



# Codification Project:

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## Exposure Draft on the Rules on Enforcement



**Philippine Competition Commission**

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## 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.

**Section 1.11. Exercise of Investigatory Powers.** - The powers of the Commission to open a preliminary inquiry and review the negative findings of the Enforcement Office are not subject to reconsideration or appeal.

## **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. *Regulatory Agency.*** - A regulatory agency is any government agency expressly vested with jurisdiction to regulate, discipline, sanction, administer, or adjudicate matters affecting substantial rights and interests of private persons

**Section 2.4. *Form and Contents; Verified complaint and Referral from Regulatory Agency.*** – A verified complaint from an interested Entity and a referral from a regulatory agency shall contain the following:

(a) The identity of the Entity complained of. For verified complaints or referrals alleging anti-competitive agreements, a description of Entities involved in the alleged violation will be sufficient.

(b) Acts constituting the violation of the Act, its implementing rules, or other competition laws; and

(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.

For referrals from regulatory agencies, it shall also contain a description of the regulatory function it exercises over the complained entities citing the relevant laws and regulations.

**Section 2.5. *Filing of verified complaints and referral by regulatory agency.*** Filing of verified complaints and referrals by regulatory agency shall be done by filing both electronic and hard copies, in the following manner:

- a. Electronic Filing. - The electronic copies, in PDF or editable word-processing format, shall be filed through e-mail to enforcement@phcc.gov.ph. The file format and required declaration thereof shall follow Section 4.12(a).

Electronic filings shall only be 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.

- b. Filing of hard copies. - The hard copies, one (1) original and one (1) photocopy, shall be submitted no later than five (5) days from the filing of the soft copies.

Upon receipt of the verified complaint or referral via email, the Enforcement Office shall acknowledge receipt thereof and remind the complainant or regulatory agency to submit hard copies within five (5) days from the filing of the soft copies.

The Enforcement Office shall consider the verified complaint or referral filed on the date of actual receipt of the hard copies of the verified complaint or referral.

If after the lapse of fifteen (15) days from receipt of the electronic copy of the verified complaint or referral, the Enforcement Office has not received hard copies thereof, the Enforcement Office shall issue a notice in writing to the complainant or regulatory agency that the verified complaint or referral shall be considered as not filed until the hard copies are submitted.

**Section 2.6. *Complaints under oath with Defective or Lacking Verification Considered Not Filed.*** - A complaint under oath which lacks verification or contains a defective verification as required in Section 1.7 shall be considered as not filed until a proper verification is submitted.

The Enforcement Office shall notify in writing via email the complainant within five (5) days from the receipt of the complaint that the same is considered as not filed for lack of proper verification. Upon receipt of the notice, the complainant may refile the complaint with the proper verification.

Nonetheless, all complaints that are not verified may serve as basis of an initial assessment by the Enforcement Office under Section 2.8.

**Section 2.7 *Action by the Commission on the Verified Complaint or Referral from Regulatory Agency.*** — The Preliminary Inquiry shall commence fifteen (15) 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) sufficiency of the information provided to commence an investigation; (d) non-compliance with Section 2.4 of this Rule in the case of a verified complaint; or (e) absence of reasonable grounds to commence Preliminary Inquiry.

The Complainant or referring agency shall be notified in writing via email of the action of the Commission within fifteen (15) days from the issuance of the pertinent resolution.

**Section 2.8. *Motu Proprio Preliminary Inquiry.*** The Enforcement Office may recommend to the Commission the conduct of a motu proprio Preliminary Inquiry based on its assessment of the complaints, referrals, or reports in Section 2.2, as well as based on its own monitoring and intelligence gathering activities.

The Commission may also, on its own, direct the opening of a Preliminary Inquiry based on its own evaluation of any reported anti-competitive agreement or conduct that has come to its knowledge.

**Section 2.9 *Activities during assessment, monitoring, and intelligence gathering.*** - In conducting its assessment, monitoring, and intelligence gathering activities, the Enforcement Office may conduct surveillance, gather publicly-available information, interview resource persons, and coordinate with government agencies, among others.

**Section 2.10. *Enforcement Advisory Letters.*** Prior to the opening of motu proprio preliminary inquiry, the Enforcement Office may issue an advisory letter informing an entity, individual, industry, sector, group, or association that its particular conduct may raise competition concerns and is being assessed for possible preliminary inquiry.

The concerned entity, individual, industry, sector, group, or association may voluntarily share relevant information with the Enforcement Office that can aid in its assessment and immediately address the agreement or conduct before the opening of an investigation.

The issuance of an Enforcement Advisory Letter shall not preclude the Commission from opening a preliminary inquiry into the same subject matter or into related matters, products, or services.

**Section 2.11 *Resolution Not to Conduct Preliminary Inquiry.*** - The resolution of the Commission not to conduct a preliminary inquiry on a verified complaint or referral shall not be subject to reconsideration or appeal.

The complainant or referring agency may, however, re-file the verified complaint or referral and provide additional information and evidence sufficient to warrant the conduct of a Preliminary Inquiry, unless the agreement or conduct is outside the jurisdiction of the PCC or is barred by the statute of limitations.

If the resolution not to conduct a preliminary inquiry is due to non-compliance with paragraphs (a), (b), (c) and (d) of Section 2.4, the Commission may still direct the Enforcement Office to evaluate the same for assessment under Section 2.8.

