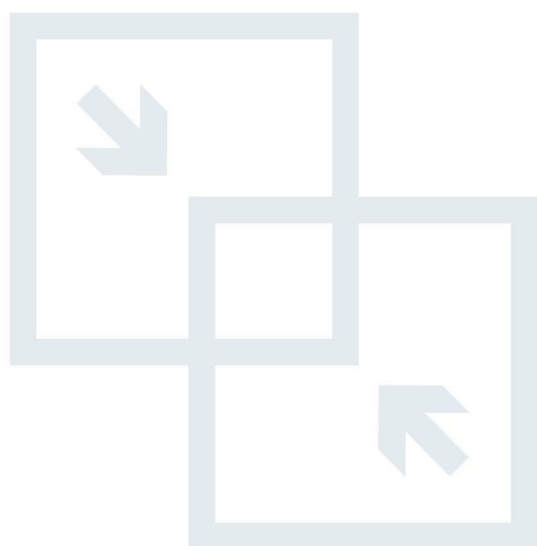




Codification Project:

Exposure Draft on the Rules on Mergers and Acquisitions



Philippine Competition Commission

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Draft

1. INTRODUCTION

- 1.1. These PCC Rules of Procedure on Mergers (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.

2. DEFINITION OF TERMS

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

- (a) *Acknowledgment* refers to the PCC’s written confirmation that a transaction is a Non-Notifiable Transaction
- (b) *Acquisition* refers to the purchase or transfer of securities or assets, through contract or other means, for the purpose of obtaining control by:
 - (1) One (1) entity of the whole or part of another;
 - (2) Two (2) or more entities over another; or
 - (3) One (1) or more entities over one (1) or more entities;

A transaction shall be deemed a purchase if it involves a transfer of the management or operation of a business, facility, or asset in whatever form for a consideration, pecuniary or otherwise.

Part of another entity may include a business unit, property, or asset of such entity.

- (c) *Acquired Entity* is the target entity or the entity that owns the assets, or non-corporate interest, or that issued voting shares or securities that are being acquired. It also refers to an entity being absorbed in a merger.

In the context of a Joint Venture, the Acquired Entity is the entity created by the joint venture partners or the existing entity that will be subject of the joint control pursuant to a transaction.

- (d) *Acquiring Entity* is the buyer or the entity making the acquisition in the proposed transaction, or the surviving entity in a proposed merger. It also refers to the joint venture partner(s) acquiring joint control in an entity whether existing or to be created.
- (e) *Acquired Group* refers to the Acquired Entity and all entities it controls;
- (f) *Acquiring Group* refers to the Acquiring Entity and all entities it controls;
- (g) *Act* refers to Republic Act No. 10667, or the Philippine Competition Act;

- (h) *Affiliate* refers to any entity who, alone or together with any other entity, directly or indirectly, through one or more intermediaries, controls, is controlled by, or under common control with the subject entity. Affiliates include (i) a subsidiary and its parent company, and (ii) subsidiaries, directly or indirectly, of a common parent;
- (i) *Agreement* refers to any type or form of contract, arrangement, understanding, collective recommendation, or concerted action, whether formal or informal, explicit or tacit, written, or oral;
- (j) *Business day* means any day except Saturday, Sunday, or a day that is a legal holiday or non-working day in the Philippines or in the city where the PCC has its main office;
- (k) *Complainant* refers to XXX [Adopt definition from CEO];
- (l) *Complementary relationship* between parties exists if the merging entities do not operate in the same supply chain but their products or services are complementary, such that the products or services are usually bought or consumed together by the same customer.
- (m) *Confidential Information* refers to information 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 ___;
- (n) *Consummation* means the act or acts by or for the benefit of a party or parties to a proposed transaction which transfer, convey, assign, or encumber any right, title, interest, property or asset pursuant to the definitive agreement(s), or more generally, when the parties exercise their rights or obligations under the definitive agreement(s), or when parties effect a transfer of control from the Acquired Entity to the Acquiring Entity, which acts of consummation are to be factually determined by the Commission *En Banc*;
- (o) *Control* refers to the ability to substantially influence or direct the actions or decisions of an entity, whether by contract, agency, or otherwise;
- (p) *Day* means calendar day, unless specifically provided otherwise;
- (q) *Definitive agreement* refers to any instrument or agreement that sets out the complete and final terms and conditions of a merger or acquisition, including the rights and obligations between or among the transacting parties;
- (r) *Entity* refers to any person, natural or juridical, sole proprietorship, partnership, combination or association in any form, whether incorporated or not, domestic or foreign, including those owned or controlled by the government, engaged directly or indirectly in any economic activity;
- (s) *Electronic Service* refers to service by electronic system on an Entity, party, or its counsel of orders, decisions, and other papers emanating from the PCC;

- (t) **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;
- (u) **Essential facility** refers to a facility, including a product, service, or property right, that cannot be duplicated in a practicable manner by would-be competitors and is indispensable to carrying on another person's business because there is no actual or potential substitute in existence;
- (v) **Gun-Jumping** occurs when the parties commit any acts of Consummation in relation to a notifiable transaction, in whole or in part, prior to notifying the PCC or during periods for review under Section 17 of the Act;
 - (1) There is non-notification when parties consummate a notifiable transaction without notifying the PCC;
 - (2) Violation of the waiting period occurs when the parties commit acts that constitute Consummation of the transaction during the periods for review under Section 17 of the Act.
- (w) **Horizontal relationship** exists if the merging entities have products or services that compete with each other in the same market. A horizontal relationship may exist even if one of the merging entities is a potential or emerging competitor to the firm that currently operates in the identified market/s. It may exist if, among others:
 - (1) The merging parties or any entity within their Notifying Groups are active in the same product market and same level of business, as in the case of a merger between two manufacturers, two wholesalers, or two distributors; or
 - (2) The merging parties or any entity within their Notifying Groups produce, sell, or offer products and/or services that may not necessarily be identical but are substitutable to some degree, whether by feature or by function; or
 - (3) The merging parties or any entity within their Notifying Groups cater to and derive revenues from the same or similar set of customers; or
 - (4) The merging parties or any entity within their Notifying Groups produce, sell, offer, or import products and/or services in the same geographic market.
- (x) **Joint venture** refers to a business arrangement whereby an entity or group of entities contribute capital, services, assets, or a combination of any or all of the foregoing, to undertake an investment activity or a specific project, where each entity shall have the right to direct and govern the policies in connection

therewith, with the intention to share both profits and risks and losses subject to agreement by the entities.

Joint ventures are considered mergers if such joint ventures are created on a lasting basis and are operationally autonomous ("full-functioning"), as when any of the following criteria concur, as is warranted by the market reviewed:

- (1) The joint venture has sufficient resources to operate independently
 - (2) The joint venture carries out activities beyond one specific function for the merging parties;
 - (3) The joint venture has or will have limited sale/purchase relations with the parents; or
 - (4) The joint venture, even if created for a specific project, shall operate for a sufficiently long period that may bring a lasting change in the market or where the agreement may be extended by the parties.
- (y) ***Letter of Non-Coverage from Compulsory Notification*** is the letter submitted to the PCC by parties seeking confirmation that a transaction is not covered by the compulsory notification requirement under Section 17 of the Act;
- (z) ***MAO*** refers to the Mergers and Acquisitions Office of the PCC;
- (aa) ***Merger*** refers to the joining of two (2) or more entities into an existing entity or to form a new entity, including Joint Ventures ;
- (bb) ***Merger Investigation*** refers to the gathering of facts for violations under Sections 17, 20, 29 (b), 29 (c), and 29 (d) of the Act, insofar as they relate to mergers;
- (cc) ***Non-Notifiable Transactions*** refers to mergers or acquisitions that do not reach the notification thresholds provided under the Philippine Competition Act (PCA), and Rule 4, Section 3 of the Implementing Rules and Regulations of the PCA, as amended by PCC Memorandum Circular No. 18-001, or provided under a law, or are exempted from compulsory notification under an effective circular or guideline issued by the PCC;
- (dd) ***Notification Form*** or Form refers to the regular Notification Form or the Expedited Notification Form;
- (ee) ***Notifying Group*** comprises the Ultimate Parent Entity filing the notification and all entities it directly or indirectly controls;
- (ff) ***Notifying Party*** means the pre-merger or pre-acquisition Ultimate Parent Entity of the Acquiring Entity or the Acquired Entity which files the

Notification Form, or any entity authorized by the Ultimate Parent Entity to file the Notification Form on its behalf.

- (gg) **Operating segment** refers to a component of an entity that engages in business activities from which it earns or may earn revenues and incur expenses (including revenues relating to transactions with other components of the same entity) irrespective of whether it is organized as a separate legal entity or not;¹
- (hh) **Operating Unit** refers to departments within the PCC other than the MAO;
- (ii) **Other Affected Market** refers to any market for goods or services that may be affected by a merger or acquisition as determined by the Commission.
- (jj) **PCC Online Facility** refers to the PCC's online document management and storage facility;
- (kk) **PCC Website** refers to the official website of the PCC, accessible at www.phcc.gov.ph;
- (ll) **Relevant Market** refers to the market in which a particular good or service is sold and which is a combination of the relevant product market and the relevant geographic market, defined as follows:
 - (1) A relevant product market comprises all those goods and/or services which are regarded as interchangeable or substitutable by the consumer or the customer, by reason of the goods and/or services' characteristics, their prices, and their intended use; and
 - (2) The relevant geographic market comprises the area in which the entity concerned is involved in the supply and demand of goods and services, in which the conditions of competition are sufficiently homogenous and which can be distinguished from neighboring areas because the conditions of competition are different in those area;
- (mm) **Respondent** refers to an entity that is a subject of a proceeding before the Commission *En Banc* under Section ___ of these Rules;
- (nn) **Size of Party** means the aggregate value of the assets in the Philippines and revenues in, into, or from the Philippines of the filing Ultimate Parent Entity, and all entities that it controls, directly or indirectly;
- (oo) **Size of Transaction** means the aggregate value of the assets in the Philippines being acquired or owned by the Acquiring Entity, or/and gross revenues generated in/into the Philippines by the assets being acquired; or the

¹ International Financial Reporting Standards (IFRS) 8.2; Schedule I, CCI Regulations 2011, as provided in PCC CN 19-001.

aggregate value of the assets or gross revenues from sales in, into, or from the Philippines of the Acquired Entity and entities it controls, depending on the type of transaction as provided in Section 4 of these Rules;

(pp) **Supporting Documents** refers to documents substantially relied upon by the MAO in preparing the Statement of Concerns. Supporting Documents do not include unrelated or irrelevant documents, internal documents of the PCC, PCC's correspondence with public authorities and confidential information.

(qq) **Ultimate Controller** refers to the natural person, juridical entity, or group of entities that exercise control over an entity or entities, and is not controlled by any other entity;

(rr) **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;

(ss) **Vertical relationship** exists when the merging entities operate at different levels of the production or supply chain. A direct supply or purchase arrangement between the merging parties is not necessary to constitute a vertical relationship. It exists if, among others:

(1) The parties or any entities within their Notifying Group are active, potentially active, or operate at different but complementary levels of an industry supply or distribution chain, from the purchase of raw materials until end-user consumption; or

(2) The upstream firm or any entity within its Notifying Group produces, sells, or offers products and/or services that are currently used or can potentially be used as inputs in the downstream production of any entity in the other Notifying Group; or

(3) The upstream firm or any entity within its Notifying Group supplies products and/or services which the downstream firm purchases or can potentially purchase as a substitute for products and/or services it currently uses.

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

2.3. As used in these Rules, the term "merger" refers to Mergers, Acquisitions and full functioning Joint Ventures, unless the context otherwise requires.

3. POWERS OF THE COMMISSION IN RELATION TO MERGER REVIEW AND INVESTIGATION

3.1. Pursuant to Section 12 of the Act, the Commission *En Banc* authorizes the MAO to exercise the following powers in the course of a review or investigation of mergers, pursuant to the Act ("Merger Review Powers").

