

[IRR OF REPUBLIC ACT NO. 10667, May 31, 2016]

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

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

RULE 1. TITLE AND SCOPE SECTION

SECTION 1. Title.

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

SECTION 2. Scope.

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

RULE 2. DEFINITION OF TERMS

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

- (a) "Acquisition" refers to the purchase or transfer of securities or assets, through contract or other means, for the purpose of obtaining control by:
 - (1) One (1) entity of the whole or part of another;

- (2) Two (2) or more entities over another; or
- (3) One (1) or more entities over one (1) or more entities;
- (b) "Agreement" refers to any type or form of contract, arrangement, understanding, collective recommendation, or concerted action, whether formal or informal, explicit or tacit, written, or oral;
- (c) "Conduct" refers to any type or form of undertaking, collective recommendation, independent or concerted action or practice, whether formal or informal; (d) "Commission" refers to the Philippine Competition Commission created under the Act;
- (e) "Confidential business information" refers to information, which concerns or relates to the operations, production, sales, shipments, purchases, transfers, identification of customers, inventories, or amount or source of any income, profits, losses, expenditures, which are not generally known to the public or to other persons who can obtain economic value from its disclosure or use, or is liable to cause serious harm to the person who provided it, or from whom it originates, and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy;
- (f) "Control" refers to the ability to substantially influence or direct the actions or decisions of an entity, whether by contract, agency or otherwise;
- (g) "Dominant position" refers to a position of economic strength that an entity or entities hold which makes it capable of controlling the relevant market independently from any or a combination of the following: competitors, customers, suppliers, or consumers;
- (h) "Entity" refers to any person, natural or juridical, sole proprietorship, partnership, combination or association in any form, whether incorporated or not, domestic or foreign, including those owned or controlled by the government, engaged directly or indirectly in any economic activity;
- (i) "Joint venture" refers to a business arrangement whereby an entity or group of entities contribute capital, services, assets, or a combination of any or all of the foregoing, to undertake an investment activity or a specific project, where each entity shall have the right to direct and govern the policies in connection therewith, with the intention to share both profits and risks and losses subject to agreement by the entities;
- (j) "Market" refers to the group of goods or services that are sufficiently interchangeable or substitutable and the object of competition, and the geographic area where said goods or services are offered;

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

RULE 3. PROHIBITED ACTS

SECTION 1. Anti-Competitive Agreements.

- (a) The following agreements, between or among competitors, are per se prohibited:
 - (1) Restricting competition as to price, or components thereof, or other terms of trade;
 - (2) Fixing the price at an auction or in any form of bidding, including cover bidding, bid suppression, bid rotation and market allocation, and other analogous practices of bid manipulation.
- (b) The following agreements, between or among competitors, which have the object or effect of substantially preventing, restricting, or lessening competition shall be prohibited:
 - (1) Setting, limiting, or controlling production, markets, technical development, or investment;
 - (2) Dividing or sharing the market, whether by volume of sales or purchases, territory, type of goods or services, buyers or sellers, or any other means.

- (c) Agreements other than those specified in (a) and (b) of this Section, which have the object or effect of substantially preventing, restricting, or lessening competition shall also be prohibited. *Provided*, that those which contribute to improving the production or distribution of goods and services or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefits, may not necessarily be deemed a violation of the Act.
- (d) For purposes of this Section, entities that control, are controlled by, or are under common control with another entity or entities, have common economic interests, and are not otherwise able to decide or act independently of each other, shall not be considered competitors.

SECTION 2. Abuse of Dominant Position.

- (a) It shall be prohibited for one or more entities to abuse their dominant position by engaging in conduct that would substantially prevent, restrict, or lessen competition, including:
 - (1) Selling goods or services below cost with the object of driving competition out of the relevant market. *Provided*, that in the Commission's evaluation of this fact, it shall consider whether such entity or entities had no such object and that the price established was in good faith to meet or compete with the lower price of a competitor in the same market selling the same or comparable product or service of like quality.
 - (2) Imposing barriers to entry or committing acts that prevent competitors from growing within the market in an anti-competitive manner, except those that develop in the market as a result of or arising from a superior product or process, business acumen, or legal rights or laws;
 - (3) Making a transaction subject to acceptance by the other parties of other obligations which, by their nature or according to commercial usage, have no connection with the transaction;
 - (4) Setting prices or other terms or conditions that discriminate unreasonably between customers or sellers of the same goods or services, where such customers or sellers are contemporaneously trading on similar terms and conditions, where the effect may be to lessen competition substantially; *Provided*, that the following shall be considered permissible price differentials:
 - i. Socialized pricing for the less fortunate sector of the economy;

- ii. Price differentials which reasonably or approximately reflect differences in the cost of manufacture, sale, or delivery resulting from differing methods, technical conditions, or quantities in which the goods or services are sold or delivered to the buyers or sellers;
 - iii. Price differential or terms of sale offered in response to the competitive price of payments, services, or changes in the facilities furnished by a competitor; and
 - iv. Price changes in response to changing market conditions, marketability of goods or services, or volume.
- (5) Imposing restrictions on the lease or contract for sale or trade of goods or services concerning where, to whom, or in what forms goods or services may be sold or traded, such as:
- i. fixing prices, or
 - ii. giving preferential discounts or rebate upon such price, or
 - iii. imposing conditions not to deal with competing entities,

where the object or effect of the restrictions is to prevent, restrict or lessen competition substantially: *Provided*, that nothing contained in the Act shall prohibit or render unlawful:

- 1) Permissible franchising, licensing, exclusive merchandising, or exclusive distributorship agreements, such as those which give each party the right to unilaterally terminate the agreement, unless found by the Commission to have substantial anti-competitive effect;
 - 2) Agreements protecting intellectual property rights, confidential information, or trade secrets;
- (6) Making supply of particular goods or services dependent upon the purchase of other goods or services from the supplier which have no direct connection with the main goods or services to be supplied;
- (7) Directly or indirectly imposing unfairly low purchase prices for the goods or services of, among others, marginalized agricultural producers, fisherfolk, micro-, small-, medium-scaled enterprises, and other marginalized service providers and producers;
- (8) Directly or indirectly imposing unfair purchase or selling price on their competitors, customers, suppliers, or consumers, Provided that prices that develop in the market as a result of or