**Section 2.12. *Period.*** – The Preliminary Inquiry shall, in all cases, be completed by the Enforcement Office within ninety (90) days from the commencement thereof.

**Section 2.13. Termination of Preliminary Inquiry.** Within 90 days from the commencement of the Preliminary Inquiry, the Enforcement Office shall submit a report of its findings to the Commission and terminate the Preliminary Inquiry by:

- a) terminating the Preliminary Inquiry without prejudice if, based on the facts or information obtained, there are no reasonable grounds to conduct a Full Administrative Investigation; or;
- b) conducting a Full Administrative Investigation.

The Preliminary Inquiry shall be deemed completed upon submission of the report by the Enforcement Office to the Commission

**Section 2.14. Review by the Commission of the Termination of Preliminary Inquiry.** - Within 15 days from receipt of the Preliminary Inquiry Report, the Commission may review whether the decision not to conduct a full administrative investigation is supported by the facts and evidence on record.

Within 30 days from the commencement of the review, the Commission shall issue a resolution to:

- (a) confirm the termination of the preliminary inquiry; or
- (b) direct the Enforcement Office to conduct a full administrative investigation.

**Section 2.15. 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 2.16. 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 2.17. 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 2.18. Termination of Full Administrative Investigation.** – After the Full Administrative Investigation, the Enforcement Office shall, shall submit a report of its findings to the Commission and terminate the Full Administrative Investigation by:



- (a) terminating the Full Administrative Investigation without prejudice to the conduct of another Investigation if the circumstances so warrant; or
- (b) filing a Statement of Objections (“SO”), if it finds sufficient basis, charging the Entity under Full Administrative Investigation for violation of the Act, its implementing rules, or other competition laws;

*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 2.18(a). Termination of Investigation through Settlement or Consent Order.** An Investigation may also be terminated through any of the following:

- a) Issuance by the Commission of a settlement decision under Sections \_\_ ;
- b) Issuance by the Commission of a Consent Order under Section \_\_.

**Section 2.18(b). – Review by the Commission of the Termination of the Full Administrative Investigation.** - Within 15 days from receipt of the Full Administrative Investigation Report, the Commission may review whether the decision to terminate the full administrative investigation without filing an SO is supported by the facts and evidence on record.

Within 30 days from to the commencement of the review, the Commission shall issue a resolution to:

1. confirm the termination of the full administrative investigation; or
2. direct the Enforcement Office to continue the full administrative investigation.

**Section 2.19. 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 2.20. 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 Full Administrative Investigation.

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

**Section 2.21. 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;

(j) Request an entity under investigation for an explanation as to the conduct or agreement subject of the Investigation; and

(k) Exercise such other powers and functions that it may deem necessary and proper for the conduct of the Investigation.

**Section 2.22. 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 2.23. 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 2.24. *Submission of Documents and Information pursuant to Requests and Subpoenas.*** -Submission of documents and information pursuant to Requests and Subpoenas shall be made by submitting both electronic and hard copies, in the following manner:

- (a) Electronic submissions - Electronic submissions may be made through the designated PCC SharePoint Facility or by email to the email address indicated in the Request or Subpoena.
- (b) Hard copy submissions. - One (1) original copy plainly indicated as such shall be submitted within five (5) days from electronic submission, unless a different number of copies is indicated in the Request or Subpoena.

The date of completion of submissions shall be reckoned from the date of actual receipt of the hard copies of the documents and information requested. However, if hard copy submissions were made by registered mail or private courier, the date of completion shall be on the date of deposit as indicated in the registry receipt or acknowledgement receipt by the courier.

**Section 2.25. *Videoconference.*** - The Enforcement Office may conduct interviews, meetings, conferences, and subpoena hearings via videoconference through Microsoft Teams or other suitable platforms. The Enforcement Office will send invitation links to the interviewees and other participants through their respective publicly available or official email address prior to the conduct of the interview or meeting.

**Section 2.26. *Recording of proceedings.*** - Interviews, meetings, conferences, subpoena hearings and other proceedings shall be recorded by the Enforcement Office. The participants shall be informed prior to the start of such proceeding that the same is being recorded.

Interviewees, participants, and their counsel may request to view the recording upon application with and approval of the Enforcement Office. Viewing of the recording shall only be done within the premises of the PCC.

Interviewees, participants and other persons attending the proceedings are strictly prohibited from recording any portion of the proceedings through any means.

**Section 2.27. *Remote administration of oaths.*** - The Enforcement Office may administer oaths remotely via videoconference.

Prior to the videoconference, the witness shall submit through email a scanned copy of a valid government issued ID bearing his/her photograph.

During the videoconference, the administering officer shall perform the following:

1. Ask the witness to present to the camera the government issued ID previously emailed.
2. Take a screenshot of the witness holding the ID viewed in full screen.
3. Require the witness to confirm his or her location by showing his or her geolocation through an application with global positioning satellite (“GPS”) capabilities or by showing the administering officer identifiable landmarks or buildings within the vicinity.
4. Administer the oath to the witness.
5. Take a screenshot of the videoconference clearly showing all attendees.