- 3.1.1. Conduct inquiry and investigate cases involving any violation of the Act and other existing competition laws pertaining to mergers, *motu proprio* or upon receipt of a verified Complaint from an interested party or upon referral by the concerned regulatory agency, and institute the appropriate civil or criminal proceedings;
- 3.1.2. Review proposed mergers and acquisitions that may substantially prevent, restrict, or lessen competition in the Relevant Market and Other Affected Market.
- 3.1.3. Monitor compliance by an Entity with the laws, Rules, regulations, circulars, and orders being implemented by the Commission, and request the submission of information and documents relevant and material thereto;
- 3.1.4. Hold clarificatory conferences and interviews with complainants, possible witnesses, the entity being investigated, and other relevant persons;
- 3.1.5. Monitor and undertake consultations with stakeholders and affected agencies for the purpose of understanding market behavior;
- 3.1.6. Administer oaths, summon and examine witnesses, and receive evidence;
- 3.1.7. 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 a merger review or investigation to:
 - 3.1.7.1. Submit or make available to the MAO such document, Electronically Stored Information, or other things, for inspection, copying, or reproduction;
 - 3.1.7.2. File written reports or answers to questions;
 - 3.1.7.3. Give a statement concerning documents or other information; or
 - 3.1.7.4. Submit the required information in a specified format such as lists, summaries, or tables.
- 3.1.8. Issue *subpoena duces tecum* and *subpoena ad testificandum*;
- 3.1.9. Enlist the aid and support of any private institution, corporation, entity, or association, pursuant to the Commission *En Banc*'s power to deputize ;
- 3.1.10. Initiate proceedings for contempt or violations committed during its review;
- 3.1.11. Recommend to the Commission *En Banc* the issuance of interim orders such as show cause orders and cease and desist orders;
- 3.1.12. In accordance with the Rule on Administrative Search and Inspection under

the Philippine Competition Act ([A.M. No. 19-08-06-SC](#)), undertake inspections of business premises and other offices, land and vehicles, as used by the entity, where it reasonably suspects that relevant books, tax records, or other documents which relate to any matter relevant to an investigation are kept, in order to prevent the removal, concealment, tampering with, or destruction of the books, records, or other documents;

3.1.13. Act as the official representative of the Philippine government in international competition matters; and

3.1.14. Promote capacity building and the sharing of best practices with other competition-related bodies.

4. PROVISIONS COMMON TO MERGER REVIEW AND INVESTIGATION

4.1. These Rules shall be liberally construed to promote their objective of securing a just and speedy conduct of investigations and disposition of proceedings.

4.2. These Rules are not exhaustive and do not set a limit on the investigation and enforcement activities of the PCC.

4.3. The Commission *En Banc* 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.

4.4. The facts and circumstances of each case will be considered in the adjudication of cases by the Commission *En Banc*.

4.5. The MAO 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 MAO, service is complete upon transmission.

4.6. Should any party conceal, destroy, fail or refuse to provide information or documents to the MAO, the MAO 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 parties. The MAO may also rely on alternative sources of information and its institutional competence and experience. This is without prejudice to any penalty that may be imposed under the Act.

4.7. In computing any period prescribed or allowed by these Rules:

4.7.1. 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 PCC main office is located, the last day shall be the next business day.

- 4.7.2. Where the period consists of days and refers to a prior act or event, the day on which the prior act or event has occurred shall be excluded.

5. OVERVIEW OF THE PROCEDURAL FRAMEWORK

A. Mandatory Regime

- 5.1. Parties to a merger that meets the thresholds for compulsory notification are required to notify the PCC.
- 5.2. In conducting merger review, the PCC, through the MAO, shall:
 - 5.2.1. Assess whether a proposed merger is likely to substantially prevent, restrict, or lessen competition (“SLC”) in the Relevant Market or in any Other Affected Market; and
 - 5.2.2. Take into account any substantiated efficiencies put forward by the parties to the proposed merger, which are likely to arise from the transaction, or whether a party to the transaction is faced with actual or imminent financial failure, in accordance with Section 21 of the Act.
- 5.3. The Commission *En Banc* has the power to prohibit mergers that will substantially prevent, restrict or lessen competition in the Relevant Market or in any Other Affected Market as may be determined by the PCC. It can also issue orders to remedy the SLC concern and impose financial penalties.
- 5.4. Where a transaction is non-notifiable, the MAO, upon the directive of the Commission *En Banc*, may initiate a *motu proprio* merger review based on reasonable grounds to believe that Section 20 of the Act has been or is likely to be infringed.
- 5.5. Parties are prohibited from committing or engaging in any kind of Consummation prior to receiving the Commission Decision clearing the transaction, or before the lapse of the relevant periods for review without a decision having been promulgated by the Commission *En Banc*.
- 5.6. The Commission *En Banc* shall factually determine whether there has been Consummation. The parties are strongly encouraged to consult the MAO on their notified transaction to determine whether certain acts will constitute Consummation.
- 5.7. Where MAO is notified of a merger that is not subject to the notification requirement by the Act or is covered by an effective exemption circular or guideline issued by the PCC, the parties shall be informed of such fact within fifteen (15) days from submission of their Forms. Nevertheless, should the parties request that their merger be reviewed, the MAO shall give due course to the voluntary notification.

B. Voluntary Notification

- 5.8. Parties to a non-notifiable transaction may notify the PCC on a voluntary basis by

submitting the Notification Form and all its appendices at any time prior to the Consummation of the transaction. The MAO shall give due course to voluntary notifications, subject to the rules on notification and review as enumerated herein.

- 5.9. Notwithstanding the preceding section, parties whose non-notifiable transaction is already pending review before the MAO may proceed to consummate the transaction; *Provided*, that all voluntary notifications must be accompanied by a written undertaking executed by each party to the transaction that it shall adhere to the directives issued by the MAO and the Commission *En Banc*, including prohibition decisions, interim measures, and remedies in relation to the non-notifiable transaction subject of voluntary notification.

C. Phases of Merger Review

- 5.10. During merger review, the MAO shall assess if the notified merger is likely to result in any SLC concerns. If there are no SLC concerns that will result from the merger, then the transaction may be cleared within the respective period for review.
- 5.11. After the conduct of Phase 1 review, the Commission *En Banc* may proceed to Phase 2 review if it deems it necessary.
- 5.12. The following periods shall be observed for merger review:
- 5.12.1. Phase 1 review lasts for a maximum period of thirty (30) days from complete submission of the requirements for notification and payment of the filing fees.
 - 5.12.2. Phase 2 review lasts for a maximum period of sixty (60) days and involves a more detailed and in-depth assessment of the merger.
 - 5.12.3. For voluntary notifications, Phase 1 review shall last for a maximum period of forty-five (45) days, and Phase 2 review shall last for a maximum period of seventy-five (75) days.
 - 5.12.4. For *motu proprio* review, the entire review period shall last for a maximum period of one hundred eighty (180) working days.
 - 5.12.5. For expedited merger review under Section 7 of these Rules, the review period shall last for a maximum period of fifteen (15) business days from the date of payment of filing fees.
- 5.13. If no decision is promulgated upon the lapse of the periods for review, the notified merger shall be deemed approved.
- 5.14. The merger parties may propose commitments that remedy, mitigate or prevent the SLC arising from the merger, in accordance with Section 17 of these Rules.

D. Basis of Notification

- 5.15. To determine whether a merger should be notified to the PCC, reference should be made to the thresholds under Section 6 of these Rules.
- 5.16. Parties to a notifiable transaction must submit their Forms prior to any act of Consummation but no later than thirty (30) days after the signing of a definitive agreement relating to the merger (“Notification Deadline”).
- 5.17. Parties may also notify on the basis of a draft Definitive Agreement; *Provided*, the Acquiring Entity must execute an undertaking to submit the signed Definitive Agreement to the PCC within three (3) days from signing, identifying changes made to the draft agreement that were implemented in the signed agreement, if any.
- 5.18. In voting securities acquisitions in which the Acquiring Entity proposes to buy voting securities from shareholders of the Acquired Entity rather than from the Acquired Entity itself (e.g. tender offers, third-party and open market transactions), the Acquiring Entity and the sellers may notify the PCC separately from the Acquired Entity.
 - 5.18.1. In the aforesaid acquisitions, the Acquiring Entity must:
 - 5.18.1.1. Serve notice on the issuer of those shares at least fifteen (15) days prior to the Acquiring Entity’s target date of filing, and also on the date the Acquiring Entity files its Form;
 - 5.18.1.2. Execute an affidavit that it has the intention of completing the proposed transaction in good faith and that it has served notice on the Acquired Entity as to its obligation to notify. In the case of tender offers, the Acquiring Entity also must affirm in its affidavit that the intention to make the tender offer has been publicly announced.
 - 5.18.2. Within three (3) days from submission by the Acquiring Entity of its Form, MAO will issue an order to the Acquired Entity to submit relevant information and documents within ten (10) days from receipt of the said order.
 - 5.18.3. Upon submission of the Form by the Acquiring Entity, the MAO shall determine within fifteen (15) days whether the Form and other relevant requirements have been completed in accordance with applicable Rules or guidelines, and shall:
 - 5.18.3.1. Inform the Acquiring Entity and the Acquired Entity of other information and/or documents they may have failed to supply;
or
 - 5.18.3.2. Issue a notice to the parties that the notification is sufficient for

purposes of commencing Phase I review of the merger.

- 5.18.4. The Acquired Entity, in writing, may request additional time within which to comply with MAO's order. The request must be filed no later than two (2) days before the lapse of the original 10-day period. The MAO may grant the requested additional period once, which shall not exceed fifteen (15) days.
- 5.18.5. Should the Acquired Entity fail to comply within ten (10) days from the filing of the Acquiring Entity of its Form, or upon the lapse of the extended period granted by the MAO, the Acquired Entity shall be meted a fine based on Section 29 (b) of the PCA.
- 5.18.6. In the event the Acquiring Entity fails to acquire the requisite percentage of shares or securities for notification within the period set in the call in order to proceed to Phase I review, the proposed acquisition shall be deemed non-notifiable. The Form submitted by the Acquiring Entity shall be returned without prejudice to the subsequent resubmission of both Forms of the Acquiring and Acquired entities.

6. NOTIFICATION THRESHOLDS

- 6.1. Pursuant to Section 12 of the Act, the Commission *En Banc* may annually adjust, and shall publish, the applicable thresholds for notification.
- 6.2. Parties to a merger are required to provide notification when:
 - 6.2.1. The aggregate annual gross revenues in, into or from the Philippines, or value of the assets in the Philippines of the UPE of at least one of the Acquiring or Acquired Entities, including that of all entities that the UPE controls, directly or indirectly, exceeds the applicable threshold for the Size of Party; *and*
 - 6.2.2. The Size of Transaction exceeds the applicable threshold as determined in the succeeding Section.
- 6.3. The Size of Transaction threshold shall be based on the following figures:
 - 6.3.1. With respect to a merger or acquisition of assets in the Philippines, if either:
 - 1) The aggregate value of the assets in the Philippines being acquired in the proposed transaction exceeds the applicable threshold as annually determined by the Commission *En Banc*; or
 - 2) The gross revenues generated in the Philippines by assets acquired in the Philippines exceed the applicable threshold as annually determined by the Commission *En Banc*.
 - 6.3.2. With respect to a merger or acquisition of assets outside the Philippines, if:
 - 1) The aggregate value of the assets in the Philippines of the Acquiring

Entity exceeds the applicable threshold as annually determined by the Commission *En Banc*, and

- 2) The gross revenues generated in or into the Philippines by those assets acquired outside the Philippines exceed the applicable threshold as annually determined by the Commission *En Banc*.

6.3.3. With respect to a merger or acquisition of assets inside and outside the Philippines, if:

- 1) The aggregate value of the assets in the Philippines of the Acquiring Entity exceeds the applicable threshold as annually determined by the Commission *En Banc*; and
- 2) The aggregate gross revenues generated in or into the Philippines by assets acquired in the Philippines and any assets acquired outside the Philippines collectively exceed the applicable threshold as annually determined by the Commission *En Banc*.

6.3.4. With respect to an acquisition of (i) voting shares of a corporation or of (ii) an interest in a non-corporate entity

- 1) If the aggregate value of the assets in the Philippines that are owned by the corporation and entities it controls, or non-corporate entity and entities it controls, other than assets that are shares of any of those corporations, exceed the applicable threshold as annually determined by the Commission *En Banc*; or
- 2) The gross revenues from sales in, into, or from the Philippines of the corporation and entities it controls, or non-corporate entity and entities it controls, exceed the applicable threshold as annually determined by the Commission *En Banc*; and
- 3) If
 - a) As a result of the acquisition of the voting shares of a corporation, the entity or entities acquiring the shares, together with their affiliates, would own voting shares of the corporation that, in the aggregate, carry more than the following percentages of the votes attached to all the corporation's outstanding voting shares:
 - i. Thirty-five percent (35%), or
 - ii. Fifty percent (50%), if the entity or entities already own more than the percentage set out in subsection I above, as the case may be, before the proposed acquisition;

Or

- b) As a result of the acquisition of an interest in a non-corporate entity, the entity or entities acquiring the interest, together with their affiliates, would hold an aggregate interest in the non-corporate entity that entitles the entity or entities to receive more than the following percentages of the profits of the non-corporate entity or assets of that Non-Corporate entity on its dissolution:
 - i. Thirty-five percent (35%), or
 - ii. Fifty percent (50%), if the entity or entities acquiring the interest are already entitled to receive more than the percentage set out in subsection I immediately above before the proposed acquisition.
 - 4) Where an entity has already exceeded the 35% threshold for an acquisition of voting shares, or the 35% threshold for an acquisition of an interest in a non-corporate entity, another notification will be required if the same entity will exceed the 50% threshold after making a further acquisition of either voting shares or an interest in a non-corporate entity.
- 6.3.5. In a Joint Venture transaction, an Acquiring Entity shall be subject to the notification requirements if either (i) the aggregate value of the assets that will be combined in the Philippines or contributed into the proposed Joint Venture exceeds the applicable threshold as annually determined by the Commission *En Banc*, or (ii) the gross revenues generated in the Philippines by assets to be combined in the Philippines or contributed into the proposed Joint Venture exceed the applicable threshold as annually determined by the Commission *En Banc*. In determining the assets of the joint venture, the following shall be included:
- 1) All assets which any entity contributing to the formation of the Joint Venture has agreed to transfer, or for which agreements have been secured for the Joint Venture to obtain at any time, whether or not such entity is subject to the requirements of the Act; and
 - 2) Any amount of credit or any obligations of the Joint Venture which any entity contributing to the formation has agreed to extend or guarantee, at any time.
- 6.3.6. A merger consisting of successive transactions, or acquisition of parts of one or more entities, which shall take place within a one-year period shall be treated as one transaction if they occur between the same parties, or any entity/ies they control or are controlled by, or are under common control

with another entity/ies.

