

INTERIM GUIDELINES ON THE OPERATIONS OF THE MERGERS AND ACQUISITIONS OFFICE DURING THE GENERAL COMMUNITY QUARANTINE AND MODIFIED GENERAL COMMUNITY QUARANTINE

1. These Interim Guidelines on the Operations of the Mergers and Acquisitions Office during the General Community Quarantine and Modified General Community Quarantine (“*MAO GCQ and MGCQ Guidelines*”) are issued pursuant to Sections 12(b) and (e) of Republic Act No. 10667, or the Philippine Competition Act (“*PCA*”, or the “*Act*”), to provide guidance on the procedures and processes that the Mergers and Acquisitions Office (“*MAO*”) shall observe in the exercise of its functions during the General Community Quarantine (“*GCQ*”) and Modified General Community Quarantine (“*MGCQ*”).
2. The MAO GCQ and MGCQ Guidelines shall remain effective while Barangay Bagong Pag-Asa, Quezon City, the location of the PCC Offices, is under GCQ or MGCQ.
3. Entities with principal offices located in areas under GCQ or MGCQ may request the application of these MAO GCQ and MGCQ Guidelines notwithstanding the lifting of the GCQ or MGCQ over the location of the PCC Offices. If only one party to a notified transaction has its principal office in an area placed in a GCQ or MGCQ, these MAO GCQ and MGCQ Guidelines shall be applied to all notifying parties.
4. Entities with principal offices located in areas under Enhanced Community Quarantine (“*ECQ*”) or Modified Enhanced Community Quarantine (“*MECQ*”) may request the application of the Interim Guidelines on the Operations of the Mergers and Acquisitions Office during the Modified Enhanced Community Quarantine (“*MAO MECQ Guidelines*”). Where such request is granted, the MAO MECQ Guidelines shall be applied to all notifying parties even if only one party to a notified transaction has its principal office in an area placed under ECQ or MECQ.
5. The Implementing Rules and Regulations of Republic Act No. 10667 (“*PCA-IRR*”) and the Rules on Merger Procedure shall continue to apply unless otherwise provided by these MAO GCQ and MGCQ Guidelines.
6. The following merger processes shall resume on 16 July 2020 and shall be conducted in accordance with these MAO GCQ and MGCQ Guidelines:
 - a. Issuance of Orders of Payment and collection of filing fees for Notification and Phase 1 Review, and for Phase 2 Review;
 - b. Review of notified mergers and acquisitions; and

- c. Conduct of investigation, surveillance function, and information gathering activities of any merger and acquisition that may have been executed or consummated in violation of Section 17 or Section 20 of the PCA.
7. Government services provided by the MAO, the acceptance and processing of which were previously resumed, shall remain available, subject to these MAO GCQ and MGCQ Guidelines.
 8. Acceptance of Expedited Review Notification Forms remain suspended during GCQ and MGCQ.
 9. Meetings, where necessary, shall be conducted remotely via video conferencing using Microsoft Teams, and recorded only by the PCC when the parties consent thereto.

I. Acceptance and Pre-Evaluation of Documents

10. Parties submitting Notification Forms, Letters of Non-Coverage, and other documents to the MAO must submit digital copies thereof using the PCC SharePoint Facility and present hard copies thereof to the PCC Records Office.
11. Documents must first be submitted electronically thru the PCC SharePoint Facility in accordance with the procedure laid out in **Annex A**.
 - a. Parties may request access to the PCC SharePoint Facility on the PCC website from Monday to Friday from 8:00 a.m. to 5:00 p.m. Documents uploaded beyond 5:00 p.m. shall be deemed transmitted on the next business day.
 - b. Pre-evaluation of documents submitted electronically shall be conducted from Monday to Friday from 8:00 a.m. to 5:00 p.m.
12. After electronic submission of documents, parties should submit hard copies thereof. In view of the social distancing measures implemented in the PCC offices, submission of hard copies of documents shall be by appointment in accordance with the procedure laid out in **Annex B**.
13. Documents shall be deemed to have been duly submitted upon confirmation by the MAO (i) that it has received both hard and digital copies thereof, and (ii) that the documents are complete and in accordance with requirements under relevant rules, regulations, and issuances of the Commission.
14. Any deficiency in the digital or hard copies of documents submitted to the MAO shall be indicated in the Notification Receiving Forms which shall be issued to the parties after the pre-evaluation of both the digital and hard copies of their documents.
15. In case of notifications, Notification Forms shall be deemed to have been duly submitted upon confirmation by the MAO that –
 - a. Both hard and digital copies of the Notification Forms together with all appendices/annexes were submitted by all notifying parties; and

- b. The formal requirements under Section 5.3 of the PCC Rules on Merger Procedure [with the exception of Section 5.3 (f)] were fully complied with by all notifying parties.

If any formal requirement is found to be lacking, the deficiency shall be noted on the Notification Receiving Form and the submitter shall be given five (5) working days to complete/correct the submission, subject to any extension that may be granted upon the discretion of the MAO.