**Section 2.28. Referral to the Department of Justice.** – At any time after termination of the Preliminary Inquiry, the Enforcement Office may recommend to the Commission the filing of a criminal complaint. If the evidence so warrants, the Commission may direct the filing of a criminal complaint before the Department of Justice for violations of the Act or other competition laws for preliminary investigation.

## **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.*** – The Commission may, in the interest of the public, issue a Show Cause Order as a non-adversarial remedy against any Entity conducting its business, in whole or in part, in a manner that may not be in accord with the provisions of this Act or other competition laws, requiring the said entity or entities to show cause why no order shall issue requiring such entity or entities to cease and desist from continuing with its identified business conduct, or pay the administrative fine therein specified, or readjust its business conduct or practices.

In assessing whether the issuance of a Show Cause Order is in the interest of the public, the Commission may consider, among others, the following factors:

- a. Whether there is sufficient basis that the Entity is conducting its business, in whole or in part, in a manner that may not be in accord with the provisions of this Act or other competition laws; and
- b. Whether there is a need to address the competition concern resulting from the identified business conduct or agreement at the soonest possible time.

**Section 3.11. *How commenced.*** – The Enforcement Office may, after finding that the grounds for issuance of the order are present, terminate the Preliminary Inquiry and recommend to the Commission in the form of a memorandum (“Memorandum”), the issuance of a Show Cause Order.

The Memorandum shall contain the following, as applicable:

- (a) Identity of the Entity complained of;
- (b) Business conduct or agreement constituting the basis for issuance of the order;
- (c) Discussion on how the identified business conduct or agreement may not be in accord with the provisions of this Act, its implementing rules or other competition laws, specifying the particular provision that may have been violated;
- (d) Documents and other evidence in support of the recommendation;
- (e) Description of the public interest involved which would justify the issuance of a Show Cause Order.
- (f) Procedural efficiencies and resource savings, if any, that can be achieved by issuance of the order.

**Section 3.12. *Due Course.*** – Within fifteen (15) days from receipt of the Memorandum, the Commission may, if it finds sufficient basis, issue the Show Cause Order to the Entity. If the Commission disagrees with the recommendation, it may direct the Enforcement Office to continue with the Investigation or order such other measures as may be appropriate for the expeditious and judicious disposition of the proceedings.

**Section 3.13. *Contents of Show Cause Order.*** – The Show Cause Order shall contain a description of the business conduct or agreement complained of, the provision of the Act possibly being violated, 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 a verified Explanation (“Explanation”) in writing within the time fixed by the Commission, which shall not be less than thirty (30) days but not more than sixty (60) days from receipt of the order.

**Section 3.14. *Contents of the Explanation.*** – The verified Explanation shall contain the following:

- (a) Admissions and denials, if any, of the business conduct or agreement described in the Show Cause Order. Denials shall be made with particularity and, whenever

practicable, the Entity subject thereof shall state the substance of the matters supporting its denial;

(b) Facts or circumstances relevant and necessary to explain why no order shall be issued requiring such person or persons to cease and desist from continuing with its identified business conduct, or pay the administrative fine therein specified, or readjust its business conduct or practices;

(c) Legal grounds, as may be applicable, on which such Explanation is based such as :

- (1) Whether the elements constituting violation of the PCA and other competition laws are present;
- (2) Whether the business conduct or agreement is done with a reasonable commercial purpose such as but not limited to phasing out of a product or closure of a business, or as a reasonable commercial response to the market entry or conduct of a competitor;
- (3) Whether the conduct or agreement contributes to improving the production or distribution of goods and services or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefits; and
- (4) Whether acquiring, maintaining and increasing of market share is through legitimate means not substantially preventing, restricting, or lessening competition in the market such as but not limited to having superior skills, rendering superior service, producing or distributing quality products, having business acumen, and the enjoyment and use of protected intellectual property rights; and
- (5) Other procompetitive justifications and efficiencies for the conduct or agreement, as may be applicable.

(d) Affidavits and other evidence, documents, and information to support its claims or arguments;

(e) The express consent, if any, of the entity subject of the show cause proceeding 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 that the Entity deems relevant to include in the Explanation.

**Section 3.15. Offer of Settlement.** – At any time before issuance of the final order, the entity or entities subject of the show cause proceedings may submit an offer to the Commission for voluntary compliance or settlement of the case (“Proposal”) in accordance with Rule III Article IV of these Rules.

**Section 3.16. Further Proceedings.** – After receiving the Explanation or Proposal, the Commission may perform any of the following acts:



- (a) Direct the Enforcement Office, or other offices that it may require, to comment on the Comment or Proposal within the period therein specified;
- (b) Require the submission of additional documents;
- (c) Conduct a Show Cause Conference for the purpose of ascertaining facts, issues and other matters relevant to the proceedings;
- (d) Consult a sector regulator, relevant government agency, as well as agencies from foreign jurisdictions, if appropriate, and other stakeholders affected by the business conduct or Proposal;
- (e) Obtain public comments;
- (f) Undertake 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; and
- (g) Issue orders to aid in the expeditious and judicious termination of the proceedings.

**Section 3.17. *Action by the Commission.*** – The Commission shall resolve the matter within thirty (30) days from receipt of the Explanation, unless an additional period, which shall not be more than sixty (60) days, is warranted.

**Section 3.18. *Rendition of Decision*** – The Commission may, render a decision granting such relief as the records and evidence may warrant and impose the appropriate penalties and remedies.

