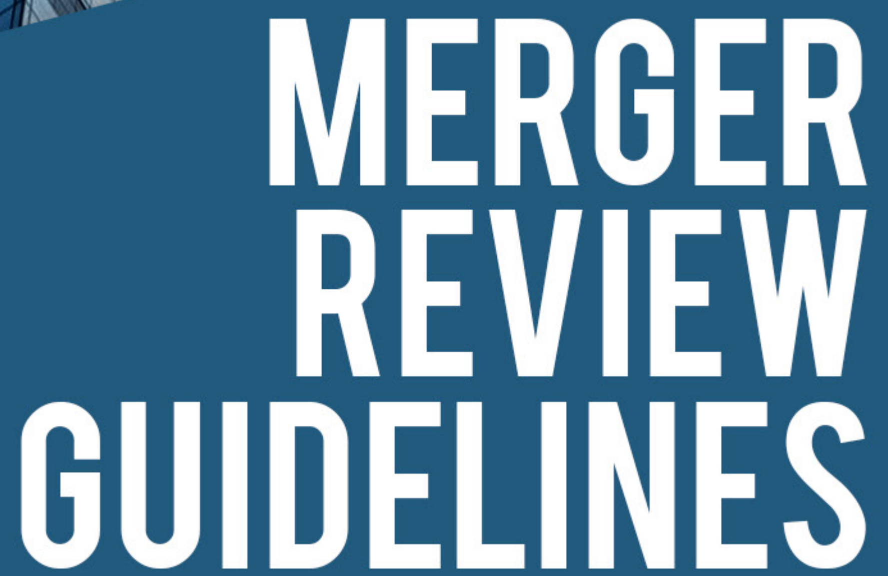

MERGER REVIEW GUIDELINES

PHILIPPINE COMPETITION COMMISSION

Ensuring businesses compete and consumers benefit

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TABLE OF CONTENTS

1. Introduction **1**

2. Rationale for merger review **2**

3. What constitutes a merger and acquisition **3**

4. Substantive Legal Standard for Merger Analysis: Substantially Prevents, Restricts or Lessens Competition (SLC) **5**

5. Market Definition **8**
   - A. The Hypothetical Monopolist Test **9**
   - B. Targeted Customers and Price Discrimination **14**
   - C. Supply-side Substitution **15**

6. Market Shares and Concentration **17**

7. Competitive Effects Analysis in Horizontal Merger Review **19**
   - A.Unilateral Effects **19**
   - B.Coordinated Effects **21**

8. Entry & Expansion **25**

9. Efficiencies **27**

10. Failing Firm/Exiting Assets **28**

11. Remedies **30**

12. Decision **31**

13. Interpretation **32**

1. Introduction

1.1. These Guidelines on substantive merger analysis are issued by the Philippine Competition Commission (the "Commission") pursuant to Section 16 of Republic Act No. 10677, otherwise known as the Philippine Competition Act ("PCA").

1.2. These Guidelines outline the principal analytical techniques, practices, and the enforcement policy of the Commission with respect to mergers and acquisitions that may have a direct, substantial and reasonably foreseeable effect on trade, industry, or commerce in the Philippines. These are adapted from the International Competition Network (ICN) Recommended Practices for Merger Analysis, which are derived from the ICN Merger Guidelines Workbook and common practices across member jurisdictions, tailored to apply to Philippine commercial and legal practices and made consistent with the PCA, and the Implementing Rules and Regulations of Republic Act No. 10667 ("IRR").

1.3. The purpose of these Guidelines is to increase the transparency of the analytical process undertaken by the Commission and thereby assist the business community and competition law practitioners. These Guidelines may also assist the courts in developing an appropriate framework for interpreting and applying the PCA, the IRR and other regulations relating to mergers.

1.4. The Commission will consider each merger with due regard to the attendant circumstances, including the information available and the time constraints, and will apply these guidelines flexibly, or where appropriate, deviate therefrom.

1.5. The Commission may revise these Guidelines from time to time to reflect developments and may publish new or supplemental guidance.

2. Rationale for Merger Review

2.1. Most mergers do not harm competition and may in fact contribute to consumer welfare. Many mergers enable the merged firm to reduce costs and become more efficient, leading to lower prices, higher quality, higher quantity and diversity of products, or increased investment in innovation.

2.2. Some mergers, however, may harm competition by creating or enhancing the merged firm's ability or incentives to exercise market power—either unilaterally or through coordination with rivals—resulting in price increases above competitive levels for a significant period of time, reductions in quality or a slowing of innovation.

2.3. Through merger control, the Commission prevents mergers that would likely deprive customers of the benefits of competition by significantly increasing market power of firms. When exercised by sellers, market power is the ability to profitably raise prices above competitive levels for a significant period of time, and/or to lessen competition on parameters other than price, such as quality, service, or innovation.

2.4. When exercised by buyers, market power is the ability to profitably reduce the price paid to suppliers below competitive levels for a significant period of time, which may lead to an anti-competitive reduction in supplier output.

2.5. In performing merger analysis, the Commission predicts a merger's competitive impact to prevent competitive problems before these materialize. The Commission will only intervene to prohibit or remedy a merger when it is necessary to prevent anti-competitive effects that may be caused by that merger. The ultimate goal of Commission intervention is to restore or maintain competition affected by the merger.

2.6. Identification of mergers that potentially threaten to substantially prevent, restrict or lessen competition on one hand, and expeditious clearance of nonproblematic mergers on the other, can prevent anti-competitive harm from occurring in the future, and likewise facilitates efficient use of Commission resources.

3. What constitutes a Merger and Acquisition

3.1. Under the PCA and the Rules, "Merger" is defined as the joining of two (2) or more entities into an existing entity or to form a new entity, including joint ventures.

3.2. "Acquisition" refers to the purchase or transfer of securities or assets, through contract or other means, for the purpose of obtaining control, by:

(1) One (1) entity of the whole or part of another;
(2) Two (2) or more entities over another; or
(3) One (1) or more entities over one (1) or more entities;

Acquisition through "other means" includes, among others, acquisition of an entity through a subsidiary or affiliate of the acquiring entity.

3.3. The term "entity" is defined in Section 4(h) of the PCA as "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." As such, an entity need not be a separate legal entity. For instance, an unregistered partnership, an unincorporated joint venture, or an unincorporated association are considered entities under the PCA.

3.4. The term "economic activity" does not only cover activities that generate profits or dividends for shareholders; it may also include activities conducted on a not-for-profit basis.

3.5. "Control" as used in Section 3.2 above is defined under the PCA as the ability to substantially influence or direct the actions or decisions of an entity, whether by contract, agency or otherwise. Control of an entity may either be legal or de facto.

