

COMPETITION RULES AND COMPLAINT PROCEDURES

Pursuant to the provisions of Section 45 of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act, the Energy Regulatory Commission hereby promulgates the Competition Rules

GENERAL PROVISIONS

Rule 1 - Preamble

Section 45 of the Electric Power Industry Reform Act of 2001 (the **EPIRA**) provides that "no participant in the electricity industry or any other Person may engage in any anti-competitive behaviour including, but not limited to, cross-subsidization, price or market manipulation, or other unfair trade practices detrimental to the encouragement and protection of contestable markets".

For this purpose, the EPIRA and the Implementing Rules and Regulations issued pursuant thereto (the **IRR**) mandate the Energy Regulatory Commission (the **ERC**) to promulgate rules that prohibit anti-competitive behaviour and abuse of market power, and that specify appropriate penalties and remedies therefor.

These Rules are made pursuant to Section 45 of the EPIRA and Rule 11, Section 8 of the IRR.

Rule 2 - Objectives of Competition Rules

The objectives of these Competition Rules are to ensure and promote competition, to encourage market development and customer choice, and to discourage or penalize anti-competitive or discriminatory behaviour and the abuse of market power, in order to further the intent of the EPIRA and to protect the public interest.

Rule 3 – Definitions

Section 1. Definition of terms. In these Competition Rules, unless the contrary intention appears:

"Affiliate", in relation to a Person (the **subject Person**), means any Person who, alone or together with any other Person, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the subject Person. **"Affiliates"** include:

- (a) a subsidiary company and a parent company; and
- (b) subsidiaries, directly or indirectly, of a common parent;

"Agreement" includes an agreement that is (in whole or in part) written or oral;

"Applicant" refers to a Person or entity seeking to obtain a Clearance or Authorization from the ERC;

"Authorization" is a certification issued by the ERC authorizing, the making of an agreement or arrangement, the arriving at an understanding, the giving effect to the provisions thereof, or any acquisition, merger or consolidation by reason of the existence of a public benefit that will be derived therefrom;

"Business Separation Guidelines" means the set of guidelines issued by the ERC pursuant to Rule 10, Section 1 of the IRR;

"Clearance" is a certification issued by the ERC confirming that, the making of an agreement or arrangement, the arriving at an understanding, the giving

effect to the provisions thereof, any acquisition, merger or consolidation is not violative of the Competition Rules;

“Control” means the power to direct or cause the direction of the management policies of a Person by contract, agency or otherwise;

“Document” includes:

- (a) any material on which there is writing or printing;
- (b) any information recorded or stored by means of any tape recorder, computer or other device, and any material subsequently derived from information so recorded or stored;
- (c) any book, map, plan, graph or drawing; and
- (d) any photograph, film, negative, tape or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced;

“ERC” means the Energy Regulatory Commission created pursuant to Section 38 of the EPIRA;

“EPIRA” refers to Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act;

“Give effect to”, in relation to a provision of an agreement, arrangement or understanding, includes:

- (a) do an act or thing in pursuance of or in accordance with that provision;
or
- (b) enforce or purport to enforce that provision;

“Grantee” refers to a Person or entity which has been granted a Clearance or Authorization by the ERC;

“Grid” refers to the high voltage backbone system of interconnected transmission lines, substations and related facilities;

“IRR” refers to the Implementing Rules and Regulations issued pursuant to the EPIRA;

“Isolated Grid” refers to a transmission system or a distribution system which is not connected to a grid;

“Market” means a market in the Philippines in which electricity or other goods or services that are directly or indirectly related to or used in connection with the generation, transmission, distribution or sale of electricity are, or may be, supplied or acquired;

“Person” means a natural or juridical Person including an individual, a corporation, a partnership or an association to which the law grants a juridical Personality, a trustee, a government-owned or government-controlled corporation, a local government unit, an electric cooperative organised pursuant to Presidential Decree No. 269, or an entity of any other kind whatsoever, which has a separate legal Personality, and whether or not that Person is a Philippine National;

“Philippine National” has the meaning given in Section 3(a) of Republic Act No. 7042, otherwise known as the Foreign Investments Act, as amended;

“Price”, in relation to goods or services, includes:

- (a) a charge of any description for those goods or services or a component of any such charge; and
- (b) a discount, allowance, rebate or credit for or in relation to those goods or services or a component of any such discount, allowance, rebate or credit;

“Primary Provision” means:

- (a) Rule 4, Section 1 (anti-competitive agreements, arrangements and understandings and price-fixing), Rule 5, Section 1 (misuse of Market power), Rule 6, Section 1 (anti-competitive acquisitions, mergers, consolidations) Rule 10, Section 6 (failure to comply with a condition to a Clearance or Authorization), or non-compliance with a cease and desist order; or
- (b) a prohibition referred to in Rule 15, Section 1 (prohibitions relating to the installed generating capacity and sourcing of demand); or
- (c) a requirement referred to in Rule 16 (cross-subsidies);

“Provision”, in relation to an arrangement or understanding, means any matter forming part of or relating to the arrangement or understanding;

“Services” includes any rights, benefits or privileges (whether provided, granted or conferred under a contract or otherwise) and includes:

- (a) rights conferred under derivatives, futures contracts, hedge contracts or other financial instruments; and
 - (b) firm and non-firm transmission rights,
- but does not include the performance of work under an employment contract;

“Supply” includes:

- (a) in relation to goods – supply (including re-supply) by way of sale, barter or exchange, donation or lease, lease with an option to purchase and the like; and
- (b) in relation to services – provide, grant or confer.

Terms not otherwise defined in Section 1 hereof, used in these Competition Rules, which are defined in the EPIRA or the IRR have the meaning given to them in the EPIRA or the IRR (as the case may be).

PROHIBITIONS, EXCEPTIONS AND PENALTIES

Rule 4 - Anti-competitive agreements, arrangements and understandings

Section 1. Anti-Competitive agreements. Subject to Rules 8, 9 and 10, a Person shall not:

- (a) make an agreement or arrangement, or arrive at an understanding, if a provision thereof -
 - (i) would have, or would be likely to have, the effect of substantially lessening competition in a Market; or
 - (ii) is a price-fixing provision; or
- (b) give effect to a provision of an agreement, arrangement or understanding entered into after the effectivity of the EPIRA if that provision -
 - (i) has, or is likely to have, the effect of substantially lessening competition in a Market; or
 - (ii) is a price-fixing provision.

Section 2. Price-fixing provision. A **“price-fixing provision”** is a provision that has the effect of fixing, controlling or maintaining the price at which any party to the agreement, arrangement or understanding or any of its Affiliates may supply or acquire, agree, offer or accept an invitation to supply or acquire,

goods or services to a Person who is not a party thereto or who is not an Affiliate of such a party.

Section 3. When Rule not applicable. This Rule does not apply to an agreement, arrangement or understanding between Affiliates for acquisitions, mergers and consolidations, the same being governed by Rule 6 of the Competition Rules.

Section 4. When not a violation of Section 1(a). No violation of Section 1(a) is committed if:

- (a) the agreement is subject to a condition that the relevant provision will not come into force unless and until a Clearance or an Authorization has been granted in accordance with Rules 8, 9 and 10 hereof; and
- (b) an application for the grant of Clearance or Authorization was filed within twenty one (21) days after such agreement is made,

Nothing in this Section prevents the giving effect to such a provision from constituting a violation of Section 1(b).

Section 5. Matters not prohibited. A Person is not prohibited from making or giving effect to a provision of, an agreement or arrangement, where it is comprised of:

- (a) the rules for the wholesale electricity spot market created under Section 30 of the EPIRA; or
- (b) the Philippine Grid Code as amended from time to time with the approval of the ERC; or
- (c) the Philippine Distribution Code as amended from time to time with the approval of the ERC; or
- (d) a Transition Supply Contract that is made in accordance with Section 67 of the EPIRA and approved by the ERC.

Rule 5 - Misuse of market power

Section 1. Prohibition. A Person that has a substantial degree of power in a Market shall not misuse that power. In this Rule, a reference to power is a reference to market power.

Section 2. Degree of power; Factors. Without prejudice to the preceding paragraph, a Person is to be taken to have a substantial degree of power in that Market if:

- (a) an Affiliate of a Person has, or two or more Affiliates of a Person; or
- (b) a Person and its Affiliate, or a Person and two or more of its Affiliates, together, have a substantial degree of power in a Market.

Section 3. Misuse of power; Factors. In determining whether a Person has misused its power in a Market, the following factors, among others, shall be taken into account:

- (a) that Person would have acted in the way it did, whether or not he had a substantial degree of market power; and
- (b) the Person was reasonably justified in using its power in the way it did.

Section 4. Use/Misuse of power; How done. The circumstances in which a Person uses or misuses its power in a Market may include where that Person:

- (a) does an act; or
- (b) refuses to do, or intentionally refrains from doing, an act; or
- (c) makes it known that an act will or will not be done; or

- (d) refuses to do an act, or to offer to do an act, except on a condition or conditions; or
- (e) makes it known that an act will not be done, except on a condition or conditions; or
- (f) makes it known that an act will only be done on a condition or conditions.

Section 5. When Rule not applicable. This Rule shall not apply to the making of an agreement, arrangement, or understanding or the giving effect to a provision thereof where a Clearance or an Authorization has been granted pursuant to Rules 8, 9 and 10.

Rule 6 – Acquisitions, mergers and consolidations

Section 1. Prohibition. Subject to Rules 8, 9 and 10, a Person shall not:

- (a) directly or indirectly acquire shares in the capital stock of a corporation; or
- (b) directly or indirectly acquire assets of a Person; or
- (c) merge with another corporation; or
- (d) consolidate with another corporation to form a new corporation

if the acquisition, merger or consolidation would have, or would be likely to have, the effect of substantially lessening competition in a Market.