- 6.3.7. The merger parties shall notify the Commission on the basis of the definitive agreement that provides for the successive transactions or acquisition of parts of one or more entities. If the successive transactions or acquisition of parts of one or more entities is covered by more than one definitive agreement, notification shall be made based on the definitive agreement relating to the last transaction which, when taken together with the preceding transactions, satisfies the applicable notification thresholds.
- 6.3.8. In calculating the aggregate value of assets in the Philippines and the gross revenues from sales of an entity, the amount stated on the most recent audited financial statements shall be used. For entities that are not required by law to prepare annual audited financial statements, the aggregate value of assets in the Philippines and the gross revenues from sales of an entity shall be the amount stated on the last regularly prepared balance sheet. "Regularly prepared" means that the document should have been prepared at a normal time, according to the entity's normal accounting procedures and for the purpose of submitting to other government agencies, self-regulatory organizations, and other market operators.
- 6.3.9. Interested parties may refer to the PCC's guidelines on computation of thresholds for further guidance.

7. EXPEDITED MERGER REVIEW

- 7.1. Notifiable mergers that fall under any of the following cases are qualified for expedited merger review:
 - 7.1.1. There are no horizontal or vertical (including complementary) relationships in the Philippines between the Acquiring Entity, including its Notifying Group, and the Acquired Entity and the entities it controls;
 - 7.1.2. The Acquiring and Acquired Entities identified in the definitive agreement are foreign entities ("foreign parents"), whose revenues in, into, or from the Philippines are negligible in relation to the global turnover of such foreign parent, and their subsidiaries in the Philippines act merely as manufacturers, assemblers, processors, tester, or supplier of service or product as part of a global or regional value chain, and other similar activity, with at least ninety-five percent (95%) of such products exported to the foreign parents, subsidiaries, affiliates, or third parties located outside the Philippines: *Provided*, That the remaining five percent (5%) product sales in a market in the Philippines is minimal in relation to the entirety of such Philippine product market;
 - 7.1.3. The candidate relevant geographic market of the merger is global and the

Acquiring and Acquired entities have negligible or limited presence in the Philippines;

- 7.1.4. Joint Ventures formed purely for the construction and development of a residential and/or commercial real estate development project; and
 - 7.1.5. Such other transactions as may be determined by the Commission *En Banc* to be qualified for expedited merger review.
- 7.2. Each party filing an Expedited Notification Form must inform the MAO by electronic mail to mergers@phcc.gov.ph of their intention to submit the Forms at least two (2) business days prior to the target submission date, specifying in the subject heading the submission of the Expedited Forms.
 - 7.3. Parties to a transaction that qualify under any of the grounds for expedited merger review are not precluded from availing of the regular notification and merger review process under these Rules.
 - 7.4. If the parties' submissions are sufficient and the merger is qualified for expedited review, the MAO shall accept the Forms and issue the Order of Payment for the expedited notification filing fees.
 - 7.5. Within one (1) business day from acceptance of the Forms, the PCC shall publish on the PCC Website the abstract of the transaction submitted by the parties and issue a call for comments.
 - 7.6. Expedited merger review shall commence on the business day following the payment of the filing fees, and shall last for a period of fifteen (15) business days.
 - 7.7. Upon completion of MAO's review and a finding by the Commission *En Banc* that the transaction will not result in SLC, the Commission *En Banc* shall issue a short-form clearance decision containing the following information:
 - 7.7.1. Names of the acquiring and acquired entities, including their respective UPE;
 - 7.7.2. Nature of the transaction;
 - 7.7.3. Markets covered by the transaction;
 - 7.7.4. An explanation or description of the identified markets; and
 - 7.7.5. A statement that the merger is approved because it is not likely to result to SLC.

8. TRANSACTIONS NOT SUBJECT TO OR EXEMPT FROM COMPULSORY NOTIFICATION

- 8.1. Notwithstanding Sections ____ and ____ of these Rules, government agencies

covered by Republic Act No. 6957, as amended, on behalf of their private partners or bidders, may request exemption from the coverage of compulsory notification of their solicited and unsolicited projects undertaken pursuant to said law, in accordance with Annex ___ of these Rules.

- 8.2. Parties to a proposed merger may request confirmation from the MAO that a transaction is not subject to compulsory notification by submitting a Letter of Non-Coverage from Compulsory Notification, in accordance with Annex ___ of these Rules.

9. PRE-NOTIFICATION CONSULTATION

- 9.1. To assist with the planning and consideration of proposed mergers, the merger parties are encouraged to avail of a PNC with the MAO at the earliest opportunity to discuss the content and timing of their notifications. For mergers involving complex products and/or services, PNCs can streamline and facilitate the review process.
- 9.2. *How requested.* The parties shall e-mail a written request for PNC to the MAO to mergers@phcc.gov.ph. The request should contain the following information:
 - 9.2.1. The names and business contact information of the entities concerned and their authorized representatives;
 - 9.2.2. The type of transaction; and
 - 9.2.3. The markets or lines of businesses covered by the proposed merger.
- 9.3. To facilitate the conduct of the PNC, the request must be accompanied by electronic copies of the Form, definitive agreement, and documents relevant to the query where applicable.
- 9.4. *Mode of PNC.* The PNC may be conducted in person or remotely via online video conferencing, at the discretion of the MAO. The PNC will be recorded by the MAO, with prior notice to the parties either verbally or in writing.
- 9.5. During the PNC, the parties may:
 - 9.5.1. Seek guidance on the thresholds provided under Section 6 of these Rules to determine whether the transaction is notifiable or not, may be qualified for expedited merger review, or may be exempt from the coverage of compulsory notification
 - 9.5.2. Seek clarification on the information required under the Form
 - 9.5.3. Inquire what other additional information may be required for merger review

- 9.5.4. Discuss their identified markets
- 9.6. Any advice given during the PNC shall be non-binding to the PCC.
- 9.7. No opinion shall be rendered by the MAO as to whether a merger is likely to lead to SLC during the PNC.
- 9.8. All information disclosed by the attendees during a PNC shall be treated as confidential by the MAO.
- 9.9. A request for PNC may be denied if such request is determined by MAO to have been made in relation to a purely speculative or hypothetical transaction, or for academic purposes.

10. REQUIREMENTS FOR NOTIFICATION

A. Filing of Merger Notifications

- 10.1. The pre-acquisition UPE of each party to a merger, or any entity controlled and duly authorized by the UPE to file on its behalf, should fill out the Form completely, provide all required supporting information and documents, and submit them to the MAO. The Form and instructions on filling the Form are available on the PCC Website.
- 10.2. The MAO shall not be limited to the UPE identified in the Form, and may consider the Ultimate Controller in determining the extent of control and ownership, and the overlaps between the transacting parties in the review or investigation of the transaction.

B. Formal Requirements for Notification

- 10.3. Parties are required to file both the electronic copies and the original physical copies of the Forms and all its appendices, in accordance with Annex ___.
- 10.4. Electronic copies of the duly accomplished Form must be uploaded to the PCC Online Facility with each attachment saved as a separate file, and each file name indicating the corresponding appendix number. Electronic versions of the completed Form must be saved in searchable PDF, Word, or spreadsheet format, in both protected and editable versions.
- 10.5. Within twenty-four hours from receipt of a notification through the PCC Online Facility, the MAO will determine if the following formal requirements are present:
- 10.5.1. 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;

- 10.5.2. In the case of a partnership or a corporation, an original Secretary's Certificate or Special Power of Attorney or its equivalent in foreign jurisdictions, naming the signatory of the Form as possessing actual authority to make the certification as required in Section 5.3.b of PCC Rules on Merger Procedure on behalf of the Notifying Party, and naming the persons authorized to file and represent them before the MAO and Commission *En Banc*;
 - 10.5.3. An original affidavit by the party's authorized signatory attesting to the fact that a definitive agreement has been signed and that each party to the proposed transaction has the intention of completing it in good faith;
 - 10.5.4. An original affidavit by the party's authorized signatory certifying that the original physical copies and the electronic copies are complete and accurate copies of each other;
 - 10.5.5. A declaration of veracity and completeness of the submission executed by individuals whose names and signatures appear on the documents submitted to the PCC;
 - 10.5.6. A certification from each Notifying Party's authorized representative that the information submitted is true and correct to the best of his/her personal knowledge or based on authentic records;
 - 10.5.7. The Documents executed abroad are duly apostilled or duly authenticated by the Philippine embassy or consul in the country of execution; and
 - 10.5.8. The hard copy submissions are bound, with each attachment labeled and properly tabbed.
- 10.6. The MAO shall notify the parties via email within one (1) business day after complete upload to the PCC Online Facility of any formal requirement found to be lacking. The completion or correction of the lacking formal requirement must be made within five (5) business days.
 - 10.7. Failure to complete the formal requirements within the period prescribed in the preceding section shall result in the non-acceptance of the electronic copy of the Form, and the removal of the same from the PCC Online Facility, without prejudice to subsequent re-filing.
 - 10.8. The MAO shall not accept Forms that fail to comply with the formal requirements under Section 10.5 of these Rules or are not substantially in the prescribed form.
 - 10.9. The determination of the sufficiency of the Form shall proceed even if the documents are not consularized, apostilled, or notarized, subject to the following conditions:

- 10.9.1. Documents executed and certified under oath in jurisdictions outside the Philippines at a time when notarization is unavailable may be submitted without notarization; *provided*, that parties shall submit a certification setting forth the reason for their failure to have the documents notarized, together with an undertaking to submit notarized copies thereof soon after they have secured notarization of the documents.
- 10.9.2. Documents executed in jurisdictions outside the Philippines where consularization or apostillization is unavailable may be submitted without having been consularized or without an Apostille; *provided*, that the party submitting the same shall submit a certification setting forth the reason for its failure to have the document consularized or apostilled, together with an undertaking to submit the consularized or apostilled copies upon resumption of the operations of the consulate or embassy in the country where consularization or apostillization is to be done.

C. Notification Filing Fees

- 10.10. The PCC shall charge filing fees for notification, which may be adjusted by the Commission *En Banc* as it deems appropriate.
- 10.11. Upon determination by the MAO that the Forms of all Notifying Parties comply with the requirements for notification and may be accepted, the MAO shall issue the Order of Payment directing the parties to pay the *non-refundable* filing fees as follows:
 - 10.11.1. For regular notification (Phase 1 review): Two Hundred Fifty Thousand Pesos (Php 250,000.00). The filing fee for Phase 1 Review is inclusive of one percent (1%) legal research fund.
 - 10.11.2. For expedited notification: One Hundred Fifty Thousand Pesos (Php 150,000.00).
- 10.12. For transactions that progress to Phase 2 review, the MAO shall issue the Order of Payment directing the parties to pay the non-refundable Phase 2 Review filing fee of one percent of one percent (1% of 1%) of the Size of the Transaction, which shall not be less than One Million pesos (Php1,000,000.00) nor exceed Five Million Pesos (Php5,000,000.00).
- 10.13. Filing fees may be paid through the following modes:
 - 10.13.1. Manager's cheque, payable to the "Philippine Competition Commission"
 - 10.13.2. Online payment facility of the PCC
 - 10.13.3. **[Insert other modes of payment]**

10.14. *Period to pay.* Notifying parties must pay the filing fees within ten (10) days from the issuance of the Order of Payment. Failure to do so shall result in the non-acceptance (in the case of Phase 1) or expiry (in the case of Phase 2) of the notification, and the return of the Forms, without prejudice to re-filing.

11. DETERMINATION OF SUFFICIENCY

11.1. Upon receipt of the complete formal requirements enumerated under Section 10.5 of these Rules, the MAO will evaluate the submission within a period of fifteen (15) days (“Sufficiency Period”). The purpose of the sufficiency check is to verify if the information and documents submitted are sufficient to commence Phase 1 review.

11.2. Where necessary or appropriate, the MAO 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 Notification Form.

A. Where the notification is deficient

11.3. Notifying Parties shall provide complete and correct information to the MAO. If the Form is determined to be deficient, a notice informing the parties of the said deficiency (“Notice of Deficiency”) shall be sent out within the Sufficiency Period. The letter shall identify the information and documents to be provided by the concerned party, pursuant to the Form.