**Section 3.19. *Notice to complainant or sector regulator*** – If the subject matter of the Show Cause Order is the subject of a verified complaint or a referral from a sector regulator, the Commission shall furnish the complainant or sector regulator, as the case may be, a copy of the Show Cause Order and of the final decision thereon.

**Section 3.20. *Breach of commitments.*** The Commission may assign the Enforcement Office to monitor the entity or entities' compliance with its commitments. If the entity or entities is found to have committed a breach, the Commission shall, after due notice and hearing, impose appropriate sanctions.

**Section 3.21. *Confidential Information.*** The Commission shall handle confidential information in accordance with Rule XI of these Rules.

**Section 3.22. *Prohibited pleadings.*** Only the pleadings required under this Article or by the Commission shall be allowed and will be given consideration.

### Article III. Consent Order

See: <https://www.phcc.gov.ph/wp-content/uploads/2022/08/PCC-Revised-Rules-Consent-Order-Enforcement-30Aug2022.pdf> (Sections 3.16 - 3.33 in the link to be inserted here and renumbered as Sections 3.23 – 3.39)

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### Article IV. Settlements

**Section 3.40. *Proposal for settlement.*** – At any time after the commencement of the Preliminary Inquiry but prior to the rendition by the Commission of a decision in case an SO has already been filed, the Entity concerned may submit a written proposal for settlement which addresses the anti-competitive conduct identified.

All written proposals for settlement shall be submitted to the Enforcement Office for evaluation.

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. Neither shall the pendency of settlement discussions between the Enforcement Office and the proponent suspend the conduct of an Investigation.

**Section 3.41. *Required contents of settlement proposal.*** – In all cases, a settlement proposal shall contain the following minimum requirements:

- a) A clear explanation of how the proposal will fully address the identified competition concern, prevent its recurrence, and deter a similar conduct;
- b) A specific timeline for implementing the proposal and all its components;
- c) Proof of the authority of the proponent's representative to enter into settlement discussions and into a binding settlement agreement on behalf of the representative's principal.

**Section 3.42. *Additional contents of settlement proposal.*** – The proponent may include in its proposal any of the following which will increase the likelihood that the proposal will be endorsed by the Enforcement Office and approved by the Commission:

- a) Admissions of the facts giving rise to the identified competition concern;
- b) Admission of liability for violation of the PCA;
- c) A specific, self-executing and time-bound undertaking to change its business conduct which has been identified to cause competition concerns;
- d) A specific, self-executing and time-bound undertaking to adopt a competition law compliance policy;
- e) A settlement amount that the proponent is willing to pay;
- f) The justification for the settlement amount that the proponent is willing to pay;
- g) A statement regarding its cooperation in the investigation conducted by the Enforcement Office.

**Section 3.43. Factors in evaluating a settlement proposal.** – In evaluating the proposal for settlement, the Commission shall consider, among others, the following:

- a) That the proposal contains an admission of facts giving rise to the competition concern;
- b) That the proposal contains an admission of liability for violation of the PCA; and
- c) That the proposal contains an undertaking to pay a settlement amount.
- d) That the settlement was proposed at the earliest possible opportunity.
- e) The number, nature, and gravity of alleged violations;
- f) Procedural efficiencies and resource savings that can be achieved by a settlement;
- g) Whether the proposed commitments are unambiguous and self-executing;
- h) Whether the approval of the settlement proposal is consistent with the government's industrial policy in the concerned sector;
- i) In all cases, a settlement proposal shall fully address the identified competition concern, prevent its recurrence, and deter a similar concern from arising.

**Section 3.44 Settlements during Investigation; Action by the Enforcement Office.** – If the Enforcement Office agrees to a settlement proposal before it has filed an SO, it shall submit the proposal to the Commission along with a memorandum recommending its approval and the reasons therefor.

If the settlement agreement was arrived at after an SO has been filed, the Enforcement Office and the Respondent shall file a joint motion for approval of the settlement agreement as stated in **Section \_\_\_\_**.

**Section 3.45 Settlements during Adjudication; Action by the Enforcement Office.** – If the Enforcement Office agrees to a settlement proposal after it has filed an SO, the provisions of **Sections \_\_\_\_** shall apply.

**Section 3.46 Notice of action on the proposal for settlement.** – Appropriate notice shall be given to the proponent of the action by the Enforcement Office on its proposal.

No proposal for settlement shall be considered by the Commission without favorable the endorsement of the Enforcement Office.

The proponent may submit another proposal for the Enforcement Office's consideration in case the Enforcement Office does not recommend the previous settlement proposal.

**Section 3.47 Further proceedings.** – At any time after receipt of the settlement proposal and prior to rendering its decision, the Commission may conduct further proceedings and issue orders as may be necessary to aid in the just and expeditious resolution of the matter, including, but not limited to the following:

- a) Requiring the submission of additional information by the proponent;

- 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 proponent's acts. The Commission may also engage external experts in conducting the in-depth market analysis.
- c) Conducting clarificatory 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 x.xx of these Rules.

At its discretion, the Commission may hold hearings at such locations that will be appropriate.

**Section 3.48. *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 proponent's settlement proposal and shall include, but not be limited to, consumers and competitors of the proponent.

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 proponent 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 proponent to inform it of the general nature of the responses received and the required changes to the proponent'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.