Section 2. Meaning of acquisition. A reference to the acquisition of shares in the capital stock of a corporation or assets of a Person shall mean an acquisition, whether alone or jointly with another Person, of any legal or equitable interest in such shares or assets (including by way of succession, purchase, barter or exchange, or donation) but not to include an acquisition by way of a lien or encumbrance only or an acquisition of assets in the ordinary course of business.

Section 3. Acquisition of shares or assets; Merger; Consolidation - when deemed not to have taken place. Where a Person has entered into an agreement for acquisition, merger or consolidation and the agreement is subject to a condition that the provisions relating thereto will not come into force unless and until the Person has been granted a Clearance or an Authorization, the acquisition, merger or consolidation (as the case may be) shall not be regarded as having taken place in pursuance of the agreement until:

- (a) that condition is satisfied or waived; or
- (b) the agreement otherwise ceases to be subject to that condition,

whichever happens first, provided that the Person applied for the grant of such a Clearance or Authorization before the expiration of twenty (21) days after the agreement was entered into.

Rule 7 - Matters not constituting violations of Competition Rules.

The following do not constitute a violation of these Competition Rules:

- (a) anything that is, or is of a similar nature, specifically authorized or required by law or its implementing rules and regulations (IRR). However, if any law or its IRR only provides in general terms for that thing, it may constitute a violation of the Competition Rules;

- (b) anything done in relation to, or any provision of an agreement, arrangement or understanding that relates to, the remuneration, conditions of employment, hours of work or working conditions of employees;
- (c) in the case of an agreement for the sale of a business (whether by the sale of assets or shares or through a merger or consolidation) – any provision of the agreement that is for the reasonable protection of the purchaser in respect of the goodwill of the business;
- (d) the imposition of, or giving effect to, a condition of a license of a patent, a published patent application, a utility model registration, an industrial design registration, a layout-design of integrated circuits registration or a copyright (as those terms are used in RA 8293 or the Intellectual Property Code) to the extent that the condition relates to the subject of the patent, patent application, registration or copyright;
- (e) the inclusion of a provision in an agreement, arrangement or understanding relating to:
 - (i) a registered trademark, service mark or collective mark (as those terms are defined in RA 8293 or the Intellectual Property Code); or
 - (ii) the use of a trademark, service mark or collective mark which is the subject of an application for registration under the Intellectual Property Code,

to the extent that the provision relates to the kinds, qualities or standards of goods or services that may be produced or supplied under the trademark, service mark or collective mark, or the giving effect to the provision to that extent; and
- (f) anything done, not in the course of trade or commerce, in concert by consumers of goods or services against the suppliers of those goods or services.

Rule 8 – Clearances

Section 1. Who may apply. A Person may apply with the ERC for a Clearance when it proposes:

- (a) to make an agreement or arrangement, or arrive at an understanding; or
- (b) to directly or indirectly acquire shares in the capital stock of a corporation; or
- (c) to directly or indirectly acquire assets of a Person; or
- (d) to merge with another corporation; or
- (e) to consolidate with another corporation to form a new corporation.

Section 2. Test for Clearance. The ERC shall grant an application for a Clearance if it determines that the making, or giving effect to any provision, of an agreement, arrangement, or understanding, or an acquisition, merger or consolidation will not, or is not likely to, have the effect of substantially lessening competition in a Market.

Section 3. Inquiries by ERC. In order to assist the ERC in deciding whether or not to grant an application for a Clearance, or if it has granted an application, whether or not to revoke that Clearance, the ERC may, subject to Section 4, consult with such Persons as it considers appropriate.

Section 4. Consultation with third parties. Until a proposed acquisition, merger or consolidation is made public, the ERC may only consult with a Person (other than the Applicant for the Clearance) for the purposes of Section 3 where:

- (a) that Person is an external consultant who is engaged by the ERC for the purpose of advising it on matters relating to the application for Clearance and such external consultant has given a written undertaking to the ERC to keep confidential the information disclosed to it for that purpose; or
- (b) that Person, capable of providing information, producing documents or giving evidence relating to the issue at hand, has been placed under oath and signed an undertaking to keep confidential the information disclosed to it for that purpose;

Section 5. Period of Suspension for Acquisitions, Mergers and Consolidations. Where the ERC has granted an application for a Clearance, the Grantee must not directly or indirectly acquire the relevant shares or assets, or undertake the relevant merger or consolidation, until the expiry of the period ending sixty (60) days after the proposed acquisition, merger or consolidation has been made public; or such shorter period as is permitted by the ERC.

The filing of an application for a Clearance for an acquisition, merger or consolidation does not result in making the said acquisition, merger or consolidation public.

Section 6. Duration of Clearance. A Clearance comes into force on the day it is issued and expires twelve (12) months thereafter or on such later date as the ERC determines.

Section 7. Effect of Clearance. While a Clearance given by the ERC remains in force, the Grantee may make the agreement or arrangement (or bring into force any provision of the agreement); or arrive at the understanding; or acquire shares or assets, merge or consolidate in accordance with the Clearance.

The expiration of the Clearance will not result in the subject of the Clearance becoming anti-competitive unless there is a material change of circumstances since the Clearance was issued.

Rule 9 – Authorization

Section 1. Who may apply. A Person may apply to the ERC for an Authorization:

- (a) to make an agreement or arrangement, or to arrive at an understanding, where a provision thereof –
 - (i) would have, or might have, the effect of substantially lessening competition in a market ; or
 - (ii) is, or might be, a price-fixing provision; or
- (b) to give effect to a provision of an agreement, arrangement or understanding where the provision -
 - (i) has, or might have, the effect of substantially lessening competition in a market; or
 - (ii) is, or might be, a price-fixing provision.

A Person may also apply to the ERC for an Authorization:

- (a) To acquire shares in the capital stock of a corporation; or
- (b) To acquire assets of a Person; or
- (c) To merge with another corporation; or
- (d) To consolidate with another corporation to form a new corporation,

where the acquisition, merger or consolidation would have, or might have, the effect of substantially lessening competition in a Market.

Section 2. Extent of application. An application made to the ERC for an Authorization in relation to a particular agreement, arrangement or understanding may be expressed to be made also in relation to:

- (a) another agreement, arrangement or understanding that is or will be; or
- (b) two or more other agreements, arrangements or understandings that are or will be,

in similar terms to the first-mentioned agreement, arrangement or understanding.

Section 3. Notice of application. Upon receipt of an application for an Authorization, the ERC:

- (a) must publish notice of the application in at least two newspapers of general circulation; and
- (b) may separately give notice of the application to any Person who, in the ERC's opinion, is likely to have an interest in the application.

The notice must specify the parties to the application, the nature and salient features of the application, manner in which, and the time by which, any comments in relation to the application must be made to the ERC.

Section 4. Test for Authorization. The ERC shall grant an application for an Authorization if it determines that making of the agreement, arrangement or understanding, the giving effect to the provisions thereof, the acquisition, merger or consolidation the subject of the application, will in the circumstances result, or be likely to result, in a benefit to the public which would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, from it.

For these purposes, the ERC shall take into account:

- (a) all of the provisions of the relevant agreement, arrangement or understanding; and
- (b) the provisions of any other agreement, arrangement or understanding where a party to that other agreement, arrangement or understanding is –
 - (i) a party to the relevant agreement, arrangement or understanding; or
 - (ii) an Affiliate of a Person, who is a party to the relevant agreement, arrangement or understanding.

Section 5. Public benefit. In determining what constitutes a benefit to the public, the ERC must regard as a benefit to the public:

- (a) any efficiencies that the ERC considers will result, or will be likely to result to the extent that those efficiencies will benefit the public; and

- (b) improved reliability of service by, reduction of costs of, and compliance with any performance standards prescribed in the IRR by that Distribution Utility, where one or more of the parties to the agreement, arrangement or understanding is a Distribution Utility or an Affiliate of a Distribution Utility or where it involves an acquisition of shares in or assets of, or where one of the corporations being merged or consolidated is, a Distribution Utility or its Affiliate.

Nothing in this Section limits in any way the other matters that the ERC may regard as a benefit for the public for the purpose of Section 4 hereof. Such matters may include enhanced economic development, increased economic efficiency, more efficient resource allocation, growth in employment, improvements in the quality and safety of goods or services, more choices for the consumer, and contained or lower prices to consumers.

Section 6. Hearing. Before deciding an application for an Authorization, the ERC may hold a hearing in relation to the application, in which case that hearing must be conducted in such manner, and in accordance with such rules, as may be determined by the ERC.

Section 7. Relief from ERC prior to its decision. Where a Person has applied for an Authorization to give effect to a provision of an agreement, arrangement or understanding, and the same was made or arrived at prior to the date on which the application for Authorization was made, the ERC may permit that Person to give effect to that provision before that application has been decided upon, if the ERC determines that the Person would, or would be likely to, suffer irreparable loss/damage if it were not able to give effect to that provision.

Section 8. Authorization to give effect to a provision. The ERC may grant an Authorization to a Person to give effect to a provision of an agreement, arrangement or understanding even though the provision has been given effect before the ERC decides the application for that Authorization.

Except when Section 7 hereof so permits, nothing in this Section prevents the giving effect to such a provision before an Authorization was granted in respect of it, from constituting a violation of these Competition Rules.

Section 9. Extent of decision. An Authorization may be granted subject to such conditions as the ERC considers appropriate and shall be effective on the day specified therein. Said Authorization expires twelve (12) months after the date on which it is granted or on such later date as the ERC determines.

Section 10. Effect of Authorization. While an Authorization granted by the ERC remains in force, the Grantee may:

- (a) make the agreement or arrangement (or bring into force any provision of the agreement which is the subject of a condition under Rule 4, Section 4) or arrive at the understanding the subject of the Authorization in accordance therewith; or
- (b) give effect in accordance with the Authorization to any provision of the agreement or arrangement so made or of the understanding so arrived at; or
- (c) give effect to the provision of the agreement, arrangement or understanding the subject of the Authorization in accordance with the Authorization; or
- (d) acquire shares or assets, or undertake the relevant merger or consolidation, in accordance with the Authorization.