3.6. Such control may be acquired by an entity acting alone or by two or more entities acting together. The control acquired may be over one (1) or more entities or over the whole or part of another entity or assets, including goodwill, brand, or licenses, of such entity. Examples of acquisitions are buying a majority stake in an entity and transfer or pooling of assets.

3.7. Control is presumed to exist when the acquisition will result in the parent of the acquiring entity owning directly or indirectly, through its subsidiaries, more than one half (1/2) of the voting power of the entity to be acquired, unless in exceptional circumstances, it can clearly be demonstrated that such ownership will not constitute control.

3.8. Where the ownership is one half (1/2) or less of the power of the entity to be acquired, control is presumed to exist if: a. there is power over more than one half (1/2) of the voting rights by virtue of an agreement with investors; b. there is power to direct or govern the financial and operating policies of the entity under a statute

or agreement; c. there is power to appoint or remove the majority of the members of the board of directors or equivalent governing body; d. there is power to cast the majority votes at meetings of the board of directors or equivalent governing body; e. there exists ownership over or the right to use all or a significant part of the assets of the entity; or f. there exist rights or contracts which confer decisive influence on the decisions of the entity.

3.9. Acquisition of the whole or part of the assets of an entity also includes those acquisitions which result in an entity being in a position to replace, or substantially replace, the acquired entity in the business or in part of the relevant business, or allow an acquirer to build up a market presence or develop market access within a reasonably short period of time.

3.10. Assessment of whether the acquisition will bestow control to the acquiring entity requires a case-by-case analysis of the entire relationship between the merging parties. In making this assessment, the Commission will evaluate not only the legal effect of any instrument, deed, assignment, or any other agreements between the merger parties but also other relevant circumstances such as the source of financing for the acquisition, family links and economic relationships.

3.11. For purposes of these Guidelines, mergers and acquisitions will be collectively referred to as mergers.

4. Substantive Legal Standard for Merger Analysis: Substantially Prevents, Restricts or Lessens Competition (SLC)

4.1. Competition is a process of rivalry between firms seeking to win customers' business over time. Competition creates incentives for firms to lower prices, increase output, improve quality, enhance efficiency, or introduce new and better products. When levels of competition are reduced, firms' competitive incentives are diminished, to the probable detriment of customers.

4.2. The objective of the PCA is to foster and promote competition. Thus, in reviewing mergers, the Commission will look at the effects on competition over time in the relevant market or markets affected by the merger. A merger gives rise to an SLC when it has a significant effect on competition, and consequently, on the competitive pressure on firms to reduce prices, improve quality, become more efficient or innovative. A merger that gives rise to an SLC is likely to lead to an adverse effect on consumers.

4.3. Merger analysis is a fact-specific process which involves the application of various principles and use of a range of analytical tools. These Guidelines illustrate the analytical process but do not exhaust the applications of the relevant principles or the range of evidence that may be used by the Commission. The Commission will conduct merger analysis reasonably and flexibly, recognizing the broad range of possible factual contexts and the specific competitive effects that may arise in different transactions. The Commission will assess whether a proposed merger or acquisition is likely to substantially prevent, restrict, or lessen competition in the relevant market or in the market for goods and services determined by it.

The Commission will also take into account any substantiated efficiencies proferred by the parties to the proposed merger, which are likely to arise from the transaction.

4.4. While a merger review typically begins with a discussion of market definition (see Section 5 below), there are instances where the Commission's analysis need not start with market definition. Evidence of competitive effects can inform market definition, just as market definition can be informative of competitive effects.

4.5. In its evaluation of the competitive effects of a merger or acquisition, the Commission may consider, on a case-by-case basis, the broad range of possible factual contexts and the specific competitive effects that may arise in different transactions, such as:

a) the structure of the relevant markets concerned;

b) the market position of the entities concerned;

c) the actual or potential competition from entities within or outside of the relevant market;

d) the alternatives available to suppliers and users, and their access to supplies or markets;
e) any legal or other barriers to entry.

4.6. In considering the range of possible factual scenarios and competitive effects, the Commission will turn to reasonably available and reliable evidence. The most common sources of reasonable and reliable evidence are the merging parties, customers, other industry participants, government offices, and industry observers. The Commission typically obtains substantial information from the merging parties. This information can take the form of documents, testimony, or data, and can consist of descriptions of competitively relevant conditions or reflect actual business conduct or decisions.

4.7. Mergers can be classified into two broad categories: horizontal mergers and non-horizontal mergers.

a. A horizontal merger is a merger of entities whose products or services directly compete in the same market.

b. A non-horizontal merger can either be a vertical merger or a conglomerate merger.

i. A vertical merger involves entities operating at different levels of the production or supply chain, that is, as suppliers or customers of one another.

An example is the merger of an upstream firm and a downstream firm whose inputs include the goods produced by the former.

ii. A conglomerate merger involves entities that are related neither horizontally nor vertically. This merger may be between suppliers of goods that are complements of one another or goods that exhibit economies of scale when purchased together.

4.8. While the present guidance focuses on horizontal mergers, its underlying principles can also be applied to non-horizontal mergers. In the future, the Commission will release guidance relevant to non-horizontal mergers.

4.9. In analyzing horizontal mergers, the Commission will generally look at the impact of the merger on the markets in which transacting entities supply goods and services, and other related markets, e.g. vertical and complementary.

4.10. Theories of harm provide the framework for assessing the effects of a merger and whether or not it could lead to an SLC (see Section 7 below). They describe possible changes in the market arising from the merger, any impact on competition and expected harm to consumers as compared with the situation likely to arise without the merger. For some mergers, several theories affecting the same market may be considered. The Commission may revise the theories of harm as their assessment progresses.

4.11. In reviewing mergers, the Commission will assess whether the merger is likely to result in an SLC. The principles of substantive assessment for Phase I and II review (see IRR, Rule 4, Section 5) are the same.

4.12. The Commission generally adopts the prevailing conditions of competition or the pre-merger situation as the counterfactual against which to assess the impact of the merger. However, the Commission, based on the evidence available to it, may consider the likely scenarios other than the prevailing conditions (e.g. one of the merger firms would inevitably have exited from the market or where there is a realistic prospect of a new entrant in the market), in its construction of the counterfactual.

4.13. Arrangements and agreements that are entered into by the merging parties, which restrict such parties' freedom of action in the market, will be included in the Commission's merger analysis. Agreements which contain a restriction on competition, but are not directly related and necessary to the implementation of the merger, may be the subject of Sections 14 and 15 of the PCA.

5. Market Definition

5.1. The Commission will assess the competitive effects of a merger within relevant markets. A relevant market is one that could be subject to an exercise of market power that would likely result in significant harm to competition, rather than anticompetitive effects that are insignificant or transient in nature.

