

PCC RULES ON MERGER PROCEDURE

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1. INTRODUCTION

1.1. These Rules on Merger Procedure (the “Rules”) are issued by the Philippine Competition Commission (the “PCC”) pursuant to Sections 12(b) and 16 of Republic Act No. 10667, otherwise known as the Philippine Competition Act (the “Act”).

1.2. These Rules provide the procedure for the review or investigation of mergers and acquisitions pursuant to the Act.

1.3. As defined under the Act and the Rules and Regulations to Implement the Provisions of Republic Act No. 10667 (the “IRR”), “Acquisition” refers to the purchase or transfer of securities or assets, through contract or other means, for the purpose of obtaining control by:

- (a) One (1) entity of the whole or part of another; ^[1]_[SEP]
- (b) Two (2) or more entities over another; or ^[1]_[SEP]
- (c) One (1) or more entities over one (1) or more entities;

while “Merger” refers to the joining of two (2) or more entities into an existing entity or to form a new entity. This includes joint ventures, whether incorporated or not. As used in these Rules, the term “merger” refers to both mergers and acquisitions.

1.4. For the purpose of these Rules, the following terms shall have the following meanings:

(a) **Commission** refers to the Chairman and the Commissioners of the PCC;

(b) **Confidential Information** refers to Confidential Business Information, as defined under Rule 2 (e) of the IRR, submitted and duly claimed as confidential by an entity, and determined to be such by the PCC, and all other information that are considered confidential under Section 9 of these Rules;

(c) **Electronic Service** refers to service by electronic mail on an entity, party, or its counsel of orders, decisions, and other papers emanating from the PCC;

(d) **Electronically Stored Information** refers to any writings, drawings, graphs, charts, photographs, sound recordings, images and other data, metadata, or data compilations temporarily or permanently stored in any electronic medium from which information can be obtained either directly or, if necessary, after conversion into a reasonably usable form or in the form that it is ordinarily maintained;

(e) **MAO** refers to Mergers and Acquisitions Office;

(f) **Notifying Group** refers to all entities directly or indirectly controlled by the Ultimate Parent Entity filing a proposed merger to the PCC for its review;

(g) **PCC Rules of Procedure** refer to the Rules of Procedure of the Philippine Competition Commission published on 15 September 2017;

(h) **PCC Website** refers to the official website of the Philippine Competition Commission, accessible at www.phcc.gov.ph;

(i) **Respondent** refers to an entity that is a subject of a proceeding before the Commission under Section 8 or 15 of these Rules.

(j) **Ultimate Parent Entity** refers to the juridical entity that, directly or indirectly, controls a party to the transaction, and is not controlled by any other entity.

Unless otherwise defined herein, terms used in these Rules shall have the same meaning ascribed to them in the Act and the IRR.

1.5. In applying these Rules, the facts and circumstances of each case will be considered. These Rules shall be liberally construed to promote their objective of securing a just and speedy conduct of investigations and disposition of proceedings. These Rules are not exhaustive and do not set a limit on the investigation and enforcement activities of PCC.

1.6. The PCC may, in exceptional cases, suspend these Rules or apply supplemental rules as may be necessary in the interest of expeditious dispensation of justice. These Rules may be revised or amended from time to time.

2. OVERVIEW OF THE PROCEDURAL FRAMEWORK

A. Mandatory Regime

2.1. Parties to a merger that meets the thresholds in Section 3 of Rule 4 of the IRR are required to notify the PCC within thirty (30) days from signing of definitive agreements relating to the merger (“notified merger”). If deemed necessary, the PCC may likewise investigate mergers by its own initiative (“*motu proprio* review”).

2.2. The PCC has the power to prohibit mergers that will substantially prevent, restrict or lessen competition (“SLC”) in the relevant market or in the market for goods and services. It can also issue orders to remedy the SLC and impose financial penalties.

B. Filings

2.3. The pre-acquisition Ultimate Parent Entity (“UPE”) of each party¹ to a merger should fill out the Notification Form completely, provide all required supporting information and documents (“Form”), and submit them to the PCC.

¹ Or any entity authorized by the UPE to file on its behalf (see Rule 4, Section 2 of the IRR).

The Form and instructions on the manner of filing, are uploaded in the PCC Website. Should there be any questions on the information required in the Form, parties may request a pre-notification consultation (“PNC”) with the MAO.

2.4. All filings shall be made by submitting one (1) original hard copy and an electronic version saved in a secure Universal Serial Bus (“USB”), with each attachment saved as a separate file, and identified by means of file names referring to the corresponding appendix number. The electronic version of the document and all attachments must be saved in Portable Document Format (PDF), Word or spreadsheet format, in two (2) versions, protected and editable.

2.5. All filings must be accompanied by a certification from each filing party’s authorized representative that the information submitted is correct to the best of his/her personal knowledge or based on authentic records.

2.6. Upon submission of the Forms, the PCC conducts a sufficiency determination within a period of fifteen (15) days.

C. Phases of Review

2.7. The PCC conducts a two-phase assessment of a notified merger. A Phase 1 review lasts for a maximum period of thirty (30) days from complete notification and payment, and involves an assessment to determine if the notified merger raises any competition concerns under the Act that would warrant a more detailed review. If no competition concerns are raised, the merger may be cleared within the period for Phase 1 review.

2.8. If, after the conduct of a Phase 1 review, the PCC is unable to conclude that the notified merger does not raise competition concerns, it will provide the merger parties a notice and request for additional information for the purpose of commencing a Phase 2 review.

2.9. A Phase 2 review lasts for a maximum period of sixty (60) days and is a more detailed and in-depth assessment of the merger.

2.10. The periods for Phase 1 and Phase 2 review shall not apply in cases of *motu proprio* review.

2.11. At any time before the PCC has rendered a decision, merger parties may propose commitments that remedy, mitigate or prevent the SLC arising from the merger (see Section 12 of these Rules). If the PCC approves the proposed commitments, the merger may be allowed to proceed subject to the commitments accepted by the PCC.

2.12. At the end of the Phase 1 or 2 review process, the PCC may decide to (i) approve the merger, (ii) prohibit the merger, or (iii) prohibit the merger subject to conditions that it considers appropriate to remedy, mitigate or prevent the SLC arising from the merger. If no decision is promulgated upon the lapse of the periods of review, the merger shall be deemed approved.

D. Powers of Investigation

2.13. PCC may exercise the following powers in the course of a review or investigation of mergers, notified or *motu proprio*, pursuant to the Act (“merger review”):

(a) Administer oaths, summon and examine witnesses, and receive evidence;

(b) Request any person or entities who may have access to, possession, custody, or control of any documents, Electronically Stored Information, or other things, or may have knowledge of any information, which relate to any matter relevant to the merger review or proceeding to: (i) submit or make available to the MAO such document, Electronically Stored Information, or other things, for inspection, copying, or reproduction; (ii) file written reports or answers to questions; (iii) give a statement concerning documents or other information; or (iv) submit the required information in a specified format such as lists, summaries, or tables;

(c) Undertake inspections of business premises, production facilities, warehouse, and other offices;

(d) Issue subpoena *duces tecum* and subpoena *ad testificandum*;

(e) Deputize any enforcement agency of the government, or enlist the aid and support of any private institution, corporation, entity, or association;

(f) Initiate proceedings for contempt or violations committed during its review;

(g) Issue interim orders such as show cause orders and cease and desist orders;

(h) Exercise such other powers and function that it may deem necessary and proper for the conduct of the review.

E. Common Provisions

2.14. The PCC may serve its letters, decisions, notices, orders, and other papers (“Papers”) through personal service, registered mail, private courier or Electronic Service. In the case of Electronic Service of Papers emanating from the PCC, service is complete upon transmission.

2.15. Should any of the merger 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.

2.16. In computing any period of time prescribed or allowed by these Rules, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a

legal holiday where the Commission sits, the last day shall be the next business day.

3. ASSESSING WHETHER OR NOT TO NOTIFY

3.1. In order to determine whether a merger should be notified to the PCC, reference should be made to the thresholds under Rule 4 of the IRR. Parties must submit their 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).