The subsequent expiration of the Authorization will not result in the subject of the Authorization from becoming anti-competitive unless there are material changes in circumstances from the time the Authorization was issued.

An Authorization which is granted by the ERC to a particular Person:

- (a) has effect as if it were also an Authorization in the same terms to every other Person named or referred to in the application for the Authorization as a party to the agreement, arrangement or understanding; and
- (b) may be expressed so as to apply to or in relation to another Person who -
 - i. in the case of an Authorization to make an agreement or arrangement or to arrive at an understanding - becomes a party to the proposed agreement, arrangement or understanding at a time after it is made or arrived at; and
 - ii. in the case of an Authorization to give effect to a provision of an agreement, arrangement or understanding - becomes a party to the agreement, arrangement or understanding at a time after the Authorization is granted.

Section 11. Extent of Authorization. Where an application for an Authorization in relation to a particular agreement, arrangement or understanding is expressed, to be made also in relation to another agreement, arrangement or understanding, the ERC may grant:

- (a) a single Authorization in respect of all the agreements, arrangements or understandings; or
- (b) separate Authorizations in respect of any one or more of the agreements, arrangements or understandings.

Rule 10-- Provisions Common to applications for Clearances and Authorizations

Section 1. Form. An application for the grant of a Clearance or Authorization must be made in writing and under oath and must contain such particulars as are required for that purpose by the ERC.

Section 2. Additional requirements. The Applicant:

- (a) shall provide to the ERC, within such time as the ERC may specify, such documents and information as the ERC may require for the purpose of deciding whether or not to grant the application; and
- (b) must pay to the ERC, or the consultants, the costs of such external consultants as the ERC engages for the purpose of advising it on matters relating to the applications.

The ERC must inform the Applicant of the name and estimated cost of any external consultant which it proposes to engage under paragraph (b) before it engages the services of such consultant. Notwithstanding that the ERC may engage external consultants for the purpose of advising it on matters relating to the application, the ERC must act on its own independent consideration of the facts and applicable laws and rules.

Section 3. Withdrawal of application. An Applicant may, at any time before its application is decided upon by the ERC, withdraw the application by notice in writing to the ERC, provided however, that the application fee shall not be subject to refund.

Section 4. Prohibition. Subject to Rule 4, Section 5, unless an Applicant has withdrawn its application, the Applicant shall not make, or give effect to the provision of the agreement or arrangement, or understanding, the subject of the application, until that application has been decided by the ERC.

Unless an Applicant has withdrawn its application, the Applicant shall not acquire the shares or assets, or undertake the merger or consolidation, the subject of the application, until that application has been decided by the ERC.

Section 5. Clearance or Authorization- when should not be granted. No Clearance or Authorization shall issue if the agreement, arrangement has been made or arrangement arrived at, or the acquisition, merger or consolidation has been made, before the ERC decides the application for that Clearance or Authorization.

Section 6. Undertaking. In giving a Clearance or Authorization for the acquisition of shares or assets, mergers or consolidations, the ERC may accept a written undertaking given by the Applicant to dispose of shares or assets specified in the undertaking, in which case the undertaking is deemed to be a condition of the Clearance or Authorization.

Section 7. Form of decision. The ERC's decision on an application for a Clearance or Authorization shall be in writing and set out the various issues involved, the factual findings and the legal reasons for the decision made.

Section 8. Grounds/Procedure for revocation or amendment. If, at any time after granting a Clearance or Authorization, it appears to the ERC that:

- (a) the Clearance or Authorization was given on the basis of information that was, when given, false, or misleading, or incomplete in a material particular; or
- (b) a condition to which the Authorization is subject has not been complied with; or
- (c) there has been a material change of circumstances since the application was granted as a result of which, if an application were made to the ERC after that change of circumstances, the ERC would not have granted such Clearance or Authorization,

then the ERC shall, by written notice given to any Person who, in the opinion of the ERC, is likely to have an interest in the matter, inform that Person and indicate the basis on which it is considering revoking or amending the Clearance or Authorization.

The ERC shall likewise invite that Person to make comments in relation to the revocation or amendment of the Clearance or Authorization within a period specified by the ERC.

Section 9. Form of decision on a revocation or amendment. A decision by the ERC to revoke or amend, or not to revoke or amend a Clearance or Authorization, must be in writing and must set out the various issues involved, the factual findings and the legal reasons for the decision made.

Section 10. Violations. The following constitute violations of these Competition Rules:

- (a) a failure to comply with any condition to which a Clearance or Authorization has been granted under this Rule is subject; and
- (b) knowingly providing information to the ERC that is false or misleading or incomplete in a material particular where such information is provided in relation to the application.

Section 11. Penalties. If the ERC determines that a Person has committed a violation of knowingly providing information to the ERC that is false or misleading or incomplete in a material particular, or has violated Section 4 hereof or Rule 8, Section 6, the ERC may, in accordance with the Complaint Procedures, make all or any of the following orders:

- (a) an order requiring the Person to pay to the ERC a fine or penalty of not more than Five Million Pesos (P5,000,000.00); and
- (b) in the case of a violation of Section 4 - an order requiring the Person to do, or not to do, an act or thing specified in that order until the ERC has determined whether or not the conduct is anti-competitive.

Rule 11– Penalties

Section 1. Violations. The ERC may, in accordance with the Complaint Procedure, make such order or orders against a Person as it considers appropriate (including all or any of the orders mentioned in Section 2), if the ERC determines that such Person:

- (a) has violated a Primary Provision; or
- (b) has aided, abetted, counselled or procured a Person to violate a Primary Provision; or
- (c) has profited, or assisted another to profit, from a violation of a Primary Provision; or
- (d) has forced or induced, or attempted to force or induce, a Person (whether by threats or promises or otherwise) to violate a Primary Provision; or
- (e) has in any way knowingly and intentionally cooperated in the violation of a Primary Provision; or
- (f) has conspired with others to violate a Primary Provision,

Section 2. Orders that may be made by ERC. The orders referred to in Section 1 are:

- (a) an order requiring the Person to stop engaging in the conduct that constitutes the violation;
- (b) an order requiring the Person to do any act or thing to rectify the violation or to remedy or mitigate the consequences of the violation including -
 - i. an order requiring the Person to vary an agreement, arrangement or understanding within such time and in such manner as is specified in the order;
 - ii. an order requiring the Person not to enforce an agreement, arrangement or understanding or such provisions thereof as are specified in the order;
 - iii. an order requiring the Person to refund money or return property;
 - iv. an order requiring the Person not to carry on a particular business or not to undertake particular operations;
- (c) an order requiring the Person to pay to the ERC a fine or penalty of not less than Fifty Thousand Pesos (PhP50,000.00) and not more than Fifty Million Pesos (PhP 50,000,000.00);

- (d) an order requiring the Person to pay to the ERC an amount not exceeding the ERC's estimation of the amount of any monetary, financial or economic benefits acquired by the Person, or accrued or accruing to the Person, as a result of the violation;
- (e) where the Person is an electric power industry participant, an order requiring the separation of the business activities of that Person into different juridical entities;
- (f) an order fixing or controlling the price at which the Person may supply or acquire electricity or goods or services that are directly or indirectly related to or used in connection with the generation, transmission, distribution or sale of electricity;
- (g) an order revoking or modifying a certificate of public convenience and/or necessity, license or permit granted to the Person;
- (h) an order requiring the Person to dispose of assets or shares in the capital stock of a corporation within such period (not exceeding 12 months from the date of the order) as is determined by the ERC.

Section 3. Factors in making orders. In determining the appropriate order or orders, the ERC shall, among others, consider the following:

- (a) the nature and extent of the violation and of any loss or damage suffered by any Person as a result of the violation;
- (b) the nature and extent of any commercial gain arising from the violation;
- (c) the effect or likely effect of the violation on competition in any Market;
- (d) the circumstances in which the violation took place;
- (e) whether the Person has previously violated a Primary Provision in similar circumstances;
- (f) if the conduct constituting the violation also constitutes a violation of another Primary Provision or of another law, the order or orders made by the ERC, any other agency or body or a court as a result of the second-mentioned violation;
- (g) the conduct of the Person since the violation occurred; and
- (h) where the Person is a corporation, whether the corporation exercised due diligence to prevent the violation.

Section 4. Cease and Desist Order. If the ERC has reason to believe that a Person is likely or about to commit the acts prohibited under Section 1 hereof, the ERC may, in accordance with the Complaint Procedure, make an order requiring that Person not to engage in that conduct. Such order expires on the date specified in the order and may be revoked by a subsequent order of the ERC.

In case of non-compliance with the above order, where the ERC determines that the Person has violated such order, the ERC may, in accordance with the Complaint Procedure, make an order requiring the Person to pay a fine or penalty of not more than Five Million Pesos (PhP5,000,000.00.)

Section 5. Prerequisites for Cease and Desist Order. The ERC must not make an order requiring a Person not to engage in conduct under Section 4 unless it determines that the prejudice that is likely to be suffered by that Person, or any other Person, as a result of the order is outweighed by:

- (a) the loss or damage that is likely to be suffered by any Person; and
- (b) the detriment that is likely to be caused to competition in any Market,

if the order is not made and the conduct that would be the subject of the order is engaged in.

Rule 12 – Conduct by directors, trustees, officers, employees or agents

Section 1. Intent, act of a corporation. To establish the intent of a corporation in relation to conduct engaged in by that corporation, it is sufficient to show that a director, trustee, officer, employee or agent of the corporation, being a director, trustee, officer, employee or agent by whom the conduct was engaged in within the scope of the Person's actual or apparent authority, had that intent.

Any conduct engaged in on behalf of a corporation:

- (a) by a director, trustee, officer, employee or agent of the corporation within the scope of the Person's actual or apparent authority; or
- (b) by any other Person at the direction or with the consent or agreement (whether express or implied) of a director, trustee, officer, employee or agent of the corporation, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, trustee, officer, employee or agent,

is deemed to have been engaged in also by the corporation.

