

## COMMISSION RESOLUTION NO. 08 -2019

### APPROVING AND ADOPTING THE PCC RULES ON EXPEDITED MERGER REVIEW

**WHEREAS**, Section 16 of Republic Act No. 10667, otherwise known as the Philippine Competition Act (“PCA”), mandates the Philippine Competition Commission (“PCC” or the “Commission”) to review mergers and acquisitions based on factors deemed relevant by the Commission;

**WHEREAS**, Section 19 of the PCA empowers the Commission to adopt and publish rules and regulations relating to the notification procedures for the review of mergers and acquisitions;

**WHEREAS**, Section 2 of Republic Act No. 11032, otherwise known as the Ease of Doing Business and Efficient Government Service Delivery Act of 2018, declares it the policy of the State to establish effective practices aimed at efficient turnaround of the delivery of government services by adopting simplified requirements and procedures that will expedite business related transactions in government;

**WHEREAS**, based on the Commission’s experience in reviewing mergers and acquisitions for the past three years, there are certain types of transactions that are less likely to substantially prevent, restrict or lessen competition in their relevant markets;

**WHEREAS**, the expedited review of non-problematic mergers will allow for a more efficient use of Commission resources towards the effective implementation of a holistic merger control regime;

**WHEREAS**, to streamline the review of mergers and acquisitions, there is a need for the Commission to promulgate the Rules on Expedited Merger Review of the PCC (“Expedited Merger Rules”) which would govern the procedure for the notification and review of mergers and acquisitions qualified for expedited review;

**WHEREAS**, upon completion of the draft Expedited Merger Rules on 3 April 2019, the Commission published said draft in its website and invited comments from the public;

**WHEREAS**, the Commission held a public consultation on the draft Expedited Merger Rules on 10 April 2019 wherein various stakeholders such as corporations, business chambers, and law firms were invited to provide comments and ask clarificatory questions;



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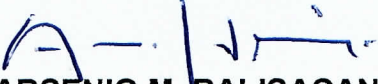
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**WHEREAS**, the draft Expedited Merger Rules, as revised for key comments and questions raised during the public consultation, was presented for approval of the Commission in its regular meeting on 28 May 2019.

**NOW, THEREFORE**, the Commission has **RESOLVED**, as it hereby **RESOLVES**, to approve and adopt the attached Expedited Merger Rules. The Expedited Merger Rules shall take effect fifteen (15) days following its publication in a newspaper of general circulation.

**DONE** this 28<sup>th</sup> day of May 2019 in Quezon City, Philippines.

  
**ARSENIO M. BALISACAN**  
Chairman

  
**JOHANNES BENJAMIN R. BERNABE**  
Commissioner

  
**AMABELLE C. ASUNCION**  
Commissioner

  
**MACARIO R. DE CLARO, JR.**  
Commissioner

## PCC RULES ON EXPEDITED MERGER REVIEW

### 1. Coverage

1.1. These Rules on Expedited Merger Review are issued by the Philippine Competition Commission (the “PCC” or “Commission”) pursuant to Sections 12(b) and 16 of Republic Act No. 10667, otherwise known as the Philippine Competition Act (the “Act”), and Rule 4, Section 1 of the Implementing Rules and Regulations of Republic Act No. 10667 (the “IRR”).

1.2. These Rules on Expedited Merger Review provide the procedure for the notification and review of mergers and acquisitions qualified for expedited review.

1.3. The Rules on Merger Procedure shall continue to apply to mergers and acquisitions qualified for expedited review unless otherwise provided for in these Rules on Expedited Merger Review.

1.4. As used in these Rules on Expedited Merger Review, the term “merger” refers to both mergers and acquisitions.

1.5. The following mergers are qualified for expedited review:

1.5.1. There are no actual or potential horizontal or vertical (including complementary) relationship in the Philippines between the acquiring entity, including its Notifying Group, and the acquired entity and the entities it controls.

1.5.2. The merger is a global transaction where the acquiring and acquired entities identified in the definitive agreement are foreign entities (“foreign parents”), and their subsidiaries in the Philippines act merely as manufacturers or assemblers of products with at least ninety-five percent (95%) of such products exported to the foreign parents, subsidiaries, affiliates or third parties located outside the Philippines: *Provided*, That the remaining five percent (5%) product sales in a market in the Philippines is minimal in relation to the entirety of such Philippine product market.