**Section 3.49. *Period to Decide*** – The Commission shall decide to approve or reject the Settlement Proposal within thirty (30) days from the submission of the Enforcement Office of the same. Such period may be extended for an additional period of x (x) days if warranted by the complexity of the subject matter involved.

**Section 3.50. *Effect of denial of a joint motion for settlement.*** – The non-approval by the Commission of the settlement proposal shall not be construed as a prejudgment on the matters subject thereof.

**Section 3.51. *Effect of settlement.*** – An order approving a settlement shall be final and immediately executory.

Should the proponent not comply with the terms of the settlement, the Commission shall issue an order enforcing the provisions of the settlement on the consequences of noncompliance.

**Section 3.52. *Termination of settlement discussions due to bad faith.*** – The Enforcement Office has full discretion on whether to entertain a settlement proposal and to set a timeline for settlement discussions.

It may at anytime decide to no longer pursue settlement discussions with the proponent.

**Section 3.53. *Confidential Information.*** The Commission shall handle confidential information in accordance with Rule XI of these Rules.

**Section 3.54. *Breach of commitments.*** The Commission may assign the Enforcement Office to monitor the Applicant's compliance with its commitments in the Settlement Agreement. If the Entity is found to have committed a breach, the Commission shall, after due notice and hearing, impose appropriate sanctions or revoke the grant of the Settlement Agreement.

In case of revocation of the Settlement Agreement, the Commission shall order the opening of an Investigation on the conduct or agreement subject of the Application, in accordance with Rule II of these Rules. The Entity shall not be entitled to the return of any amount paid pursuant to the Application and the Settlement Agreement.

## **Article V. Common Provisions**

**Section 3.55. *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 3.56. *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 3.57. *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 3.58. *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 3.59. *Investigation not suspended.*** – The proceedings under this Rule shall not suspend the conduct of an ongoing Investigation.

**Section 3.60. *Powers of the Enforcement Office.*** – The Enforcement Office may exercise the powers provided in [Section 2.21](#) when appropriate.

## RULE IV

### Leniency

**Section 4.1 *Leniency Program.*** The Leniency Program of the PCC offers the benefit of leniency in the form of immunity from suit or reduction of administrative fines to an entity that was or is a participant in an anti-competitive agreement as defined in Section 14(a) or 14(b) of the Act in exchange for the entity's voluntary disclosure of information regarding such agreement subject to the requirements provided herein.

Immunity from suit includes immunity from administrative and criminal liability arising from Section 14(a) or 14(b) of the Act. Immunity from suit likewise includes immunity from civil actions initiated by the PCC on behalf of affected parties and third parties.

The amount of reduction of administrative fines which the entity shall be eligible for shall be in accordance with the appropriate guidelines and other issuances of the PCC.

**Section 4.2 *Who may apply.*** Any entity who may be liable for a violation under Section 14(a) or 14(b) of the Act may apply with the PCC for leniency.

Any current or former director, officer, trustee, partner, employee, or agent of a juridical entity who may be liable for a violation under Section 14(a) or 14 (b) may apply for leniency independently of their employer, or the corporation, partnership, or juridical entity that they are associated with.

**Section 4.3 *Immunity from suit.*** An entity reporting an anti-competitive activity under Section 14(a) or 14(b) of the Act before a fact-finding or preliminary inquiry has begun shall be eligible for immunity from suit subject to the following conditions:

- (a) At the time the entity comes forward, the PCC has not received information about the activity from any other source. For purposes of these Rules, “any other source” shall mean an entity that has been granted conditional immunity from suit;
- (b) Upon the entity’s discovery of illegal activity, it took prompt and effective action to terminate its participation therein;
- (c) The entity reports the wrongdoing with candor and completeness, and provides full, continuing, and complete cooperation throughout the investigation until the finality of any and all administrative case(s), as well as civil case(s) initiated by the PCC on behalf of affected parties and third parties; and
- (d) The entity did not coerce another to participate or to continue participating in the activity, and clearly was not the leader in, or the originator, of the activity.

Further, an entity that reports the illegal anti-competitive activity under Section 14(a) or 14(b) after the commencement of a fact-finding or preliminary inquiry may, at the discretion of the PCC, still be qualified to avail of the benefit of immunity. In such a case, the entity must comply with all the conditions in this Section and subparagraphs (d) and (e) in Section 4.4 hereof.

Furthermore, an entity that is otherwise ineligible for the benefit of immunity from suit may be considered for the benefit of reduction of administrative fines in accordance with the appropriate guidelines or issuances of the PCC.

**Section 4.4 *Reduction of administrative fines.*** Even after the PCC has received information about an anti-competitive activity under Section 14(a) or 14(b) of the Act or after a fact-finding or preliminary inquiry has begun, the entity may be eligible for exemption, waiver, or gradation of administrative fines that would otherwise have been imposed on it subject to the following conditions:

- (a) The entity is the first to come forward and qualify for reduction of administrative fines, or is the first to qualify when a previous grant of conditional reduction of administrative fines has been revoked;
- (b) Upon the entity’s discovery of an anti-competitive activity under Section 14(a) or 14(b) of the Act, it took prompt and effective action to terminate its participation therein;

- (c) The entity reports the wrongdoing with candor and completeness, and provides full, continuing, and complete cooperation throughout the investigation until the finality of any and all administrative case(s), as well as civil case(s) initiated by the PCC on behalf of affected parties and third parties;
- (d) At the time the entity comes forward, the PCC does not have evidence against the entity that is likely to result in a sustainable conviction for the reported violation under Section 14(a) or 14(b) of the Act; and
- (e) The PCC determines that granting such leniency would not be unfair to others.

