

Republic of the Philippines
ENERGY REGULATORY COMMISSION
San Miguel Avenue, Pasig City

Resolution No. 45, Series of 2006.

**RESOLUTION ADOPTING THE COMPETITION RULES
AND COMPLAINT PROCEDURES**

WHEREAS, Section 45 of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA) provides that no participant in the electricity industry or any other person may engage in any anti-competitive behavior 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;

WHEREAS, the EPIRA and its Implementing Rules and Regulations (IRR) issued pursuant thereto, mandate the Energy Regulatory Commission (ERC) to promulgate rules that prohibit anti-competitive behavior and abuse of market power, and specify appropriate penalties and remedies therefor;

WHEREAS, the EPIRA likewise mandates the ERC to promulgate rules providing for a complaint procedure that, without limitation, provides the accused party with notice and an opportunity to be heard;

NOW THEREFORE, BE IT RESOLVED, AS THE ERC HEREBY RESOLVES, to **APPROVE** and **ADOPT** the Competition Rules and Complaint Procedures herein attached as Annex "A" and made an integral part of this Resolution.

RESOLVED FURTHER, to adopt as a prohibited act, misuse of market power, which encompasses any market power abuse, anti-competitive or discriminatory act or behavior, by any participant in the electric power industry, regardless of intent.


This Resolution shall take effect fifteen (15) days following its publication in a newspaper of general circulation in the country.


Pasig City, 23 August 2006.


RODOLFO B. ALBANO, JR.
Chairman


RAUF A. TAN
Commissioner


MARIA TERESA A. R. CASTAÑEDA
Commissioner


ALEJANDRO Z. BARIN
Commissioner


JOSE C. REYES
Commissioner

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 and Complaint Procedures.

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 (the **IRR**) issued pursuant thereto mandate the Energy Regulatory Commission (the **ERC**) to promulgate rules that prohibit anti-competitive behaviour and abuse of market power, and specify appropriate penalties and remedies therefor and to promulgate rules "providing for a complaint procedure that, without limitation, provides the accused party with notice and opportunity to be heard."

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 and Complaint Procedures

The objectives of these Competition Rules and Complaint Procedures (the **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. These Rules likewise prescribe the manner in which the ERC will investigate possible violations thereof consistent with the requirements of due process.

Rule 3 - Definitions

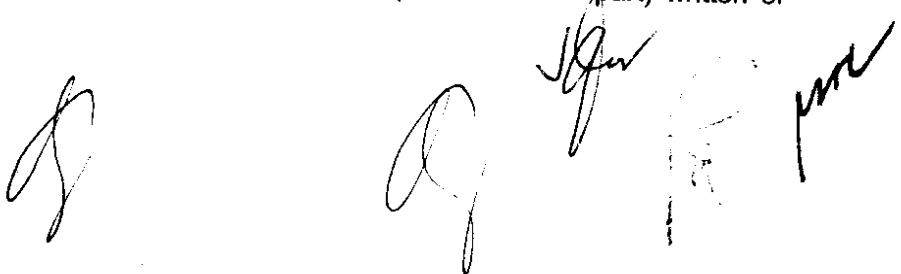
Section 1. Definition of terms. In these Rules, unless the contrary intention appears:

"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;

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"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 these Rules;

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

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

"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 of 2001;

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

- (a) doing an act or thing in pursuance of or in accordance with that provision; or
- (b) enforcing or purporting 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 for the purpose of conveyance of bulk power;

"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 these Rules and for taking action to prevent apprehended violations thereof;

"Investigatory Unit" means those ERC personnel whose functions include the investigation and prosecution of alleged violations of these Rules and the taking of action to prevent apprehended violations thereof, in each case under the supervision of the Investigating Officer;

"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 organized 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 7 (failure to comply with a condition of a Clearance or Authorization), 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 Rules, which are defined in the EPIRA or the IRR have the same 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 these 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 issued pursuant to 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 executed 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 or not a Person has misused its power in a Market, the following factors, among others, shall be considered:

- (a) that Person would have acted in the way it did, whether or not it 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 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 these Rules.

The following do not constitute a violation of these 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 these 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 or 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 Republic Act No. 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 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 file an application with the ERC for a Clearance when it proposes:

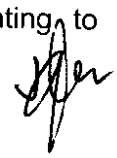
- (a) to make an agreement or arrangement, or arrive at an understanding; or
- (b) to acquire shares in the capital stock of a corporation; or
- (c) to acquire assets of a Person; or
- (d) to merge with another corporation; or
- (e) to consolidate with another corporation to form a new corporation.