Section 2. Intent, act of a Person other than a corporation. To establish the intent of a Person (other than a corporation) in relation to conduct engaged in by that Person, it is sufficient to show that an employee or agent of the Person, being an employee or agent by whom the conduct was engaged in within the scope of the employee's or agent's actual or apparent authority, had that intent.

Any conduct engaged in on behalf of a Person (other than a corporation):

- (a) by an employee or agent of the Person within the scope of the actual or apparent authority of the employee or agent; or
- (b) by any other Person at the direction or with the consent or agreement (whether express or implied) of an employee or agent of the first-mentioned Person, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent,

is deemed to have been engaged in also by the first-mentioned Person.

Rule 13 - Information gathering

Section 1. Power to gather information. If the ERC has reason to believe that a Person is capable of providing information, producing documents or giving evidence relating to a matter that constitutes, or may constitute, a violation of these Competition Rules, the ERC may, by written notice, require the Person:

- (a) to provide that information in writing to the ERC, signed under oath by that Person or the authorized officer of that corporation, within the time and in the manner specified in the notice; or
- (b) to produce those documents to the ERC in accordance with the notice; or
- (c) to appear before the ERC at a time and place specified in the notice to give that evidence.

Section 2. Form of notice. A notice under Section 1:

- (a) must indicate the nature of the violation or possible violation which the ERC believes the information, documents or evidence relates to; and
- (b) where the notice requires the production of documents, may identify those documents specifically or by description or by reference to a category within which those documents fall.

Section 3. Prohibitions. A Person must not:

- (a) refuse or fail to comply with a notice given by the ERC under Section 1 to the extent the Person is capable of complying with it unless that Person has a lawful excuse for that refusal or failure; or
- (b) in purported compliance with such a notice, knowingly provide information or give evidence that is false or misleading; or
- (c) destroy or otherwise dispose of, conceal or alter or falsify documents that are required to be produced pursuant to such a notice or cause or permit such destruction, disposal, concealment, alteration or falsification; or
- (d) refuse or fail to be sworn or affirmed or refuse or fail to answer a question where that Person appears before the ERC or when required to do so unless that Person has a lawful excuse for that refusal or failure.

If the ERC determines that a Person has violated any of the above prohibitions, the ERC may, after due notice and hearing, make an order requiring the Person to pay to the ERC a fine or penalty of not more than Five Million Pesos (PhP5,000,000.00).

Rule 14 - Disclosure of Information and Confidentiality

Section 1. Matters that may be disclosed. Subject to Section 4, the ERC may disclose to any Person all or any of the contents of:

- (a) any application for a Clearance or Authorization, including any document or information submitted in relation thereto; or
- (b) any comments that are made to the ERC in relation to an application referred to in paragraph (a) or that are made to the ERC in relation to the grounds/procedure for revocation or amendment of a Clearance or Authorization.

Section 2. Matters that must be made available to the public. Subject to Section 4, the ERC must make available to the public, in such manner as it considers appropriate:

- (a) copies of all decisions granting an application for a Clearance or an Authorization, or revoking or amending (or deciding not to revoke or amend) a Clearance or Authorization; and
- (b) details of all undertakings accepted by it under Rule 10, Section 6.

Section 3. Confidential matters that may be disclosed. Subject to Section 4, if any contents of any application, document, information or comments are confidential, the ERC may nevertheless disclose those contents in a decision made under these Competition Rules, or in its reasons for that decision, where the ERC considers that the disclosure is necessary to enable the decision, and the reasons for it, to be properly understood.

Section 4. When consent of Applicant is required. Subject to Section 5, until the time (if any) at which the relevant acquisition, merger or consolidation is made public, the ERC must not disclose to any Person the contents of -

- (i) any application for a Clearance or any document or information submitted in relation thereto; or
- (ii) any comments that are made to the ERC in relation to the revocation or amendment of a Clearance;

except to the extent the Person who made or provided the relevant application, document, information, comments or undertaking consents to that disclosure.

Section 5. Disclosure to consultant. Nothing in this Rule precludes the ERC from disclosing the contents of any application, document, information or comments to an external consultant who is engaged by the ERC for the purpose of advising it on those matters, providing that such external consultant has first given a written undertaking to the ERC to keep those contents confidential.

RELATED PROHIBITIONS

Rule 15 – Entitlement to installed generating capacity and sourcing of demand

Section 1. Prohibitions. To promote true market competition and prevent harmful monopoly and market power abuse:

- (a) Section 45(a) of the EPIRA and Rule 11, Section 4 of the IRR (subject to certain exceptions) prohibit a company, related group or IPP administrator, singly or in combination, from owning, operating or controlling more than -
 - i. 30% of the installed generating capacity of a grid (as defined therein or otherwise determined pursuant thereto); or
 - ii. 25% of the national installed generating capacity;
- (b) Section 45(b) of the EPIRA and Rule 11, Section 5(b) of the IRR (subject to certain exceptions) prohibit a distribution utility from sourcing from bilateral power supply contracts more than 50% of its total demand from an associated firm engaged in generation; and
- (c) Section 45(c) of the EPIRA and Rule 11, Section 6 of the IRR prohibit a distribution utility, for the first 5 years from the establishment of the wholesale electricity spot market, from sourcing more than 90% of its total demand from bilateral power supply contracts.

Section 2. Bilateral power supply contract. For the purposes of the prohibitions referred to in Section 1(b) and (c):

- (a) a bilateral power supply contract is a contract for the physical supply of electricity and, does not include a financial derivative contract or a contract for the sale of electricity from a distribution utility to a Person who requires the supply and delivery of that electricity for its own consumption;
- (b) the total demand of a distribution utility is determined for each trading interval and is the aggregate of the gross ex-post settlement quantities of electricity for all customer nodes for which the distribution utility is financially responsible as a customer under the WESM Rules; and

- (c) the quantities of electricity which are sourced by a distribution utility from a bilateral power supply contract will be the quantities of electricity, expressed in MWh, which are purchased by the distribution utility pursuant to that bilateral power supply contract in each trading interval.

For the purposes of paragraphs (b) and (c), words which are defined in the WESM Rules have the same meaning in those paragraphs.

Section 3. Isolated grid. In relation to Section 1, an isolated grid is a transmission system or a distribution system which is not connected to a grid and:

- (a) In relation to Section 1(a), the generating capacity of a generation facility that is connected to an isolated grid will not be included in calculating the installed generating capacity of a grid, the national installed generating capacity or the percentage of such capacity that is owned, operated or controlled by a company, related group or IPP administrator;
- (b) In relation to Section 1(b), such part of the demand of a distribution utility which is sourced from a generation facility that is connected to an isolated grid will not be included in calculating either the total demand of that distribution utility or the percentage of that total demand which is sourced from any associated firms engaged in generation; and
- (c) In relation to Section 1(c), such part of the demand of a distribution utility which is sourced from a generation facility that is connected to an isolated grid will not be included in calculating either the total demand of that distribution utility or the percentage of that total demand which is sourced from bilateral power supply contracts.

Rule 16 – Cross-subsidies

Section 5.3 of the Business Separation Guideline:

- (a) requires TRANSCO (or its buyer or concessionaire) and distribution utilities to ensure that the only costs that are included in the prices charged by them for the provision of regulated services are costs which are properly allocated to those services; and
- (b) requires TRANSCO (or its buyer or concessionaire) and distribution utilities to ensure that, subject to certain exceptions set out in that section 5.3, the assets comprising the networks operated by them are not encumbered.

The requirements referred to above are deemed to be incorporated in these Competition Rules as if they were set out in full herein, and a violation of any of these requirements is a violation of these Competition Rules.

Rule 17 – Reportorial requirements

Section 1. Power of ERC to require information. The ERC may, from time to time and by written notice, require a Person to provide it with information relating to that Person's compliance with a condition of a Clearance or Authorization given or granted hereof or with an order made by the ERC under these Competition Rules, and that Person must comply with that request within such reasonable time as the ERC specifies in that notice. The list of reportorial requirements shall be contained in a separate and accurate document to be issued by the ERC which will be updated annually.

Section 2. Requirements for the Market Operator. In order to enable the ERC to monitor potential anti-competitive behaviour, the market operator shall file its calculation of the market monitoring indices specified in the schedule in accordance with the document issued by the ERC.

Section 3. Penalties. If the ERC determines that a Person has violated any of the above Sections on the reportorial requirements, the ERC may, after due notice and hearing, make an order requiring the Person to pay to the ERC a fine or penalty of not more than Five Million Pesos (PhP5,000,000.00).

Rule 18 – Amendment

Subject to the provisions of any other applicable law:

- (a) these Competition Rules may be amended from time to time by the ERC; and
- (b) any amendment thereto takes effect 15 days after its publication in a newspaper of general circulation in the Philippines.

Rule 19 – Interpretation and Application

Section 1. Interpretation. In these Competition Rules, unless the contrary intention appears:

- (a) the singular includes the plural and conversely;
- (b) where a term is defined, its other grammatical forms have a corresponding meaning;
- (c) a reference to any law or the rules and regulations issued implementing such a law or to any particular provision of a law or of any rules and regulations issued implementing such a law is taken to include any modification, consolidation, amendment, re-enactment, replacement or codification of the law, rules and regulations, or provisions; and
- (d) mentioning anything after include, includes or including does not limit what else might be included.

Section 2. Market. A Market includes one in which goods or services, and other goods or services that are substitutable for, or otherwise competitive with, the first-mentioned goods or services, are or may be supplied or acquired.

Section 3. Substitution and competition. The substitutability of, or competitiveness between, goods or services shall be determined depending on the nature of those goods or services, the geographic area over which they are substitutable for or competitive with each other, the nature of the suppliers and buyers of those goods or services, and any future changes thereto.

Section 4. Lessening of competition. Lessening of competition includes preventing, restricting or hindering competition.