3.2. Where PCC is notified of a merger that is not subject to the notification requirement under the IRR or is covered by an effective exemption circular or guideline issued by the PCC, the parties shall be informed within fifteen (15) days from submission of their Forms. Nevertheless, should the parties request to have their merger undergo review, the PCC may, in its discretion, give due course to the voluntary notification, subject to the periods provided under Section 13 of these Rules.

3.3. Notwithstanding Section 3.1 above, nothing prevents the PCC from reviewing a merger on its own initiative if there are reasonable grounds to believe that Section 17 or 20 of the Act has been or is likely to be infringed. In the course of its market surveillance activities, the PCC may identify mergers that may potentially raise concerns under the Act and gather information about the merger and its effect on competition. For this purpose, it may exercise its power to require production of documents or information from the merger parties and third parties.

Failure to notify or observe the waiting period

3.4. A merger that meets the thresholds under the IRR and was notified to the PCC after the Notification Period but prior to consummation, will subject the parties to the applicable fines under Section 16 of these Rules.

3.5. A merger that meets the thresholds under the IRR but was (i) not notified to the PCC, or (ii) notified but consummated, in whole or in part, prior to the expiration of the waiting period, is considered void and will subject the parties to the fines provided under Section 16 of these Rules.

3.6. In investigating whether merger parties failed to notify their merger, the PCC will approach the merger parties as well as third parties to gather information. For this purpose, it may exercise its power to require production of documents or information from the merger parties and third parties.

4. PRE-NOTIFICATION CONSULTATION (PNC)

4.1. To assist with planning and consideration of proposed mergers, the parties are encouraged to avail of a PNC at the earliest opportunity to discuss the content and timing of their notifications. For mergers involving complex products or services or raising competition issues, PNCs can streamline and facilitate the review process.

4.2. Parties may submit a written request for PNC to the MAO, either by personal service or by electronic mail (“email”) to mergers@phcc.gov.ph. The request shall contain the following information:

- (a) The names and business contact information of the entities concerned;
- (b) The type of transaction; and
- (c) The markets covered or lines of businesses by the proposed merger (see Rule 4, Section 4 of the IRR).

4.3. A draft Form may likewise be attached to the request in order to facilitate the conduct of the PNC.

4.4. During the PNC, parties may seek clarification on the information required under the Form, inquire what other additional information may be required for the review, and discuss their identified markets. The parties are given non-binding advice on the specific information that is required in the Form (see Rule 4, Section 4 of the IRR).

4.5. The PCC does not give opinion on whether a merger is likely to lead to SLC during the PNC.

4.6. All information disclosed during a PNC shall be treated as confidential by the PCC. Confidential treatment of information submitted pursuant to a notification shall be governed by Section 9 of these Rules.

4.7. Parties may also request a PNC to seek guidance on the thresholds provided under Rule 4 of the IRR to facilitate their assessment on whether a potential merger is notifiable or not.

4.8. A request for PNC may be denied if such request is determined by PCC to have been made in relation to a purely speculative or hypothetical transaction.

5. SUBMISSION OF MERGER NOTIFICATIONS

5.1. This part describes the notification process and the determination of sufficiency of the notification to the PCC.

5.2. All acquiring and acquired pre-acquisition UPE or any entity authorized by the UPE to file the notification on its behalf must each submit an

accomplished Form, using the most recent version available on the PCC Website (see Rule 4, Section 2 of the IRR).

5.3. Upon receipt of a notification, the PCC will first determine whether the Form complies with the following formal requirements:

(a) The original 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);

(b) In the case of a partnership or a corporation, the 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 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;

(c) 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)²;

(d) Documents executed abroad are duly authenticated by the Philippine embassy or consul in the country of execution;

(e) All documents are properly bound, with each attachment labeled with a tab;

(f) Electronic version of the completed Form in a secure USB,³ with each attachment saved as a separate file, and each file name referring to the identifying appendix number;

(g) Electronic version of the completed Form saved in searchable PDF, Word or spreadsheet format in two (2) versions, protected and editable.⁴

5.4. The PCC will determine if there is any portion of the Form that has not been filled out, or annexes required under the Form that have not been attached.

5.5. PCC may refuse to accept the Form if it fails to comply with Section 5.3 or 5.4, or if it is not substantially in the prescribed form.

5.6. Once the parties have submitted their Forms to the PCC within the Notification Period, the penalty provided under Sections 3.5 and 16.2 will not apply even if their Forms are subsequently returned. However, the parties must refile the notification prior to any acts of consummation.

² In voting securities acquisition as provided under Rule 4 Section 5 (e) (iii) of the IRR, the binding preliminary agreement will be the agreement executed between the acquiring entity and the shareholders of the acquired entity.

³ Any submission in an alternative electronic format must have PCC's prior approval.

⁴ *Ibid.*

Determination of sufficiency

5.7. Upon receipt of the parties' Forms, the PCC will conduct a sufficiency check within a period of fifteen (15) days as provided under Rule 4, Section 5 of the IRR ("Sufficiency Period"). The purpose of the sufficiency check is to verify if the information and documents provided are complete.

5.8. The merger parties should provide complete and correct information to the PCC. Each filing party's authorized representative must certify that the information submitted is correct to the best of his personal knowledge and/or based on authentic records (see Rule 4, Section 5(c) of the IRR). The supply of incorrect or misleading information is subject to a fine of up to one million pesos (PHP1,000,000.00) under Section 29 of the Act (refer to Section 16 of these Rules). Where necessary or appropriate, the PCC may gather information or conduct market calls during the Sufficiency Period for a better understanding of the market and to assist it in determining sufficiency of the Form.

5.9. If the PCC determines that the submitted Forms are sufficient, the merger parties will be directed to pay the corresponding filing fee.

5.10. Upon payment, the Forms will be assigned a merger notification case number. The letter of sufficiency shall be sent to the merger parties by email. A copy of said letter of sufficiency may also be obtained by the merger parties from the PCC.

5.11. The letter of sufficiency only indicates that the merger parties have formally complied with the requirements of the Forms, but does not certify that the submitted information and documents are substantially correct. Moreover, the issuance of said letter of sufficiency does not preclude the PCC from requesting the merger parties during the Phase 1 and 2 review to submit further information that are relevant to its review of the merger.

5.12. The Form shall be considered filed upon payment of the filing fee. The period for Phase 1 review shall commence on the first business day following the date of payment of the filing fee, unless otherwise provided under the IRR or relevant rules issued by the PCC.

5.13. If at any time during the review process, the PCC finds that any information or document required under the Form, which is relevant or material to the PCC's review, has been withheld from the PCC, the PCC will return the Forms to the merger 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. The parties must then re-submit their Form to the PCC pursuant to Section 5 of these Rules.

5.14. Merger parties shall have a continuing obligation to inform PCC of any substantial modification to the transaction after submission of their

notification. On the basis of the new information provided, the PCC shall determine if a new notification is required (see Rule 5, Section 5 (j) of the IRR). Substantial modification includes instances where the merger parties assign their ownership, rights or interests to other entities, or when there is a change in the identity, type, or quantity of assets or shares purchased, among others.

5.15. Substantial modification likewise includes a decision of the merger parties to abandon the notified merger, resulting in the withdrawal of the notification. Merger parties have to inform PCC if another merger will be pursued in similar or related markets involving the same parties or any entity within their Notifying Group, their assigns or successors-in-interest.

Where notification is deficient

5.16. If the Form is determined to be deficient, letters informing the merger parties of the said deficiency shall be sent out within the Sufficiency Period. The letter shall identify the information and documents to be provided by the concerned merger party, pursuant to the Form.

5.17. Merger parties shall have a period of fifteen (15) days to respond, commencing from the earliest date the letter of deficiency is served through any of the modes under Section 2.14 of these Rules. The issuance of a letter of deficiency shall suspend the running of the Sufficiency Period.