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 assists 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 has signed an undertaking to keep confidential the information disclosed to it for that purpose;
- (c) that Person, has agreed to be subject to the fines and penalties provided under these Rules for violation of said undertaking.

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 other 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 subject to Section 5 hereof, 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 file an application with 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 file an application with the ERC for an Authorization when it proposes:

- (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. Test for Authorization. The ERC shall grant an application for an Authorization if it determines that the making of the agreement, arrangement or understanding, the giving effect to the provisions thereof, the acquisition, merger or consolidation will in the circumstances result, or 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 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 4. 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 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 3 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 5. 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.

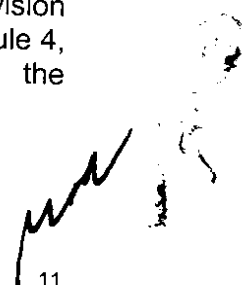
Except when Section 6 hereof so permits, nothing in this Section prevents the giving effect to such a provision before an Authorization was granted in respect of it, from constituting a violation of these Rules.

Section 6. 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 7. 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 other date as the ERC determines.

Section 8. 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.

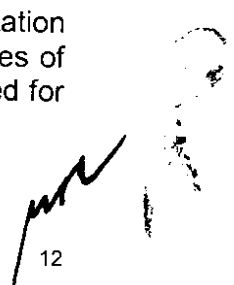
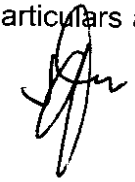
Section 9. Extent of Authorization. Where an application for an Authorization in relation to a particular agreement, arrangement or understanding is expressed, to be made also in relation to another agreement, arrangement or understanding, the ERC may grant:

- (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 comply with the formal requirements under Rule 3 of the ERC Rules of Practice and Procedure and must contain such particulars as are required for that purpose by the ERC.

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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 the costs of such external consultants required by the ERC for the purpose of advising it on matters relating to the applications.

The ERC shall inform the Applicant of the necessity of engaging an external consultant and must inform the Applicant of the name and estimated cost of the consultant which shall render advice under paragraph (b). For this purpose, the consultancy contract shall be executed by the Applicant and the external consultant so engaged.

Notwithstanding that the ERC may require external consultants for the purpose of advising it on matters relating to the application, the ERC shall act on its own independent consideration of the facts and applicable laws and rules.

Section 3. Procedure. Before deciding an application for a Clearance or an Authorization, the ERC shall conduct hearings in relation to the application, in accordance with the ERC Rules of Practice and Procedure.

Section 4. Withdrawal of application. An Applicant may, at any time before its application is decided upon by the ERC, file a motion to withdraw the application, provided however, that the application fee shall not be subject to refund.

Section 5. Prohibition. Subject to Rule 4, Section 4, 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.

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 6. Clearance or Authorization, when not be granted. Subject to Rules 8 and 9, 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 7. 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 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 the Grantee or any Person who, in the opinion of the ERC, is likely to have an interest in the matter, inform the Grantee and/or that Person and indicate the basis on which it is considering revoking or amending the Clearance or Authorization.

The ERC shall likewise direct that Person to submit its comment on the intended revocation or amendment of the Clearance or Authorization within a period specified in the notice, after which the ERC shall render its decision on the revocation or amendment of the Clearance or Authorization.

Section 9. Violations. The following constitute violations of these 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 5 hereof, the ERC may, after due notice and hearing, 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 case of violation of Section 7, 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, after due notice and hearing, make such order or orders against a Person as it considers appropriate (including all or any of the orders mentioned in Section 2), if it 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 include:

- (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 (PhP50,000,000.00);
- (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

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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; and
- (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, after due notice and hearing, 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, after due notice and hearing, 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. Pre-requisites for Cease and Desist Order. The ERC shall 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 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, must 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 shall be made available to the public. Subject to Section 4, the ERC shall 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 Rules, or in its reasons for that decision, where the ERC considers that the disclosure is necessary for 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, its officers and employees must not disclose to any Person the contents of:

- (a) any application for a Clearance or any document or information submitted in relation thereto; or
- (b) 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 required by the ERC for the purpose of advising it on those matters, provided 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;

Resolution No. 26, Series of 2005, the Guidelines issued by the ERC on the Determination of Installed Generating Capacity in a Grid and the National Installed Generating Capacity and Enforcement of the Limits on Concentration of Ownership, Operation or Control of Installed Generating Capacity under Section 45 of the EPIRA, is deemed to be incorporated in these Rules for the purpose of enforcing the above prohibition.

- (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. For this purpose, Transition Supply Contracts shall not be treated as bilateral power supply contracts during the term of the said contract as provided under Section 67 of the EPIRA.