11.4. The Notifying Parties shall have a period of fifteen (15) days from the date of the issuance of the Notice of Deficiency to provide the information requested. The issuance of a Notice of Deficiency shall suspend the running of the Sufficiency Period.

11.5. During the Sufficiency Period, parties may request a meeting with the MAO to clarify any item required in the Form. It is recommended that key officers of the merger parties with operational knowledge of the business attend the said meeting.

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

11.7. Where one or both of the parties still fail to cure the deficiency within the given period, the Forms will be returned, without prejudice to a subsequent refiling.

B. Return of Notification Forms

11.8. The Notification Forms shall be returned for any of the following reasons:

11.8.1. Failure to submit information or attachments required under the Form as

- detailed in the Notice of Deficiency;
- 11.8.2. Submission of incorrect or misleading information, without prejudice to the application of Section 27 of these Rules;
 - 11.8.3. Failure to pay the corresponding filing fees for Phase 1 review within ten (10) days from transmittal of the Order of Payment;
 - 11.8.4. Incorrect designation of any of the merger parties' UPE. However, the parties may correct their submission after the MAO has made a preliminary determination on the correct UPE.
 - 11.8.5. The MAO finds at any time during the review process that any information or document required under the Notification Form, which is relevant or material to merger review, has been withheld from the PCC, ; *Provided*, that the parties shall be given the opportunity to justify why such information or document was withheld. Should the MAO accept the parties' explanation, it will require submission of the relevant information.
- 11.9. The Expedited Notification Forms shall be returned for any of the following reasons:
- 11.9.1. The MAO has determined that the merger does not qualify for Expedited Merger Review; or
 - 11.9.2. There are SLC concerns that require additional information and further investigation.
- 11.10. In case the Forms are returned, the MAO shall issue a Notice of Return detailing the reason/s for such return.
- 11.11. Only authorized representatives of the parties shall be allowed to claim the Form at the PCC Records Office by presenting a copy of the Notice of Return to the PCC Representative. If the claimant is a person other than the authorized representative of the parties, the claimant must submit an original copy of their proof of authority together with a photocopy of a government-issued ID, the original copy of which must likewise be presented for verification to the PCC Representative.
- 11.12. When Notification Forms or Expedited Notification Forms are returned, no notification shall be considered to have been made.
- 11.13. Notwithstanding the preceding section, notifying parties who have submitted their Forms within the Notification Deadline shall not be held liable for late notification under Section 17 of the Act should they re-submit their Forms beyond the Notification Deadline; *Provided*, parties who re-submit their corrected and complete Forms must do so prior to any act of Consummation.

11.14. No filing fees shall be required for Expedited Notification Forms re-submitted for the same transaction. Should the Notifying Parties opt to notify the same transaction under the regular notification process, the filing fee initially paid shall be applied towards the filing fee for regular notification. The balance shall be due within ten (10) days from the issuance of the Order of Payment for the regular notification (Phase 1 review) filing fee.

C. Where notification is sufficient

11.15. If the submitted Notification Forms are sufficient to enable the MAO to commence Phase 1 review, an Order of Payment shall be sent to the Acquiring Entity to pay the Phase 1 Review Filing Fee.

11.16. Upon payment, the Notification Forms will be assigned a merger notification case number. The Notice of Sufficiency shall be transmitted to the Notifying Parties by email. A copy of said Notice of Sufficiency may also be obtained by the parties from the MAO.

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

12. SUBSTANTIAL MODIFICATION OF NOTIFIED TRANSACTIONS

12.1. The parties shall have a continuing obligation to inform PCC of any substantial modification to the transaction, whether currently under review, already subject of a Commission Decision, or deemed approved. The Commission *En Banc* shall determine if a new notification is required based on the new information provided.

12.2. The transaction thresholds do not apply in determining whether an event occurring post-Notification constitutes a substantial modification to the original notified transaction.

12.3. Substantial modification includes, but is not limited to, the following instances:

12.3.1. Where the merger parties assign their ownership, rights or interests to other entities;

12.3.2. When there is a change in the identity, type, or quantity of assets or shares purchased, among others;

12.3.3. When there are changes to the definitive agreement and related documents submitted to MAO that affect the rights, obligations, and duties of the parties or the subject or object of the agreement;

- 12.3.4. In the case of joint ventures, when another joint venture partner is added, whether the new joint venture partner has subordinate, equal, or greater rights than the partners of the original joint venture. This includes the formation of other or secondary joint ventures for the fulfillment of specific obligations in the original joint venture;
- 12.3.5. When the parties abandon the merger.
- 12.4. Failure to notify the Commission *En Banc* of substantial modifications to the transaction shall be punishable under [Section 6.16 2017 PCC Rules of Procedure (other violations)].
- 12.5. The parties to a notified merger shall inform the Commission *En Banc* 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.

13. PHASE 1 REVIEW PROCESS

- 13.1. During Phase 1 review, the MAO determines if a merger may give rise to SLC concerns, or may be cleared within the Phase 1 review period.

A. Commencement of Phase 1 Review

- 13.2. The Notification Form shall be considered filed upon payment of the Phase 1 review 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.

B. Additional information from the parties

- 13.3. The MAO shall examine the information submitted by the Notifying Parties under the Form, and may require supplementary or comprehensive information from them in accordance with the succeeding sections.
- 13.4. *Party Interviews.* The MAO may request a meeting with the parties to better understand the industry, market, operations, and business of the parties; and to confirm and clarify any of the information or documents they have submitted. Party interviews may be conducted as early as the Sufficiency Period.
- 13.5. Party interviews conducted during Sufficiency Period should not be interpreted that Phase 1 review has commenced or that any competition issues have already been identified. Moreover, this does not preclude the MAO from requesting another meeting with the parties during Phase 1.
- 13.6. *Information Request.* At any time during the review period, the MAO may issue a Request for Information (“Phase 1 RFI”) and require the Notifying Parties to provide additional data, information, or documents as it deems necessary for its

review (“Required Information”). The Required Information shall be provided within five (5) business days from the issuance of the RFI or such period as may be specified by the MAO.

- 13.7. Parties may negotiate with the MAO regarding the coverage, format, and scope of the information and documents requested in the Phase 1 RFI. Parties shall submit a request to this end before the expiration of the period to submit the information and documents, detailing the specific item/s in the Phase 1 RFI with the modifications being requested and an explanation why such request is being made. If the MAO finds the request acceptable, it shall grant the request in whole, in part, or adjust the same.
- 13.8. Should the parties require additional time to comply with the Phase 1 RFI, they may request for an extension to submit the requested information beyond the period specified by submitting a request and waiver in accordance with the Model Request and Waiver of the Periods available at the PCC Website. Upon the filing of request, the periods for review under the Act shall be correspondingly extended without need of confirmation from the MAO. For subsequent requests for extension, the MAO has the discretion to grant or deny the request. In no case, however, shall the total waived period be more than thirty (30) days.
- 13.9. If any of the parties fail or refuse to provide information or documents being requested in the Phase 1 RFI or submit the same within the prescribed period, Sections 2.15 of PCC Rules on Merger Procedure and 13.13 of these Rules shall be applicable. Alternatively, the MAO may proceed to review the transaction under Phase 2 Review.
- 13.10. ***Other Information.*** 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:
 - 13.10.1. A list of all currently manufactured, marketed, or sold products and products in development;
 - 13.10.2. Prices of all currently manufactured, marketed, or sold products;
 - 13.10.3. A list of the types of reports the company prepares on a regular basis;
 - 13.10.4. Organization chart to help the review team identify potential document custodians or candidates for interviews;
 - 13.10.5. Strategic and marketing plans earlier than the three (3) year period required under the Form, to capture a pivotal business development or historic event;
 - 13.10.6. A data map for identification of types of data the organization creates

- and stores and the relationships between the organization's different data sets;
- 13.10.7. Internal reports and communications relating to the merger and/or products or services being acquired; and
- 13.10.8. Such other information the parties consider could assist MAO in assessing the proposed merger and the markets involved.
- 13.11. Where appropriate, information and documents submitted to the MAO may be treated as confidential in accordance with the procedures provided in Section 18 of these Rules.
- 13.12. **Site Inspections.** If the MAO deems it necessary, it may conduct site visits or inspections of the business premises of the parties, their customers and/or their competitors, to better understand how products are manufactured, distributed or sold, how services are rendered, or the nature of competition in the market, among others.
- 13.13. **Compulsory Processes.** Additionally, the MAO may also utilize compulsory process, by issuing *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 MAO 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 MAO, which relate to any matter relevant to the merger review process in accordance with Act or these Rules.
- 13.14. The subpoena shall state, among others, the following:
- 13.14.1. The purpose for which it is issued;
- 13.14.2. Name and address of the Entity or individual to whom the subpoena is directed; and
- 13.14.3. The period within which to comply.
- 13.15. A *subpoena duces tecum* shall contain a reasonable description of the documents, Electronically Stored Information, other things, or other information subject thereof.
- 13.16. Service of a subpoena shall be made in the same manner as service of summons as provided in Section ___, except through publication.

- 13.17. A subpoena may be reconsidered upon motion on the ground that the subject of the *subpoena duces tecum* is not related to a matter relevant to the Investigation or proceeding, or when the person subject of the subpoena ad testificandum cannot comply therewith on the ground that doing so would violate a law, issuance, or valid order.
- 13.18. Based on compelling reasons, a motion may be filed praying for an alternative date or manner by which to comply with the subpoena, or for a modification of the scope thereof.
- 13.19. The motion shall be considered denied if the same is not resolved within five (5) days from filing.
- 13.20. In complying with a *subpoena duces tecum*, a certification shall be made stating that all the documents, Electronically Stored Information, other things, or information in any other format required by the subpoena and in one's possession, custody, or control, or to which he has access to, have been made available or submitted, and that there is nothing required in the subpoena that is in one's possession, custody, or control, or to which he has access to, that has not been made available or submitted.
- 13.21. [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 ____). 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 ____.

C. State of Play Meetings

- 13.22. At any time during the review and as it deems necessary, the MAO may coordinate with the merger parties to discuss theories of harm, relevant market, voluntary commitments, and timing of the review, among others. These 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.
- 13.23. The Notifying Parties may also request such conferences or state of play meetings, which may be granted by the MAO where it deems appropriate.
- 13.24. During these coordination meetings, Notifying Parties may discuss commitments that will remedy, mitigate or prevent the SLC concerns identified by the MAO as arising from the merger, subject to Section 17 of the Rules.
- 13.25. **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.

- 13.26. **Format and Venue.** State of play meetings may be conducted in person in the PCC Office or via phone or online video conferencing at the discretion of the MAO.
- 13.27. **Content.** State of play meetings allow the MAO to discuss with the merger parties information about any SLC 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.
- 13.28. **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 RFI 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.
- 13.29. In instances where the merger parties propose commitments for the approval of their merger, State of Play meetings may be held to allow the Commission *En Banc*, through MAO, to provide feedback on the results of its evaluation of the proposal.

D. Third Parties

- 13.30. The PCC may gather information from third parties. This is done to obtain relevant information regarding the market, their views on the merger particularly on competition issues it may raise, and how they will be affected.
- 13.31. Pursuant to the preceding section, the MAO may contact, interview, and issue RFIs and market inquiry letters to, and conduct market surveys among third parties. Third parties shall include customers, suppliers, and competitors, government entities, sector regulators, industry associations, consumer bodies, think-tanks, market research firms or centers for information, among others.
- 13.32. The MAO may also engage the services of third parties to conduct market surveys.
- 13.33. The PCC may conduct voluntary information gathering or utilize compulsory process in relation to these third parties. This is done 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.

E. Assessment

- 13.34. If the merger does not appear to give rise to SLC concerns, the Commission *En Banc* shall render a favorable decision and the parties may proceed to consummate the merger.
- 13.35. The merger shall be subjected to a Phase 2 review in the event that the Commission *En Banc* identifies SLC concerns in Phase 1 review, or if the Commission *En Banc* deems it necessary to continue the review of the merger.

F. Publication

- 13.36. The PCC shall publish a non-confidential version of the Decision and a summary of the merger on the PCC Website, within xx days from the promulgation of the Decision.
- 13.37. When publishing this information, the Commission *En Banc* shall take into account the legitimate interest of the entities regarding the protection of their trade secrets and other confidential information.

14. PHASE 2 REVIEW PROCESS

- 14.1. 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 any Other Affected Market.
- 14.2. Phase 2 review shall commence on the day after service of the Phase 2 Notice and Phase 2 RFI. The MAO 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.
- 14.3. *Order of Payment.* The MAO shall issue an Order of Payment to the Notifying Parties not later than five (5) days from the commencement of Phase 2 review.
- 14.4. The parties shall pay the Phase 2 filing fee within ten (10) days from receipt of the Order of Payment. Failure to pay the Phase 2 filing fee within ten (10) days shall cause the return of their notification.
- 14.5. *Phase 2 RFI.* The Notifying Parties shall respond to the Phase 2 RFI within fifteen (15) days from receipt thereof. Should the Notifying Parties require additional time to comply with the Phase 2 RFI, they may request an extension to submit the requested information beyond the period specified by submitting a request and waiver in accordance with the Model Request and Waiver of the Periods available at the PCC Website. Upon the filing of a request, the periods for review under the Act shall be correspondingly extended without need of confirmation from the MAO. For subsequent requests for extension, the MAO has the discretion to grant

or deny the request. In no case, however, that the total waived period be more than sixty (60) days.