Section 5. Substantial lessening of competition in a Market. In determining whether a provision of an agreement, arrangement or understanding, or an acquisition, merger or consolidation, has or is likely to have, or would have, or would be likely to have, the effect of substantially lessening competition in a Market, the following factors, among others, shall be taken into account:

- (a) the level of concentration in the Market;
- (b) the nature and effect of barriers to entry to the Market;

- (c) the degree of countervailing power in the Market;
- (d) the dynamic characteristics of the Market, including growth, innovation and product differentiation;
- (e) the nature and extent of vertical integration in the Market; and the behaviour of competitors in the Market.

Section 6. Provisions which substantially lessen competition in a Market.

For purposes of applying Rule 4, Section 1(a)(i) or 1(b)(i) hereof, a provision of an agreement, arrangement or understanding is deemed to have, or be likely to have, the effect of substantially lessening competition in a Market if that provision and any one or more of the following provisions, namely:

- (a) the other provisions of that agreement, arrangement or understanding; and
- (b) the provisions of any other agreement, arrangement or understanding to which that Person or any Affiliate of that Person is a party, together have, or are likely to have, that effect.

Section 7. For purposes of Rule 4, Section 2, “**goods or services**” are goods or services (including electricity) that are directly or indirectly related to or used in connection with the generation, transmission, distribution or sale of electricity.

Without prejudice to the first paragraph, a provision is deemed to have the effect of fixing, controlling or maintaining a price in respect of goods or services if it:

- (a) states the price of those goods or services; or
- (b) specifies the price of those goods or services by reference to a price specified by another Person in respect of those goods or services or of goods or services of a like description; or
- (c) specifies or refers to a set form, method or formula by which or by reference to which the price of those goods or services is to be calculated; or
- (d) specifies the price of those goods or services by reference to a set form, method or formula specified by another Person in respect of those goods or services or of goods or services of a like description; or
- (e) specifies the price in respect of those goods or services by reference to a price range, a maximum amount that the price is not to exceed or a minimum amount that the price is not to be below.

Section 8. In determining the degree of power that a Person has in a Market, the conduct of the following must be considered:

- (a) competitors, or potential competitors, of that Person or any of those Persons in that Market; or
- (b) Persons to whom or from whom that Person, any of those Persons or any of their Affiliates supply or acquire goods or services in that Market.

Section 9. Extraterritorial application. These Competition Rules extend to things done, or omitted or refused to be done, outside the Philippines to the extent that the doing of, or the omitting or refusing to do, those things affects a Market. Without limiting the foregoing, Rule 6 extends to:

- (a) the acquisition outside the Philippines of shares or assets, whether or not such shares are shares in the capital stock of a corporation that is a Philippine National or such assets are assets of a Philippine National;

- (b) the merger outside the Philippines of two or more corporations, whether or not any of those corporations is a Philippine National; and
- (c) the consolidation outside the Philippines of two or more corporations to form a new corporation, whether or not any of those corporations is a Philippine National or the new corporation is a Philippine National, to the extent that the acquisition affects a Market.

COMPLAINT PROCEDURES

GENERAL PROVISIONS

Rule 1 – Preamble

These Complaint Procedures are made pursuant to Section 45 of the EPIRA and Rule 11, Section 7(e) of the IRR.

Rule 2 – Objectives of Complaint Procedures

The objectives of these Complaint Procedures are:

- (a) to prescribe the manner in which the ERC will investigate possible violations of the Competition Rules; and
- (b) to ensure that adjudicative proceedings before the ERC are conducted expeditiously in accordance with the requirements of due process and, with as little formality and technicality, as possible.

Rule 3 – Scope

Part II of these Complaint Procedures governs the procedures of the ERC in relation to the investigation of matters that may constitute a violation of the Competition Rules.

Part III of these Complaint Procedures governs the procedures that apply in relation to the prosecution by the ERC of alleged violations of the Competition Rules, adjudicative proceedings before the ERC pertaining to matters arising under the Competition Rules and the determination of those proceedings.

Part IV of these Complaint Procedures contains various miscellaneous provisions.

Rule 4 – Definitions

In these Complaint Procedure Rules, unless the contrary intention appears:

“Commission”, in relation to a Complaint, means the Members constituting a quorum and acting for the purpose of dealing with matters arising out of or in connection with that Complaint;

“Custodian”, in relation to the investigation of a matter that may constitute a violation of the Competition Rules, means a member of the Investigatory Unit who is designated by the Investigating Officer as the Custodian for that matter;

“Investigating Officer” means a director (or of equivalent rank) of the ERC, designated as the Investigating Officer by the Chairman and responsible for investigating and prosecuting alleged violations of the Competition Rules and for taking action to prevent apprehended violations of the Competition Rules;

“Investigatory Unit” means those ERC staff (including employees and consultants) whose functions include the investigation and prosecution of alleged violations of the Competition Rules and the taking of action to prevent apprehended violations of the Competition Rules, in each case under the supervision of the Investigating Officer;

"Member" means any member of the ERC (such member being commonly referred to as a "commissioner"), including the Chairman;

"Party", in relation to proceedings relating to a Complaint, means the Investigating Officer or his authorized representative and the Respondent who is served with the Complaint,;

"Pleading" means a Complaint or an Answer;

"Registrar" means the head of the Docket Section of the ERC;

"Respondent" means a Person who is served with a Complaint that alleges that Person to have violated the Competition Rules;

"Subpoena" means a notice under Rule 11, Section 1 of the Competition Rules;

and terms, not otherwise defined in Section 1, which are used in these Complaint Procedures and defined in the EPIRA or the IRR have the meaning given to them in the EPIRA or the IRR (as the case may be).

INVESTIGATIONS

Rule 5 – Initiation of investigations

Section 1. Investigation, who may initiate. The ERC may initiate an investigation into matters that may constitute a violation of the Competition Rules. Such an investigation may be commenced by the ERC upon its own initiative or upon the request of a governmental agency or official, an electric power industry participant, or any other Person.

Section 2. Form of request. Any request for investigation shall be in writing and signed under oath by the Person making the request.

Rule 6 – Conduct of investigations

Section 1. Powers delegated to the Investigating Officer. The Investigating Officer is responsible for investigating matters that may constitute a violation of the Competition Rules. For this purpose:

- (a) the information-gathering powers of the ERC under Rule 13 of the Competition Rules have been delegated by the ERC (on a non-exclusive basis) to the Investigating Officer; and
- (b) the Investigatory Unit has been established to investigate, under the supervision of the Investigating Officer, matters that may constitute a violation of the Competition Rules.

Section 2. Form and Content of the Subpoena. A Subpoena shall be signed by the Investigating Officer or his duly authorized representative. It shall identify:

- (a) the Investigating Officer or a member of the Investigatory Unit before whom the relevant evidence is to be given; and
- (b) the Custodian to whom any relevant information or documents are to be provided or produced and by whom the transcript of any relevant evidence is to be kept.

Section 3. Oral evidence. Where a Person is required to appear before the Investigating Officer or a member of the Investigatory Unit to give evidence, the latter shall:

- (a) put that Person under oath or affirmation; and

- (b) exclude from the place where the testimony is to be taken all Persons except the Person giving the evidence, that Person's counsel, the Person before whom the evidence is to be taken, the Person who is recording the testimony, any members of the Investigatory Unit who are involved in the matter and any legal advisers retained to assist the ERC in connection with the matter.

Section 4. Right to counsel. Any Person who is required to appear before the Investigating Officer or a member of the Investigatory Unit to give evidence may be represented by counsel.

Section 5. Refusal, failure to be sworn/affirmed or answer. If a Person who appears before the Investigating Officer or a member of the Investigatory Unit:

- (a) refuses or fails to be sworn or affirmed; or
- (b) refuses or fails to answer a question when required to do so,

that Person (or that Person's counsel) shall state for the record the reason for that refusal or failure.

Section 6. Objection to a question. A Person or his counsel who appears before the Investigating Officer or a member of the Investigatory Unit may object on the record to any question, in whole or in part, and shall state for the record the reason for that objection. The Investigating Officer or member of the Investigatory Unit has no power to rule on the objection but the question objected to must be answered. Any such objection shall be ruled upon by the Commission in its first hearing of the matter subsequent to the objection. If the Commission upholds the objection, the question objected to and its answer shall be expunged from the transcript, otherwise the question and its answer shall remain on the record.

Section 7. Record of testimony. Testimony given by a Person who appears before the Investigating Officer or a member of the Investigatory Unit shall be stenographically recorded by the official stenographer of the ERC and the transcript of stenographic notes shall be part of the records and the sole official transcript of the testimony.

Section 8. Furnishing copies. The Investigating Officer or member of the Investigatory Unit must provide a copy of the transcript (upon the payment of reasonable charges for the transcription) to the Person giving the testimony or his counsel.

Rule 7 – Custodian and confidentiality of material

Section 1. Duties of Custodian. The Custodian is responsible for the safekeeping of such written information, documents including extracts from documents and transcripts of testimony as are delivered to the Custodian.

The Custodian shall not provide or disclose to any Person, or copy, any written information, documents or transcripts of testimony in relation to that matter which have been delivered to the Custodian as described in the preceding paragraph, except under the following circumstances:

- (a) making and supplying such copies of that material as are required by and/or making that material available to the Investigating Officer, any member of the Investigatory Unit and any legal adviser retained to assist the ERC where the Investigating Officer, member of the Investigatory Unit or legal adviser requires that material in connection with an investigation or prosecution relating to that matter;

- (b) supplying a copy of that material, and/or make it available for inspection and allow copies or extracts of that material to be made or taken,;
- (c) making that material, or copies thereof, available to or at the direction of any Member where such material is required in connection with any proceedings before a court that relate to that matter; and
- (d) returning any documents to the Person who produced those documents once those documents cease to be required by the ERC in connection with an investigation or prosecution relating to the matter in respect of which they were produced or in connection with any proceedings before a court that relate to that matter.

