

**RULES IMPLEMENTING THE CRIMINAL PROVISIONS
OF REPUBLIC ACT NO. 10667, OTHERWISE KNOWN AS
THE PHILIPPINE COMPETITION ACT**

**RULE I
GENERAL PROVISIONS**

Section 1. **Title.** These Rules shall be known and cited as “*The Rules Implementing the Criminal Provisions of the Philippine Competition Act.*”

Section 2. **Objectives/Applicability.** These Rules shall govern the implementation of the criminal provisions of Republic Act No. 10667, otherwise known as the Philippine Competition Act (PCA), including the grant of leniency or immunity during preliminary investigation of covered offenses.

Section 3. **Construction.** These Rules shall be liberally construed in order to effectively carry out the objectives of the PCA.

Section 4. **Definition of Terms.** As used in these Rules, the following terms shall mean:

1. Anti-competitive agreement – any agreement, arrangement, understanding, collective recommendation, or concerted action, which is prohibited by the PCA, regardless of type or form of contract, whether formal or informal, explicit or tacit, written or oral;
2. Applicant – a person or entity, made respondent in a complaint that seeks immunity from prosecution involving an anti-competitive agreement as defined in subsections 14(a) and (b) of the PCA;
3. Clear and convincing evidence – evidence which, in its totality, is highly and substantially more likely to be true than untrue; more than mere preponderance of evidence, but not to the extent of such certainty as is required by proof beyond reasonable doubt;
4. Commission – the Philippine Competition Commission;
5. Conduct – any type or form of undertaking, collective recommendation, independent or concerted action or practice, whether formal or informal;
6. Control – the ability to substantially influence or direct the actions or decisions of an entity, whether by contract, agency or otherwise;

7. Entity – 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;
8. Immunity – an exemption from prosecution for a specific offense for which the immunity was granted;
9. Marker – an essential measure to determine an entity’s position relative to others in the application for immunity;
10. Market – 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;
11. Perfection of a marker – full and complete compliance with all the requirements for a leniency application within the period prescribed by these Rules.

RULE II COVERED OFFENSES AND PERSONS LIABLE

Section 1. **Entering into Anti-Competitive Agreements Prohibited *Per Se*.** It shall be unlawful for an entity to enter into any of the following agreements with one or more competitors:

- (a) Agreements restricting competition as to price, or components thereof, or other terms of trade; or
- (b) Agreements fixing 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.

Section 2. **Entering into Anti-Competitive Agreements Prohibited as to Object or Effect.** It shall be unlawful for an entity to enter into any of the following agreements which have the object or effect of substantially preventing, restricting or lessening competition with one or more competitors:

- (a) Agreements setting, limiting, or controlling production, markets, technical development, or investment; or
- (b) Agreements 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.

Section 3. **Who are Criminally Liable.** The following persons are criminally liable for the covered offenses under Sections 1 and 2 of this Rule:

- (a) When the offender is a non-juridical entity, its responsible officers or directors, owners, and other persons responsible for the entity.
- (b) When the offender is a juridical entity, its officers, directors, or employees holding managerial positions who are knowingly and willfully responsible for the violation.

The fine provided under Section 30 of the PCA for violation of the covered offenses under Sections 1 and 2 of this Rule shall be imposed upon the entity, while the penalty of imprisonment shall be imposed upon the persons enumerated under this Section.

Nothing in this Section shall exempt a natural person from criminal liability for any covered offense.

Section 4. **Entities not Considered Competitors.** When an entity controls, is controlled by, or is under common control with, another entity or entities, both the controlling and controlled entities shall not be considered competitors if they have common economic interests and are not otherwise able to decide or act independently of each other.

RULE III

PRELIMINARY INVESTIGATION AND PROSECUTION

Section 1. **OFC to Conduct Preliminary Investigation and to Prosecute.** The Office for Competition (OFC) under the Department of Justice (DOJ) shall conduct preliminary investigation of, and prosecute, all criminal offenses under the PCA and competition-related laws.