- 14.6. The MAO shall inform the Notifying Parties whether or not their submission complies with the Phase 2 RFI within five (5) days from the submission of the Phase 2 documents.
- 14.7. Failure or refusal by the Notifying Parties to provide information or documents being requested in the Phase 2 RFI shall cause the expiration of their notification, and the MAO shall return the Notification Form of the parties without prejudice to a subsequent refiling. Should the parties refile, the Form must include the information required under the Phase 2 RFI; otherwise, the notification shall be considered deficient and shall not be accepted.
- 14.8. Despite the failure or refusal of the parties to provide information or documents in the Phase 2 RFI, the Commission en banc, may in its discretion, allow the Phase 2 review to proceed, where the MAO has alternative approximate information available sufficient to proceed to the Phase 2 review of the merger, subject to the application of Rule _____. The Commission *En Banc* may exercise its powers under Section 13.13 of these Rules.
- 14.9. Within five (5) days from the Notifying Parties' full compliance with the Phase 2 RFI or upon being informed that the MAO has alternative approximate information available sufficient to proceed to the Phase 2 review, the Commission *En Banc* shall publish a statement on the opening of a Phase 2 review of the merger and call for comments. The statement shall include the following information:
 - 14.9.1. The name of the acquired and acquiring entities, and brief description of their operations;
 - 14.9.2. The parties' respective UPEs and brief description of their operations;
 - 14.9.3. The type of the transaction;
 - 14.9.4. A description of the candidate product and geographic markets covered or lines of businesses by the transaction;
 - 14.9.5. The date when the complete notification was received; and
 - 14.9.6. A summary of Phase 1 review conducted by the MAO.
- 14.10. During the Phase 2 review, Sections 13.4 to 13.14 and 13.18 of these Rules shall be applicable.
- 14.11. Following the conduct of Phase 2 review:
 - 14.11.1. If the MAO does not find SLC concerns, it shall recommend the clearance

of the merger.

- 14.11.2. 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 concerns, a Statement of Concerns ("SOC") shall be submitted by the MAO with the Commission *En Banc* not later than the forty-fifth (45th) day of the Phase 2 review period, copy furnished to the merger parties.

15. STATEMENT OF CONCERNS

- 15.1. The SOC shall set forth the findings of the MAO on the likelihood of the merger giving rise to SLC concerns, and may include any recommendations or commitments that the MAO proposes to address the potential anti-competitive effects of the notified merger.
- 15.2. The SOC may contain the following information, subject to MAO's discretion and relevant to the results of the Phase 2 review:
 - 15.2.1. Executive Summary;
 - 15.2.2. Information on the Acquiring and Acquired Entities;
 - 15.2.3. Transaction;
 - 15.2.4. Counterfactual;
 - 15.2.5. Market Definition;
 - 15.2.6. Competitive Assessment;
 - 15.2.7. Countervailing Effects;
 - 15.2.8. Recommendation to approve or prohibit; and
 - 15.2.9. Any and all other information material to the comprehensive merger review.
- 15.3. Within five (5) days from the issuance of the SOC, the Commission *En Banc* shall publish a non-confidential version of the SOC on the PCC Website with a request for third party comments on the same.
- 15.4. Any third party may submit comments on the published SOC that the Commission *En Banc* may consider in its adjudication of the Phase 2 review. However, no standing is conferred upon such third parties in relation to the proceeding.
- 15.5. Filing of comments, letters, motions and other papers to the Commission *En Banc* for this phase of the proceeding shall comply with Article II, Rule IV of the PCC Rules of Procedure.

A. Verified Comment

- 15.6. Within ten (10) days from issuance of SOC, a party may file a verified written comment (“Verified 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.
- 15.7. The verified comment must have the following:
 - 15.7.1. Admissions and denials, if any, of material facts alleged in the SOC. Denials shall be made with particularity and, whenever practicable, the parties shall state the substance of the matters supporting its denial;
 - 15.7.2. Facts or circumstances relevant and necessary to explain why the transaction should be cleared by the Commission *En Banc*;
 - 15.7.3. Legal and economic bases on which such comment is based;
 - 15.7.4. Evidence to support parties’ claims or arguments;
 - 15.7.5. Verification 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;
 - 15.7.6. Original Secretary’s Certificate or Special Power of Attorney authorizing an officer of the entity to file the verified comment on behalf of the transacting party;
 - 15.7.7. Affidavits and documentary exhibits relied on for the party’s defense; and
 - 15.7.8. Such other matters the parties deems necessary to include.
- 15.8. Should there be difficulty in securing authenticated documents within the period provided under Section ___, 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.
- 15.9. A party may request an extension of time to submit its verified comment by filing a Model Request and Waiver with the Commission *En Banc* prior to the expiration of the period.

B. Access to Supporting Documents used for the Statement of Concerns

- 15.10. Upon receipt of the SOC, the merger parties may request access to the Supporting Documents substantially relied upon by the MAO in preparing the SOC..

- 15.11. The Commission *En Banc* shall provide the Supporting Documents through any of the following means:
- 15.11.1. Electronic Data Storage Device
 - 15.11.2. Copies of the accessible file in paper form sent by mail; or
 - 15.11.3. By inviting the parties to examine, separately, the accessible file at the PCC's premises on a given date.
- 15.12. Access to the Supporting Documents is granted on the condition that the information thus obtained shall only be used for the purpose of judicial or administrative proceedings undertaken pursuant to the Act. If the information is used in any way contrary to this Section, the party guilty of the same will be subject to penalties provided under Section 29(d) of the Act, in relation to Section 34 of the Act. If the use for a different purpose or the breach of the said limitations occurred with the involvement of counsel, the Commission *En Banc* may report the incident to the bar of that counsel, for disciplinary action.

C. Conference

- 15.13. The parties, with the submission of their Verified Comment to the SOC, may request for the conduct of a Conference where they can make oral representations before the Commission *En Banc*.
- 15.14. The request for a Conference must include the following:
- 15.14.1. Model Request and Waiver.
 - 15.14.2. The proposed issues to be subject of the Conference;
 - 15.14.3. A summary of the Notifying Parties' arguments;
 - 15.14.4. The documents or exhibits the parties propose to present during the proposed conference as well as the purpose thereof; and
 - 15.14.5. The proposed number and names of the witnesses, including the substance of their respective testimonies.
- 15.15. The Phase 2 review period shall be suspended upon submission of the request for a Conference with the Model Request and Waiver. A request for Conference without the Model Request and Waiver shall not be considered.
- 15.16. If the request for a Conference is granted, the Commission *En Banc* 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.

- 15.17. If the request for Conference 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 *En Banc*'s receipt of the request for Conference.
- 15.18. Where confidential information will be disclosed during the Conference, the designated officer, *motu proprio* or upon motion, may order a hearing in camera.
- 15.19. Parties may be accompanied by counsels during the hearing; *Provided*, the parties and their witnesses must answer the questions directed to them.
- 15.20. During the Conference the Commission *En Banc* may direct the parties and the MAO to submit any further memoranda, brief, or information.
- 15.21. The Commission *En Banc* shall promulgate its Decision not later than fifteen (15) business days from the date of the last hearing or submission of the parties, whichever is applicable.

D. Supplemental SOC

- 15.22. The MAO may issue a Supplemental SOC upon discovery of new evidence relating to the notified merger, and such evidence further supports the conclusion that the merger is likely to give rise to SLC.
- 15.23. The parties shall have the right to file a Verified Comment and request a Conference in respect of the Supplemental SOC in accordance with Section 15 of these Rules.

16. COMMISSION DECISION

- 16.1. Upon consideration of the concerns raised in the SOC and the submissions of the parties, the Commission *En Banc* will determine whether the merger is likely to result in an SLC in the Relevant Market or in any Other Affected Market.
- 16.2. Decisions shall be in writing, setting forth the basis for the Commission *En Banc*'s findings.
- 16.3. The parties shall be furnished a certified copy of the Decision via Electronic Mail, and be given three (3) days from receipt thereof to identify any confidential information therein.
- 16.4. The Decision shall be posted on the PCC Website within xx days from the lapse of the period to claim confidentiality of information in the Decision. A non-confidential version of the Decision may also be furnished to such persons as the Commission *En Banc* considers appropriate.
- 16.5. *Decisions approving the merger.* If the Commission *En Banc* determines that a

merger, if carried into effect, will not lead to an SLC in the Relevant Market or in any Other Affected Market, the Commission *En Banc* shall allow the merger. A favorable decision may be rendered in Phase 1 or Phase 2 review.

- 16.6. Mergers that have received a favorable decision from the Commission *En Banc*, except such decisions obtained on the basis of fraud or false material information, may not be challenged under the Act.
- 16.7. *Decisions prohibiting the merger.* If the Commission *En Banc* determines that the merger or acquisition is prohibited under Section 20 of the PCA and does not qualify for exemption under Section 21 of the PCA, the Commission *En Banc* may:
 - 16.7.1. Prohibit the consummation of the merger;
 - 16.7.2. Prohibit the implementation of the agreement unless and until the pertinent party or parties comply with the changes to the definitive agreement specified by the Commission *En Banc*;
 - 16.7.3. Prohibit the consummation of the merger, unless and until the pertinent party or parties comply with the legally enforceable agreements specified by the Commission *En Banc*.
- 16.8. *Prohibition Decision under Section 18(a) of the PCA.* The Commission *En Banc* shall prohibit the implementation of the merger if the Commission *En Banc* determines that the merger will substantially prevent, restrict, or lessen competition in the Relevant Market or in any Other Affected Market and no remedy would be applicable to the merger.
- 16.9. The Decision shall set forth the facts and the grounds that form the basis for the Commission's prohibition of the merger. The Commission shall impose fines under Section 27 of these Rules and such other measures as it may deem necessary.
- 16.10. *Prohibition Decisions Under Sections 18(b) and 18(c) of the PCA.* Upon finding that a merger will substantially prevent, restrict, or lessen competition in the Relevant Market or in any Other Affected Market, the Commission *En Banc* may issue a Decision prohibiting the implementation of the merger unless and until the parties (i) modify the merger based on the changes specified by the Commission *En Banc*; or (ii) enter into legally enforceable agreements specified by the Commission *En Banc*. This shall be referred to as "Section 18(b) or 18(c) Prohibition Decision".
- 16.11. Examples of changes to the merger that can be specified under a Section 18(b) Prohibition Decision (Directions) are:
 - 16.11.1. Requiring the merger parties to dispose of such operations, assets,

- or shares in such manner as may be specified by the Commission *En Banc*;
- 16.11.2. Providing a performance bond, guarantee or other form of security on such terms and conditions as the Commission *En Banc* may determine;
 - 16.11.3. Ordering corporate reorganization, divestment, adjustments, or divestiture in the manner and under such terms and conditions as may be prescribed by the Commission *En Banc*;
 - 16.11.4. Requiring the appointment of a divestiture trustee to oversee and execute the prescribed structural remedy to prevent, mitigate or lessen the anti-competitive effects of a merger, among others;
 - 16.11.5. Impose qualifications or disqualifications of directors, trustees, or officers.
- 16.12. Examples of legally enforceable agreements specified by the Commission *En Banc* to prevent or lessen the anti-competitive effects under a Section 18(c) Prohibition Decision (Directions) are:
- 16.12.1. Requiring the execution of supply purchase agreements, licensing agreements, distribution agreements or any other access agreements with third parties;
 - 16.12.2. Requiring the appointment of a monitoring trustee to monitor the parties' compliance with prescribed behavioral remedies and the execution of monitoring agreement with the PCC and said trustee; or
 - 16.12.3. Requiring the adoption of certain technical standards.
- 16.13. Following the promulgation of a Prohibition Decision under Section 18(b) or 18(c) of the PCA, the parties may either (i) comply with the directions stated in the Prohibition Decision under Section 18(b) or 18(c) of the PCA, (ii) file a motion for reconsideration, or (iii) terminate the merger.
- 16.14. *Compliance.* In complying with the Prohibition Decision, parties must submit their compliance pursuant to Section __ of these Rules within the period stated in the Decision.
- 16.15. *Commitment Decision.* The Commission *En Banc* shall evaluate the Compliance with the Section 18(b)/ Section 18(c) Prohibition Decision within XX days from submission. Upon finding that the parties have fully complied with the Prohibition Decision, the Commission *En Banc* shall issue:

- 16.15.1. A Commitment Decision approving the merger, if the modification to the merger will address the SLC concerns of the Prohibition Decision under Section 18(b) or 18(c); or
 - 16.15.2. A Commitment Decision directing the monitoring of the parties' compliance with the legally enforceable agreement to ensure that the merger will not result in SLC.
- 16.16. Should the parties fail to establish compliance, the Commission *En Banc* shall issue a Resolution reiterating the Prohibited Decision.
- 16.17. *Motion for Extension to submit Compliance.* Before the lapse of the period prescribed in the Prohibition Decision, the parties may request additional time to submit their Compliance; *Provided*, that it shall be for reasonable grounds and the period for the extension shall not exceed sixty (60) days.
- 16.18. *Motion for Reconsideration.* The Rules under Section __ shall apply to Motions for Reconsideration.
- 16.19. *Termination of the merger.* In terminating the merger, the parties must file a Manifestation with the Commission *En Banc* stating the termination. The Commission *En Banc* shall issue a Notice to the parties noting the termination of the merger without prejudice to the Parties' filing of another notification for the same transaction. The notified transaction will be treated and reviewed like a new notification, not bound by any findings in the previous merger review.
- 16.20. *No decision upon expiration of the relevant periods of review.* The merger shall be deemed approved if no decision is rendered upon the lapse of:
- 16.20.1. The Phase 1 review period and no Phase 2 Notice is issued;
 - 16.20.2. The Phase 2 review period; or
 - 16.20.3. Such extended period as provided under these Rules,
- 16.21. The Commission *En Banc* may review its Decisions when it has reasonable grounds to suspect that the information submitted in relation to the merger on which the decision is based was incomplete, incorrect, or misleading (see Rule 4, Section 12 of the IRR).