5.2. The Commission assesses market definition within the context of the particular facts and circumstances of the merger under review. Competitive conditions change over time and may vary in different geographic areas. While relevant markets identified in past investigations in the same industry or in investigations by agencies in other jurisdictions may be informative, they may not be applicable to the Commission's assessment of the merger in question when, for example, market conditions differ (or have evolved) over time or across geographic areas. The Commission exercises particular care in defining markets where the choice among possible market definitions may have a significant impact on market shares.

5.3. Market definition is a step in the analytical process which helps in determining whether the merged entity possesses or will, post-merger, possess market power. For example, in some cases, the Commission may gather more evidence regarding likely competitive effects. In other cases, it may be clear that a merger will not create or enhance market power in any market, or that competitive harm would be predicted in any market. In such circumstances, the Commission may not need to reach a firm conclusion on the scope of the relevant market.

5.4. An exercise of market power is feasible only when customers would not sufficiently reduce their demand for the relevant product(s), or divert sufficient demand to other products or to other locations, so as to make a price increase (or other lessening of competition) unprofitable. Thus, market definition depends primarily upon demand-side substitution, which focuses on the extent to which customers would likely switch from one product to another, or from a supplier in one geographic area to a supplier in another area, in response to changes in prices, quality, availability, or other features.

5.5. As stated in PCA, Chapter I, Section 4 (k)(1), a relevant product market comprises all those goods and/or services that are regarded as interchangeable or substitutable by the consumer or the customer, by reason of the goods and/or services' characteristics, their prices, and their intended use. Product definition considers the consumer's perspective or the customers' response to a price increase or a corresponding non-price change.

5.6. As stated in PCA, Chapter I, Section 4 (k)(2), a relevant geographic market comprises the area in which the entity concerned is involved in the supply and demand of goods and services, in which the conditions of competition are sufficiently homogenous and which can be distinguished from neighboring areas because the conditions of competition are different in those areas. Geography may limit some customers' willingness or ability to substitute some products, or some suppliers' willingness or ability to serve some customers, which is why geography is an important component of market definition.

5.7. As stated in PCA, Chapter V, Section 24, the Commission, in determining the relevant market, will consider the following factors, among others: (a) The possibilities of substituting the goods or services in question with others of domestic or foreign origin, considering the technological possibilities, the extent to which substitutes are available to consumers and the time required for such substitution; (b) The cost of distribution of the good or service, its raw materials, its supplements and substitutes from other areas and abroad, considering freight, insurance, import duties, and non-tariff restrictions; the restrictions imposed by economic agents or by their associations; and the time required to supply the market from those areas; (c) The cost and probability of users or consumers seeking other markets; and (d) National, local or international restrictions which limit the access by users or consumers to alternate sources of supply or the access of suppliers to alternate consumers.

5.8. Once a market is defined, the Commission will, where circumstances require, consider market shares and concentration as part of the evaluation of competitive effects. Market shares and concentration are considered in conjunction with other reasonably available evidence. Market shares are a relevant aspect of the review process because they can influence firms' competitive incentives and reflect their capabilities. For example, as an initial indicator, when the combined post-merger market share of the merged entity is high, competition concerns may arise because a firm may be more reluctant to impose price reductions or pass on cost savings. Conversely, when market shares are low it may be possible to dismiss any concerns or the need for further review.

5.9. Some mergers may have potential effects in more than one relevant product market or geographic market, and may require an independent competitive assessment of each market in which a potential competitive concern arises. The Commission will examine all the relevant markets that may be potentially impacted by a merger to determine whether significant harm to competition is likely to occur in any of them. In addition, supply considerations also play a key role in understanding the competitive constraints on the merging firms.

A. The Hypothetical Monopolist Test

5.10. The "hypothetical monopolist" or "SSNIP" test is a methodological tool that may be used to determine the relevant market(s) in which to analyze the competitive effects of a proposed merger. The SSNIP test is not a tolerance level for price increases resulting from a merger. It generally identifies a product and a geographic space in which a hypothetical monopolist would profitably exercise market power. Under this test, the Commission identifies the relevant market as a product or group of products and a geographic area in which it is produced or sold, for which a hypothetical, profit maximizing firm, not subject to price regulation, that was the only present and future producer or seller of the product(s) in that area, would likely impose a "small but significant and non-transitory increase in price" (commonly referred to as a "SSNIP"), assuming the terms of sale for all products outside the candidate market are held constant.

"SSNIP" The Commission applies the SSNIP test to a candidate market of each product produced or sold by each of the merging firms, assessing what would happen if a hypothetical monopolist of that product imposed at least a SSNIP on that product, while the terms of sale of all other products remained constant. If the hypothetical monopolist would not profitably impose such a price increase because of substitution by customers to other products, the candidate market is not a relevant product market by itself. The Commission then adds to the product group the product that is the next-best substitute for the merging firm's product and apply the SSNIP test to a candidate market of the expanded product group. This process continues until a group of products is identified such that a hypothetical monopolist supplying the product(s) would be able to exercise market power and profitably impose a SSNIP in the candidate market. The relevant product market generally will be the smallest group of products that satisfies this test.

5.11. In most cases, the Commission uses the prevailing prices of the products of the merging firms and possible substitutes as a starting point for application of the SSNIP test. Where pre-merger circumstances strongly suggest coordinated interaction or other evidence strongly indicates that current prices are above competitive levels, the Commission may consider using a price more reflective of the competitive price.

5.12. What constitutes a "small but significant and non-transitory increase in price" will depend on the nature of the industry, but a common benchmark is a price increase of between 5% and 10% lasting for the foreseeable future (e.g., one to three years depending on market conditions and the type of market).

5.13. The Commission generally applies the "smallest market principle" to identify a relevant product and geographic market that is no bigger than necessary to satisfy the SSNIP test. At times, however, it may be appropriate to define broader markets. In some cases, applying the smallest market principle may fail to detect a horizontal overlap of concern between the merging parties. In other cases, where the competitive effects analysis is the same for a broader market, it may be unnecessary to define the smallest market. Similarly, it may be appropriate as a matter of convenience to aggregate markets where the competitive effects analysis is the same across a group of products or geographic areas, each of which could be defined as a separate relevant market.

5.14. Applying the SSNIP Test to Identify a Relevant Product Market

5.14.1. In determining the appropriate product market(s) in which to assess the competitive effects of a merger, the Commission considers not only whether products are functional substitutes, but also whether they are good economic substitutes for sufficient numbers of customers so as to make a SSNIP unprofitable. In doing this, the Commission may use economic tools, such as own price or cross price elasticities of demand, and diversion ratios, where they can be reliably calculated.