Section 2. Information, when may be disclosed. Except as provided in Section 1 hereof, any information obtained in the course of an investigation may only be disclosed by such a Person to another Person who is not one of the foregoing where such disclosure:

- (a) is required or permitted by or under a rule contained in Part III (Adjudicative Proceedings) or Part IV (Miscellaneous Provisions) of these Complaint Procedures; or
- (b) is made in the course of a pre-hearing conference or a hearing relating to that matter before the Commission; or
- (c) is made in connection with any proceedings before a court that relate to that matter.

ADJUDICATIVE PROCEEDINGS

Rule 8 – Parties and legal representation

Section 1. Parties. The only Persons who are entitled to appear and participate in proceedings before the Commission relating to a Complaint are:

- (a) the Investigating Officer or his authorized representative;
- (b) the complainant and/or his counsel; and
- (c) the Respondent who has been served with the Complaint,

in which case such appearance and participation will be in accordance with, and governed by, these Complaint Procedures.

Section 2. Appearance. Any Party may appear and participate in proceedings before the Commission in Person or by counsel. Except with the leave of the Commission, no counsel may appear on behalf of a Party without first filing with the Registrar a written notice of appearance.

Section 3. Person who requested investigation. The Commission shall permit the Person (if any) who requested the investigation that resulted in the proceedings to appear and participate in those proceedings, in which case that Person shall comply with such of these Complaint Procedures, and such other terms and conditions, as the Commission determines to be appropriate.

Section 4. Intervention. The Commission may, by proper motion filed by a Person who is not a Party, permit that Person to appear and participate in proceedings relating to a Complaint, in which case that Person must comply with such of these Complaint Procedure, and such other terms and conditions, as the Commission determines to be appropriate.

Rule 9 – Initiation of proceedings

Section 1. Proceedings, when commenced. The Investigating Officer may only commence proceedings against a Person for an alleged violation of the Competition Rules by serving on that Person both a Complaint (together with all supporting affidavits and documents referred to in Section 7 hereof) and summons.

Section 2. Complaint. The Complaint shall contain:

- (a) the name and address of the Respondent;
- (b) if practicable, the date of commission of the alleged violation;
- (c) the provision or provisions of the Competition Rules which the Respondent is alleged to have violated;
- (d) a concise statement of the acts, omissions and ultimate facts constituting the alleged violation; and
- (e) the reliefs and prayers sought for.

A Complaint may allege two or more violations of the Competition Rules by the Respondent, in which case each violation shall be separately alleged and these Complaint Procedures will apply in respect of each such alleged violation *mutatis mutandis*.

The summons that accompanies the Complaint shall:

- (a) direct the Respondent to file an Answer (together with all supporting affidavits and documents referred to in Section 7) with the Registrar within 20 days of the service of the Complaint on the Respondent; and
- (b) state that, unless such an Answer is so filed, the Respondent may be declared to be in default and, as a result, to be deemed to have waived his right to appear and participate in the proceedings and to have authorized the Commission, without further notice to the Respondent, to find the facts to be as alleged in the Complaint and to make such orders against the Respondent on the basis of that finding as the Commission considers to be appropriate.

Section 3. Answer. Within 20 days from receipt of the Complaint and the accompanying summons, the Respondent shall file an Answer (together with all supporting affidavits and documents referred to in Section 7) with the Registrar.

The Answer must:

- (a) specifically admit or deny each of the material allegations of fact stated in the Complaint or set out the reasons the Respondent cannot admit or deny those allegations (any material allegation of fact that is not so dealt with will be deemed to be admitted); and
- (b) concisely state the matters of fact and law relied upon by the Respondent by way of defense.

Section 4. Default. The Commission may *motu proprio* declare the Respondent in default for its failure (without reasonable justification) to file an Answer with the Registrar within the time required by Section 3, in which case that failure will be deemed to constitute a waiver by the Respondent of the Respondent's right to appear and participate in the proceedings and to authorize the Commission, without further notice to the Respondent, to find the facts to be as alleged in the Complaint and to make such orders against the Respondent on the basis of that finding as the Commission considers to be appropriate.

Section 5. Amended Complaint. Within ten (10) days from the filing of an Answer, the Investigating Officer may serve an amended Complaint on the Respondent.

The amendments made to the Complaint that was served on the Respondent under Section 1 shall be properly indicated and emphasized by appropriate marks. The amended Complaint must also comply with Sections 2 and 7 except that, where the affidavits and documents have already been served on the Respondent under Section 1, the amended Complaint need not be accompanied by those affidavits and documents but shall instead contain a statement to that effect which clearly identifies each of those affidavits and documents by reference.

Section 6. Amended Answer. Within ten (10) days from the service of an amended Complaint, the Respondent may file an amended Answer with the Registrar.

The amendments made to the Answer that was filed with the Registrar under Section 3 shall be properly indicated and emphasized by appropriate marks. The amended Answer shall also comply with Sections 3 and 7 except that, where such affidavits and documents have already been filed with the Registrar under Section 3, the amended Answer need not be accompanied by those affidavits and documents but must instead contain a statement to that effect which clearly identifies each of those affidavits and documents by reference.

Section 7. Verification of Pleadings. All Pleadings shall be verified or accompanied by affidavits and by such documents as would reasonably tend to establish prima facie the truth of the factual allegations contained in them. A Pleading is verified by an affidavit stating that the Person verifying has read the Pleading and that the allegations of fact contained in it are true to that Person's own personal knowledge. A verification based on "knowledge, information and belief" is sufficient.

Section 8. Amendment of Pleadings to state case in more detail. The Commission may, at any time, on its own motion or upon the motion of a Party, direct a Party to amend its Pleading in order to state that Party's case more fully or in a more detailed or specific manner. If:

- (a) the Pleading is a Complaint, then the amended Complaint, shall be served by the Investigating Officer on the Respondent within such time as is ordered by the Commission; or
- (b) the Pleading is an Answer, then the amended Answer, shall be filed by the Respondent with the Registrar within such time as is ordered by the Commission.

Section 9. Amendment of Pleadings to conform to or authorize presentation of evidence. When, at a hearing under Rule 14, issues not raised by the Pleadings are introduced by express or implied consent of the Parties, they will be treated in all respects as if they had been raised in the Pleadings. If evidence upon a new issue is objected to on the ground that the issue is not among those raised in the Pleadings, the Commission may allow the Pleadings to be amended and receive such evidence when it appears that the presentation of the merits of the proceedings will be served thereby without prejudicing the rights of any Party. The Commission may grant a continuance to enable the objecting Party to meet such evidence.

Section 10. Amendments by leave of the Commission. A Party may only amend its Pleading other than pursuant to Sections 5, 6, 8 or 9, and submit

additional supporting affidavits or other documents, with the leave of the Commission, which leave may be granted on such terms and conditions as the Commission considers appropriate and only after the other Party has been given an opportunity to be heard.

Section 11. Effect of amended Pleading. An amended Pleading supersedes the Pleading that it amends.

Section 12. Form of Pleadings. All Pleadings shall be in a form prescribed by the ERC.

Rule 10 – Motions

Section 1. Motions in general. A Party may only apply for any procedural or interlocutory relief or ruling, or for the dismissal of a Complaint or the discontinuance of a proceeding, by way of a motion.

Section 2. Contents. A motion shall state the ruling or relief sought and the grounds upon which it is based, and if necessary must be accompanied by supporting affidavits and other documents.

All motions shall be in writing except motions for continuance made in the presence of the other Party or those made in the course of a hearing.

Section 3. Hearing of motion. All written motions shall be filed with the Registrar and served on the other Party at least three (3) working days before the hearing of the motion; and

A written motion shall contain a notice setting the hearing of the motion at a specified date and time. However, for good cause shown, the Commission may hear a motion on shorter notice.

Section 4. Proof of service necessary. The Commission shall not act upon any motion without proof of service of notice of the motion on the other Party, except when the Commission is satisfied that the rights of the other Party are not adversely affected.

Section 5. Motion during hearings. Motions made during hearings may be stated orally upon the record unless the Commission requires that such motions be reduced to writing, in which case Sections 3 and 4 will apply.

Section 6. Opposition to motion. The other Party may, within three (3) working days of being served with the motion, file with the Registrar, and serve on the Party bringing the motion, an opposition to the motion, accompanied by any necessary supporting affidavits and documents.

Section 7. Form. All written motions and oppositions to such motions shall be in a form prescribed by ERC.

Section 8. Interlocutory order. At any time after the filing of a Complaint with the Registrar, the Commission may (after notice and hearing) grant on motion of the Investigating Officer the orders sought (or any other orders the Commission considers appropriate), if it finds that the Complaint (together with the supporting affidavits and documents and such additional evidence as may have been presented) substantially supports the making of such orders and there exists an urgent and compelling reason for the making of such orders. This is without prejudice to a final decision after completion of the hearing,

Section 9. Extension of time. A motion for an extension of any time period or the suspension or deferral of any proceedings may only be made where there is a justifiable reason for that extension, suspension or deferral.

Rule 11 – Motion for cease and desist order

Section 1. Source. Rule 11, Section 4 of the Competition Rules empowers the ERC to make an order requiring a Person not to engage in certain conduct if the ERC has reason to believe that the Person is likely or about to engage in that conduct.

Section 2. Form; Contents. The Investigating Officer may only apply for a cease and desist order by way of a motion. Such a motion shall:

- (a) be in writing;
- (b) state the order sought and the grounds upon which it is based;
- (c) be in a form prescribed by the ERC;
- (d) if necessary, be accompanied by supporting affidavits and other documents;
- (e) contain a notice setting the hearing of the motion at a specified date and time; and
- (f) be served on the Person against whom the order is sought at least three (3) working days before the hearing of the motion (although, for good cause shown, the motion may be heard on shorter notice).

Section 3. Hearing; Proof of service necessary. The application for a motion under this Rule shall be heard by a quorum of the Commission.