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 nor 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 using the data contained in the monthly submissions by distribution utilities to the ERC; 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 for each month.

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 Guidelines:

- (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 Rules as if they were set out in full herein, and a violation of any of these requirements is a violation of these 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 under the provisions hereof or with an order made by the ERC under these Rules, and that Person must comply with that requirement within such reasonable time as the ERC specifies in that notice. The list of reportorial requirements shall be contained in a separate document to be issued by the ERC which may be periodically updated.

Section 2. Requirements for the Market Operator. To enable the ERC to monitor potential anti-competitive behaviour, the Market Operator shall, in accordance with a monitoring protocol executed for, among others, such purpose, submit to the ERC, a set of data as defined therein which may be updated from time to time.

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 - Interpretation and Application

Section 1. Interpretation. In these 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 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
- (f) 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 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 likely to have, that effect.

Section 7. Definition of "goods or services". 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. Determination of degree of power. 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 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.

INVESTIGATIONS

Rule 19 - Initiation of investigations

Section 1. Investigation, who may initiate. The ERC may initiate an investigation into matters that may constitute a violation of these 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 20 - Conduct of investigations

Section 1. Referral to the Investigating Officer. After a request is made with the ERC under Rule 19 or upon its own initiative, the ERC shall refer the matter to the Investigating Officer who shall forthwith issue subpoenas to persons capable of providing information, producing documents or giving evidence relating to the matter under investigation.

Section 2. Powers delegated to the Investigating Officer. The Investigating Officer is responsible for investigating matters that may constitute a violation of these Rules. For this purpose:

- (a) the information-gathering powers of the ERC under Rule 13 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 these Rules.

Section 3. 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 4. 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 requested the investigation, the person who is recording the testimony, any member of the Investigatory Unit involved in the matter and any legal adviser retained to assist the ERC in connection with the matter.

Section 5. 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 6. 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 7. 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 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 resolved by the ERC at the proceeding initiated by the Investigation Officer arising from his investigation, if any such proceeding is initiated, or at any other appropriate proceeding.

Section 8. Record of testimony. Testimony given by a Person who appears before the Investigating Officer or a member of the Investigatory Unit shall be recorded and the transcript of such recording shall form part of the records of the investigation.

Section 9. Resolution. If, after conducting the investigation, the Investigating Officer finds that there exists a prima facie case against the Person investigated for violation of these Rules, he shall prepare the appropriate Complaint for filing with the ERC. Otherwise, he shall transmit his

recommendation to the ERC to terminate and close the investigation, together with the entire records of the investigation.

If the ERC, on the basis of its own appreciation of the evidence elicited during the investigation, agrees with the recommendation of the Investigating Officer to terminate and close the investigation, it shall issue an Order to this effect and notify the Investigating Officer, the Person who requested the investigation, if any, and the Person investigated. If the ERC, however, finds that the evidence on record is sufficient to warrant the institution of proceedings against the Person investigated, it shall direct the Investigating Officer to prepare the appropriate Complaint for filing.

Rule 20 - 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 under circumstances not covered by the foregoing where such disclosure:

- (a) is required or permitted by the ERC; or
- (b) is made in connection with any proceedings before a court that relate to that matter.

ADJUDICATIVE PROCEEDINGS

Rule 21 - Initiation of proceedings

Section 1. Proceedings, when commenced. The Investigating Officer shall commence proceedings against a Person for an alleged violation of these Rules by filing with the ERC a Complaint, together with all supporting affidavits and documents, as would reasonably tend to establish prima facie the truth of the allegations therein, against such Person. He shall be a party to the proceedings as Complainant.

Section 2. Complaint. The Complaint shall conform to the formal requirements for pleadings as provided in the ERC Rules of Practice and Procedure and 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 these 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 these Rules by the Respondent, in which case each violation shall be separately alleged.

Section 3. Procedure. The filing of the Complaint and the proceedings thereafter shall be governed by the ERC Rules of Practice and Procedure.

Section 4. Notice to the person who requested the investigation. The ERC shall notify the Person who requested the investigation, of the filing of the Complaint. Said Person may petition the ERC to be a party to the proceedings by filing a petition to intervene within the period allowed in the notice.

MISCELLANEOUS

Rule 22 - Amendment of these Rules

Subject to the provisions of any other applicable law:

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

Rule 23 - Separability

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

Rule 24 - 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, 23 August 2006


RODOLFO B. ALBANO JR.
Chairman


RAUF A. TAN
Commissioner


ALEJANDRO Z. BARIN
Commissioner


MARIA TERESA A. R. CASTAÑEDA
Commissioner


JOSE C. REYES
Commissioner


DTL/MCCG/FSCJ