5.18. During the Sufficiency Period, merger parties may request a meeting with the PCC in order to clarify any deficiencies in the Form. It is recommended that key officers of the merger parties with operational knowledge of the business attend the said meeting.

5.19. Upon submission of the deficient information, PCC shall review the information and documents within the period remaining from the Sufficiency Period, which shall however be no less than five (5) days.

5.20. Where one or both of the merger parties still fail to provide the deficient information within the given period, the Forms will be returned. In case of such return of the Forms, no notification shall be considered to have been made, subject to Section 5.6 above.

5.21. In case the Forms are returned for deficiency, the merger parties may re-file their corrected and complete Forms at any time prior to any acts of consummation of their merger.

5.22. In addition, the Forms may be returned for the following reasons:

- (a) Submission of incorrect or misleading information, without prejudice to the application of Section 16 of these Rules; or
 - (b) Incorrect designation of any of the merger parties' UPE.
- However, the parties may correct their submission after the former has made a preliminary determination on the correct UPE.

6. PHASE 1 REVIEW PROCESS

6.1. This part describes the Phase 1 review process, the purpose of which is to determine if a merger is likely to give rise to competition concerns, or may be cleared within the Phase 1 review period. It likewise explains how the PCC may gather supplementary information from the merger parties in addition to those contained in their initial submissions, as well as the process for obtaining information from third parties.

Information gathering

6.2. The PCC examines the information submitted by the parties in the Form. It determines if it needs supplementary or more comprehensive information from the merger parties than that provided in the Form to allow it to complete its Phase 1 review.

6.3. At any time during the review period, the PCC may require parties to provide such additional data, information, or documents as it deems necessary for its review. Parties shall provide the required data, information, or documents promptly within the period specified by PCC.

6.4. However, a merger party may submit the requested information beyond the period specified by PCC, provided that the party waives the thirty (30) and ninety (90)-day periods of review. In such event, the parties may file a request for extension of time prior to expiration of the specified period using the Model Request for Extension and Waiver (“Model Request and Waiver”) available at the PCC Website.

6.5. In order to help expedite the merger review process, parties are also encouraged to submit the following documents and information in addition to those required under the Form:

- (a) A list of all currently manufactured, marketed, or sold products and products in development;
- (b) Prices of all currently manufactured, marketed, or sold products;
- (c) A list of the types of reports the company prepares on a regular basis;
- (d) Organization chart to help the review team identify potential document custodians or candidates for interviews;
- (e) Strategic and marketing plans earlier than the three (3) year period required under the Form, to capture a pivotal business development or historic event;
- (f) A data map for identification of types of data the organization creates and stores and the relationships between the organization’s different data sets;
- (g) Internal reports and communications relating to the merger and/or products or services being acquired;
- (h) Such other information that could assist PCC in assessing the proposed merger and the markets involved.

6.6. Where appropriate, information and documents submitted by merger parties may be given confidential treatment in accordance with the procedures provided in Section 9 of these Rules.

6.7. If the PCC deems it necessary, it may conduct site visits or inspections of the business premises of the parties, their customers and/or their competitors, 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.

6.8. 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 these Rules.

Coordination with merger parties

6.9. At any time during the review and as it deems necessary, the PCC may coordinate with the merger parties through conference calls or meetings to discuss theories of harm, relevant market, voluntary commitments, timing of the review, among others.

6.10. Merger parties may also request such conferences, which may be granted by the PCC where it deems appropriate.

6.11. During these coordination meetings, merger parties may propose commitments that will remedy, mitigate or prevent the competition concerns identified by the PCC as arising from the merger (see Section 12 of these Rules).

Third parties

6.12. The PCC may contact third parties, such as customers, suppliers or competitors, by means of market calls or inquiry letters in order to obtain relevant information regarding the market, their views on the merger, any competition issues it may raise and how they will be affected. Third parties may also include other governmental entities, sectoral regulators, industry associations, consumer bodies, think-tanks, market research firms or centers for information, among others. Information provided by third parties may be given confidential treatment in accordance with Section 9 of these Rules and Rule 4, Sections 5 (o) and 13 of the IRR.

Assessment

6.13. If the merger does not appear to give rise to competition concerns, the PCC shall render a favorable decision and the parties may proceed to consummate the merger.

6.14. In the event that PCC identifies competition concerns in Phase 1 review such that a favorable decision cannot be rendered, or on the basis of all

information before it, is unable to form a conclusion that the merger does not raise competition concerns, the merger shall be subjected to a Phase 2 review.

6.15. In case a merger is subjected to a Phase 2 review, the PCC shall notify the merger parties that a more detailed and extensive review is needed for their merger (“Phase 2 Notice”), and issue a Phase 2 Request for Additional Information (“Phase 2 Request”).

Publication

6.16. In case of a favorable decision approving the merger during Phase 1 review, a non-confidential version of the decision and the abstract of the merger shall be published in the PCC Website.

6.17. In case a merger is subjected to a Phase 2 review, and when additional information or documents requested by the MAO for the purpose of a Phase 2 review has been submitted by the parties, the MAO may publish a statement on the opening of a Phase 2 review of the merger and call for comments: *Provided*, that when the parties request for extension to submit the Phase 2 documents, the publication may still be made upon expiration of fifteen (15) days from the Phase 2 Notice.

7. PHASE 2 REVIEW PROCESS

7.1. The Phase 2 review shall commence on the day after service of the Phase 2 Notice. The PCC shall have a period of sixty (60) days within which to conduct the Phase 2 review. During the said period, the merger parties are prohibited from consummating their transaction.

7.2. The purpose of the Phase 2 review is to determine whether the proposed merger is likely to result in SLC in the relevant market or in the market for goods and services as determined by the PCC.

7.3. Upon receipt of an order of payment from the PCC, the parties shall pay the Phase 2 review fee pursuant to Memorandum Circular No. 17-002. In case of non-payment of said fee, PCC shall return the Forms to the merger parties.

7.4. The parties shall respond to the Phase 2 Request within fifteen (15) days from receipt thereof. Failure to submit a complete response within such period shall result in the expiration of their notification and the parties must refile their notification in accordance with Section 5 of these Rules (see Rule 4, Section 5 (i) of the IRR). The refiled notification should include the information required under the Phase 2 Request. Otherwise, the notification shall be considered deficient.

7.5. In exceptional cases and where PCC has alternative approximate information available to it sufficient to proceed to the review of the merger, the PCC may, in its discretion, allow the Phase 2 review to proceed, subject to the

application of Section 2.15 of these Rules.

7.6. Alternatively, the parties may request an extension of time within which to comply with the Phase 2 Request. Upon the filing of the first request, the periods for review under the Act shall be correspondingly extended without need of confirmation from the PCC (see Rule 4, Section 5 (i) of the IRR). However, PCC may shorten the requested period of extension. For subsequent requests for extension, the PCC has the discretion to grant or deny the request.

Phase 2 Request documents

7.7. The Phase 2 Request documents (“Phase 2 documents”) shall be filed with MAO in accordance with Sections 2.4 and 2.5 of these Rules.

7.8. The MAO shall inform the parties whether or not their submission complies with the Phase 2 Request within five (5) days from submission of the Phase 2 documents. If the submission fails to comply with the Phase 2 Request, Sections 7.4 to 7.6 of these Rules shall apply.

Voluntary information gathering

7.9. Parties can provide additional information at any time during the Phase 2 review, even if not requested by MAO. Preparing and gathering documents and information in anticipation of a request for information may expedite the merger review process.

7.10. During the Phase 2 review, the MAO may exercise any of its powers stated hereunder for the purpose of collecting information relating to the subject matter of the review.

7.11. Information provided by third parties may be given confidential treatment in accordance with Section 9 of these Rules and Rule 4, Section 5 (o) and 13 of the IRR.

Compulsory information gathering

7.12. The Commission or the MAO may issue *subpoena duces tecum* to direct anyone who may have access to, possession, custody, or control of documents, Electronically Stored Information, other things, or information which relate to any matter relevant to the review or proceeding, to submit or make available to the PCC such documents, Electronically Stored Information, or other things for inspection, copying, or reproduction, file written reports or answers to questions, or submit the required information in a specified format such as lists, summaries, or tables, or *subpoena ad testificandum* to a person to give testimony before the PCC, which relate to any matter relevant to the merger review process.