Section 4. Opposition. The Person against whom the order the subject of the motion is sought may, within three (3) working days of being served with the motion, file with the Registrar an opposition to the motion, accompanied by any necessary supporting affidavits and documents. Such an opposition to a motion shall be in a form prescribed by the ERC.

Section 5. Applicability of other provisions. The provisions on Adjudicative Proceedings and Miscellaneous Provisions of these Complaint Procedures (other than Rule 9) apply in relation to a motion under this Rule, and any proceedings arising out of such a motion, as if the motion were a Complaint, the Person against whom the order the subject of the motion is sought were a Respondent and the opposition to the motion (if any) were an Answer.

Rule 12 – Filing and service

Section 1. When to file. The Investigating Officer shall file a pleading, summons, written motion or other document with the Registrar (together with proof of its service on the Respondent) as soon as practicable after it has been served on the Respondent.

Section 2. When deemed service on the Investigating Officer. The filing of a pleading, written motion or other document with the Registrar is deemed to be service of that document on the Investigating Officer.

Section 3. Number of copies; Assignment of docket number. Unless the ERC requires otherwise, every Party filing a pleading, written motion or other document with the Registrar shall file an original and five conformed copies of that document. Upon the filing of a Complaint, the Registrar must assign a docket number to the case.

Section 4. Manner of filing. The filing of pleadings, summonses, written motions, orders, rulings, decisions, resolutions and other documents is made by:

- (a) delivering the original to the Registrar; or

- (b) sending the original by registered mail, properly addressed to the Registrar and with postage prepaid – in which case the date of the mailing of the document as shown by the post office stamp on the envelope will be considered as the date of filing.

Section 5. Effect of filing. Acceptance of a pleading, summons, written motion or other document for filing is not a waiver of a failure to comply with these Complaint Procedures and such failure may be a cause for striking all or any part of a pleading, summons, written motion or other document.

Section 6. Service upon a natural Person. Subject to Section 8, a pleading, subpoena, summons, written motion, order, ruling, decision, resolution or other document may be served on a Respondent who is a natural Person by:

- (a) delivering a copy of it to the Respondent or to the Respondent's attorney of record (in which case a verified return by the individual delivering it, describing the manner of service, will be proof of such service); or
- (b) sending a copy of it by registered mail, return receipt requested, properly addressed and with postage prepaid, to the Respondent at the Respondent's residence or principal office or place of business or to the Respondent's attorney of record at that attorney's office (in which case the return post office receipt of delivery will be proof of such service).

Section 7. Service upon a juridical Person. Subject to Section 8, a Pleading, subpoena summons, written motion, order, ruling, decision, resolution or other document may be served on a Respondent who is not a natural Person by:

- (a) delivering a copy of it to the president, managing partner, general manager, corporate secretary, in-house counsel or other equivalent officer of the Respondent, or to the Respondent's attorney of record (in which case a verified return by the individual delivering it, describing the manner of service, will be proof of such service); or
- (b) delivering a copy of it to the principal office or place of business of the Respondent, marked to the attention of the president, managing partner, general manager, corporate secretary, in-house counsel or other equivalent officer of the Respondent, or to the office of the Respondent's attorney of record (in which case a verified return by the individual delivering it, describing the manner of service, will be proof of such service); or
- (c) sending a copy of it by registered mail, return receipt requested, properly addressed and with postage prepaid, to the president, managing partner, general manager, corporate secretary, in-house counsel or other equivalent officer of the Respondent at the Respondent's principal office or place of business or to the Respondent's attorney of record at that attorney's office (in which case the return post office receipt of delivery will be proof of such service).

Section 8. Service upon counsel. If a Respondent's counsel has filed a written notice of appearance under Rule 8, Section 2, service upon that Respondent shall be made by service upon that counsel.

Section 9. Substituted service. If service of a pleading, subpoena, summons, written motion or other document on a Respondent cannot be effected by the Investigating Officer under Sections 6, 7 or 8, such service may be effected by delivering the copy to the Registrar together with proof of failure of service.

Section 10. Other modes of service. Notwithstanding Sections 6, 7 and 8, a quorum of the Members may upon application by the Investigating Officer or the Registrar, and for good cause shown, grant leave for the Investigating Officer or the Registrar to effect service of a pleading, subpoena, summons, written motion, order, ruling, decision, resolution or other document on a Respondent in such manner as those Members consider appropriate in the circumstances, being a manner that is likely to give the Respondent notice of the pleading, summons, written motion order, ruling, decision, resolution or other document; and

The power under this Section must not be exercised if it is reasonably practicable to effect service of the relevant pleading, summons, written motion, order, ruling, decision, resolution or other document on the Respondent under Sections 6, 7 or 8.

Section 11. Requirement of sworn certificate. The provision of information or production of documents pursuant to a subpoena, or refusal or failure to comply with a subpoena for valid reasons, must be made under a sworn certificate, in such form as the notice designates, by:

- (a) if the Person to whom the notice is directed is a natural Person – that Person; or
- (b) if the Person to whom the notice is directed is a Person other than a natural Person – any Person who has Personal knowledge of the facts and circumstances relating to the provision of the information or the production of the documents (as the case may be) and who is authorized by the Person to whom the notice is directed to swear that certificate,

to the effect that all of the information or documents referred to in the notice has been provided or have been produced (as the case may be).

Rule 13 – Pre-hearing conference

Section 1. When conducted. Prior to the first hearing of the Commission relating to a Complaint, and except where the Investigatory Unit otherwise determines, a pre-hearing conference shall be conducted before the Consumer Affairs Service (CAS) for the purpose of considering ways and means of expediting the proceedings, including:

- (a) the possibility and advisability of a consented decree, voluntary compliance or desistance on certain terms and conditions;
- (b) the simplification of the issues;
- (c) the exchange and acceptance of service of exhibits to be offered in evidence;
- (d) the obtaining of admissions as to, or stipulation of, facts not remaining in dispute or the authenticity of documents which might properly shorten the hearing;
- (e) the limitation of the number of witnesses; and
- (f) such other matters as may facilitate the orderly and efficient conduct of the proceedings.

Section 2. Appearance of Parties. Both of the Parties and their counsels shall attend the pre-hearing conference unless that Party's counsel is authorized to enter into an agreement on such ways or means of expediting the proceedings as may be considered at the pre-hearing conference. Any such authority shall be conferred in writing, either by way of a power of attorney or

certified board resolution, and shall be provided to the CAS and the other Party on request.

Section 3. Requirement relating to evidence. At the pre-hearing conference, the Parties shall inform each other of the nature and character of the evidence that they propose to offer, indicating the purpose of each item of evidence.

Section 4. Judgment on the Pleadings. If, at the pre-hearing conference, the CAS finds that uncontested facts exist upon which a decision on the Pleadings may be made, the Commission, upon the recommendation of the CAS, may render such decision on the pleadings as justice may require.

Section 5. Record of pre-hearing conference. After a pre-hearing conference, the CAS shall make an order that recites the matters taken up in the pre-hearing conference, the action taken in relation to those matters, and the agreements made by the Parties as to any of the matters considered. Such order will limit the issues for hearing to those not disposed of by admissions and agreements of the Parties or their counsel.

Section 6. Effect of failure to attend. The Commission, upon the recommendation of the CAS, may *motu proprio* declare the Respondent in default for the failure of the Respondent or the Respondent's counsel (without reasonable justification) to attend a pre-hearing conference, in which case that failure will be deemed to constitute a waiver by the Respondent of the Respondent's right to appear and participate in the proceedings.

Section 7. Offer for a settlement of the case. The Respondent may, at any time, make an offer to the CAS, conditionally or otherwise, for a consented decree, voluntary compliance or desistance and other settlement of the case. Any such offer, and any or all of the ultimate facts upon which the offer is based, is for settlement purposes only and cannot be used as evidence against the Respondent for any other purpose and does not constitute an admission by the Respondent of any violation of the Competition Rules.

Rule 14 – Hearings

Section 1. How conducted. A hearing before the Commission shall only be conducted after notice of the time, date and place of the hearing has been served on the Respondent, such notice being served on the Respondent at least 5 days before the date of the hearing. The Commission may *motu proprio* declare that any Party who fails to attend any hearing (without reasonable justification) has waived that Party's presence and may allow the Party present to present evidence *ex parte*.

Section 2. Consolidation. The Commission may, of its own motion or on motion of any Party, consolidate or hold a joint hearing or proceedings on matters involving common questions of law or fact in which case, if there are two or more Respondents, these Complaint Procedures will apply *mutatis mutandis*. However, upon motion of a Respondent, a separate hearing may be held on issues peculiar only to that Respondent.

Section 3. Requirement on a Party. A Party appearing before the Commission must endeavour to present its case in concise form, avoiding cumulative and repetitious evidence and arguments to avoid unnecessary and prejudicial delay.

Section 4. Record of hearings. Hearings shall be stenographically recorded by the official stenographer of the ERC and the transcript of stenographic notes shall be part of the record and the sole official transcript of the proceedings. Corrections to the transcript may only be made with the approval of the

Commission upon notice and after opportunity for hearing objections. The Respondent is entitled to be provided with a copy of the transcript upon the payment of reasonable charges for the transcription.

Section 5. Conduct during hearings. A Person shall not:

- (a) engage in conduct that results in the obstruction or hindering of the Commission in the performance or exercise of any of the Commission's functions and powers; or
- (b) engage in conduct that results in the disruption of proceedings before the Commission.

If the Commission determines, after due notice and hearing, that a Person has violated the preceding paragraph, it may make an order requiring the Person to pay to the ERC a fine or penalty of not more than Five Million Pesos (P5,000,000.00).

Rule 15 – Provision of information, production of documents and attendance of witnesses

Section 1. Subpoena. At the request of a Party, or on its own initiative, the Commission may issue a subpoena requiring the provision of information, the production of documents or the giving of testimonial evidence. A request by a Party for the issuance of a subpoena shall be in writing and shall describe the Person to whom it is sought to issue a subpoena, and the information, documents or evidence the provision, production or giving of which is sought to be required, with sufficient particularity as to enable the Commission to determine the relevance of the facts intended to be proven thereby.