16. A Letter of Non-Coverage shall be deemed to have been duly submitted upon confirmation by the MAO that –

- a. Both hard and digital copies of the Letter of Non-Coverage together with all required documents were submitted by the party; and
- b. The formal requirements under Section 9 of the Revised Guidelines on Letters of Non-Coverage from Compulsory Notification [with the exception of Section 9(b)] were fully complied with.

If any formal requirement is found to be lacking, the deficiency shall be noted on the Notification Receiving Form. The party shall be given five (5) working days to complete/correct the submission, subject to any extension that may be granted upon the discretion of the MAO.

17. Parties submitting documents to the PCC shall provide a written consent signed by their authorized signatory¹ granting the Commission staff permission to access the submitted documents and information outside the office premises of the PCC.

18. Parties submitting documents to the PCC must also submit an affidavit of their authorized signatory certifying that the hard copies and the digital copies are complete and accurate copies of each other.

19. Signatories to documents submitted electronically to the PCC may affix their electronic signatures in lieu of their wet signatures.

20. Individuals whose names and signatures appear on documents submitted to the PCC shall be accountable for the veracity and completeness of the submission and shall be liable under Section 29 (c) of the PCA for supplying incorrect or misleading information, without prejudice to other liabilities under applicable laws.

21. Documents that are executed abroad may be submitted without an Apostille or without having been consularized; provided, that the party submitting the same shall submit a certification setting forth the reason for its failure to have the document consularized or Apostilled, together with an undertaking to submit the consularized or Apostilled copies upon resumption of the operations of the consulate or embassy in the country where consularization or Apostillization is to be done.

¹ For purposes of compliance with the MAO Interim Guidelines, an external counsel or consultant shall not be considered an authorized signatory.

22. Documents that are executed and certified under oath in a foreign country may be submitted without notarization; provided, that parties shall submit a certification setting forth the reason for their failure to have the documents notarized, together with an undertaking to submit notarized copies thereof soon after they have secured notarization of the documents.

II. Evaluation of Sufficiency of Notification Forms

23. The 30-day Notification Period under Section 3.1 of the Rules on Merger Procedure shall be waived during the GCQ and MGCQ. Parties may file Notification Forms at any time after the signing of definitive agreements relating to their transaction but prior to any acts of consummation; provided, that the 30th day of the Notification Period under Section 3.1 of the Rules on Merger Procedure falls within the community quarantine period commencing on 13 March 2020.² Transactions that should have been notified prior to 13 March 2020 in accordance with Section 3.1 of the Rules on Merger Procedure shall not be covered by this waiver.
24. During its evaluation of the sufficiency of Notification Forms, the MAO shall inform the parties of the information and documents that they must submit, which information and documents may not be limited to those required by the Notification Form.
25. Requests by the MAO during the sufficiency determination stage for information and documents shall be without prejudice to requests for additional information and documents during the review of the transaction.
26. A notifying party who is unable to submit all information and documents required under a Notice of Deficiency (NOD) may file by email a request for extension of the period to comply signed by its authorized signatory prior to the lapse of the deadline for submission. The notifying party may then submit documents and information in compliance with the NOD on a rolling basis, or as soon as such documents are available or prepared. In line with this, the 15-day Sufficiency Period under Section 5.7 of the Rules on Merger Procedure shall be extended until all notifying parties shall have fully complied with their respective NODs.
27. During its evaluation of the sufficiency of Notification Forms, the MAO may interview the parties remotely, and contact third parties by means of market calls or inquiry letters to obtain relevant information regarding the market, their views on the notified transaction, any competition concerns it may raise, and how they will be affected, subject to the issuance by notifying parties of written consents signed by their respective authorized signatories allowing the MAO to contact third parties about their transaction during the Sufficiency Period.

² The Inter-Agency Task Force for the Management of Emerging Infectious Disease (IATF), in view of Code Red Sublevel Two (2) for the COVID-19 public health event, issued Resolution No. 11 on 12 March 2020 recommending the suspension of work in the Executive Branch during the imposition of Stringent Social Distancing Measures in the National Capital Region (NCR). As clarified in IATF Resolution No. 12 issued on 13 March 2020, Stringent Social Distancing Measures in NCR included the imposition of community quarantine in NCR.

III. Issuance of Orders of Payment

28. After having determined that all documents and information requested under the NODs and all documents subject of undertakings issued pursuant to Sections 21 and 22 hereof have been submitted by all notifying parties, the MAO shall issue an Order of Payment by email and direct the parties to pay the fee for Notification Filing and Phase 1 Review in accordance with PCC Memorandum Circular No. 17-002.
29. After payment, parties must submit a copy of the Official Receipt issued by the PCC Cashier Office by email to mergers@phcc.gov.ph.
30. Notices of Sufficiency shall be issued to the parties by email after receipt by the MAO of an electronic copy of the Official Receipt. Pursuant to Section 2.16 of the PCC Rules on Merger Procedure, service of Notices of Sufficiency by email shall be deemed complete upon transmission.
31. The MAO shall endeavor to send hard copies of Notices of Sufficiency by courier after complete service by email.
32. In case a notified transaction shall proceed to a Phase 2 review, the MAO shall issue an Order of Payment by email and direct the parties to pay the fee for Phase 2 Review in accordance with PCC Memorandum Circular No. 17-002.
33. After payment, parties must submit a copy of the Official Receipt issued by the PCC Cashier Office by email to mergers@phcc.gov.ph.
34. Prior to payment, notifying parties must secure an appointment in accordance with the procedure laid out in **Annex B**.
35. Notifying parties who are unable pay the fees for Notification Filing and Phase 1 Review, or for Phase 2 Review within the applicable Payment Schedule under PCC Memorandum Circular No. 17-002 may request an extension of the period within which to pay signed by their authorized signatory prior to the lapse of the deadline for payment.
36. A request to extend the period to pay the fees for Phase 2 review must be accompanied by a waiver extending Phase 2 review for a period corresponding to the number of days by which the deadline for payment of fees will be extended.