7.13. The procedure set forth in Rule XIII on Subpoena of the PCC Rules of Procedure shall apply to these Rules. Failure to comply with a subpoena will subject the individual or entity to contempt and imposition of a

fine (see Section 16 of these Rules). Failure to comply with a subpoena by the parties will likewise render their notification expired and the parties must re-file their notification, subject to the application of Section 7.5 of these Rules.

7.14. Alternatively, should the parties wish to submit the requested information beyond the given period, the parties may request an extension and waive the periods for review. For this purpose, the Model Request and Waiver shall be used by the parties, which must be filed with the MAO prior to the expiration of the given period.

State of play meeting

7.15. **Purpose.** The MAO may call for state of play meetings during the Phase 2 review process. State of play meetings seek to ensure transparency and communication between the MAO and the merger parties, thereby enhancing the quality and efficiency of the review process.

7.16. **Participants.** Key officers of the merger parties are encouraged to attend the state of play meetings. As a general rule, state of play meetings will be offered to each party separately. The merger parties may be accompanied by counsel whose role shall be limited to providing legal advice to the parties.

7.17. **Format and Venue.** State of play meetings may be conducted in the form of meetings at the PCC premises, or alternatively, if appropriate, by telephone or video conferences.

7.18. **Content.** State of play meetings allow the MAO to discuss with the merger parties information about any competition concerns, including feedback from the market investigation, whether or not the review may result in the issuance of a Statement of Concerns, and the theories of harm that may be included in such statement. The MAO may likewise provide an update on the likely timetable for the case going forward.

7.19. **Timing.** The MAO may offer state of play meetings at key stages of the case. Shortly after the opening of a Phase 2 review, a state of play meeting may be held to provide the parties the opportunity to discuss the Phase 2 Request and the issues identified. It may also serve to assist the MAO in deciding on the appropriate framework for its further investigation. The MAO may likewise offer a meeting at a sufficiently advanced stage in the review to allow the parties an opportunity to understand the MAO's preliminary views on the merger following the investigation and the competition concerns identified. At this stage, the MAO may clarify issues and facts relevant to the case.

7.20. In instances where the merger parties propose commitments for the approval of their merger, state of play meetings may be held to allow the MAO to provide feedback on the results of its evaluation of the proposal.

Statement of concerns

7.21. If, based on the available information thus gathered, the MAO's analysis leads to a conclusion that the merger is likely to give rise to SLC, a Statement of Concerns ("SOC") shall be filed with the Commission not later than the forty-fifth (45th) day of the Phase 2 review period, and copies shall be sent to the merger parties stating the facts and the reasons why the MAO has reached such conclusion.

7.22. The SOC shall set forth the MAO findings on the likelihood of the merger giving rise to SLC, and may include any recommendations or remedial actions that the MAO proposes to apply.

7.23. Where appropriate, the Commission may publish a non-confidential version of the SOC on the PCC Website with a request for third party comments on the same, with a view to considering such comments in its review of the MAO's findings.

7.24. Any third party may submit comments on the published SOC. However, no standing is conferred upon such third parties in the proceeding.

7.25. In case new evidence is discovered, the MAO may issue a supplemental SOC. In this case, the same right to submit a comment and request a hearing are available to the parties.

7.26. If no SOC is filed by the MAO, it will recommend clearance of the merger.

8. PROCEEDINGS BEFORE THE COMMISSION ON THE SOC

8.1. Upon the request of the merger parties, the Commission may direct the MAO to conduct a state of play meeting immediately following the merger parties' receipt of the SOC. This meeting is solely for the benefit of the parties for them to have the opportunity to clarify matters which the MAO has identified as giving rise to competition concerns. Parties may also propose commitments pursuant to Section 12 of these Rules.

8.2. The merger parties should communicate with the MAO their availability for the state of play meeting, and the specific matters they wish to discuss arising from the SOC.

8.3. Filing of comments, letters, motions and other papers to the Commission for this phase of the proceeding shall comply with Article II, Rule IV of the PCC Rules of Procedure.

Verified Comment

8.4. Within ten (10) days from receipt of a SOC through any of the means provided in Section 2.14 of these Rules, whichever is earlier, a party

may file a verified written comment on the SOC containing all the facts, arguments, evidence, and analysis that are relevant to the parties' defense against the concerns identified by the MAO.

8.5. The verified comment shall be:

(a) Verified 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 legal representative that he has read the comment and the allegations therein are true and correct of his personal knowledge or based on authentic records;

(b) Accompanied by an original Secretary's Certificate or Special Power of Attorney; and

(c) Accompanied by affidavits and documentary exhibits relied on for the party's defense.

8.6. Should there be difficulty in securing authenticated documents within the period provided under Section 8.4 of these Rules, photocopies of the non-authenticated documents and an undertaking to submit the original authenticated documents within a specified period may be submitted with the verified comment.

8.7. Prior to the expiration of the period to file a comment, a merger party may file a written request for extension of time to submit its written comment and waive the periods for review. For this purpose, the Model Request and Waiver shall be used by the parties, which must be filed with the Commission prior to the expiration of the period.

Supporting Documents of the Statement of Concerns

8.8. Upon receipt of the SOC, the merger parties may request access to the supporting documents⁵ of the SOC ("Supporting Documents") for the purpose of preparing their defense in the proceedings.

8.9. The PCC shall provide the Supporting Documents through any of the following means: (i) electronic data storage device; (ii) copies of the accessible file in paper form sent by mail; or (iii) by inviting the parties, separately, to examine the accessible file at the PCC's premises on a given date.

8.10. Access to the Supporting Documents is granted on the condition that the information thereby obtained may only be used for the purpose of judicial or administrative proceedings undertaken pursuant to the Act and its IRR. If the information was used in any way contrary to this Section, the party guilty of the same will be subject to penalties provided under the Act. If the use for a different purpose or the breach of the said limitations occurred with the

⁵ Documents substantially relied upon by the MAO in preparing the SOC. Supporting Documents do not include unrelated or irrelevant documents, internal documents of the PCC, PCC's correspondence with public authorities and confidential information.

involvement of counsel, the PCC may report the incident to the bar of that counsel, for disciplinary action.

8.11. If a party considers that, after having access to the Supporting Documents, it requires knowledge of specific non-accessible information for its defense, it may submit a reasoned request to that end. If the Commission's designated officer does not accept the request and if the party disagrees with that view, the party concerned may petition the Commission within five (5) days from notice and submit a Model Request and Waiver for a period of ten (10) days. The Commission has to resolve the matter within a period of ten (10) days from receipt of the petition and Model Request and Waiver.

Conference

8.12. The merger parties may propose to make oral representations to the Commission upon submission of their verified comment to the SOC.

8.13. Upon submission of the request for a conference with the Model Request and Waiver, the Phase 2 review period shall be suspended. A request for conference without the Model Request and Waiver shall be not be considered filed.

8.14. The request for a conference shall include the following information:

- (a) The proposed issues to be subject of the conference;
- (b) A summary of the parties' arguments;
- (c) The documents or exhibits the parties propose to present during the proposed conference as well as the purpose thereof;
- (d) the proposed number and names of the witnesses, indicating the substance of their respective testimonies, of the parties.

8.15. If the request for a hearing is granted, the Commission or its designated officer shall issue a resolution setting forth the scope of the issues that will be taken up during the conference, the number of witnesses which may be presented and the timetable of the conference.

8.16. In the event that the request for hearing is denied, the Phase 2 review period shall resume upon the parties' receipt of the resolution denying the request. Should the request be granted, the Phase 2 review period shall resume upon the expiration of the requested number of days, provided that the extension shall not exceed sixty (60) days from the Commission's receipt of the request for conference.

8.17. Where confidential information will be disclosed during the conference, the designated officer, *motu proprio* or upon motion, may order a hearing in camera.