Section 2. **Commencement of Preliminary Investigation.** The OFC shall commence preliminary investigation only upon receipt of a complaint for violation of the PCA and competition-related laws filed by the Commission or by any agency authorized by law.

Section 3. **Applicable Rules.** The OFC shall conduct preliminary investigation and prosecute cases in accordance with:

- (a) the Revised Rules of Criminal Procedure and these Rules for offenses covered under Sections 1 and 2 of Rule II; and
- (b) the Revised Rules of Criminal Procedure for offenses defined and penalized under competition-related laws.

Section 4. **Information; Where Filed.** (a) For the purpose of filing an information, every agreement, or each and every violation in an agreement, entered into and covered by Sections 1 and 2 of Rule II, whether implemented or not, shall be considered as one distinct offense.

(b) Information for any of the covered offenses under Sections 1 and 2 of Rule II, regardless of the penalties and fines imposed, shall be filed in the Regional Trial Court of the city or province where the entity or any of the entities whose business act or conduct constitutes the subject matter of a case, conducts its principal place of business.

Information against an accused charged in the capacity of a director, officer, shareholder, employee, or agent of a corporation or other juridical entity who knowingly and willfully authorized the commission of the offense shall be filed in the Regional Trial Court of the city or province where such corporation or juridical entity conducts its principal place of business.

Section 5. **Statute of Limitations.** — A criminal action based on covered offenses under Sections 1 and 2 of Rule II shall be forever barred, unless commenced within five (5) years from the time the violation is discovered by the offended party, the authorities, or their agents.

Section 6. **Nolo Contendere.** — An entity charged in a criminal proceeding pursuant to Sections 1 and 2 of Rule II may enter a plea of *Nolo Contendere* by which such entity neither accepts nor denies responsibility for the charges but accepts punishment as if a plea of guilt has been entered. The plea cannot be used against such entity in a suit for civil liability arising from the criminal action or in another cause of action: *Provided*, that a plea of *Nolo Contendere* may be entered only up to arraignment and subsequently, only with the permission of the court.

Section 7. **Inadmissibility of Evidence Relating to and Arising from Availment of Non-adversarial Administrative Remedies.** — The following evidence which arise from the availment by an entity or entities before the Commission of non-adversarial administrative remedies provided under Section 37 of the PCA shall not be admissible:

- (a) The request for a binding ruling, the show cause order, or the proposal for consent order;
- (b) The facts, data, and information therein contained or subsequently supplied by the entity or entities concerned;
- (c) Admissions against interest, whether oral or written, made by the entity or entities;
- (d) All other documents filed by the entity or entities, including the evidence presented in the proceedings; and
- (e) The judgment or order rendered thereon.

The inadmissibility provided under this Section shall only apply in criminal proceedings arising from the same act subject of the binding ruling, show cause order or consent order against the entity or entities which applied for the non-adversarial remedy or remedies as well as such entity or entities' officers, and agents, but not to the same or similar acts repeated or continued after the issuance of the consent order.

RULE IV LENIENCY PROGRAM

Section 1. Grant or Recognition of Immunity from Suit. (a) The OFC may, pursuant to Section 35 of the PCA, grant immunity from prosecution for a covered offense under Sections 1 and 2 of Rule II which is the subject of a preliminary investigation pending before it.

(b) The OFC shall recognize the immunity granted by the Commission. All the evidence which formed the basis for such grant, and such other relevant evidence, should be submitted to the OFC.