Cross-price elasticity of demand is a tool that measures the rate at which the quantity of a product sold changes when the price of another product goes up or down. When the cross-price elasticity is positive, those products are substitutes; if they are negative, those products are complements. Where there is zero cross-elasticity, the products in question will be unrelated.

Diversion ratios provide a direct measure of the closeness of competition between products. The diversion ratio between product A and B is defined as the percentage of lost sales of product A which are diverted to product B, should A increase its price. The higher the diversion ratio from A to B, the greater is the competitive constraint that B imposes on A.

5.14.2. The boundaries of relevant product markets may not be precise, particularly in differentiated products where substitutes may exist along a continuum. In such cases, some products may be in the same market yet may be much closer substitutes for each other than they are for other products that are also in the market. The degree of product differentiation and customer substitutability may vary over time and across geographic areas.

5.15. Applying the SSNIP Test to Identify a Relevant Geographic market

5.15.1. The SSNIP test is also used to identify a relevant geographic market.

5.15.2. A single firm may operate in a number of geographic markets. The Commission applies the SSNIP test to a candidate market of each location in which each merging firm produces or sells the relevant product, assessing what would happen if a hypothetical monopolist in that location imposed at least a SSNIP on sales of the product in that location, while the terms of sale in all other locations remained constant. If the hypothetical monopolist would not profitably impose such a price increase because of substitution by customers to products from other geographic areas, the candidate market is not a relevant geographic market by itself.

5.15.3. The Commission then adds the location that is the next-best substitute for the merging firm's location, and applies the SSNIP test to a candidate market of the expanded area. This process will continue until an area is identified such that a hypothetical monopolist would achieve market power and profitably impose at least a SSNIP in the candidate market. The relevant geographic market generally will be the smallest area that satisfies this test.

5.15.4. A relevant geographic market may be a city, province, national, multinational, or global in nature, and may not necessarily correspond to political or jurisdictional boundaries. In considering whether a market may be multinational or global in nature, the Commission may consider the extent to which imports, or the potential for imports, would constrain the ability of a hypothetical domestic monopolist to impose a SSNIP by constituting a competitive threat that would make such a price increase unprofitable. As part of this assessment, the Commission considers evidence indicating the extent to which customers currently view imported products as acceptable substitutes, the potential and likelihood for substitution to imports to increase in response to a SSNIP imposed by a hypothetical domestic monopolist, and whether imports would occur on a sufficient scale, and sufficiently quickly, to constrain an exercise of market power by a hypothetical domestic monopolist.

Evidence relevant to determination of product substitution

5.15.5. The Commission may consider reasonably available and reliable evidence relevant to the likelihood of product substitution by customers, including, among others:

a. The characteristics, prices, functions, and customer usage of the product(s) in question;

b. The possibilities of substituting the goods or services in question with others of domestic or foreign origin, considering the technological possibilities, the extent to which substitutes are available to consumers and the time required for such substitution;

c. Evidence that customers have shifted or have considered shifting purchases between products in response to relative changes in price or other competitive variables. In some instances, the Commission may be able to derive such evidence from empirical analysis of quantitative data, such as through calculation of own price or cross price elasticities of demand;

d. The margins between price and marginal or incremental cost, where higher margins as a fraction of price may imply that consumers are less price sensitive;

e. Evidence that sellers base business decisions on the prospect of buyer substitution between products in response to relative changes in price or other competitive variables;

f. Evidence regarding the strength and nature of customer preferences among products (e.g., brand loyalty, preferences for certain product performance or compatibility standards, etc.);

g. Relative price levels and price movements of the products compared to costs and to potential substitutes;

h. Legal or regulatory requirements (e.g., product certification standards, regulatory compliance standards, etc.) that may impact the substitutability of products from the standpoint of customers;

i. The time and costs required to switch products, as high switching costs relative to the value of a product tend to make substitution less likely.

5.15.6. The Commission relies on reasonably available and reliable evidence relevant to the likelihood that customers tsubstitute to suppliers outside the geographic area, including, among others:

a) The cost and probability of users or consumers seeking other markets;

b) The cost of distribution of the good or service, its raw materials, its supplements and substitutes from other areas and abroad, considering freight, insurance, import duties, and non-tariff restrictions; the restrictions imposed by economic agents or by their associations; and the time required to supply the market from those areas;

c) The cost and difficulty of transporting the product in relation to the value of the product (the higher the value of a product relative to its transportation costs, the more likely customers are to seek suppliers in more distant locations and the more likely suppliers located in other areas are willing to supply customers in that area);

d) Product characteristics (e.g., product perishability or fragility, the nature and requirements of offered services, etc.), geographic features, or other circumstances impacting the ability of customers to obtain products from sellers outside the geographic area;

e) Evidence that customers have shifted or have considered shifting purchases between different geographic locations in response to relative changes in price or other competitive variables. In some instances, the Commission may be able to derive such evidence from empirical analysis of quantitative data;

f) Evidence that sellers base business decisions on the prospect of buyer substitution between geographic locations in response to relative changes in price or other competitive variables;

g) Relative price levels and price movements of products in different geographic areas;

h) The willingness of customers to obtain the relevant product or service from suppliers in other geographic locations, including customer preferences for obtaining the product from a supplier with a local presence or with the ability to communicate in the local language;

i) Constraints on the ability of outside sellers to expand their sales into the geographic area (e.g., production capacity, committed capacity, the need to establish brand recognition and acceptance; distribution and after-sales service capabilities, etc.);

j) Legal or regulatory requirements (e.g., import duties, tariffs, quotas, licensing requirements, required regulatory authorizations or approvals, etc.) that may raise the costs of suppliers from outside the geographic area or impact the ability of customers to obtain the product or service from suppliers located outside the geographic area;

k) National, local or international restrictions which limit the access by users or consumers to alternate sources of supply or the access of suppliers to alternate consumers;

l) The timing and costs of switching suppliers from one region to another, as high switching costs relative to the value of the product will make substitution less likely.

B. Targeted Customers and Price Discrimination

5.16. Where a hypothetical monopolist would profitably discriminate in prices charged to particular groups of customers or in particular geographic areas, the Commission may consider whether a narrower relevant market, consisting of a product or group of products sold to certain groups of customers or in particular geographic areas, is appropriate. The Commission may also decide to define only one relevant market and note the scope for price discrimination within it. Markets serving targeted customers are also known as price discrimination markets.

5.17. In assessing whether a hypothetical monopolist would price discriminate to impose a SSNIP profitably on particular groups of customers or customers in particular locations, relevant factors may include, among others:

a) Whether price discrimination is feasible in the market at issue;

b) Whether a hypothetical monopolist could successfully identify transactions subject to successful price discrimination;

c) Whether customers or third parties could undermine price discrimination through some form of arbitrage in which a product sold at lower prices to some customer groups is resold to customer groups intended by the firms to pay higher prices;

d) Whether price discrimination would permit or enhance the successful exercise of market power against particular buyer groups or customers in particular locations.