8.18. Parties may be accompanied by counsels during the hearing. However, questions directed to the parties and its witnesses should be directly answered by them.

8.19. All evidence presented to the Commission will be considered, subject to the Commission's determination of the appropriate weight to be given to such evidence.

8.20. The Commission may direct the merger parties and the MAO to submit any further memoranda, briefs or information.

8.21. The Commission's decision shall be promulgated not more than fifteen (15) days from the date of the last hearing or submission of the parties, whichever is applicable.

Final Decision

8.22. After taking into account any oral and written representations made by the merger parties in response to the SOC, the Commission shall render a decision on the merger. A copy of the Decision shall be sent to the merger parties, and published at the PCC Website after giving the parties an opportunity to indicate any information claimed to be confidential in the Decision.

Enforcement of Decision and Orders

8.23. Rule VII on Enforcement of Decisions and Orders of the PCC Rules of Procedure shall, as far as practicable, apply to the execution and implementation of the Commission's Decision or any final order or resolution provided in these Rules.

9. CONFIDENTIALITY

9.1. The PCC shall give appropriate treatment to confidential information in all aspects of its operations.

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

9.3. **Other confidential information.** The PCC may, upon the claim of an entity, extend confidential treatment to information other than Confidential Business Information, if such information is not generally known to the public and is the subject of reasonable efforts under the circumstances to maintain its

secrecy, or the disclosure of such information is prejudicial to any investigation conducted for the enforcement of the Act, its IRR and other competition laws.

9.4. **Confidentiality of identity.** Subject to Section 9.14 of these Rules, the PCC shall keep confidential the identity of persons providing information under condition of anonymity, unless such confidentiality is expressly waived by the latter.

9.5. The following classes of information are not generally considered to be confidential by PCC:

- (a) The fact of the merger itself;
- (b) Information that relates to the business of any of the merger parties but is not commercially sensitive in the sense that disclosure would cause harm to the business;
- (c) Information that reflects the merger parties' views of how the competitive effects of the merger could be analyzed;
- (d) Information that is general knowledge within the industry, or is likely to be verified by any diligent market participant or trade, finance or economic expert.

9.6. **Confidentiality not a ground for non-submission.** A claim for confidentiality is not a ground for the non-submission of information required by PCC. Any entity that fails or refuses to comply with the order requiring submission of information on the ground of confidentiality shall be liable for the penalty provided under Section 16 of these Rules.

Steps in Claiming Confidentiality

9.7. Submissions to the PCC of information or documents by merger parties, resource persons, or other third parties ("submitters") should indicate if there are claims of confidentiality. Such claims must be substantiated, such that it must be accompanied by a detailed explanation why particular parts of their submissions should not be disclosed, including an explanation of the nature of the information, and the elements provided under Section 9.2 or 9.3, as applicable.

9.8. Additionally, a non-confidential version should be provided at the same time as the original submission.

9.9. The PCC may share the non-confidential versions of submissions with the merger parties or third parties. Unless there is a claim of confidentiality, it will be presumed that none of the information contained in a party's submission is confidential.

9.10. Information claimed to be confidential should be identified as follows:

- (a) In the confidential versions of submissions, confidential information must be marked by enclosing it in square brackets or

underlining the text;

(b) In the non-confidential version of submissions, redactions must be marked by square brackets containing the word "CONFIDENTIAL";

(c) The applicant must submit a separate annex in table form identifying the confidential information and giving reasons why the information should be treated as confidential.

Blanket or overly broad confidentiality claims shall not be accepted.

Determining Confidentiality Claims

9.11. If the claim of confidentiality meets the conditions set out in the paragraphs above as determined by the MAO, the subject information or documents shall be provisionally treated as confidential. The provisional treatment of confidentiality shall not be construed as an evaluation of the merits of the claim for confidentiality.

9.12. The MAO may withdraw its provisional treatment of confidentiality in whole or in part at a later stage.

9.13. Where the MAO does not agree with the confidentiality claim or where it takes the view that the provisional treatment of confidentiality should be withdrawn, it will inform the submitter of its intention to disclose the information within a period of not less than five (5) days prior to disclosure. Should the submitter wish to oppose such disclosure, it may raise the matter to the Commission or the designated PCC officer within five (5) days from the MAO's notice, who will render a ruling according to the applicable rules and guidelines of the PCC. During such period, the MAO shall not disclose the information unless and until the Commission or the designated PCC officer has ruled on the matter.

9.14. Confidential Information shall not be disclosed by PCC, except in any of the following circumstances:

(a) When there is consent from the entity claiming confidentiality;

(b) When disclosure is required by law;

(c) When disclosure is required by a valid order of a court of competent jurisdiction or pursuant to a lawful writ or process of a government agency;

(d) When disclosure is based on an agreement with a government agency: *Provided*, That, the information shall be treated by the agency as confidential, and used for law enforcement purposes; or

(e) When necessary for enforcing the Act, its IRR, other existing competition laws, and for purposes of advancing the review.

In these circumstances, the PCC may make a disclosure of Confidential Information in the manner, time, and extent necessary under the

circumstances.

9.15. Disclosure of Confidential Information to government agencies outside the Philippines shall be made only upon waiver of the entity claiming confidentiality.

9.16. Prior to the publication of a merger decision, order or summary, a party may be allowed to identify or request the exclusion of previously determined Confidential Information contained in a decision, order or summary. Whenever possible, confidentiality claims of third parties are respected by anonymizing or aggregating their responses, or both. The PCC, however, has full discretion to determine what information is confidential.

10. INTERIM MEASURES

10.1. **Interim measures.** The Commission may impose interim measures to prevent any action that may prejudice its ability to investigate the merger or its ability to impose appropriate remedies, or when the Commission finds reasonable grounds to believe that the merger subject to review has resulted or may result in substantial prevention, restriction, or lessening of competition in the relevant market. It may also issue interim measures it considers necessary to protect the integrity of the review or adjudicatory process.

10.2. The Commission may issue interim measures *motu proprio*, or upon application filed by the MAO or a merger party.

10.3. Interim measures may include ordering a party, its subsidiaries or affiliates, including their respective directors, officers, agents or employees, to temporarily cease or desist from the performance of certain acts, including but not limited to, prohibiting a party from performing acts of consummation of a merger, or prohibiting the layoff of certain staff members, or limiting exchange of commercially sensitive information, or ordering preservation of documents including, but not limited to, computer memory, computer disks, data compilations, e-mail messages sent and received and all back-up computer files or devices.

10.4. **Contents of verified application.** The MAO or the party applying for interim measures must specify and substantiate the grounds causing, or expected to cause, the injury or prejudice sought to be prevented and the relief sought.

10.5. **Order to explain.** Upon receipt of the application sufficient in form and substance, the Commission shall issue an order against whom the interim measure is sought to explain within a period of ten (10) days why the application should not be granted.

The explanation must be written and verified, and may include alternative measures that will address the concerns raised in the application.

10.6. **Effectivity and duration of interim measure.** Unless otherwise stated in the order, an interim measure shall be immediately effective and shall remain effective for the period stated therein, or until the Commission has lifted the same, or rendered a decision on the merits.

The filing of a motion for reconsideration, if any, shall not stay the implementation of an interim measure.

10.7. **Motion to lift the measure.** The party subject of the measure may file a verified motion to lift the same on the ground that the factual and legal bases for which it was issued no longer exist.

10.8. **Publication.** The order imposing the measure may be published on the PCC Website, subject to Section 9 of these Rules.

11. DECISION

11.1. Upon consideration of the concerns raised in the SOC and the submissions of the parties, the Commission will determine whether the merger is likely to result in an SLC in the relevant market or in the market for goods and services as determined by the PCC.

11.2. **Decisions allowing the merger.** If the Commission determines that a merger, if carried into effect, will not lead to an SLC in the relevant market, the Commission shall allow the merger. A favorable decision may be rendered in Phase 1 or Phase 2 review. Where a favorable decision is rendered, the Commission will notify the merger parties.