Section 2. Who are Qualified. A respondent in a complaint involving an anti-competitive agreement as defined in subsections 14(a) and (b) of the PCA may avail of the Leniency Program in exchange for the voluntary disclosure of information regarding such agreement, subject to the following conditions:

- (a) The respondent, upon discovery of the illegal anti-competitive activity, took prompt and effective action to terminate participation therein;
- (b) The respondent comes forward during the preliminary investigation and qualifies pursuant to Section 3, subject to Section 4, of this Rule;
- (c) At the time the respondent comes forward, the OFC has no evidence against such respondent that may result in a sustainable conviction;
- (d) The respondent discloses the wrongdoing with candor and completeness and provides full, continuing, and complete cooperation throughout the preliminary investigation;
- (e) The respondent did not coerce or instigate another entity to participate in, and clearly was not the leader in, or originator of, the illegal anti-competitive activity;
- (f) The respondent did not report or provide the Commission or the OFC false, misleading or malicious information, data or document; and
- (g) The OFC determines that the grant of immunity would not be unfair to others.

Section 3. **Application Process for Grant of Immunity.** (a) A respondent shall submit a fully accomplished Leniency Marker Request Form to the OFC which shall contain the following:

- (i) Its name and address as well as the names and addresses of all the other entities involved in the alleged anti-competitive agreements;
- (ii) The names, positions, office locations and, where necessary, home addresses of all individuals who, to the applicant's knowledge, are or have been involved in the alleged illegal activity, including those individuals who have been involved on the applicant's behalf, as well as the specific acts they committed; and
- (iii) A description of: (1) the alleged anti-competitive agreement/s, including but not limited to, its aims, activities and operations; and (2) the product or service concerned, the geographic scope, the duration of and the estimated market volumes affected.

(b) The submission of a Leniency Marker Request Form protects an applicant's place in the queue and grants said applicant a period within which to perfect the marker by submitting proof of the offense by clear and convincing evidence. An applicant shall have a period of ten (10) calendar days from such submission to perfect the marker if the complaint is filed by the Commission, otherwise the period shall be thirty (30) calendar days.

(c) Within the relevant period indicated in the preceding paragraph, the applicant shall perfect the marker by providing a sworn statement that includes, in so far as it is known to the applicant at the time of the submission:

- (i) The alleged anti-competitive agreement, its nature and duration;
- (ii) The parties to the alleged anti-competitive agreement;
- (iii) The affected product/s or service/s;
- (iv) The affected geographic area/s;
- (v) The specific dates, locations, content of and participants in, and their specific acts committed in connection with the alleged anti-competitive agreement;
- (vi) The pieces of evidence relating to the alleged anti-competitive agreement in the possession of, or available to, the applicant at the time of the submission, including in particular any evidence contemporaneous to the violation; and
- (vii) All relevant matters relating to the pieces of evidence provided in support of the application, including an explanation on the manner by which they were obtained.

(d) The applicant may request or be called to a meeting with the OFC to discuss matters related to the application.

(e) Once an applicant perfects the marker, the OFC shall, upon request, confirm in writing the date and time of its receipt of the Leniency Marker Request Form.

The perfection of such marker shall automatically suspend the preliminary investigation for a period not exceeding sixty (60) calendar days pending the evaluation and processing of, and action, on the application by the OFC.

Section 4. Evaluation of Evidence Produced by the Entity Granted Immunity. The OFC shall evaluate the evidence submitted by the Commission pursuant to Section 1(b) of Rule IV hereof, simultaneously with the evidence submitted by applicants towards the perfection of their respective markers. Any finding of false, misleading or malicious information or data shall be immediately coordinated with the Commission.

Section 5. Failure to Perfect the Marker. If an applicant fails to perfect the marker within the required period, its application shall be denied and the remaining entities in the marker queue shall be considered in the order their applications were received.

Section 6. Grant or Denial of Conditional Immunity. (a) The OFC shall evaluate the information and evidence provided by the applicant within a period of thirty (30) calendar days from the perfection of the marker, unless an additional period is warranted. A qualified applicant shall be granted conditional immunity upon a finding of clear and convincing evidence of the covered offense under Sections 1 and 2 of Rule II, otherwise its application shall be denied.

(b) Upon the grant of conditional immunity, the preliminary investigation shall resume. The complaint against such entity granted immunity shall be provisionally dismissed.