**Section 4.5. Procedure.** (a) *Marker.* An entity seeking the benefits of the Leniency Program may request a marker from the PCC at any time prior to the commencement of adjudication on the anti-competitive agreement that it intends to report.

The PCC shall issue a marker to the entity indicating the date and time the request for a marker was made and the description of the anti-competitive agreement reported. A marker is necessary to protect an entity's place in the queue for applicants under the Leniency Program and allows the entity an initial period of thirty (30) days within which to gather and submit information and evidence. The entity may request or may be required to attend a meeting with the PCC in order to discuss the information and evidence that will be required, any extension to the period, and other matters related to the application.

(b) *Submission of information and evidence.* The entity must provide, within the time allowed in the preceding paragraph, information and evidence about the reported anti-competitive agreement, relating in particular to the following:

- i. The entities involved in the alleged anti-competitive agreement;
- ii. The affected product(s) or service(s);
- iii. The affected geographic area(s) or territory (-ies);
- iv. The duration of the alleged anti-competitive agreement;
- v. The reasons why the entity is eligible under the Leniency Program;
- vi. The nature of the alleged anti-competitive agreement; and
- vii. Information on any past leniency applications with the PCC and other competition authorities outside the Philippines in relation to the alleged anti-competitive agreement.

If the entity fails to submit the information and evidence within the allowed period, the succeeding entity in the marker queue that submits the information and evidence in a timely manner shall be considered for the benefit of immunity from suit or reduction of fines, as the case may be.

(c) *Grant of conditional leniency.* Unless an additional period is warranted in consideration of, among others, the complexities of the matter or the voluminous records involved,



within a period of thirty (30) days from the submission by the entity of information and evidence, the PCC shall evaluate the same to determine whether the entity should be granted conditional leniency.

The conditional leniency shall be subject to the entity's continuing, full, and genuine cooperation with the PCC until the finality of any and all administrative, as well as civil case(s) initiated by the PCC. Such cooperation includes, among others, the following:

- i. Providing the PCC candidly and promptly with all relevant information and evidence that come in to the entity's possession or control, or to which the entity has access or gains access;
- (ii) Providing testimony or a sworn statement for the administrative, criminal and/or civil case(s) arising from the reported violation if the PCC, in its discretion, finds such testimony or sworn statement necessary for the case/s. The testimony or sworn statement shall include among others, in so far as it is known to the entity at the time of the submission, a detailed description of the alleged anti-competitive agreement and the activities related thereto, including: the product(s) and/or service(s) concerned; the geographic scope; the duration of the agreement; the specific participation of entities in relation to the anti-competitive agreement; and all relevant explanations in connection with the pieces of evidence provided;
- (iii) Remaining at the disposal of the PCC to reply promptly to any requests that, in the PCC's view, may contribute to the establishment of relevant facts;
- (iv) Making current and, to the extent possible, former directors, trustees, partners, officers, employees, and agents available for meetings and interviews with the PCC;
- (v) Not 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; and
- (vi) Not disclosing the fact of, or any of the contents of the leniency application, unless and to the extent otherwise explicitly authorized by the PCC.

**Section 4.6. Basis for granting of conditional leniency.** If no Investigation on the reported anti-competitive agreement is ongoing, the PCC shall grant conditional leniency if, in its discretion, it determines that: (1) the information or evidence enables the PCC to carry out a targeted investigation on the alleged anti-competitive agreement; or (2) the entity provides the PCC with a sufficient basis for initiating adjudication through the filing of a Statement of Objection as provided under Section 2.18 of these Rules. However, if an **Investigation** is ongoing, the PCC shall grant conditional leniency if, in its discretion, it determines that the information and evidence provided adds significant value to the same.

Within fifteen (15) days from notice of denial of an application for leniency the entity may appeal to the appeals committee to be established by the PCC.

**Section 4.7. *Revocation of the grant of conditional leniency.*** Should the entity that was granted conditional leniency be shown to have violated its obligations or any of the provisions herein, the PCC may revoke the grant of conditional leniency after giving the entity an opportunity to be heard. In case of revocation, any document and information provided by the entity may be used by the PCC as it deems necessary.

Within fifteen (15) days from notice of revocation, the entity may appeal to the appeals committee to be established by the PCC.

**Section 4.8. *Officers, directors, trustees, partners, employees, and agents.*** Officers, directors, trustees, partners, employees, and agents of an entity may apply under the Leniency Program independently of the juridical entity with which they are associated.

Where a juridical entity secures a marker, any and all of its former and current officers, directors, trustees, partners, employees, and agents who, at the time the information and evidence required under Section 4.5(b) are submitted, come forward and cooperate with the PCC, will be considered to have the same marker and may be granted conditional leniency together with the juridical entity.

Where the application made by the juridical entity is abandoned, withdrawn, or is denied, the individual directors, officers, trustees, partners, employees, and agents who came forward at the time the information and evidence under Section 4.5(b) are required to be submitted shall take the place of the juridical entity in the queue and they shall be considered to have applied under the Leniency Program independently of the juridical entity.