11.3. Merger agreements that have received a favorable decision from the Commission, except when such decision was obtained on the basis of fraud or false material information, may not be subsequently challenged under the Act.

11.4. **Commitment Decisions.** On the basis of commitments proposed by the parties pursuant to Section 12 of these Rules, the Commission may issue a commitment decision that is binding without concluding whether the merger is prohibited.

11.4.1. In the event that parties fail to abide by their commitment, the PCC may impose fines, additional remedies, and such other measures as it may deem necessary, including nullifying the commitment decision.

11.5. **Decisions prohibiting the merger.** If the Commission determines that the merger is likely to result in an SLC, it shall render a decision prohibiting the merger. The decision shall set forth the facts and the grounds that form the basis for the Commission's determination.

11.5.1. In certain cases, the decision may include conditions that the merger parties may comply with in order to obtain a favorable decision from the Commission.

11.5.2. **Conditions.** If PCC concludes that the merger is likely to result in an SLC if carried into effect, PCC may impose such conditions as it considers appropriate to remedy, mitigate, or prevent the negative effects to competition caused by the merger.

11.5.3. Examples of conditions include:

(a) Prohibiting a merger from being carried into effect or requiring a merger to be dissolved or modified in such manner as PCC may direct;

(b) Requiring the merger parties to enter into such legally enforceable agreements as may be specified by PCC to prevent or lessen the anti-competitive effects which may arise;

(c) Requiring the merger parties to dispose of such operations, assets, or shares in such manner as may be specified by the PCC;

(d) Providing a performance bond, guarantee or other form of security on such terms and conditions as PCC may determine.

11.5.4. Merger parties amenable to the stipulated conditions may submit commitments or revise their agreement. If PCC approves such commitments or revisions, it shall issue a modified decision that shall have the effect of superseding the previous decision.

11.6. Decisions shall be in writing and the merger parties shall be furnished a certified copy of the decision. A non-confidential version may also be furnished to such persons as the PCC considers appropriate, and published on the PCC Website for information of the public subject to Section 9 of these Rules.

11.7. **No decision upon expiration of the relevant periods of review.** If no decision is rendered upon the lapse of (i) the Phase 1 review period and no Phase 2 Notice is issued; or (ii) the Phase 2 review period; or (iii) such extended period as provided under these Rules, the merger shall be deemed approved.

11.8. PCC has the power to review its merger decisions when it has reasonable grounds to suspect that the information provided to it on which the decision is based was incomplete, incorrect, or misleading (see Rule 4, Section 12 of the IRR).

12. PROPOSAL FOR REMEDIES

12.1. Should there be a finding that a merger is likely to substantially prevent, restrict, or lessen competition, or where the parties propose commitments to competition concerns identified by the PCC, the PCC may impose remedies to address the potential negative effect of the merger.

12.2. The PCC may accept remedies proposed by the parties concerned, issue conditions, require parties to modify the terms of their agreement, or to desist from a particular conduct or practice, as a requirement to the approval of their merger.

Voluntary Commitments

12.3. At any stage of the Phase 1 or 2 review, merger parties may propose commitments that will remedy, mitigate, or prevent the competition concerns identified by the PCC as arising from the merger. However, proposals for commitments after PCC has rendered a decision will not be allowed.

12.4. Upon submission of a proposed commitment, the review periods shall be suspended for a period of sixty (60) days. However, PCC may shorten such period, or extend for a maximum of thirty (30) days [“Commitment Review Period”]. The Model Request and Waiver available at the PCC Website shall be submitted by the party together with its proposed commitment. A proposed commitment without the Model Request and Waiver shall be not be considered filed.

12.5. Once the Commitment Review Period expires without PCC’s acceptance of the proposed commitments, the Phase 1 or 2 review shall resume.

12.5.1. PCC will confer with the parties to discuss their proposed commitments. Submission of a proposal for commitment does not excuse non-compliance with requests for information from the PCC.

12.5.2. Before accepting any commitments, PCC must be of reasonable belief that these are sufficient to clearly address the competition concerns and are proportionate to them. As provided under the PCC Merger Review Guidelines, commitments can either be structural or behavioral.

12.5.3. In instances where PCC considers the commitments proposed by the merger parties as a suitable remedy, PCC may decide to consult the concerned stakeholders or the public and issue an invitation to comment on its website. Third parties may also be approached on an individual basis for their views.

12.5.4. Should the PCC decide that changes need to be made to the commitments in light of responses to the consultation, it will discuss the material changes with the parties. Minor changes do not require further consultation.

12.5.5. PCC may consider and impose alternative remedies, notwithstanding the merger parties' proposals.

12.5.6. The PCC will adopt a Commitment Decision once it decides to accept the commitments of the merger parties.

Applications to Vary, Substitute or Release a Commitment

12.5.7. Where PCC has rendered a Commitment Decision, the party who provided the commitment may apply to PCC to vary, substitute or release such commitment.

12.5.8. The written application shall contain the following:

(a) Description of the terms of the proposed varied or substitute commitment;

(b) An explanation as to the impact which the variation or substitution of the commitment will have on the competition concerns;

(c) For applications for release, an explanation as to whether the competition concerns sought to be addressed by the commitment which the party is seeking release from still exist;

(d) Full contact details of the main competitors, customers and clients of the party subject to the commitment.

All explanations should be accompanied by relevant supporting documents and certified under oath by an authorized representative of the party.

12.5.9. Before varying, substituting or releasing a commitment, PCC will consult with such persons as it deems appropriate.

13. MOTU PROPRIO MERGER REVIEW

13.1. Pursuant to its market surveillance function, the PCC may conduct investigation of any merger that the PCC has reasonable grounds to believe is likely to substantially prevent, restrict or lessen competition in the market ("Section 20 merger review").

13.2. There may be reasonable grounds to believe that a merger is likely to result or has resulted in an SLC in the market where there are preliminary indications that customers may be adversely affected, there are possibilities for foreclosure, a high degree of market concentration exists, either of the merger parties has high market shares, the merger takes place in a critical industry, among others.

13.3. For a *motu proprio* Section 20 merger review, PCC will endeavor

to follow the same process for notified mergers, except for the review periods which are seventy-five (75) days for Phase 1 and one hundred twenty (120) days for Phase 2, and subject to the procedure provided in this Section.

Complaints

13.4. Complaints from businesses and consumers will be considered by PCC as inputs in its determination of whether or not it will open an investigation.

13.5. An entity or individual may file a written complaint with the PCC (“Complainant”) by submitting one (1) original copy of the complaint, with its attachments, and an electronic version of the complaint and all attachments, in a secure electronic storage device, with each attachment saved as a separate file, and each file name referring to the identifying appendix number. The electronic version of the complaint and all attachments must be saved in PDF, Word, or in a spreadsheet format, in two (2) versions, protected and non-protected.

13.6. The complaint should include the following information:

- (a) Information regarding the complainant, including its ultimate parent entity, if any; a concise overview of the lines of business it is engaged in or its affiliated organizations, if any; and a contact person for future correspondence;
- (b) Information on the merger party or parties complained of, including its ultimate parent entity, if known, and the lines of business it is engaged in;
- (c) Relationship of the complainant *vis-à-vis* the entity complained of (such as being a customer or a competitor);
- (d) Acts constituting the violation of Section 17 or 20 of the Act;
- (e) Relevant documents and other supporting materials;
- (f) If possible, indicate the goods, services or intellectual property rights, affected by the merger and explain the commercial relationships between or among these goods or services, and include the relative market positions of the entities concerned;
- (g) Names and address of persons that the PCC may approach and interview for additional information;
- (h) Remedy sought by the complainant;
- (i) Statement under oath that the complainant has read the complaint and that the allegations therein are true and correct of his personal knowledge or based on authentic records. The verification shall be made by a general partner of a partnership, an officer, director, or trustee of a corporation with evidence of his authority, or if the entity is a natural person, by the person himself.