5.17. In assessing whether a hypothetical monopolist would price discriminate to impose a SSNIP profitably on particular groups of customers or customers in particular locations, relevant factors may include, among others:

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b) Whether a hypothetical monopolist could successfully identify transactions subject to successful price discrimination;

c) Whether customers or third parties could undermine price discrimination through some form of arbitrage in which a product sold at lower prices to some customer groups is resold to customer groups intended by the firms to pay higher prices;

d) Whether price discrimination would permit or enhance the successful exercise of market power against particular buyer groups or customers in particular locations.

C. Supply-side Substitution

5.18. The Commission may consider the potential for supply-side substitution, and whether to include as participants in the relevant market not only all firms that currently produce or sell in the relevant market, but also firms that, in response to a SSNIP in the relevant market, would likely produce or sell in the relevant market within a short time frame without incurring significant sunk costs.

> **Sunk Costs:** The term "sunk costs" means the acquisition costs of tangible and intangible assets necessary to manufacture and sell the relevant product or provide the relevant service that cannot be recovered through the redeployment of these assets for other uses. Entry of a new firm is not likely if the anticipated reward were not commensurate with the risk from being unable to recover **sunk costs.**

5.19. The relevant question for analysis is not whether a firm has the capability to produce or sell the relevant product, but whether it would likely make such sales profitably in response to a SSNIP. If a firm has existing assets that could be shifted or extended quickly into production or sale of the relevant product in the relevant geographic market, it does not necessarily mean that (a) the firm would have the incentive to produce or sell the relevant product, (b) the firm would entirely switch or extend its production or sales of the relevant product, or (c) all firms producing the other product would do so.

5.20. In determining the extent to which supply-side substitution is likely, the Commission takes into account reasonably available and reliable evidence, including, among others:

a) The extent to which obtaining new tangible or intangible assets, or switching or extending existing assets, to enter into production or sale in the relevant market is technically feasible;

b) The extent to which customers would be willing to switch to products offered by the firm in the relevant market;

c) The time it would take to enter into production or sale, including the time necessary to comply with any applicable legal or regulatory requirements;

d) The costs of shifting or entering into production or sale relative to the profitability of sales at the elevated price;

e) Whether the firm's capacity is elsewhere committed or elsewhere so profitably employed that such capacity likely would not be made available to respond to an increase in price in the relevant market.

5.21. The Commission assesses the competitive significance of probable supply responses that will not meet the requirements for quick supply-side substitution in the analysis of entry.

6. Market Shares and Concentration

6.1. Market shares are an indication of the competitive significance of each merging firm in the relevant market. They provide an indication of a firm's incentives to coordinate its actions with rivals and its ability to exercise market power. The significance of market shares and measures of market concentration is specific to the analytical context presented in each review. They are not determinative of possible competition concerns in themselves, as they may, for instance, either underestimate or overestimate the future competitive significance of a firm or the impact of a merger.

6.2. Mergers that require more attention are those that significantly increase market concentration. The change in concentration caused by a merger is a useful, although imperfect, indicator of the loss of direct competition between the parties and of the potential for competitive harm.

6.3. In interpreting market shares and concentration, the Commission may consider, among others, extent of product differentiation, how widely the market is drawn, movements in market shares over time, the level of variable profit margins, and market structure. The Commission may also use other indicators to determine the firms' competitive significance, for instance, when market shares do not provide a realistic indication of the merging firms' market power.

6.4. Market share and concentration estimates used for merger analysis are deemed to reflect the best available indication of the firms' future competitive significance. Measurements may be based on units or monetary values, volume of sales, production, supply and number of customers, as may be appropriate.

6.5. In order to avoid understating or overstating a firm's future competitive significance, the Commission considers reasonably predictable effects of recent or ongoing changes in market conditions when calculating and interpreting market share data.

6.6. The absence of high market shares or post-merger concentration usually supports a conclusion that a given transaction requires no further analysis. Similarly, a transaction that does not significantly increase post-merger market shares or concentration is often not subjected to further analysis, as the pre-merger competitive conditions are unlikely to be significantly altered by the merger. However, there may be exceptions. For example, when at least one party to the merger has substantial market power, even small increases in market share may be indicative of possible competition concerns.

6.7. The Herfindahl-Hirshman Index (HHI), among other tools for measuring market concentration, helps interpret market share data. The HHI is calculated by summing the squares of the market shares of all the firms active in the market. When using HHIs, the Commission considers both the post-merger level of the HHI and the increase in the HHI resulting from the merger. The increase in the HHI is equal to twice the product of the market shares of the merging firms.

6.8. A higher HHI indicates more concentration in the market. Conversely, a lower HHI indicates less concentration.

> **Measuring HHI: Example**
> A market of 4 firms with market shares of 30, 30, 20, and 20 produces an HHI of 2600. 302 + 302 + 202 + 202 = 900 + 900 + 400 + 400 = 2600. If one of the firms with 30 percent market share merged with one of the 20 percent market share firms, the new HHI would be 3800, an increase of 1200 points. Example: (30 + 20)2 + 302 + 202 = 2500 + 900 + 400 = 3800

6.9. In interpreting post-merger HHIs, the Commission examines the change in concentration arising from the merger.

6.9.1. Unconcentrated Markets: mergers resulting in unconcentrated markets that do not cause any impact are unlikely to have anti-competitive effects.

6.9.2. Moderately Concentrated Markets: mergers resulting in moderately concentrated markets potentially raise significant competitive concerns and often warrant scrutiny.

6.9.3. Highly Concentrated Markets: mergers resulting in highly concentrated markets typically raise significant competitive concerns and often warrant scrutiny. This indication may be overcome by persuasive evidence showing that the merger is unlikely to enhance market power.

6.10. These indications, however, are not meant to be a conclusive screen to separate competitively benign mergers from anti-competitive ones. Rather, they provide one way of identifying mergers unlikely to raise competitive concerns and those that which require further examination of other competitive factors that confirm, reinforce, or counteract the potentially harmful effects of increased concentration. The higher the post-merger HHI and the increase in the HHI, the greater are the potential competitive concerns.

7. Competitive Effects Analysis in Horizontal Merger Review

7.1. After defining the market and a preliminary evaluation of market share and concentration, the Commission conducts a competitive effects analysis to determine if the proposed merger is likely to harm competition significantly by creating or enhancing market power, either unilaterally or in coordination with rivals.

7.2. While changes in market share or market concentration are useful indicators of potential competitive concerns, competitive effects analysis involves a comprehensive assessment of market conditions, and provides a more reliable means to assess potential harm to competition than changes in market share or market concentration alone.