1.5.3. The candidate relevant geographic market of the merger is global and the acquiring and acquired entities have negligible or limited presence in the Philippines.

1.5.4. Joint ventures, whether incorporated or not, formed purely for the construction and development of a residential and/or commercial real estate development project.



1.6. The PCC may, in exceptional cases, suspend these Rules on Expedited Merger Review or apply supplemental rules as may be necessary. These Rules on Expedited Merger Review may be revised or amended from time to time.

## **2. Assessing Whether a Merger may be Qualified for Expedited Review**

2.1. In order to determine whether a merger may be qualified for expedited review, reference should be made to the notification thresholds under Rule 4 of the IRR, as amended by PCC Memorandum Circular No. 18-001, the PCC Guidelines for Notification of Joint Ventures, and Section 1.5 of these Rules on Expedited Merger Review. Prior to notification under expedited review, parties are strongly encouraged to request and have a pre-notification consultation ("PNC") with the Mergers and Acquisitions Office ("MAO") in accordance with Rule 4, Section 4 of the IRR.

2.2. Even if a merger may be qualified for expedited review, the parties have the option to file Notification Forms under the Rules on Merger Procedure.

## **3. Submission of Notifications of Transactions Under Expedited Review**

3.1. To avail of expedited review, all acquiring and acquired pre-acquisition ultimate parent entities ("UPE") or any entity authorized by the UPE to file the notification on its behalf ("Notifying Party") must each submit their accomplished Expedited Review Notification Form ("Expedited Form") using the most recent version available on the PCC Website.

3.2. Notifying Parties must submit their Expedited Forms within thirty (30) days after the signing of definitive agreements relating to the merger ("Notification Period"), but prior to any acts of consummation (see discussion on definitive agreements and acts of consummation in Clarificatory Note ("CN") No. 16-001).

3.3. Prior to submission of the Expedited Forms, Notifying Parties must each inform the MAO of their intention to submit their respective Expedited Forms at least two (2) days prior to the target submission date, specifically indicating as purpose the submission of the Expedited Forms.

3.4. Upon submission of an Expedited Form, the MAO will determine whether the Expedited Form complies with the following requirements:

- 3.4.1. All portions of the Expedited Form have been filled out, and all annexes required have been attached.
- 3.4.2. The original Expedited Form is signed and certified by a general partner of a partnership, an officer or director of a corporation, or in the case of a natural person, the natural person or his/her legal representative, and duly notarized (see Rule 4, Section 5(b) of the IRR);
- 3.4.3. In the case of a partnership or a corporation, the Expedited Form shall be accompanied by an original Secretary's Certificate or Special Power of Attorney or its equivalent in foreign jurisdictions, naming the authorized signatory of the Expedited Form as possessing actual authority to make the certification on behalf of

the entity filing the notification, and naming the persons authorized to file and represent them before the PCC;

- 3.4.4. Original affidavit attesting to the fact that a definitive agreement has been signed and that each party has an intention of completing the proposed transaction in good faith (see Rule 4, Section 5(c) of the IRR);
- 3.4.5. Documents executed abroad are notarized and bear an apostille recognized in the Philippines. If the country of execution is not a party to the Apostille Convention, the document executed abroad must be duly authenticated by the Philippine embassy or consul in the country of execution;
- 3.4.6. All documents are properly bound, with each attachment labeled with a tab;
- 3.4.7. Electronic version of the completed Expedited Form in a secure USB, with each attachment saved as a separate file, and each file name referring to the identifying appendix number;
- 3.4.8. The electronic version of the completed Expedited Form is saved in searchable PDF, Word or spreadsheet format in two (2) versions, protected and editable.

3.5. The PCC shall refuse to accept an Expedited Form if it fails to comply with Section 3.4, or if it is not substantially in the prescribed form.

3.6. Upon determination by the MAO that the Expedited Forms of all Notifying Parties comply with Section 3.4 and may be accepted, the acquiring entity must pay a non-refundable filing fee of **One Hundred Fifty Thousand Pesos (PhP 150,000.00)** by manager's cheque, payable to the Philippine Competition Commission. Failure to pay the filing fee shall result in the non-acceptance of the Expedited Forms.

3.7. Within one (1) working day from acceptance by the PCC of the Expedited Forms, the PCC will publish the abstract of the transaction in the PCC Website and issue a call for comments.