13.7. PCC will consider each complaint on its merits to determine if an investigation is warranted.

13.8. In deciding whether or not to give due consideration to a complaint, the PCC shall take into account the following: (i) PCC's jurisdiction; (ii) public interest; (iii) resource allocation; (iv) strength of supporting evidence; or, (v) overall effect of the merger on the market.

13.9. A complainant has no standing to take part in the investigation. However, the complainant will be informed of PCC's action on the complaint. The PCC may also decide to communicate or consult with the complainant at any stage of the proceedings pursuant to its information gathering powers. In addition, the complainant is entitled to receive a copy of the non-confidential version of the decision on the merger.

13.10. If a complainant wishes to remain anonymous, the complainant should so indicate in the complaint. However, potential complainants should note that it may be necessary to reveal information which may identify the source of a complaint for the effective handling of said complaint.

Case Initiation and Review

13.11. The PCC, through the MAO, shall open a Phase 1 review of a merger pursuant to a *motu proprio* directive from the Commission based on Section 13.1 of these Rules. The MAO will issue a notice to the merger parties that the PCC is opening a Phase 1 review of the merger, together with a Request for Information.

13.12. The fact that a merger has been completed does not prevent the PCC from investigating and opening a Phase 1 review. Section 6 of these Rules shall correspondingly apply to this stage of the review.

13.13. The MAO may likewise publish a statement on the opening of a *motu proprio* Phase 1 review of the merger and call for comments relating to the merger.

13.14. The issuance of Requests for Information or subpoena *duces tecum* or *testificandum* shall suspend the relevant periods for a *motu proprio* merger review, until PCC's receipt of the requested information or documents, or the termination of testimony. In exceptional cases and where PCC has alternative approximate information available to it sufficient to proceed to the review of the merger, the PCC may, in its discretion, allow the review to proceed, subject to the application of Section 2.15.

13.15. Should the PCC decide to move to a Phase 2 review of the merger, a notice and request for additional information shall be sent to the merger parties. Section 7 of these Rules will correspondingly apply to this stage of the review.

13.16. At any time during the *motu proprio* merger review, merger parties may propose voluntary commitments in accordance with Section 12 of these Rules.

13.17. If the Commission determines that the merger is likely to result in an SLC, it shall render a decision prohibiting the merger pursuant to Section 11, and subject to Section 9, of these Rules.

13.18. The Commission may also impose financial penalties on the merger parties of a prohibited merger in accordance with Section 16 of these Rules.

14. VIOLATION OF THE COMPULSORY NOTIFICATION AND WAITING PERIOD RULES

14.1. The PCC may conduct an investigation of any merger that reaches the thresholds under the IRR but has not been notified to the PCC, or where waiting periods required under Section 17 of the Act have been violated (collectively, "Section 17 investigations").

14.2. If, based on its initial findings, the MAO suspects that (i) a merger that reaches the thresholds under the Rules has not been notified to the PCC; or (ii) there is a violation of the waiting periods required under Section 17 of the Act (the "Non-Compliant Acts"), it will issue a notice to the merger parties and their ultimate parent entities ("Concerned Parties") to explain (the "Initial Notice").

14.3. As part of its information gathering efforts, the MAO may also publish a call for comments on its website on whether or not a completed or anticipated merger that has not been notified to it may raise concerns under the Act.

14.4. **Explanation.** The Concerned Parties shall submit their explanation within the period stated in the Initial Notice, which in no case shall be less than fifteen (15) days from receipt of the said Notice. The explanation shall contain the following: (i) facts or circumstances relevant and necessary to explain why they shall not be held liable for the alleged violation; (ii) a summary of admitted facts, if any; (iii) the legal grounds on which such explanation or answer is based; (iv) the supporting documents and evidence, if any, to support its claims or arguments; and (v) such other matters that may be relevant to its case.

14.5. **Failure to Explain.** Where the Concerned Parties fail to submit an explanation, the MAO is entitled to rely on the relevant evidence it has obtained in its investigation.

14.6. **Clarificatory Conference.** A clarificatory conference may be held for purposes of clarifying or ascertaining facts, issues, and other matters necessary and relevant to the investigation.

The Concerned Parties may be accompanied by counsel who shall confine his activity to advising the Concerned Parties of their legal rights. The Concerned Parties shall be primarily responsible in answering questions propounded by

the MAO.

14.7. **Recommendation.** Should the MAO find that the Concerned Parties have engaged in a Non-Compliant Act, it will submit its findings to the Commission and its recommendation on the imposable fines ("Recommendation").

14.8. **Other Violations.** The same procedure provided in this Section shall apply *mutatis mutandis* to all other violations of the Act, the IRR, these Rules, and decisions or orders of the Commission that relate to or in the course of a merger review.

15. ADJUDICATION

15.1. Articles II and III of Rule IV on service and filing of the PCC Rules of Procedure shall apply, as far as practicable, and unless otherwise stated, to the service and filing of all pleadings, motions, notices, orders, decisions, and other papers under this Section.

15.2. **Notice.** Upon receipt of the MAO's Recommendation, the Commission shall issue and serve upon each Respondent a Notice, requiring them to comment, within the period therein fixed, on the Recommendation.

15.3. The Notice shall be accompanied by the Recommendation, which shall contain (i) a written description of the Respondents' Non-Compliant Act; (ii) a statement of relevant facts and information; (iii) its findings; and (iv) the recommended fine. The Notice shall specify the period within which the Respondent shall submit its verified comment; direct the Respondent to include any mitigating circumstances that should be considered by the Commission in setting the fine; and such other matters or instructions that the Commission deems relevant and necessary to include.

15.4. The Notice may also contain interim measures in accordance with Section 10 of these Rules.

15.5. **Verified Comment.** Within the period stated in the Notice, the Respondent shall submit its verified comment to the Commission. Such written comment shall be deemed to have been verified either by a statement therein, or by attaching a separate affidavit, which states that the affiant has read the written explanation and that the allegations stated therein are true and correct based on his personal knowledge or based on authentic records.

15.6. **Failure to Submit Verified Comment.** Failure of the Respondent to file a verified comment within the time provided shall be deemed a waiver of the Respondent's right to contest the allegations in the Recommendation and to participate in the proceedings. Further, such failure authorizes the Commission to find the facts to be as alleged in the Recommendation.

15.7. **Additional Evidence.** The Commission, in its discretion, may issue requests for information and compulsory processes to obtain additional evidence before rendering its decision, when necessary for the proper determination of the case.

15.8. **Clarificatory Hearing.** The Commission or its designated officer may call for a clarificatory hearing for the purpose of ascertaining facts, issues, and other matters necessary and relevant to the resolution of the case.

15.9. **Submission for decision.** After the filing of the last pleading or the expiration of the period to file the same, or the conduct of the last hearing, as the case may be, the Commission shall issue an order submitting the case for decision.

15.10. **Decision.** The Commission shall render its decision within thirty (30) days from the time the case is submitted for decision, unless an additional period is warranted. The decision of the Commission shall contain a concise statement of its findings, the legal basis therefor, the penalties or remedies imposed, and such other matters as may be appropriate.

15.11. **Publication.** The decision shall be published on the PCC website subject to Section 11 of these Rules.

15.12. **Motion for reconsideration.** A motion for reconsideration of a decision, order, or resolution may be filed pursuant to Section 17 of these Rules.

15.13. **Finality of decisions and final orders of the Commission.** If no appeal or motion for reconsideration is filed within the period fixed in these rules, the decision or final order of the Commission, as the case may be, shall become final.

16. FINES AND PENALTIES

16.1. **Non-notification of a consummated merger and gun-jumping.** Parties to a merger and their ultimate parent entities failing to notify the PCC prior to consummation of their merger, or violating the waiting period provided under Section 17 of the Act and Rule 4, Section 5 of the IRR, shall be imposed a fine equivalent to one (1) to five (5) percent of the value of transaction.

16.2. **Failure to notify within the period for notification.** Merger parties and their ultimate parent entities failing to notify the PCC within the period for notification provided under Section 2 of these Rules but has yet to consummate the merger will be fined in the amount of ½ of 1% of 1% of the value of transaction, but not exceeding two million pesos.