IV. Review of Notified Transactions

37. In view of the serious threat to the health, safety, security, and lives of the Filipino people posed by COVID-19, review periods may be extended by fifteen (15) days for Phase 1 and thirty (30) days for Phase 2, subject to the execution of a waiver by the Notifying Parties consistent with the Rules on Merger Procedure.
38. Parties submitting information and documents in response to Requests for Information during Phase 1 or Phase 2 review of a notified transaction must observe Sections 10 to 12 above.

V. Evaluation of Letters of Non-Coverage

39. Acceptance and processing of Letters of Non-Coverage, whether or not required by other government agencies, shall continue during GCQ or MGCQ.
40. After submission by the party of the hard and digital copies of the Letter of Non-Coverage and of all the information and documents required under the Commission's Revised Guidelines on Letters of Non-Coverage from Compulsory Notification,³ the MAO shall evaluate the Letter of Non-Coverage and inform the party by email of any additional information that may be necessary to assess the transaction.
41. After evaluation of the Letter of Non-Coverage and all information and documents submitted in relation thereto, the MAO shall issue a response via email.
42. Notwithstanding the foregoing, if the party has availed of the provisions of Section 21 or 22 hereof, the MAO shall only issue a response to the Letter of Non-Coverage only after the party has fully complied with its undertaking/s. In line with this, the processing time shall be extended until the party shall have fully complied with its undertaking/s.

IV. Pre-notification Consultations

43. Parties may submit a written request for a Pre-Notification Consultation ("PNC") by email to mergers@phcc.gov.ph containing all the information required under Rule 4, Section 4 of the PCA-IRR together with a list of questions or issues they wish to discuss or seek consultation on, and accompanied by electronic copies of relevant documents.
44. In addition, parties must submit together with their request a written consent duly signed by their authorized signatory authorizing the MAO staff to access their documents and information outside the office premises of the PCC.
45. The MAO shall endeavor to address the concerns of the requesting parties via email. Should a live consultation still be required, the PNC shall be conducted remotely in accordance with Section 9 hereof.

V. Queries

46. Phone and walk-in queries shall be suspended. Parties may email their queries to the MAO thru mergers@phcc.gov.ph.
47. The MAO shall respond to email queries also by email.

VI. Conduct of Investigation, Surveillance Function, and Information Gathering Activities for Violations of Sections 17 or 20 of the PCA

48. The MAO shall conduct investigation, exercise its surveillance function, and undertake information gathering activities (collectively referred to as

³ Issued on 29 November 2019

“monitoring activities”) of any merger and acquisition that may have been executed or consummated in violation of Section 17 or Section 20 of the PCA. As part of its monitoring activities, the MAO may issue Notices to Explain, Requests for Information, Letters, Papers, or *Subpoena Duces Tecum* or *Ad Testificandum* (collectively referred to as “Notices”).

49. The Notices shall be issued electronically by email to the publicly available or official email address of the recipient. Pursuant to Section 2.16 of the PCC Rules on Merger Procedure, service of Notices by email shall be deemed complete upon transmission.
50. The MAO shall endeavor to send hard copies of Notices by courier to the recipient’s publicly available addresses after complete service by email.
51. Any person or entity who is submitting documents to the MAO in relation to the latter’s Notices must observe the procedure under Part I hereof on Acceptance and Pre-Evaluation of Documents.
52. Any person or entity who is unable to submit information or documents requested in the Notices may file by email a request for extension of the period to comply signed by their authorized signatory prior to the lapse of the deadline for submission. Hard copies of such request for extension shall likewise be submitted following the procedure under Part I on Acceptance and Pre-Evaluation of Documents
53. Meetings or conferences between the MAO and any person or entity shall be conducted remotely via video conferencing using Microsoft Teams, and recorded only by the PCC when the parties consent thereto, either verbally or in writing.
54. Hearings shall likewise be conducted remotely via video conferencing using Microsoft Teams and shall be recorded by the PCC.
55. In accordance with Section 2.15 of the PCC Rules on Merger Procedure, if a party should conceal, destroy, fail or refuse to provide information or documents to the PCC, the PCC shall be entitled to make reasonable assumptions, adopt worse case scenarios when forecasting and conducting sensitivity analysis, or infer any presumption adverse to the party. Moreover, the PCC may rely on alternative sources of information and on its institutional competence and experience.

16 July 2020.