

## **PCC RULES ON EXPEDITED MERGER REVIEW PROCEDURE**

**(as of 26 March 2019)**

### **1. Coverage**

- 1.1. These Rules on Expedited Merger Review 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”), and Rule 4, Section 8 of the Implementing Rules and Regulations of Republic Act No. 10667 (the “IRR”).
- 1.2. These Rules on Expedited Merger Review provide the procedure for the notification and review of mergers and acquisitions qualified for expedited review.
- 1.3. The Rules on Merger Procedure shall continue to apply to mergers and acquisitions qualified for expedited review unless otherwise provided for in these Rules on Expedited Merger Review.
- 1.4. As used in these Rules on Expedited Merger Review, the term “merger” refers to both mergers and acquisitions.
- 1.5. The following mergers are qualified for expedited review:
  - 1.5.1. There are no horizontal or vertical (including complementary) relationship between the acquiring entity, including its Notifying Group, and the acquired entity and the entities it controls.
  - 1.5.2. The merger is a global transaction where the acquiring and acquired entities are foreign entities (“foreign parents”), and their subsidiaries in the Philippines act merely as manufacturers or assemblers of products with all such products exported to the foreign parents, subsidiaries, affiliates or third parties located outside the Philippines.
  - 1.5.3. The candidate relevant geographic market of the merger is global and the acquiring and acquired entities have negligible or limited presence in the Philippines.
  - 1.5.4. The merger will result in the acquiring entity acquiring sole control of an entity over which it has joint control (“JV entity”), *Provided*: that the acquiring entity is not operating in any other market except the market where the JV entity operates. There is joint control when two or more entities or persons have the possibility of exercising decisive influence over another entity regardless of whether joint control was acquired de jure or de facto.

- 1.5.5. Joint ventures, whether incorporated or not, formed purely for the construction and development of a residential and/or commercial real estate development project.
- 1.6. The PCC may, in exceptional cases, suspend these Rules on Expedited Merger Review or apply supplemental rules as may be necessary. These Rules on Expedited Merger Review may be revised or amended from time to time.

## **2. Assessing Whether Merger is Qualified for Expedited Review**

- 2.1. In order to determine whether a merger is qualified for expedited review, reference should be made to the notification thresholds under Rule 4 of the IRR and Section 1.5 of these Rules. Prior to notification under expedited review, parties are strongly encouraged to request and have a pre-notification consultation ("PNC") with the Mergers and Acquisitions Office ("MAO") in accordance with Rule 4, Section 4 of the IRR.
- 2.2. Even if a merger is qualified for expedited review, the parties have the option to file Notification Forms under the Rules on Merger Procedure.

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

- 3.1. To avail of expedited review, all acquiring and acquired pre-acquisition ultimate parent entities ("UPE") or any entity authorized by the UPE to file the notification on its behalf ("Notifying Party") must each submit their accomplished Expedited Review Notification Form using the most recent version available on the PCC Website.
- 3.2. Notifying Parties must submit their Expedited Review Notification Forms within thirty (30) days after the signing of definitive agreements relating to the merger ("Notification Period"), but prior to any acts of consummation (see discussion on definitive agreements and acts of consummation in Clarificatory Note ("CN") No. 16-001).
- 3.3. Upon submission by the parties, the PCC will first determine whether the Expedited Review Form complies with the following formal requirements:
  - 3.3.1. 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);
  - 3.3.2. 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;