Section 7. Responsibility of the Entity Granted Conditional Immunity. The entity granted conditional immunity shall render continuing, full and genuine cooperation to the OFC until the finality of the criminal case. Without necessarily limiting its responsibility under this paragraph, it shall, among others:

- (a) provide the OFC candidly and promptly with all relevant information and evidence in its possession or control, including those which become available subsequent to its application;
- (b) promptly comply with all the directives of the OFC in relation to the case;
- (c) make available for interviews with the OFC the current and former directors, trustees, partners, officers, employees and agents;
- (d) take such necessary measures to preserve the integrity of the evidence and to avoid the destruction, falsification or concealment of relevant information or evidence;

- (e) keep confidential all matters relating to the application, unless and to the extent otherwise explicitly authorized by the OFC; and
- (f) testify in court at the trial of the case for which the entity was granted conditional immunity.

Section 8. Revocation of the Grant of Conditional Immunity. The OFC may revoke the conditional immunity if the entity fails to discharge its responsibility or violates any provisions of these Rules. Such revocation shall not prevent the OFC from using any document or information provided by such entity as it may deem necessary.

Section 9. Privileges Granted to Officers and Agents of a Juridical Entity. – (a) If a juridical entity withdraws its application or fails to qualify for immunity, the directors, trustees, partners, officers, employees, and agents who come forward with such entity shall: (i) take the place of the juridical entity in the queue; and (ii) be considered as if they had approached the OFC individually, based on their individual submission accompanying the application made by the juridical entity.

(b) If a juridical entity qualifies for immunity, all directors, trustees, partners, officers, employees, and agents of the juridical entity who admit involvement in the offense shall be granted immunity from criminal prosecution for the illegal activity, subject to conditions and responsibility imposed by these Rules.

Section 10. Joint Applications. (a) Entities that are parties to an anti-competitive agreement may not jointly apply for immunity. Any such joint application shall not be acted upon.

(b) Two or more persons within the same entity applying for immunity may appoint a joint representative to act on their behalf with respect to their application with the OFC.

Section 11. Effect of Denial or Grant of Application. (a) The denial of an application shall not prohibit the OFC from using any information or evidence provided by the applicant.

(b) Any information or evidence submitted by an applicant whose place in the marker queue falls after that of the entity granted conditional immunity shall not be used against it, except when such information or evidence is independently obtained by the OFC.

RULE V MISCELLANEOUS AND FINAL PROVISIONS

Section 1. Confidentiality of Information. Confidential business information submitted by entities, relevant to any inquiry or investigation being conducted pursuant to the PCA as well as any deliberation in relation thereto, shall not, in any manner, be directly or indirectly disclosed, published, transferred, copied, or disseminated. The

OFC shall, to the extent possible, subject such information to the confidentiality rule provided under this section when issuing notices, bulletins, rulings and other documents: *Provided*, That the confidentiality rule shall not apply if the notifying entity consents to the disclosure, or the document or information is mandatorily required to be disclosed by law or by a valid order of a court of competent jurisdiction or of a government or regulatory agency, including an exchange. The identity of the persons who provide information under condition of anonymity, shall remain confidential, unless such confidentiality is expressly waived by these persons.

For the purpose of this Section, confidential business information refers to information which concerns or relates to the operations, production, sales, shipments, purchases, transfers, identification of customers, inventories, or amount or source of any income, profits, losses, expenditures, which are not generally known to the public or to other persons who can obtain economic value from its disclosure or use, or is liable to cause serious harm to the person who provided it, or from whom it originates, and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Section 2. **Separability.** If any provision of these Rules is declared invalid or unconstitutional, the provisions not affected shall continue to be in full force and effect.

Section 3. **Repeal.** All rules and regulations and other issuances, or parts thereof, which are inconsistent with the provisions of these Rules are hereby deemed repealed, amended or modified accordingly.

Section 4. **Effectivity.** These Rules shall take effect fifteen (15) days after publication in a newspaper of general circulation, and the deposit of a copy hereof with the University of the Philippines Office of the National Register.