7.3. In conducting a competitive effects analysis, the Commission makes conducts a forward-looking inquiry that compares the anticipated state of competition in the relevant market/s with the merger with that absent the merger. As stated in Rule 4, Section 1 of the Rules, the Commission's assessment of competition without the merger is informed not only by the existing conditions of competition, but also by any significant changes in the state of competition likely to occur without the merger.

7.4. There are two conceptually distinct means by which a horizontal merger might result in substantial lessening of competition: unilateral effects and coordinated effects. It is possible that a merger may raise both types of concern.

A. Unilateral Effects

7.5. In analyzing the potential of a horizontal merger to result in anti-competitive unilateral effects, the Commission assesses whether the merger is likely to harm competition significantly by creating or enhancing the merged firm's ability or incentives to exercise market power independently.

7.6. Horizontal mergers eliminate any competitive constraint that the merging parties previously exerted upon each another. In most mergers, this has no significant adverse effect on competition because there are other sufficient competitive constraints on the merged entity. In some mergers, however, the elimination of competition between the merging parties in itself may create or enhance the ability of the merged firm independently to exercise market power, depending on market conditions, including the lack or ineffectiveness of other competitive constraints.

7.7. Mergers may increase the likelihood of the exercise of unilateral market power in a variety of settings. Common theories and models include, but are not limited to:

a) Merger to monopoly: A merger that would combine the only two rivals in a properly defined market raises a high risk of significant anticompetitive unilateral effects. Review of such merger entails an assessment of whether any competitive constraints exist, such as ease of entry, that would preclude the unilateral exercise of market power by the merged firm.

b) Merger of competitors in differentiated product markets: A merger that would combine competing suppliers of differentiated products may raise the potential for significant anti-competitive unilateral effects if a sufficient proportion of consumers view the products combined by the merger as close substitutes. Review of such a merger entails an assessment of whether the merger would allow the merged firm to profitably increase price on one or more of such products after the merger, or whether sufficient customers would switch to products of other competitors, so as to render such a price increase unprofitable for the merged firm. The potential for rival sellers to replace any loss of competition by repositioning or extending their product lines to compete more closely with the merged firm is also considered.

c) Merger of competitors in undifferentiated product markets: A merger that would combine competing suppliers of undifferentiated products in markets in which firms are distinguished primarily by capacity entails an assessment of whether the merged firm would find it profitable to raise price by reducing output below the level that would have prevailed absent the merger.

d) Merger of rivals in bidding or auction markets: A merger that would combine rival bidders in bidding or auction markets raises the potential for significant anti-competitive unilateral effects. The effects of such a merger are likely to be significant where, for example, a merging party was frequently a runner up when the other won the business.

7.8. Competitive effects analysis depends heavily on the specific facts of each merger. As such, the Commission will refine its theories or models of likely competitive harm based on available qualitative and quantitative evidence.

Qualitative evidence often comes from documents or first-hand observations of the industry by customers or other market participants. Quantitative evidence is often derived from statistical analysis of price, quantity, or other data related to, among other things, prior market events (sometimes called "natural experiments") involving incumbent responses to prior events such as entry or exit by rivals. Competitive effects analysis should be flexible enough to adapt over time to evolving markets, business practices, and technological advancements or innovations.

7.9. Several other competitive constraints and market conditions that will remain in the market following the merger may be adequate to prevent the creation or enhancement of unilateral market power. Factors that are often relevant in assessing the likelihood of a unilateral exercise of market power as a result of a merger include, but are not limited to:

a) Availability and Responsiveness of Alternative Suppliers: If alternative suppliers (offering adequate substitutes and with sufficient available capacity) will remain post merger, and a significant number of customers are willing and able to turn to these alternative suppliers in the event of an increase in price, the threat of losing such customers may be enough to deter the exercise of market power by the merged firm;

b) Entry, Repositioning, or Expansion: The prospect of entry by new competitors, or expansion or repositioning by existing competitors, may be sufficient in time, scope, and likelihood to deter or defeat any attempt by the merged firm to exercise market;

c) Countervailing Buyer Power: In some circumstances, customers may have the incentive and ability to defeat the exercise of market power through their bargaining strength against the seller because of their size, commercial significance to the seller, or ability to switch to alternative sources of supply. Customers may also have the ability to encourage or sponsor competitive entry or expansion, or to produce the relevant product themselves. In such cases, even firms with very high market share may not be in a position to exercise market power postmerger. To prevent significant anti-competitive effects, however, countervailing buyer power must constrain the exercise of market power in the relevant market and not merely protect certain individual customers.

B. Coordinated Effects

7.10. In analyzing the potential for coordinated effects, the Commission assesses whether the merger increases the likelihood that firms in the market will successfully coordinate their behavior or strengthen existing coordination in a manner that harms competition.

7.11. To identify mergers that materially enhance the likelihood of coordination or strengthen existing coordination, the Commission: (a) assesses whether market conditions are conducive to coordination in the relevant market/s affected by the merger; and (b) analyses firms' ability and incentives that would make coordination more likely post-merger.

7.12. The Commission will determine whether the merger will make coordination easier or more likely, considering the specific features of the market that affect the merged firm's ability and incentives to exercise market power in coordination with rivals.

7.13. Coordinated behavior may be tacit or explicit. For example, firms may coordinate their behavior on prices in order to keep them above the competitive level, or firms may coordinate to limit production or the amount of new capacity brought to the market. Firms may also coordinate by dividing the market, for instance by geographic area or other customer characteristics, or by allocating contracts in bidding markets. Other forms of coordinated behavior that are likely to result in an SLC will also be examined by the Commission.

7.14. In order to coordinate, firms would simply need to have an understanding as to how to do so, which does not require an explicit agreement among competitors, or any communication between them. It also need not involve all firms or perfect coordination between firms. When assessing market conditions conducive to reaching terms of coordination, the Commission looks at relevant factors which include, but are not limited to:

a) The number of firms in a market, where a smaller number of players makes it easier to coordinate;

b) The existence of frequent and regular orders, which make it easier to coordinate and to detect deviations from the terms of coordination;

c) The homogeneity of the products, since it is easier to coordinate on terms such as price when competing products are substantially the same;

d) The homogeneity of the firms, especially in terms of symmetry of market shares, similarity of cost structures, levels of vertical integration, and the impact that such homogeneity may have on their ability or incentives to coordinate;

e) The degree of transparency of important information that could provide a focal point for coordination, such as information concerning prices, output, capacity, customers served, territories served, discounts, new product introductions, etc.;

f) Cross-shareholdings and other links that may make it easier for competitors to exchange information on terms of coordination, and may reduce their incentives to compete;

g) Other market conditions: for instance, it is easier to coordinate on price when demand and supply conditions are relatively stable than when they are frequently changing (e.g., because of the ease of entry by new firms or rapid, significant product innovations).