17. VOLUNTARY COMMITMENTS

- 17.1. Parties may propose voluntary commitments that will remedy, mitigate or prevent the identified SLC concerns arising from the merger in the following instances:
- 17.2. *Timing of submission.* Parties may propose voluntary commitments according to

the following schedule:

- 17.2.1. Where the merger parties concede in writing that the merger may result in SLC, but they aim to reach a Phase 1 review clearance with remedies. The parties may submit voluntary commitments together with its Notification Form during Sufficiency Period.
- 17.2.2. At any time during Phase 1 review, provided that the parties concede in writing that the merger may result in SLC. The parties may submit a voluntary commitment any time before the issuance of a Notice to Proceed to Phase 2 Review.
- 17.2.3. At any time during Phase 2 review provided that the parties concede in writing that the merger may result in SLC. The parties may submit a voluntary commitment before the issuance of a Statement of Concerns.
- 17.2.4. At any time after the issuance of a Statement of Concerns but prior to the promulgation of a Commission Decision.
- 17.2.5. After the promulgation of a Commission Decision prohibiting the merger, but before said Decision final and executory. In this case, the parties may attach the proposed voluntary commitments to a Motion for Reconsideration filed in accordance with Section ____ of these Rules.

If the parties propose voluntary commitments under 17.1.1, they are required to submit a waiver of the review period within ____ days from MAO's notice that it will evaluate the proposed commitments.

In cases under 17.1.2, 17.1.3, 17.1.4, the merger parties are required to submit a waiver of review period in order to allow the MAO and the Commission *En Banc* to evaluate the proposed commitments.

- 17.3. Should the MAO believe that it is unable to make any informed, accurate or correct evaluation of the proposed voluntary commitments under 17.1.1 and 17.1.2, the MAO will notify the parties that it will continue its review of the merger, without prejudice to the submission of the proposed voluntary commitments at a later stage of the proceedings.
- 17.4. The MAO or the Commission *En Banc* will evaluate the proposed commitments within a period of sixty (60) days, extendible for another thirty (30) days ("Commitment Review Period"). The Commitment Review Period shall not apply when the proposed commitment was submitted as part of the merger parties' motion for reconsideration under Section 17.2.5 of these Rules.
- 17.5. The MAO or the Commission *En Banc*, as applicable, may confer with the parties to discuss their proposed commitments.
- 17.6. Before accepting any commitments, the Commission *En Banc* must be of

reasonable belief that these are tailored to the SLC concerns and effective to address the same. As provided under the PCC Merger Review Guidelines, commitments can either be structural or behavioral.

- 17.7. The Commission *En Banc* shall consult concerned stakeholders or the public and publish on its website an invitation to comment. Third parties may also be approached on an individual basis for their views. For this purpose, the Commission *En Banc* shall disclose the proposal to the extent necessary to obtain reasonably informed comments from stakeholders.
- 17.8. Should the Commission *En Banc* decide that changes need to be made to the commitments considering responses to the consultation, it will discuss the material changes with the parties. Minor changes do not require further consultation.
 - 17.8.1. The Commission *En Banc* may consider and propose alternative remedies, notwithstanding the parties' proposals.
- 17.9. Once the Commitment Review Period expires without the Commission *En Banc*'s acceptance of the proposed commitments, the Commission shall proceed to issue a decision prohibiting the transaction.
- 17.10. Where the merger parties submit a proposed commitments under Sections 17.2.1, 17.2.2, 17.2.3, and 17.2.4 of these Rules, the Commission will incorporate the proposed commitments in specifying its Directions in the Section 18(b) or (c) Prohibited Decision.
- 17.11. Where the merger parties submit a proposed commitments under 17.1.5, the Commission will adopt a modified Section 18(b) or (c) Prohibited Decision.
- 17.12. Should the parties agree with the Directions contained in the Section 18(b) or (c) Prohibited Decision, it will file its Compliance thereto in accordance with the period provided under the said decision and Section 16.16 of these Rules shall correspondingly apply.
- 17.13. The Section 18(b) or (c) Prohibited Decision and Commitment Decision under Section 16.16 of these Rules shall clearly and distinctly narrate the facts and discuss the law on which it is based.
- 17.14. In the event the parties fail to abide by essential undertakings or commitments as provided in the Commitment Decision, the latter shall be automatically vacated, and the previous Prohibited Decision will stand.

18. CONFIDENTIALITY

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

- 18.2. *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.
- 18.3. *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.
- 18.4. *Confidentiality of identity.* Subject to Section ___ 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. The PCC may, even without request of anonymity, treat as confidential the identity of any persons providing information when necessary for the enforcement of the Act, its implementing Rules, or other competition laws.
- 18.5. The following classes of information are not generally considered to be confidential by PCC:
- 18.5.1 The fact of the merger itself;
 - 18.5.2 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;
 - 18.5.3 Information that reflects the merger parties' views of how the competitive effects of the merger could be analyzed;
 - 18.5.4 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.
- 18.6. *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 ___.
- 18.7. Unless there is a claim of confidentiality, the PCC will presume that none of the

information contained in a party's submission is confidential.

- 18.8. The PCC may share the non-confidential versions of submissions with the merger parties or third parties.

A. Process of Claiming Confidentiality

- 18.9. 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.
- 18.10. A non-confidential version should be provided at the same time as the original submission.
- 18.11. Information claimed to be confidential should be identified as follows:
- 18.11.1 In the confidential versions of submissions, confidential information must be marked by enclosing it in square brackets or underlining the text;
 - 18.11.2 In the non-confidential version of submissions, redactions must be marked by square brackets containing the word "CONFIDENTIAL";
 - 18.11.3 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.
- 18.12. Blanket or overly broad confidentiality claims shall not be accepted.

B. Determining Confidentiality Claims

- 18.13. 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.
- 18.14. The MAO may withdraw its provisional treatment of confidentiality in whole or in part at a later stage of the Merger Review process.
- 18.15. 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 *En Banc* within five (5) days from the MAO's notice, who will render a ruling within ten (10) days. During such period, the MAO shall not disclose the information unless and until the Commission *En Banc* has ruled on the matter.

- 18.16. Confidential Information shall not be disclosed by PCC, except in any of the following circumstances:
- 18.16.1 When there is consent from the entity claiming confidentiality;
 - 18.16.2 When disclosure is required by law;
 - 18.16.3 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;
 - 18.16.4 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
 - 18.16.5 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.

- 18.17. Prior to disclosure, the PCC shall inform the owner of the Confidential Information of the basis of the disclosure and the specific information that will be disclosed. The consent of the owner of confidential information shall not be necessary for this act.
- 18.18. Disclosure of Confidential Information to government agencies outside the Philippines shall be made only upon waiver of the entity claiming confidentiality.
- 18.19. Prior to the publication of a Decision, order or summary, a party shall 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.

19. PRE-MERGER EXCHANGE OF INFORMATION

- 19.1. As provided under Section 17 of the PCA, Notifying Parties are prohibited from consummating their agreement until after the Commission has cleared the merger, or upon the lapse of the review period without a Decision being

rendered. Notifying Parties should remain independent firms in the market and refrain from, among others, exchanging Confidential Information.

- 19.2. A pre-merger exchange of Confidential Information between Notifying Parties constitutes premature consummation of the transaction punishable under Section ___ of these Rules. It may likewise be regarded as an anti-competitive agreement prohibited under the PCA. Therefore, Notifying Parties must confirm to the safeguard for pre-merger exchange of information in Annex ___ of these Rules.

20. MERGER INTELLIGENCE AND INVESTIGATION

- 20.1. *Scope and Coverage.* These Rules on merger intelligence and merger investigation (the “Merger Investigation Rules”) shall apply to all merger investigations involving violations under Sections 17, 20, 29 (b), 29 (c) and 29(d) of the Act in so far as they are related to mergers (“Merger Violations”). The Rules on Notified Merger shall continue to apply to this section, unless otherwise inconsistent with the rules hereunder.

- 20.2. *Grounds to open Section 17 motu proprio Merger Investigation.* In cases involving violation of Section 17 of the PCA, the MAO may conduct an investigation when there is *prima facie* evidence that (i) a merger that reaches the thresholds under Section 6 of these Rules has not been notified to the Commission; or (ii) the Parties committed any acts of consummation of the transaction in whole or in part during the periods for review under Section 17 of the PCA.

- 20.3. *Grounds to open Section 20 motu proprio Merger Investigation.* – In cases where the existence of SLC concerns in a Relevant Market or in any Other Affected Market for goods and services is an element of the violation, the MAO shall consider the following grounds for the conduct of motu proprio review: (i) public interest; (ii) resource allocation; (iii) strength of supporting evidence; (iv) overall effect of the merger on the market, or (v) other factors which may be determined by the Commission.

There is a reasonable ground to believe that a merger is likely to result or has resulted in an SLC in the market where (i) there are preliminary indications that customers may be adversely affected, (ii) there are possibilities for foreclosure, (iii) there is a high degree of market concentration, (iv) either of the merger parties has high market shares, (v) the merger takes place in a critical industry, or (vi) other grounds exist as determined by the Commission.

- 20.4. *Grounds to open section 29(b), 29(c), and 29(d) motu proprio Merger investigation.* The MAO may conduct Merger Investigation when there is reasonable ground to believe that any of the following violations is committed:

20.4.1. A Section 29(b) violation is committed when an Entity fails or refuses to

comply with a ruling, order or decision issued by the Commission *En Banc* in so far as they are related to mergers;

20.4.2. A Section 29(c) violation is committed when an Entity intentionally or negligently supplies incorrect or misleading information in any document, application or other paper filed with or submitted to the PCC or the MAO in so far as they are related to mergers;

20.4.3. A Section 29(d) violation is committed when an Entity violates any other violations not specifically penalized under the Act in so far as they are related to mergers.

20.5. *Nature of proceedings.* – The proceedings under these rules shall be summary in nature and shall be conducted without necessarily adhering to the technical rules of procedure and evidence applicable to judicial proceedings.

20.6. *Commencement of Merger Investigation.* – A merger investigation for possible violations under Sections 17, 20, 29 of the PCA, laws, rules, regulations, circulars, and orders being implemented by the PCC may be commenced by the MAO, either *motu proprio*, or upon receipt of a Complaint from the public, an interested Entity, a referral from a government agency, instrumentality or a self-regulatory organization, or an anonymous tip.

A. Complaints

20.7. *Who may file.* Any Entity may file a written Complaint with the MAO (“Complainant”). The Complainant may also authorize a representative to file the Complaint on their behalf, through a Special Power of Attorney or a Secretary’s Certificate, whichever is applicable.

20.8. An anonymous Complaint may be considered by the MAO as input in its determination of whether or not it will open an investigation.

20.9. *Form.* The Complaint must be in writing, signed by the Complainant or the Complainant’s counsel, and verified. Furthermore:

20.9.1. The electronic version of the Complaint must be uploaded to the PCC Online Facility. Each attachment must be saved as a separate file, and each file name must refer to the identifying appendix number. The electronic version of the Complaint and all attachment must be saved in PDF, Word, or in a spreadsheet format, in two (2) versions, protected and non-protected.

20.9.2. The hard copies and all its attachments must be submitted to the PCC Records Office in three (3) original copies.

20.9.3. Where the Complainant submits photocopies of documentary evidence in lieu of original copy of documentary evidence, the Complainant must

include a certification that such photocopies are true and faithful copies of the original, are correct and complete, and may be used by the MAO and/or Commission as such in any adjudicative proceeding or court proceedings without objection from the Complainant on the ground that the evidence offered is not original.