Where the grant of conditional leniency of the juridical entity is revoked, the grant of conditional leniency given to the officers, directors, trustees, partners, and employees will not necessarily be revoked, subject to Section 4.7 hereof.

**Section 4.9. *Joint applications.*** Joint applications between or among parties to an anti-competitive agreement shall not be considered under the Leniency Program. *Provided, however,* That, two or more officers, directors, trustees, partners, employees, and/or agents of the same juridical entity that is a participant to an anti-competitive agreement under Section 14(a) or 14(b) of the Act may jointly apply for the benefits of the Leniency Program.

**Section 4.10. *Confidentiality.*** The identity of an entity applying for leniency as well as those who have been granted leniency, conditional or otherwise, shall be confidential and shall not be disclosed by the PCC unless the PCC determines that such entity's sworn

testimony or sworn statement is necessary for the administrative or criminal case(s), or the civil case filed by the PCC before the appropriate courts, in relation to the reported violation.

**Section 4.11. *Effect of denial, withdrawal, or abandonment of the application.*** In cases where the application is denied by the PCC or where the entity notifies the PCC that it will withdraw its application prior to the denial or grant of conditional leniency, any self-incriminating information and documents provided shall not be used against the entity or any of its current and former officers, directors, trustees, partners, employees, and agents who have come forward to the PCC at the time of the or denial or withdrawal of the application. However, nothing shall preclude the PCC from initiating or continuing an investigation on the basis of independently obtained information and documents or from using the same as evidence.

In cases where the application is considered abandoned prior to the denial or grant of conditional leniency and there is no written notification made by the applicant, the documents and information submitted may be used by the PCC as it deems necessary. The application will be considered abandoned if, prior to the denial or grant of conditional leniency: (1) the entity fails to appear at any meeting with the PCC; (2) the entity fails to submit information and evidence as required in Section 4.5(b) hereof; or (3) the applicant fails to cooperate with, or follow the Rules, guidelines, and other issuances of the PCC.

**Section 4.12 *Violations and Penalties.*** (a) *False information.* Nothing in these Rules shall preclude prosecution of entities that report to the PCC false, misleading, or malicious information, data or documents damaging to the business or integrity of an entity. An entity found to have reported false, misleading or malicious information, data, or documents may be subject to a penalty in the form of a fine of not less than the penalty imposed in the Section 29 of the Act reported to have been violated by the entity complained of.

(b) *Reprisal.* Any entity that commits any form of reprisal or discrimination against anyone cooperating or furnishing information, documents, or data to the PCC in connection with an investigation or proceeding being conducted, shall, after due notice and hearing, be subject to a penalty in accordance with **Section \_\_\_** of these Rules.

**Section 4.13. *Computation of administrative fines for subsequent violation.*** An entity that has been granted the benefits, conditional or otherwise, under the Leniency Program shall not be considered to have committed an offense for the purpose of computing the administrative fine for a subsequent violation as provided under **Sections \_\_\_** hereof: *Provided*, That this provision shall not apply to an entity whose benefits under the Leniency Program had been revoked.

## RULE IX

### Monitoring of Compliance

**Section 9.1. *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 following:

- a. Delegation of the monitoring function to any of its operating units;
- b. Appointment of external compliance monitors, trustees, or external experts;
- c. Constitution of a special monitoring team; or
- d. A combination of the any of the above.

The engagement of external compliance monitors, trustees, or external experts to assist in the monitoring of Parties' compliance, as may be directed by the Commission, shall be facilitated by the relevant operating unit. The extent of participation of compliance monitors, trustees, or external experts to the assigned monitor shall be subject to the specific terms of their engagement approved by the Commission.

**Section 9.2. *Compliance report.*** – Where the filing of compliance report is required, unless otherwise required by the Commission, the Entity concerned shall file with the assigned operating unit, 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 assigned operating unit, written reports of compliance as may be further required.

**Section 9.3. *Updating with the Commission.*** - The assigned operating unit shall provide periodic updates to the Commission as necessary, based on the Commission's decisions and orders.

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## RULE XII

### Confidentiality

**Section 12.1. *Confidentiality of Information.*** - Confidential Information shall not be disclosed to any person not authorized to have access thereto.

**Section 12.2. *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 12.3. *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 12.4. *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. However, the claim of anonymity is not available to persons giving testimonies pursuant to subpoenas or other compulsory processes.

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 12.5. *Procedure for claiming confidential treatment of information provided during interviews, meetings, subpoena hearings, conferences.*** – During an interview, meeting, *subpoena* hearing, or conference with the Commission or the Enforcement Office, an Entity that claims confidentiality under Section 12.2 shall:

- (a) Specifically identify the information it claims as Confidential Business Information. Blanket claims for confidentiality shall not be accepted; and
- (b) Justify and substantiate the request for confidential treatment over each piece of information, and the period within which confidentiality is requested.

If the entity is unable to provide the justification during the interview, meeting, subpoena hearing, or conference, it may be given a period not exceeding ten (10) days to submit its written justification.

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 12.7 of this Rule. The provisional treatment of confidentiality shall not be construed as an evaluation of the merits of the claim for confidentiality.