7.15. Firms may be able to identify terms of coordination even in markets with complex product characteristics or terms of trade. For instance, in a market with many differentiated products, firms may still be able to coordinate on prices by establishing simple pricing rules that reduce the complexity of coordinating on a large number of prices or to coordinate on terms other than prices. Moreover, coordination may not necessarily be achieved on all dimensions of competition.

7.16. For coordination to be maintained, participants must have the ability to detect and respond to deviations from the terms of coordination. Although coordination may be in the collective interest of participants, it is often in a firm's individual interest to deviate from the terms of coordination in order to take advantage of the profit opportunity created when other firms raise their prices or otherwise coordinate their behavior. The Commission assesses the extent to which firms could have the ability to monitor the important terms of coordination and to detect deviations from the terms of coordination in a timely manner.

7.17. To deter deviations from the terms of coordination, firms must have the ability to punish deviations in a manner that will ensure that coordinating firms find it more profitable to adhere to the terms of coordination than to deviate, given the cost of reprisal. Punishment may take various forms, including temporary abandonment of the terms of coordination by other firms in the market. In assessing whether there will be a sufficiently credible and severe punishment when a deviation by one of the firms is detected, the Commission looks at relevant factors that include, but are not limited to:

a) The effectiveness of the deterrent mechanism itself: e.g., the threat of expanding output to punish a deviating firm may not be credible or effective if coordinating firms have no or little excess capacity;

b) The speed at which the deterrent mechanism can be implemented, given that reprisal that manifests itself after some significant time lag is less likely to be sufficient to offset the benefits from deviating;

c) The costs of implementing the deterrent mechanism compared to the long-term benefits of coordination.

7.18. Other factors, such as the presence of the same firms in several markets (sometimes called "multi-market contacts"), may also be of relevance in determining the likelihood of sufficiently credible and severe punishment.

7.19. The Commission assesses whether competitive constraints or other market conditions remaining in the market after the merger are adequate to prevent the creation or enhancement of coordinated interactions. Relevant factors include, but are not limited, to:

a. *Past Coordination/Behavior of Firms:* The Commission takes into account information on the pre merger characteristicsof the markets concerned, including the past behavior of firms. Evidence of past coordination may serve as strong evidence that all three conditions for successful coordination are present if the relevant market characteristics have not changed appreciably or are not likely to do so in the near future;

b. *Maverick Firm:* Coordination may also be difficult to sustain in the presence of a maverick firm—a firm with a differentcompetitive strategy and a greater economic incentive than its rivals to deviate from the terms of coordination. Particular care is needed in evaluating mergers involving the acquisition ofa maverick firm because in some circumstances those mergers may eliminate a significant constraint to effective coordinationand make coordinated interaction more likely, more successful, or more complete;

c. *Countervailing Buyer Power:* The Commission considers whether the actions or characteristics of customers affect the likelihood of successful coordination. In some circumstances, buyers may be able to undermine coordinated behavior, for example by sponsoring entry or expansion. Where large buyers would likely engage in long term contracting so that sales covered by such contracts would be large relative to a firm's total output, firms may have a greater incentive to deviate from the terms of coordination.

8. Entry & Expansion

8.1. Firm entry and/or expansion by existing competitors is an integral part of the analysis of whether a merger is likely to harm competition significantly, and allow the merged firm to raise prices or reduce output, quality, or innovation.

8.2. Entry, or the threat of entry from potential competitors or from customers turning to in-house supply, can be an important competitive constraint on the conduct of the merged firm. If the merged firm is subject to significant competitive constraints from the threat of market entry (e.g., if barriers to entry are low and entry is likely to be profitable at premerger prices), the merger is unlikely to have meaningful anticompetitive effects.

8.3. The ability of rival firms to expand capacity in a timely manner, or use existing spare capacity or switch capacity from one use to another, can constitute an important competitive constraint on the merged firm's conduct. Many of the factors that are used to assess entry are relevant to the analysis of expansion, including competitor expansion plans, barriers to expansion, and the profitability of expansion.

8.4. In assessing whether entry and/or expansion would effectively constrain the merged entity, the Commission considers whether entry and/or expansion would be: (a) likely; (b) timely; and, (c) sufficient in nature, scale and scope.

8.5. For entry and/or expansion to be likely, it should be profitable for competitors of the merged entity to expand output and/or for potential entrants to enter the market in response to an attempt by the merged entity to profit from the potential reduction in competition brought about by the merger (e.g., a post-merger price increase).

8.6. In assessing the likelihood of entry, the Commission considers the history of entry into and/or exit from the relevant market using available evidence, including information on firms that have recently entered or exited the market, information about past and expected market growth, evidence of planned entry and/or expansion, direct observation of the costs, risks and benefits associated with entry and information from firms identified as potential entrants. Further, the Commission considers the existence and significance of barriers to entry and expansion to the relevant market. Relevant factors include, but are not limited to:

a) Economies of scope and/or scale, the availability of a scarce resource that is an essential input, technical capability or intellectual property rights;

b) The reputation of incumbent firms, incumbent firms' investment in excessive capacity, or the duration, termination and renewal provisions in existing contracts;

c) Government regulations that might, for example, limit the number of market participants or impose substantial regulatory approval costs;

d) Sunk costs that could not be recovered if the entrant left the market including machinery that might be site specific or R&D that has not yet resulted in any marketable invention or innovation.

8.7. In assessing whether entry and/or expansion is timely, the Commission considers whether entry and/or expansion would take place within a reasonable period of time after the merger. This often means that entry must have a competitive impact within two years to have a sufficiently disciplining effect. The appropriate time horizon may vary according to the characteristics of the relevant market.

8.8. For entry and/or expansion to be sufficient, the Commission considers whether entry and/or expansion would be:

a) Sufficient in scale to compete effectively with the merged entity;

b) Able to counteract any specific anti-competitive effects resulting from the merger; and

c) Able to counteract any localized effects of the merger (e.g., in markets differentiated by geographic areas or customer categories).

9. Efficiencies

9.1. Chapter IV, Section 21 (a) of the PCA and Rule 4, Section 10 of the Rules provide that otherwise anti-competitive mergers may nonetheless be exempt from prohibition by the Commission when the parties establish that the merger has brought about or is likely to bring about gains in efficiencies that are greater than the effects of any limitation on competition that result or are likely to result from the merger or acquisition.

9.2. A primary benefit of mergers to the economy is their potential to generate significant efficiencies and enhance the merger firm's ability and incentive to compete. Benefits include lower prices, improved quality, enhanced service and new products.