20.9.4. The Complainant shall include a statement under oath that the affiant 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 with proper evidence of authority, or if the entity is a natural person, by the person himself.

20.10. *Content.* The Complaint must include the following information:

20.10.1. The identity of the entities or individuals alleging a violation of the PCA.

20.10.2. Complainant's contact information, including an electronic mail address and the postal address where the Complainant or duly authorized representative may be served with orders, issuances, or communications, including an electronic mail address.

20.10.3. Identity of Entity or Entities complained of. In the case of juridical persons, the Complaint may also include the ultimate parent entity, as respondent (collectively, the "Respondent").

20.10.4. The relationship of the Complainant to the Respondent (e.g. shareholder, customer, competitor, etc.)

20.10.5. If known: (a) Respondent's contact information; and (b) the address where Respondent may be served with orders, issuances, or communications from the MAO and the Commission.

20.10.6. A narration of the material facts and supporting testimonial and/or documentary evidence including statistics or data, if any, supporting the allegations of violations of the PCA.

20.10.7. Names and address of persons or entities that the MAO and the Commission may approach, interview or subpoena for additional information.

20.10.8. Any remedies that should be given due course by the Commission

20.10.9. The following specific allegations if the acts complained of constitute a violation of Section 20 of the PCA:

a. A concise overview of the lines of business of the Complainant, its ultimate parent entity and its affiliated organizations, if any;

- b. A concise overview of the lines of business of the Respondent, its ultimate parent entity and its affiliated organizations, if any; and
 - c. A concise explanation of the reasons for, and details of, the Complaint, including details of the merger situation to which the Complaint relates, when and how the Complainant became aware of the merger situation, and the relative market positions of the respondents. If possible, indicate the goods, services, or intellectual property rights, affected by the merger and explain the relative competitive positions of these goods or services (i.e. whether the goods or services are substitutable, complementary or unrelated). The Complaint must specify the identity of the Entities claiming violation of the PCA.
- 20.11. *Confidentiality claimed by Complainants.* If a Complainant does not wish to be identified publicly as a Complainant, this should be made clear to MAO upon filing of the Complaint. In this regard, MAO will evaluate the applicability of Section 34 of the PCA. However, if it becomes necessary to reveal the source of a Complaint, the MAO shall engage with the Complainant on the latter's available remedies. If the Complainant has claims of confidential information other than the Complainant's identity, the Complainant shall claim confidential information based on Rule ____.
- 20.12. *Effect of withdrawal of the Complaint.* Withdrawal of the Complaint does not automatically result in the termination of the Merger investigation or discharge the Respondent from complying with processes under the PCA and its implementing rules, nor exempt the Respondent from possible imposition of administrative sanctions or penalties, after due notice and hearing.
- 20.13. *Investigative Discretion.* The MAO shall not be bound by the contents of the Complaint.
- 20.14. *Evaluation of the Complaint.* The MAO will evaluate each Complaint on its merits to determine if a Merger Investigation is warranted. There is no obligation for MAO to follow-up or investigate Complaints. The MAO will not investigate a merger simply because a Complaint has been made to it. Each Complaint will be judged regarding its applicable context and on its merits considering, among other things, the strength of any supporting evidence.
- 20.15. A Complaint based on any of the following grounds cannot be acted upon:
- 20.15.1. The Commission has no jurisdiction over the subject matter of the Complaint; or
 - 20.15.2. The Complaint does not pertain to a violation of the PCA specifically Sections 17, 20, 29(b), 29(c), or 29(d).

20.16. *Standing and participation of the complainant.* A Complainant shall have no standing to take part in the Merger Investigation, but may request to receive updates on the MAO's action on the complaint. The MAO may also communicate or consult with the Complainant at any stage of the Merger Investigation pursuant to its information gathering power.

B. Other Common Provisions

20.17. *Manner of investigation.* The MAO shall actively investigate the alleged violation(s) using all available means, tools, and resources of the PCC in the exercise of MAO's information gathering powers. The purpose of the Merger Investigation is to gather facts regarding possible merger violations.

20.18. *Additional documents.* The MAO may require, at any time before the Merger Investigation is terminated, the Complainant, Respondent(s), or other Entities to submit information and documents relevant to the investigation.

20.19. *Invitation to comment.* During a Merger Investigation, the MAO shall publish an invitation for the public to comment if warranted by the circumstances or necessary as a tool to gather information.

20.20. *Actions after Merger Investigation.* The MAO may take one or more of the following actions after the termination of Merger Investigation:

20.20.1. Recommend to the Commission *En Banc* the issuance of a Show Cause Order;

20.20.2. Recommend to the Commission *En Banc* the opening of motu proprio review under Section 20 of the PCA;

20.20.3. Continuously monitor compliance by the Respondent with the competition laws, rules, regulations, circulars being implemented by the PCC

20.21. The Commission *En Banc* may refer the matter to another Operating Unit within the PCC, or other government authorities or foreign competition authorities, as warranted.

20.22. *Termination of the Merger Investigation.* The MAO may terminate a Merger Investigation based on any of the following:

20.22.1. The Complaint falls under any of the grounds listed in Section ____ of this Rules; or

20.22.2. The MAO finds no sufficient ground to commence an adjudicative action.

20.23. The MAO shall issue a Notice to the Complainant and the Respondent, if the latter has already been informed that a Merger Investigation was commenced,

citing the ground for the termination of investigation. The Termination of the Merger Investigation may be appealed by the Complainant to the Commission *En Banc* within xx days from receipt. Termination of the Merger Investigation shall be without prejudice to the conduct of another Merger Investigation if the circumstances so warrant.

- 20.24. *Statutory period.* Section 46 of the PCA provides that any action arising from a violation of any provision of the PCA which is administrative in nature shall be forever barred unless commenced within five (5) years from the time the cause of action accrues. A cause of action shall accrue only when the PCC discovers that the merged parties have consummated the merger or have committed any violations of the provisions under Sections 17, 20, 29(B), 29(C), and 29(D) of the Act.

C. Inquiry Letters

- 20.25. During the Merger Investigation for Merger violations, the MAO shall issue Inquiry Letters directing the Respondents to submit information such as but not limited to the names of the parties, details of the merger, the notification thresholds, business activities, and relevant market. The Respondent's response to the Inquiry Letters shall form part of the MAO's basis to recommend the opening of a *motu proprio* review. Alternatively, based on the Respondent's response to the Inquiry Letters, MAO may also decide to further monitor the merger or to terminate with its Merger Investigation.
- 20.26. The Respondent may submit a verified explanation to the Inquiry letters. Nevertheless, the Respondent must respond to the Inquiry Letter; otherwise, the MAO shall institute compulsory process of gathering information.
- 20.27. The Respondent's submissions, other information gathered by the MAO during its Merger Investigation, and a Recommendation Report shall be submitted to the Commission *En Banc* for its adjudicative action.

[Then remove Notice to Explain provision but retain verified explanation in case the Respondents opted to submit one. Delete also clarificatory conference and let the Commission conduct a clarificatory hearing. This Inquiry letter shall apply to ALL Merger violations.]

21. SPECIFIC RULES GOVERNING MERGER INVESTIGATION UNDER SECTION 17, 29(B), 29(C), AND 29(D) VIOLATIONS

- 21.1. *Notice to explain.* During the Merger Investigation, the MAO shall issue a Notice to Explain requiring Respondent to submit its Verified Explanation within the period stated, which in no case shall be less than fifteen (15) days from receipt of the said Notice.

- 21.2. *Verified Explanation.* The Verified Explanation must contain the following:
- 21.2.1. Facts or circumstances relevant and necessary to explain why they shall not be held liable for the alleged violation;
 - 21.2.2. A summary of admitted facts, if any;
 - 21.2.3. All of their defenses;
 - 21.2.4. The legal grounds on which such explanation or answer are based;
 - 21.2.5. The supporting testimonial or documentary evidence to support their claims, defenses, or arguments; and
 - 21.2.6. Such other matters that may be relevant to their case.
- 21.3. Where the Respondent submits photocopies of documentary evidence in lieu of original copy, the Respondent must issue a certification that such photocopies are true and faithful copies of the original and may be used by the PCC as such in any court or adjudicative proceeding without objection from the Respondent on the ground that the evidence offered is not original.
- 21.4. *Failure to explain.* Where the Respondent fails to submit a Verified Explanation, the MAO is entitled to rely on relevant evidence obtained by MAO in its investigation or those submitted by the Complainant. In addition, the MAO 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 Respondent. The MAO may also rely on alternative sources of information and its institutional competence and experience.
- 21.5. *Prohibited pleadings and motions.* The following pleadings and motions shall not be allowed during the Merger Investigation:
- 21.5.1. Motions to dismiss the Complaint;
 - 21.5.2. Motions for a bill of particulars;
 - 21.5.3. Motions to declare Respondent in default;
 - 21.5.4. Dilatory motions for postponement; and
 - 21.5.5. Appeal or motion of reconsideration from any actions of the MAO
- Should the Respondents file any of the aforementioned papers, the MAO may treat these prohibited pleadings and motions as the Respondent's verified explanation or a part thereof.
- 21.6. *Clarificatory Conference.* A clarificatory conference may be held for purposes of

clarifying or ascertaining facts, issues, and other matters necessary and relevant to the Merger Investigation.

- 21.7. The Respondent or other Entities called for attendance may be accompanied by counsel who shall confine his activity to advising the Respondent or other attendees of their legal rights. Only the Respondent or attendee to which the question is directed can answer the questions propounded by the MAO.
- 21.8. *Recommendation Report.* If the MAO finds reasonable grounds that warrant the commencement of adjudicative action, the MAO shall submit a Recommendation Report to the Commission *En Banc*.
- 21.9. Upon MAO's submission of the Recommendation Report, the Rules on Section ___ will apply.

22. COMMISSION PROCEEDINGS FOLLOWING THE SUBMISSION OF A RECOMMENDATION REPORT

- 22.1. *Action on the Recommendation Report of the MAO.* Upon receipt of the MAO's Recommendation Report, the Commission *En Banc* shall evaluate the evidence presented and supporting documents. The Commission *En Banc* may (1) promulgate a Decision, (2) issue summons pursuant to Rule ___, (3) issue interim measure orders, or (4) remand the Recommendation Report.

[IF the intake is Complaint, the MAO suggest to add this provision:

Nominal Complainant. The MAO shall only act as the nominal complainant for purposes of filing a Complaint for administrative adjudication before the Commission *En Banc*.]

- 22.2. *Commission to issue summons.* If the Commission *En Banc* finds reasonable grounds to adjudicate the case based on the cited violation in the Recommendation Report, the Commission *En Banc* may issue the corresponding summons with a copy of the Recommendation Report to the Respondent within fifteen (15) days from MAO's submission of the Recommendation Report.
- 22.3. *Contents of Summons.* The summons shall be addressed to the Respondent and shall contain:
- 22.3.1. A directive that the Respondent file a verified answer, and not a motion to dismiss, within the time fixed by the Commission *En Banc*.
- 22.3.2. A notice that unless the Respondent files a verified answer, the Commission *En Banc* may render a decision granting such relief as the records and evidence may warrant and impose the appropriate penalties and remedies.

- 22.4. *Verified answer.* An answer is a pleading in which the Respondent shall set forth its defenses. The answer must be verified.
- 22.5. *Period to file a verified answer.* The Respondent must file a verified answer within the time indicated in the summons, which shall not be less than thirty (30) days and not more than sixty (60) days.
- 22.6. *Contents of verified answer.* The verified answer must contain the following:
- 22.6.1. Admissions and denials, if any, of material facts alleged in the Recommendation Report. Denials shall be made with particularity and, whenever practicable, the Respondent shall state the substance of the matters supporting its denial;
 - 22.6.2. Facts or circumstances relevant and necessary to explain why the Respondent should not be held liable for the alleged violation stated in the Recommendation Report
 - 22.6.3. Legal grounds on which such answer is based;
 - 22.6.4. Evidence to support Respondent's claims or arguments;
 - 22.6.5. The express consent, if any, of the Respondent or its counsel to the Electronic Service of Papers emanating from the Commission *En Banc*, and the e-mail address at which he agrees to accept such service; and
 - 22.6.6. Such other matters the Respondent deems necessary to include.
- 22.7. *Additional issues to be raised before the Commission.* The Respondent may, in its Verified Answer or upon motion, raise additional issues which were not raised during the MAO's Merger Investigation. The Commission *En Banc* may resolve the issues separately or jointly with the case at hand, or direct the MAO to conduct a separate Merger Investigation; provided that, in all cases, the MAO shall be given opportunity to respond to the additional issues raised by the Respondents.
- 22.8. *Standing and participation of the Complainant.* A Complainant shall have no standing to take part in the adjudicative proceedings of the Commission.
- 22.8.1. The Complainant will be informed of the Commission's action on the MAO's Recommendation Report relating to the Complaint filed. The Commission *En Banc* may also communicate or consult with the Complainant at any stage of the adjudicative proceedings.
 - 22.8.2. The Complainant is entitled to receive all orders of the Commission *En Banc* and a copy of the non-confidential version of the decision on the Complaint.