Upon motion of a Party or the Person to whom the subpoena is issued, or is sought to be issued, the Commission may refuse to issue a subpoena, or to continue exercising its powers under the subpoena if it is satisfied that to do so would be unreasonable, oppressive or capricious.

Section 2. Form of Subpoena. The subpoena shall be signed by a Member or a duly authorized representative of the ERC.

Rule 16 – Evidence

Section 1. Order of hearing. As far as practicable, the following order must be followed in the presentation of evidence before the Commission:

- (a) the presentation of evidence will commence with the Investigating Officer or the complainant's counsel presenting his evidence;
- (b) the Respondent will then present its evidence;
- (c) presentation of further evidence may be allowed at the discretion of the Commission; and
- (d) when the presentation of evidence is concluded, the Parties may be required or allowed to submit their respective memoranda in support of their cases.

Section 2. Requirement of oath or affirmation. A witness whose testimony is to be taken shall be sworn or shall affirm concerning the matter about which the witness will testify, before the witness's testimony may be taken in evidence.

Section 3. Right to counsel. Any Person who is required to give evidence in proceedings before the Commission may be accompanied, represented and advised by an counsel.

Section 4. Statement of reason for refusal, failure to be sworn/affirmed or answer. If a Person who appears before the Commission:

- (a) refuses or fails to be sworn or affirmed when such is required by the presiding member of the Commission; or
- (b) refuses or fails to answer a question when required to do so by the presiding member of the Commission,

that Person (or that Person's counsel) shall state for the record the reason for that refusal or failure.

Section 5. Objection to a question. A Person or his counsel who appears before the Commission may object on the record to any question, in whole or in part, and must state for the record the reason for that objection.

Section 6. Cross-examination. At all hearings, each Party has the right to conduct such cross-examination of witnesses as may be necessary subject to the materiality or relevance of the evidence as well as the competence of the witness to answer the question. The Commission may also, from time to time, propound such questions as will elicit the full and true disclosure of the facts of the case or clarify certain points at issue.

Rule 17 – Powers and duties of Commission

Section 1. Power of the Commission. The Commission:

- (a) has control over the entire conduct of all proceedings before it; and
- (b) may give directions from time to time concerning the conduct of such proceedings.

Without limiting the foregoing, the Commission may:

- (a) give directions abridging or extending any time period specified in or prescribed by these Complaint Procedures;
- (b) give directions about the issues to be addressed before the Commission;
- (c) give directions about -
 - (i) the manner in which a matter may be presented, either orally or in writing, to the Commission; and
 - (ii) the duration of the time in which a Person may address the Commission or give evidence in proceedings before the Commission;
- (d) permit a Person to amend or withdraw information, documents or evidence provided, produced or given for the purposes of any proceedings;
- (e) direct that proceedings be suspended for a period determined by the Commission;
- (f) direct that proceedings be deferred until a day determined by the Commission; and
- (g) direct that a Person whose behaviour has a disruptive effect on proceedings be removed or excluded from those proceedings.

Section 2. Duties of the Commission. In the performance of its functions and the exercise of its powers, the Commission:

- (a) is not strictly bound by the rules of evidence except to the extent that Section 12 of Book VII of Executive Order No. 292 (otherwise known as the Administrative Code of 1987) otherwise requires;
- (b) shall consider all relevant information contained in -
 - (i) written or verbal presentations that are made to the Commission; and
 - (ii) other evidence that is given to the Commission;
- (c) shall act fairly, impartially and reasonably; and
- (d) shall act expeditiously in accordance with the requirements of due process, but otherwise with as little formality and technicality as possible.

Rule 18 – Orders

Section 1. General.

- (a) All orders, rulings, decisions and resolutions of the Commission in relation to a matter shall be reached with the concurrence of a majority of the members constituting the Commission for the purposes of that matter.
- (b) All orders, rulings, decisions and resolutions of the Commission determining the merits of a matter (including any dissent therefrom by a member of the Commission) shall be in writing, stating clearly and distinctly the facts and the law on which they are based.
- (c) The Commission shall decide each case within sixty (60) days of the completion of the presentation of evidence in that case.
- (d) Each order, ruling, decision and resolution of the Commission determining the merits of a matter shall be filed with the Registrar who shall, serve a copy of such order, ruling, decision or resolution upon the Respondent.
- (e) All orders, rulings, decisions and resolutions of the Commission determining the merits of a matter must be published by the Registrar in at least one newspaper of general circulation.
- (f) The Registrar must compile the final decisions, orders, rulings and resolutions of the Commission.

Section 2. Effectivity of decisions.

- (a) Except as otherwise provided by law, all decisions, orders, rulings and resolutions of the Commission will take effect immediately unless otherwise specified by the Commission.
- (b) The Commission may, if it considers it appropriate, stay the operation of any decision, order, ruling or resolution made by it.

Rule 19 – Motion for reopening or reconsideration

Section 1. Grounds of and period for filing motion for reopening. A Party may move for the reopening of any proceedings in relation to a matter at any time after the presentation of evidence in those proceedings has been completed, but before the promulgation by the Commission of a final decision,

order, ruling or resolution which determines the merits of that matter, if, during that period, transactions, events or matters (whether factual or legal) arise which result in a substantial change of situation of a Party. Any such motion shall be filed with the Registrar prior to the promulgation of the relevant decision, order, ruling or resolution.

Section 2. Grounds of and period for filing motion for reconsideration. A Party may move for reconsideration by the Commission of a final decision, order, ruling or resolution. Any such motion shall be filed with the Registrar within thirty (30) days from notice of the relevant decision, order, ruling or resolution. Except with the leave of the Commission, each Party may only file one motion for reconsideration.

Section 3. Form; Contents of motions. The motions allowed by this Rule must:

- (a) be in writing;
- (b) state the ruling or relief sought and the grounds upon which it is based;
- (c) be in a form prescribed by the ERC;
- (d) if necessary, be accompanied by supporting affidavits and other documents;
- (e) contain a notice setting the hearing of the motion at a specified date and time; and
- (f) be served on the other Party at least three (3) working days before the hearing of the motion.

Section 4. Proof of service necessary. The Commission shall not act upon any motion allowed by this Rule without proof of service of notice of the motion on the other Party.

Section 5. Opposition. The other Party may, within 15 days of being served with the motion, file with the Registrar, and serve on the Party bringing the motion, an opposition to the motion, accompanied by any necessary supporting affidavits and documents. Such an opposition to a motion shall be in a form prescribed by the ERC.

PART IV – MISCELLANEOUS

Rule 20 – Confidentiality

Section 1. Hearings shall be in public. Except as provided in Section 2, hearings before the Commission shall be in public.

Section 2. Exceptions. Where the Commission determines that it is desirable to do so, it may, after giving the Parties an opportunity to make submissions in relation to the matter, do all or any of the following:

- (a) direct that a hearing or part of a hearing will take place in private and give directions as to the Persons who may be present other than the Parties and the counsels;
- (b) give directions prohibiting or restricting the publication of matters raised before, or of evidence given to, the Commission or of matters contained in documents filed with the Registrar;
- (c) give directions prohibiting or restricting the use or disclosure of, or access to, information provided to the Commission (whether in

evidence or otherwise) or information contained in documents filed with the Registrar.

Section 3. Factors to consider. In determining whether or not to give a direction under Section 2, the Commission shall take into account the following:

- (a) whether information or evidence provided or given, or that may be provided or given, or a matter that has arisen or may arise, during the proceedings is of a confidential nature;
- (b) any unfair prejudice to a Person's reputation that would be likely to be caused unless the Commission exercises its powers under this Rule;
- (c) whether it is in the public interest that the Commission exercises its powers under this Rule; and
- (d) any other relevant matter.

Rule 21 – Applicability of the Rules of Court

The provisions of the Rules of Court applicable to proceedings before the Regional Trial Court, which are not inconsistent with these Complaint Procedures, apply in an analogous and supplementary character whenever practicable and convenient.

Rule 22 - Amendment

Subject to the provisions of any other applicable law:

- (a) these Complaint Procedures may be amended from time to time by the ERC; and
- (b) an amendment to these Complaint Procedures takes effect 15 days after its publication in a newspaper of general circulation in the country.

Rule 23 – Interpretation

In these Complaint Procedures, unless the contrary intention appears:

- (a) the singular includes the plural and conversely;
- (b) where a term is defined, its other grammatical forms have a corresponding meaning;
- (c) a reference to any law or the rules and regulations issued implementing such a law or to any particular provision of a law or of any rules and regulations issued implementing such a law is taken to include any modification, consolidation, amendment, re-enactment, replacement or codification of the law, rules and regulations, or provisions; and
- (d) reference to anything after include, includes or including does not limit what else might be included.

Rule 24 – Computation of time

In computing any period of time prescribed or allowed by these Complaint Procedures, or by a notice or order given or made under or as described in these Complaint Procedures, the day of the act or event from which the designated period of time begins to run is to be excluded and the day of performance included provided

that, if the last day of the period as so computed falls on a Saturday, a Sunday or a public holiday in Metro Manila, the period will instead be deemed to end on the next day that is not such a day.

Rule 25 – Separability

If, for any reason, any rule or part of a rule of these Competition Rules and Complaint Procedures is declared unconstitutional or invalid, those provisions which are not thereby affected will continue to be in full force and effect.

Rule 26 – Effectivity

These Competition Rules and Complaint Procedures shall take effect fifteen (15) days after their publication in a newspaper of general circulation.

Pasig City, Philippines, _____, 2006.

RODOLFO B. ALBANO, JR.
Chairman

OLIVER B. BUTALID
Commissioner

JESUS N. ALCORDO
Commissioner

RAUF A. TAN
Commissioner

ALEJANDRO Z. BARIN
Commissioner