9.3. Efficiencies that increase competition in the market may also be considered.

9.4. Efficiencies are difficult to verify, and many projected efficiencies may never be realized. Thus, as noted in PCA Chapter IV, Section 22, and IRR Rule 4, Section 11, a party seeking to rely on an efficiencies justification must demonstrate that if the proposed merger or acquisition were implemented, significant efficiency gains would be realized.

9.5. The burden is on the merging firms to substantiate efficiency claims so that the Commission can verify by reasonable means the likelihood and magnitude of each asserted efficiency and how and when each would be achieved, among other things.

9.6. In order to be taken into account by the Commission, the efficiencies must be demonstrable, with detailed and verifiable evidence of anticipated price reductions or other benefits. Moreover, the efficiency gains must be merger specific and consumers will not be worse off as a result of the merger. For that purpose, efficiencies should be substantial and timely, and should, in principle, benefit consumers in those relevant markets where it is otherwise likely that competition concerns would occur.

9.7. Merger specific efficiencies are those likely to be accomplished with the proposed merger and unlikely to be accomplished in the absence of either the proposed merger or another means having comparable anti-competitive effects.

9.8. The greater the potential adverse competitive effect of a merger, the greater must be the demonstrated efficiencies, and the more they must be passed through to customers.

10. Failing Firm/Exiting Assets

10.1. Under Chapter IV, Section 21(b) of the PCA and Rule 4, Section 10 of the Rules, when a party to a merger or acquisition agreement is faced with actual or imminent financial failure, and the agreement represents the least anti-competitive arrangement among the known alternatives for the failing entity's assets, the Commission may exempt from prohibition an otherwise anti-competitive merger. As stated in PCA Chapter 4, Section 21, the burden of proof lies with the parties seeking the exemption.

10.2. A merger is not likely to create or enhance market power if one of the merging parties is likely to fail and its assets are likely to exit the market in the imminent future. In this case, the counterfactual (the competitive situation absent the merger) may be adjusted to reflect such likelihood.

10.3. The basis for concluding that a merger with a failing firm does not harm competition is that the competition provided by a failing firm would be lost even without the merger and, consequently, the competitive situation post-merger may be no worse than the counterfactual (i.e. no merger but failing firm exists the market). In other words, the Commission may conclude, based on the failing firm doctrine, that the merger has no causal connection with worsened competitive conditions in the future.

10.4. The burden of proof of exit lies on the merging parties, who also hold the relevant evidence. In the absence of sufficient evidential support for exit, the Commission cannot make use of the failing firm analysis.

10.5. Many firms, despite temporary difficulties, are able to survive and continue competing. The fact that a firm has not been profitable does not necessarily mean that it is a "failing firm." For instance, a firm with a substantial debt may be able to emerge from its financial trouble as an effective competitor through a new business strategy or new management because it possesses valuable assets.

10.6. The material tests for showing that one of the merging parties is failing are that (a) the firm is unable to meet its financial obligations in the imminent future; (b) there would be no serious prospect of reorganizing the business; (c) there would be no credible less anti-competitive alternative outcome than the merger in question; and, (d) the firm and its assets would exit the market in the imminent future absent the merger.

10.7. Merging firms should provide as evidence profit and loss and cash flow information, recent balance sheets and analysis of the most recent statutory accounts, the timing and nature of the firm's financial obligations, the relationship between the company's costs and its revenues, the likely ability of the firm to obtain new revenues or new customers, and the current and future availability of key inputs. Prospective financial information and forecast information for the current year should also be provided.

10.8. The Commission shall also assess whether the failing firm has unsuccessfully sought in good faith any credible alternative offers of acquisition of the firm or its assets that would retain the assets in the relevant market and pose less harm to competition than the merger in question. The parties are required to provide evidence that there is sufficient awareness regarding the sale of the firm or its assets to attract the attention of likely prospective purchasers. The Commission will consider other offers to purchase the assets of the failing firm above the liquidation value of those assets (net of the costs associated with the liquidation process) as credible alternative offers even if these are not commercially preferable.

10.9. The Commission shall likewise consider whether the failure of the firm and the liquidation of its assets could be a less anti-competitive alternative to the merger since the remaining firms in the market would compete for the failing firm's market share and assets that otherwise would have been transferred wholesale to a single purchaser.

11. Remedies

11.1. If the Commission establishes that a merger or an anticipated merger, if carried into effect, will or may be expected to substantially restrict, lessen or prevent competition, the Commission may decide to prohibit the merger. Alternatively, it may decide to approve the merger only when the pertinent party or parties modify the merger agreement or enter into legally enforceable agreements to remedy, mitigate or prevent the anti-competitive effects resulting from the merger.

11.2. In this regard, there are two types of remedies that the Commission may consider: structural remedies and behavioral remedies.

a. Structural remedies are measures that directly alter market structure and address issues that give rise to competition problems. Basic forms of this type are divestitures (forced sale of business units or assets, either in full or partial), licensing (compulsory licensing of legal rights, usually intellectual property rights), rescission (undoing a completed transaction) and dissolution (ending a legal entity).

b. Behavioral remedies are measures that directly alter the behavior of an entity. The Commission may also impose behavioral remedies to prevent a merged entity to behave anti-competitively.

c. Structural remedies may also be supported by behavioral remedies. For instance, to ensure that a partial divestment remedy would lead to a situation where a viable and effective competitor will arise, the merged entity may be prohibited in the interim from having communication with the former clients of the divested business.

11.3. In determining the remedy or set of remedies that would be appropriate, reasonable and practicable to address the adverse effects of the merger on competition, the Commission will take into account the adequacy and effectiveness of the action in preventing, remedying or mitigating the anti-competitive effects of the merger.

12. Decision

12.1. If the Commission determines that the merger is not likely to result in SLC, the merging parties may proceed to implement or consummate the transaction.

12.2. If the Commission determines that the merger or acquisition is prohibited under Section 20 of the PCA and Section 9 of the IRR, and does not qualify for exemption under Section 21 of the PCA and Section 10 of the IRR, the Commission may: a. Prohibit the implementation of the agreement; b. Prohibit the implementation of the agreement unless and until it is modified by changes specified by the Commission; or c. Prohibit the implementation of the agreement unless and until the pertinent party or parties enter into legally enforceable agreements specified by the Commission.

12.3. The Commission's decision on the merger may not be challenged under the Act, unless it was obtained on the basis of fraud or false material information.

13. Interpretation

13.1. Any legal concept, definition or clause provided under the PCA, IRR, these Guidelines, as well as applicable rules and guidelines issued by the Commission, shall exclusively apply in the conduct of merger review, to the exclusion of other laws, decrees, executive orders and regulation inconsistent therewith.