16.3. **Prohibited mergers.** Merger parties and their ultimate parent entities found to have violated Section 20 of the Act may be imposed the

following fines:

- (a) First offense: Fine of up to one hundred million pesos (PHP 100,000,000.00);
- (b) Second offense: Fine of not less than one hundred million pesos (PHP 100,000,000.00) but not more than two hundred fifty million pesos (PHP 250,000,000.00).
- (c) Third and succeeding offenses: Fine of not less than one hundred fifty million pesos (PHP 150,000,000.00) but not more than two hundred fifty million pesos (PHP 250,000,000.00).

Any previous finding of violation under Sections 17 or 20 of the Act by the PCC shall be counted for purposes of determining the minimum imposable penalty according to the above schedule.

Computation of fine for non-notification and gun-jumping

16.4. **Basis of the Fine.** The fine imposable for Section 16.1 (non-notification of a consummated merger and gun-jumping) and Section 16.2 (failure to notify within the required period of a merger that has not been consummated) is based on the value of the transaction which shall be set with reference to the following, whichever is higher:

- (a) The aggregate value of the assets in the Philippines subject of the proposed transaction or owned by the acquired corporation, including entities it controls, or
- (b) The gross revenues generated by assets subject of the proposed transaction or from sales in, into, or from the Philippines of the acquired corporation, including entities it controls.

In calculating the value of (a) or (b), the Commission may determine the value of assets or gross revenues on the basis of the partial figures it has obtained and any other information which it regards as relevant and appropriate, including:

- i) The most recent audited financial statements, or
- ii) The last regularly prepared balance sheet or annual statement of income and expense.

16.5. **Computation of Basic Fine.** The basic amount of the fine (“basic fine”) shall be three percent (3%) of the value of the transaction as determined under Section 16.4 of these Rules, for each violation of Section 17 of the Act and Rule 4, Section 3 (g) of the IRR. Thereafter, if warranted by the circumstances attending the violation, the Commission may adjust such basic amount in the manner prescribed in the subsequent Sections.

General provisions on fixing the amount of the fine

16.6. **Adjustment of Fines.** The basic fine may be increased or decreased, on a case-by-case basis depending on the gravity and duration of

the violation, taking into account all the relevant circumstances of the case: *Provided*, That, in no case shall the imposable fine for each violation exceed five percent (5%) of the value of the transaction nor shall the imposable fine be less than one percent (1%) of the value of the transaction.

16.7. In fixing the amount of the fine, PCC will consider the following factors:

- (a) The gravity of the SLC;
- (b) The time the merger parties took to carry the infringing merger into effect and how long the merged entity has been in place; and
- (c) Other relevant factors, such as the deterrent value and the presence or absence of any aggravating or mitigating factors, among others.

16.8. Examples of aggravating and mitigating factors that may be taken into consideration by the PCC are as follows:

(a) **Aggravating circumstances**

- 1. Previous violation of the Act or its IRR, except Sections 17 and 20 by the same acquiring or acquired entity(-ies) or their ultimate parent entities, respectively;
- 2. Previous violation of Sections 17 or 20 of the Act at least three times by the same acquiring or acquired entity(-ies) or their ultimate parent entities, respectively;
- 3. Continuing or committing other acts of consummation of the merger after being informed of its failure to notify or after receipt of an issuance of a cease and desist order from the PCC;
- 4. That the Respondent engaged in any of the acts under Sections 6.9 to 6.16 of the PCC Rules of Procedure in the same review or proceeding.
- 5. That the Respondent is a repeat offender. A Respondent shall be considered a repeat offender if it was previously found by the Commission to have violated: (i) any Section of the Act or its implementing rules, except Sections 17 or 20 of the Act; or (ii) either Sections 17 or 20 of the Act at least three times.

(b) **Mitigating Circumstances**

- 1. If the Respondents are able to provide evidence that they had ceased to perform acts constituting the violation prior to, or without, the intervention of the PCC;
- 2. Cooperation with the PCC during the conduct of the investigation or review beyond what is required under the Act, the IRR and these Rules;
- 3. Adequate steps have been taken by the Respondents with a view to ensuring compliance with the PCC's

directives, orders or resolutions.

16.9. The foregoing penalties may be imposed in the following instances:

16.9.1. Where the merger parties consummated either a non-notifiable or notifiable merger which is the subject of a later Commission decision finding that the merger results in an SLC; or

16.9.2. Where the merger parties, after having received an unfavorable decision from PCC with respect to a potential merger, proceeded with an allegedly different merger which is simply a sham restructuring of the potential merger, among others.

16.10. A notifiable consummated prohibited merger under Section 20 of the Act that is not notified to the Commission, or which violated the waiting periods under the Act, will be subject to both the penalties under Section 16.1 or 16.2 and Section 16.3 of these Rules.

16.11. If the Respondents fail to pay the penalty within the date specified in PCC's order or decision and such Respondents have either not appealed against the imposition or amount of the penalty or such an appeal has been made and the penalty upheld, the PCC shall execute the decision in accordance with Rule VII of the PCC Rules of Procedure.

16.12. **Other applicable fines and penalties.** For all other violations of the Act, the IRR, and these Rules, including but not limited to, contempt, supply of incorrect or misleading information, reprisal or discrimination of any entity providing information to or assisting PCC, failure to comply with an order, or obstruction, Rule VI of the PCC Rules of Procedure shall apply, and references therein to the Enforcement Office shall be taken to mean the MAO.

16.13. **Solidary Liability.** Merger parties, together with their pre-acquisition ultimate parent entities, successors or assigns, shall be solidarily liable for the penalties imposed under the Act, its IRR, these Rules and other applicable rules of the PCC.

17. MOTION FOR RECONSIDERATION

17.1. **Period to file motion for reconsideration.** Parties to the merger may file a motion for reconsideration of a decision, order, or resolution of the Commission within fifteen (15) days from receipt thereof.

17.2. **Grounds for reconsideration.** A motion for reconsideration shall be based on any of the following grounds:

- (a) The evidence on record is insufficient to justify the decision, order, or ruling; or
- (b) The decision, order, or ruling is contrary to law.

17.3. **Form and content of a motion for reconsideration.** The motion shall be in writing, specifically identifying the findings of fact or conclusions of law in the decision, order, or resolution which are not supported by evidence, or which are contrary to law, and shall include such other relevant supporting evidence.

17.4. **Comment or opposition to the motion for reconsideration.** A comment to the motion may be filed by MAO within fifteen (15) days from receipt thereof.

17.5. **Second motion for reconsideration not allowed.** A second or subsequent motion for reconsideration shall be prohibited.

17.6. **Effect of pending motion for reconsideration.** A pending motion for reconsideration shall stay the order, ruling, or decision sought to be reconsidered, unless otherwise provided in these Rules.

18. APPEAL

18.1. Final orders or decisions of the Commission shall be appealable to the Court of Appeals in accordance with the Rules of Court. The appeal shall not stay the final order or decision sought to be reviewed, unless the Court of Appeals shall direct otherwise upon such terms and conditions it may deem just. In the appeal, the Commission shall be included as a party respondent to the case.

19. MISCELLANEOUS PROVISIONS

19.1. **Applicability.** These Rules shall apply to existing merger cases, as well as to those commenced after their effectivity.

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

19.3. **Repealing clause.** Provisions of Sections 2(a), Rule 4 of the IRR, Section 6(b) of CN No. 16-001, PCC Memorandum Circular No. 17-001, Series of 2017, and all other rules or regulations, or any part thereof that are inconsistent with these Rules are hereby repealed, amended, or modified accordingly.

19.4. **Effectivity.** These Rules shall take effect fifteen (15) days after publication in a newspaper of general circulation.

Approved this 9th day of November 2017 in the City of Pasig, Philippines.

(sgd.) ARSENIO M. BALISACAN
Chairman

(sgd.) JOHANNES R. BERNABE
Commissioner

(sgd.) STELLA LUZ A. QUIMBO
Commissioner

(sgd.) AMABELLE C. ASUNCION
Commissioner