- 3.3.3. Original affidavit attesting to the fact that a definitive agreement has been signed and that each party has an intention of completing the proposed transaction in good faith (see Rule 4, Section 5(c) of the IRR);
  - 3.3.4. Documents executed abroad are notarized and bear an apostille recognized in the Philippines. If the country of execution is not a party to the Apostille Convention, the document executed abroad must be duly authenticated by the Philippine embassy or consul in the country of execution;
  - 3.3.5. All documents are properly bound, with each attachment labeled with a tab;
  - 3.3.6. Electronic version of the completed Form in a secure USB, with each attachment saved as a separate file, and each file name referring to the identifying appendix number;
  - 3.3.7. Electronic version of the completed Form saved in searchable PDF, Word or spreadsheet format in two (2) versions, protected and editable.
- 3.4. The PCC will determine if there is any portion of the Expedited Review Form that has not been filled out, or annexes required under the Form that have not been attached. The PCC shall refuse to accept the Expedited Review Form if it fails to comply with Section 3.3, or if it is not substantially in the prescribed form.
  - 3.5. Within five (5) working days from receipt of the Expedited Review Forms, the PCC will publish the abstract of the transaction in the PCC Website and issue a call for comments.
  - 3.6. Upon receipt of the parties' Expedited Review Forms, the PCC will verify if the merger is qualified for expedited review and determine if the information and documents provided are complete.
  - 3.7. The Expedited Review shall be conducted within a period of fifteen (15) working days from receipt by the PCC of the Expedited Review Forms ("Expedited Review Period").
  - 3.8. If the PCC determines that the submitted Expedited Review Forms are sufficient and the merger is qualified for expedited review, an Order of Payment directing the parties to pay the filing fee shall be sent to the acquiring party. The filing fee of PHP 250,000.00 shall be paid by either merger party within ten (10) days from receipt of an Order of Payment. The filing fee shall be paid by manager's cheque,

payable to the Philippine Competition Commission. Failure to pay the filing fee shall result in the return of the Expedited Review Forms to the notifying parties. Accordingly, no notification shall be considered to have been made, subject to Section 4.1.

- 3.9. *Amount of filing fees.* Filing fees shall be in accordance with existing PCC Memorandum Circular No. 17-002, which may be adjusted from time to time as the Commission warrants.
- 3.10. Within the period prescribed in Section 3.7 herein and only after the payment of the filing fee, a short-form clearance decision will be issued by the PCC which shall contain the following information:
- i. Names of the merger parties
  - ii. Nature of the transaction
  - iii. Markets covered by the transaction
  - iv. A statement that the merger is approved because it does not raise any competitive concerns and it falls within one or more grounds under these Rules on Expedited Merger Review
- 3.11. If at any time during the review process, the PCC finds that any information or document required under the Expedited Review Form, which is relevant or material to the PCC's review, has been withheld from the PCC, the PCC will return the Expedited Review 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.

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

- 3.12. If an Expedited Review Form is determined to be deficient or it cannot be determined if the merger qualifies for expedited review, the Expedited Review Forms of both notifying parties will be returned. In case of return of the Expedited Review Forms, no notification shall be considered to have been made, subject to Section 4.1.
- 3.13. In case the Forms are returned, the merger parties may resubmit their corrected and complete Expedited Review Forms or Notification Forms under the Rules on Merger Procedure, as the case may be, at any time prior to any acts of consummation of their merger.

**4. Miscellaneous Provisions**

- 4.1. Once the parties have submitted their Expedited Review Forms to the PCC within the Notification Period, the penalty provided under Sections 3.5 and 16.2 of the Rules on Merger Procedure will not apply even if their Forms are subsequently

returned. However, the parties must resubmit the Expedited Review Forms prior to any acts of consummation.

- 4.2. The MAO or the Commission may call for the submission of the long notification form when, even though the conditions for use of the abbreviated form are fulfilled, it determines it to be necessary for an adequate investigation of possible competition problems.
- 4.3. **Applicability.** These Rules on Expedited Merger Review shall apply prospectively to all notifiable mergers and acquisitions qualified for expedited review and notified through the Expedited Review Form.
- 4.4. **Separability clause.** If any part or provision of these Rules is declared unconstitutional or illegal, the other parts or provisions shall remain valid.
- 4.5. **Effectivity.** These Rules shall take effect fifteen (15) days after publication in a newspaper of general circulation.