**Section 12.6. Procedure for claiming confidential treatment.** – An Entity that claims confidentiality under Section 12.2 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 12.7. 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 12.8. 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 nonconfidential. 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 \_\_\_\_.

**Section 12.9. *Disclosure of Confidential Information.*** – Notwithstanding Section 12.1, 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 12.10. *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 12.11. *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.

**Section 12.12. *Confidentiality of investigations.*** The Investigations conducted by the Enforcement Office are confidential proceedings.

Should the Complainant or the Regulatory Agency issue a public statement regarding the filing of complaint with the PCC, the PCC may issue a statement, which shall be limited to addressing whether or not such complaint has been received by the Commission.

## RULE XIII

### Interim Measures

**Section 13.1. *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 13.2. 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 13.3. 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 13.4. 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 13.5. 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 13.6. 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 13.7. Publication.** – The order imposing an interim measure may be published on the PCC website, subject to Rule XI.

## RULE XIV

### Subpoena

**Section 14.1. Subpoena ad testificandum and subpoena duces tecum.** – Subpoena *ad testificandum* is a process that directs any person, whether subject of an Investigation or not, to give a testimony before the PCC in an Investigation or proceeding.

Subpoena *duces tecum* is a process that directs any person, whether subject of an Investigation or not, 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.



Subpoenas *ad testificandum* and *duces tecum* may also be issued to persons or government agencies not considered entities within the meaning of the PCA, during an Investigation or proceeding.

**Section 14.2. 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 14.3. Service of Subpoena during Investigation.** –

Service of a subpoena issued by the Enforcement Office to a natural person shall be made or effected through any of the following means:

- (1) by handing a copy thereof to the addressee or their authorized agent in person;
- (2) by leaving a copy at the addressee's principal office or regular place of business with a clerk or some other person in charge thereof;
- (3) by leaving a copy at the addressee's dwelling house or residence with some person of suitable age and discretion residing therein;
- (4) by sending a copy thereof addressed to the addressee in a sealed envelope by registered mail or by private courier to the addressee's principal office or regular place of business; or
- (5) by electronic mail or other electronic means of communication that can generate proof of transmission.

Service of subpoena issued to an entity that is a juridical person shall be made or effected by any of the following means:

- (1) by handing a copy thereof to the addressee's principal office or regular place of business with a clerk or some other person in charge thereof;
- (2) by sending a copy thereof addressed to the addressee in a sealed envelope by registered mail or by private courier to the addressee's principal office or regular place of business; or
- (3) by electronic mail or other electronic means of communication that can generate proof of transmission.

**Section 14.4. Completeness and proof of service.** –

- (a) **Completeness of service.** – Service shall be considered complete when: (i) the subpoena is personally received by the addressee, or its authorized agent; (ii) the subpoena is received by the clerk or some other person in charge thereof at the addressee’s principal office or regular place of business; (iii) the subpoena is received by some person of suitable age and discretion residing at the addressee’s dwelling house or residence; (iv) the subpoena is received by the addressee in a sealed envelope by registered mail at its office or residence address, or after five (5) days from the date the addressee received the first notice of the postmaster, whichever date is earlier; (v) Service by private courier is complete upon actual receipt by the addressee, or after at least two (2) attempts to deliver by the courier service, or upon the expiration of five (5) calendar days after the first attempt to deliver, whichever is earlier; or (vi) in the case of electronic service of subpoenas, service is completed upon transmission.
- (b) **Proof of Service.** – Proof of service of subpoena may consist of a written admission of receipt by the party served, or the official return of the server, containing a full statement of the date, place, and manner of service. The return shall specify the name of the person who received the subpoena, and shall be sworn to when made by a person other than the server of the Commission.

Service by mail to a natural person ~~an individual~~ shall be made by depositing the subpoena in a sealed envelope to the post office or private courier, plainly addressed to the addressee’s principal office or regular place of business with a clerk or some other person in charge thereof. If service by mail to a juridical person ~~an entity~~, it shall be made in the same manner and plainly addressed to the addressee’s principal office or regular place of business. In both cases, there shall be instructions to the postmaster or private courier to return the mail to the sender after ten (10) days, if undelivered.

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.

If the service is by electronic mail, proof thereof shall consist of an affidavit of service executed by the person who sent the email together with a printed proof of transmittal.

**Section 14.5. 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 14.6. 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 14.7. Resolutions on Subpoenas.** Any resolution or order by the Enforcement Office on motions filed under Section 14.5 and 14.6 of the Rules may be appealed to the Commission within five (5) days from receipt of the same.

**Section 14.8. Review of Resolution or Order by the Commission.** The Commission shall review the resolution or order by the Enforcement Office within five (5) days from when the appeal was taken. Should the Commission take no action on the appeal within five (5) days, the appeal shall be considered denied.

The period to comply with the Subpoena shall be tolled if an appeal is timely taken. In the event of the denial of the appeal, the person to whom the Subpoena is addressed shall comply with the Subpoena within the remaining period.

Any decision or order by the Commission on the appeal shall be considered final.

**Section 14.9. 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 14.10. Costs.** — Except for the Enforcement Office, the requesting party shall pay the costs of service and compliance with the subpoena.

## RULE XV

### Enlistment and Deputization

**Section 15.1. 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 15.2. 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 15.3. 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 15.4. 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 15.5. 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 15.6. 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.