3.8. During the review of the Notifying Parties' Expedited Forms, the PCC will verify if the merger may be qualified for expedited review and determine if the information and documents provided are complete. The review shall be conducted within a period of fifteen (15) working days from acceptance by the PCC of the Expedited Forms ("Expedited Review Period").

3.9. At any time during the Expedited Review Period, the PCC may require the Notifying Parties to provide such additional data, information, or documents as it deems necessary for its review. The PCC may conduct site visits or inspections of the business premises of the Notifying Parties, their customers and/or their competitors, in accordance with Section 6.7 of the Rules of Merger Procedure, in order to better understand how products are manufactured, distributed or sold, how services are rendered, or the nature of competition in the market, among others. The PCC may also contact third parties in accordance with Section 6.12 of the Rules on Merger Procedure, and receive information in response to the call for comments in Section

3.7. Additionally, the PCC may conduct interviews, require a person to provide information or documents, or to provide testimony, in accordance with Section 7.12 of the Rules on Merger Procedure.

3.10. Should any of the Notifying Parties conceal, destroy, fail or refuse to provide information or documents to the PCC, the PCC shall be entitled to make reasonable assumptions, adopt worst case scenarios when forecasting and conducting a sensitivity analysis, or infer any presumptions adverse to the merger parties. The PCC may also rely on alternative sources of information and its institutional competence and experience.

3.11. Upon completion of the review within the Expedited Review Period, the PCC shall issue a short-form clearance decision that shall contain the following information:

- a. Names of the acquiring and acquired entities;
- b. Nature of the transaction;
- c. Markets covered by the transaction; and
- d. A statement that the merger is approved because it does not raise any competitive concerns and it falls within one or more grounds under these Rules on Expedited Merger Review.

3.12. If at any time during the review process, the PCC finds that any information or document required under the Expedited Form, which is relevant or material to the PCC's review, has been withheld from the PCC, the PCC will return the Expedited Forms to the Notifying Parties: *Provided*, That the parties shall be given the opportunity to justify why such information or document was withheld. Should the PCC accept the parties' explanation, it will require submission of the relevant information. Otherwise, no notification is considered to have been made to the PCC.

***Where notification is deficient or does not qualify for expedited review***

3.13. Within the Expedited Review Period, if an Expedited Form is determined to be deficient, it cannot be determined if the merger qualifies for expedited review, or there is a substantial competition issue that requires additional information, the Expedited Forms of both Notifying Parties will be returned. A Notice of Return will be issued to each Notifying Party stating the ground for the return. In case of return of the Expedited Forms, no notification shall be considered to have been made, subject to Section 3.16.

3.14. In case the Expedited Forms are returned, the Notifying Parties may resubmit their corrected and complete Expedited Forms or, in case the merger is not qualified for expedited review, their Notification Forms under the Rules on Merger Procedure, as the case may be, at any time prior to any acts of consummation of their merger.

3.15. Notifying Parties that will resubmit their Expedited Forms shall no longer be required to pay the filing fees for expedited review. However, if the Expedited Forms were returned for the reason that the transaction is subject to the regular notification and review process under the Rules on Merger Procedure, the applicable

filing fees must be paid in accordance with PCC Memorandum Circular No. 17-002, as may be amended from time to time.

3.16. Once the parties have submitted their Expedited Forms to the PCC within the Notification Period, the penalty provided under Sections 3.5 and 16.2 of the Rules on Merger Procedure will not apply even if their Expedited Forms are subsequently returned. However, the parties must resubmit the corrected and complete Expedited Forms or Notification Forms prior to any acts of consummation.

#### 4. Miscellaneous Provisions

4.1. During the Expedited Review Period, the MAO or the Commission may call for the submission of the Notification Forms under the Rules on Merger Procedure when, even though the conditions for use of the Expedited Forms are fulfilled, there may be a material competition issue that requires an in-depth review or investigation.

4.2. **Applicability.** These Rules on Expedited Merger Review shall apply prospectively to all notifiable mergers and acquisitions qualified for expedited review.

4.3. **Separability clause.** If any part or provision of these Rules on Expedited Merger Review is declared unconstitutional or illegal, the other parts or provisions shall remain valid.

4.4. **Effectivity.** These Rules on Expedited Merger Review shall take effect fifteen (15) days after publication in a newspaper of general circulation.

Approved this 28<sup>th</sup> day of May 2019 in Quezon City, Philippines.

  
**ARSENIO M. BALISACAN**  
Chairman

  
**JOHANNES BENJAMIN R. BERNABE**  
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