted for decision.

10.3. *Notice of Decision.* Once the Commission has rendered a decision in accordance with Section 12.2, it shall issue a Notice informing the parties of the Commission's decision. The Notice shall include the dispositive portion of the case and that the full decision shall be issued within thirty (30) days.

10.4. *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.

10.5. *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.

10.6. *Publication.* The decision shall be published on the PCC website subject to Section __ (confidentiality).

10.7. *Motion for reconsideration.* A motion for reconsideration of a decision, order, or resolution may be filed pursuant to Section 13 of these Rules.

10.8. *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.

11. Enforcement of Decisions and Orders

- 11.1. *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.
- 11.2. *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.
- 11.3. *Return of writ of execution.* The officer, personnel, sheriff, or such other duly deputized officer implementing the writ of execution shall submit the 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.

12. Motions

- 12.1. *Motions.* All motions shall be prohibited, unless allowed by these Rules, or by the Commission for meritorious reasons. Should a prohibited motion 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.

13. Motion for Reconsideration

- 13.1. *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.
- 13.2. *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.
- 13.3. *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.
- 13.4. *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.
- 13.5. *Second motion for reconsideration not allowed.* A second or subsequent motion for reconsideration shall be prohibited.

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

14. Appeal

14.1. *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 Section 43 of 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.

15. Contempt, Obstruction and Other Offenses

Contempt

15.1. *Direct Contempt.* Any person, appearing in person or online, may be summarily adjudged guilty of direct contempt for:

- a. Any misconduct done in the vicinity or in the presence of the Commission or Hearing Commissioner that seriously interrupts any hearing, session, or proceeding; or
- b. Being present at a hearing, session or proceeding:
 - i. refuse to be sworn as a witness;
 - ii. refuse to answer questions; or
 - iii. refuse to furnish information when lawfully required to do so.

15.2. *Indirect Contempt.* Any person committing any of the following acts may, after due notice and hearing, be punished for indirect contempt:

- a. Refusal to furnish information when lawfully required to do so at an Investigation; or
- b. Willful failure or refusal, without just cause, to comply with a summons or subpoena legally issued by the Commission or any of its authorized offices.

15.3. *How indirect contempt is commenced.* Proceedings for indirect contempt shall be commenced by the Commission motu proprio or by the parties through the filing of a Petition.

In case of motu proprio proceedings, the Commission shall issue an Order directing the Respondent to show cause within fifteen (15) days from receipt, why they should not be punished for contempt.

In case of contempt proceedings commenced through a Petition, the party filing shall attach all evidence supporting the charge for indirect contempt. The Petition shall be docketed, heard and decided separately, unless the Commission in its discretion orders the consolidation of the Petition and principal case.

- 15.4. *Summons in Petition for Indirect Contempt.* The Commission shall issue Summons in accordance with Section 6 of these Rules.
- 15.5. *Proceedings for Indirect Contempt via Petition.* Upon receipt of the entity's verified comment or Answer, as the case may be, the Commission may submit the case for decision, and render its decision within sixty (60) days therefrom. Or conduct further proceedings in accordance with Section 8 of these Rules.
- 15.6. *Fines and Penalties.* Contempt shall be punished by imprisonment not exceeding thirty (30) days or by the imposition of a fine not exceeding one hundred thousand pesos (P100,000.00), or both.
- 15.7. *Non-Interruption of Proceedings or Investigations.* Any proceedings for indirect contempt made before the Commission shall not toll or suspend any proceeding or investigation pending before it.
- 15.8. *Withdrawal of Petition for Contempt.* A Petition for Contempt may be withdrawn in accordance with Section 4.5 of these Rules.

Obstruction

- 15.9. *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 29(b) of the PCA;
 - 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 29(c) of the PCA;
 - 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.

Other Offenses

15.10. ***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 Section 6 of the Common Provisions; or
- b. Identity of persons who provide information to the PCC under condition of anonymity.

15.11. 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).

16. Fines, Penalties and Final Remedies

16.1. ***Administrative fines for violations of Sections 14 or 15 of the Act.*** 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.

16.2. ***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).

17. Enlistment and Deputization

17.1. *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.

17.2. *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.

17.3. *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.

17.4. *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 Section 15.9.

17.5. *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.

17.6. *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.

18. Miscellaneous

18.1. *Applicability*. These Rules shall apply to pending cases before the Commission, and to those commenced after they take effect. These Rules shall supersede the 2017 PCC Rules of Procedure and PCC Rules on Merger Procedure.

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

18.3. *Effectivity.* These Rules shall take effect immediately and shall remain in effect until modified or revoked by the Commission, or by applicable laws and/or pertinent regulations

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