- 22.9. In cases involving violations under Section 17 and 29(b) of the PCA, a Complainant who seeks to gain standing and take part in the adjudicative proceedings shall submit a Verified Motion to the Commission *En Banc*. The Commission *En Banc* may grant legal standing to participate in the proceedings if the Complainant shows with reasonable ground that it suffers direct injury and has direct interests in the outcome of the case, as minority shareholders, suppliers, competitors, or customers of the Respondent.
- 22.10. *Access to Confidential Information.* A Respondent who seeks to access information treated provisionally confidential or otherwise considered to be confidential under Section __, may file a motion for the purpose and show that the same is essential for Respondent's defense. The MAO and the Entity which claimed confidentiality may comment on the motion. The Commission *En Banc*, in resolving the motion and when giving access to Confidential Information under this Section, shall be guided by Section __ and shall implement such means as may be necessary to protect the confidentiality of the information.
- 22.11. *Effect of failure to file a verified answer.* If the Respondent fails to answer within the time allowed therefor, the Commission may proceed to render judgment as the allegations in the Recommendation Report and evidence may warrant.
- 22.12. *Comment.* The Commission may direct the MAO to submit a comment to the Respondent's verified answer. The Commission may further order the MAO to furnish the Respondent a copy of the MAO's comment.
- 22.13. *Further Proceedings.* Upon receipt of the verified answer and comment, if any, the Commission *En Banc*, as appropriate, shall render a decision within sixty (60) days therefrom. Otherwise, the Commission *En Banc* may:
- 22.13.1. Conduct a clarificatory hearing;
 - 22.13.2. Require the submission of additional documents;
 - 22.13.3. Issue an order requiring any party to submit a position paper, answer in writing any clarificatory question, appear before the Commission to make an oral presentation on any issue, or submit a memorandum summarizing the facts, issues, and arguments; *Provided*, that no evidence which has not been previously submitted or presented to the Commission *En Banc* may be attached or referred to; or
 - 22.13.4. Consult a resource person, sector regulator, relevant government agency, as well as agencies from foreign jurisdictions, if appropriate.
- 22.14. *Notice of clarificatory hearing.* The Commission *En Banc* may issue a notice of clarificatory hearing directing the Respondent and the MAO to appear before the presiding Commissioner or the Commission *En Banc*, at the place and on the date specified therein, to discuss the summary of admitted facts and the proposed

stipulation of facts, the factual and legal issues to be tried or resolved, the purpose thereof.

- 22.15. *Clarificatory hearing.* At the clarificatory hearing, the following shall be taken up:
- 22.15.1. The issues to be tried or resolved;
 - 22.15.2. Deadline for filing of position papers, affidavits and other submissions;
 - 22.15.3. Consideration of confidentiality issues or protection of sensitive information; and
 - 22.15.4. Other matters that may aid in the just and expeditious disposition of the proceeding.
- 22.16. During the hearing, the Commission *En Banc* may order the submission of additional documentary evidence. Unless otherwise provided, the documentary evidence must be received by the Commission *En Banc* within three (3) days from an order requiring such submission.
- 22.17. All parties shall be furnished with the copies of such documentary evidence via email. The documentary evidence must be received by the Adjudication Division through the email address adjudication@phcc.gov.ph and be accompanied by proof of service to all parties at the email address provided by the receiving parties. The Adjudication Office shall inform the concerned party of the date of receipt.
- Non-compliance with this rule may bar a party from introducing such documentary evidence during the videoconferencing hearing.
- 22.18. *Presentation of documentary evidence, witnesses and resource persons during clarificatory hearings.* Unless the Commission gives permission to any other person, only the Clerk of the Commission may present the documents on the screen.
- 22.19. *Admissibility of Electronic Documents.* An electronic copy of an original document is admissible to the same extent as an original unless: (1) a genuine question is raised as to the authenticity of the original, or (2) given the circumstances, the Commission finds it unjust or inequitable to admit the electronic copy in lieu of the original.
- 22.20. *Extension of hearing.* Where additional time is needed to complete the clarificatory hearing, the Commission shall set additional dates for the conduct thereof.
- 22.21. *Failure to appear at the clarificatory hearing.* If the sole Respondent or if all the Respondents fail to appear at the clarificatory hearing, the Commission may

render a decision based on the records.

In a case with multiple Respondents, failure of any but not all of the Respondents to appear at the preliminary conference shall not prevent the conduct of the same.

In either case, the Respondent that failed to appear shall be entitled to notice of subsequent proceedings but not to take part in same.

- 22.22. *Clarificatory hearing order.* Not later than twenty (20) days from termination of the clarificatory hearing, a clarificatory hearing order shall be issued containing the matters taken up at the clarificatory hearing and the actions taken thereon. The contents of the clarificatory hearing order shall bind the parties, whether or not they participated in the clarificatory hearing, and shall control the subsequent course of the proceeding unless modified to prevent manifest injustice
- 22.23. *Resource Person.* A resource person may, at any time before the case is submitted for decision, be called on or allowed by the Commission *En Banc* to submit a brief or to make an oral presentation for the purpose of aiding in the determination of the issues in the case. The Commission may allow the resource person to present via video conference.
- 22.24. *Quantum of evidence to support a decision.* The required quantum of evidence to support a decision is substantial. The decision shall be supported by evidence on record.
- 22.25. *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.
- 22.26. *Rendition of decision.* The Commission shall render its decision within sixty (60) days from the time the case is submitted for decision, unless an additional period is warranted.
- 22.27. *Partial, several, or separate decision.* Upon motion or *motu proprio*, the Commission may render a partial, several, or separate decision at any stage of the proceedings.
- 22.28. *Form and content of decision.* All decisions of the Commission shall contain a concise statement of its findings, legal basis, the penalties or remedies imposed, and such other appropriate matters.
- 22.29. *Publication.* The decision shall be published on the PCC website subject to Section ____.
- 22.30. *Motion for reconsideration.* A motion for reconsideration of a decision, order, or resolution may be filed pursuant to Section ____ (Motion for Reconsideration).

22.31. *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 *En Banc*, as the case may be, shall become final.

23. SPECIFIC RULES GOVERNING MERGER INVESTIGATIONS OF SECTION 20 VIOLATION (ANTI-COMPETITIVE MERGES)

23.1. *Applicability of rules on notified mergers.* To the extent that it may be practicable, the MAO will endeavor to follow the same process for notified merger, except for the sections on the Sufficiency Review and the review periods.

23.2. *Recommendation Report.* If the MAO finds reasonable grounds to open a *motu proprio* investigation of a merger, the MAO shall submit to the Commission *En Banc* a Recommendation Report, including the results of the investigation, evidence gathered, and recommendations.

23.3. *Case Initiation to open Merger Review.* The Commission *En Banc* shall evaluate the Recommendation Report and supporting documents. On the basis of the said evaluation, if the Commission *En Banc* finds reasonable grounds to conduct a *motu proprio* merger review of the transaction, it shall promulgate a resolution directing MAO to open a *motu proprio* merger review of the transaction; and it may: (1) issue interim measure orders; or (2) grant other reliefs as recommended by the MAO.

If the Commission *En Banc* finds no reasonable grounds to conduct a *motu proprio* merger review of the transaction, it shall: (1) direct the MAO to conduct further MERGER investigation; or (2) issue a resolution terminating the Merger investigation.

23.4. *Notice to the Merger Parties.* Upon receipt of a resolution from the Commission *En Banc* directing MAO to open a *motu proprio* merger review, the MAO will issue a Notice to the Respondents that the PCC is opening a merger review of the transaction, together with a Request for Information.

23.5. *Publication.* The MAO shall publish a statement on the opening of a *motu proprio* merger review and call for comments from the public and other stakeholders relating to the merger.

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

23.7. *Review Periods.* The *motu proprio* merger review shall be for a total of two

hundred (200) days. The MAO shall submit the SOC to the Commission *En Banc* no later than the 90th day of the said period, copy furnished to the merger parties.

- 23.8. Once the Commission *En Banc* has directed the MAO to conduct a *motu proprio* merger review, the merger parties are no longer allowed to file a voluntary notification of the same transaction, unless expressly allowed by Commission *En Banc*.

24. INTERIM MEASURES

- 24.1. The Commission *En Banc* may impose interim measures under the following circumstances:
- 24.1.1. To prevent any action that may prejudice its ability to investigate the merger or its ability to impose appropriate remedies;
 - 24.1.2. The Commission *En Banc* finds reasonable grounds to believe that the merger subject to review has resulted or may result in SLC in the Relevant Market or in any Other Affected Market;
 - 24.1.3. The Commission *En Banc* deems interim measures necessary to protect the integrity of the review or adjudicatory process
- 24.2. The Commission *En Banc* may issue interim measures *motu proprio*, or upon application filed by the MAO, a merger party, or other interested party (the “applicant”).
- 24.3. *Publication.* The order imposing the measure shall be published on the PCC Website within three (3) calendar days from issuance, subject to Section __ of these Rules.
- 24.4. *Timing for imposing interim measure.* The Commission may impose Interim measures at any time during the MAO’s merger review, including: (i) before the consummation of the merger, to take effect immediately; or (ii) on or after the consummation of the merger, to take effect immediately.
- 24.5. Interim measures may include orders directing an entity, its subsidiaries or affiliates, a party’s ultimate parent entity, including their respective directors, officers, agents and employees, to temporarily cease or desist from the performance of certain acts, including but not limited to:
- 24.5.1. Any acts of consummation of a merger
 - 24.5.2. The layoff of certain staff members
 - 24.5.3. Exchanging commercially sensitive information
 - 24.5.4. Disposal or destruction 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.

- 24.6. *Contents of verified application.* The applicant 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.
- 24.7. *Order to explain.* Upon receipt of the application sufficient in form and substance, the Commission shall issue an order to the Entity 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.
- 24.8. *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.
- 24.9. Any Entity concerned who is subject to an interim measure should inform the Commission: (1) of any planned or past action which might constitute pre-emptive action; and (2) other information relevant to their obligations under the Interim measures, including but not limited to: (i) details of any actions taken before the Interim measures came into force which would have been prohibited if the Interim measures had been in force prior to such actions; (ii) plans for integration of the acquired entities; (iii) the management of information exchanges and appropriate safeguards; and (iv) planned and actual communications with their respective directors, officers, agents, employees, and third parties about the merger. Failure to inform the Commission *En Banc* will constitute a merger violation.
- 24.10. Where pre-emptive action has, or may have, taken place before the Interim measure come into force, the Commission may use its power to issue an appropriate remedy to reverse or mitigate the effect of such pre-emptive action. Commission *En Banc* shall take action to ensure compliance with the Interim measures, including an unwinding order, appointment of monitoring trustee or a hold separate manager, or imposition of administrative fines and penalties.
- 24.11. Pre-emptive action refers to an action that may prejudice the outcome of a merger investigation or review, or impede the ability to impose appropriate remedies; or activities that the merging parties may take in connection with or as a result of the merger that has the potential to affect the competitive structure of the market during the PCC's investigation. Pre-emptive actions include, but are not limited to, the following instances:

- 24.11.1. Closing or selling sites;
 - 24.11.2. Selling or failing to maintain equipment;
 - 24.11.3. Degrading service levels;
 - 24.11.4. Failing to retain key employees;
 - 24.11.5. Integrating IT systems;
 - 24.11.6. Failing to compete at arm's length for tenders;
 - 24.11.7. Integrating customer-facing functions;
 - 24.11.8. Weakening the independence of brands;
 - 24.11.9. Discontinuing competing products;
 - 24.11.10. Exchanging confidential commercially sensitive information.
- 24.12. Interim Measure generally requires that the acquired entity should be carried on separately, and at arm's length, from the acquiring entity. Therefore, if the Interim Measures are imposed in a consummated merger, the Entity should immediately consider whether the arrangements they have in place are sufficient to meet this requirement.
- 24.13. *Motion for Reconsideration shall not stay an interim measure order.* The filing of a motion for reconsideration, if any, shall not stay the implementation of an interim measure.
- 24.14. *Motion for Derogation.* Upon motion of the Entity, the Commission *En Banc* may grant a derogation, giving consent to the merging parties to undertake certain actions that would otherwise be prohibited by the Interim Measure. The motion for derogation shall include the following:
- 24.14.1. A full and detailed explanation of the action the merging party wishes to take;
 - 24.14.2. The relevant provisions of the Interim Measures against which the derogation request is made;
 - 24.14.3. The purpose of the derogation and reason why the action proposed does not amount to pre-emptive action; and
 - 24.14.4. Any other information which may assist the Commission *En Banc* in considering the request.

The Commission *En Banc* may also use the information provided in its substantive analysis of the merger.

- 24.15. *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.
- 24.16. *Compliance.* To help ensure compliance with Interim Measure, the Commission *En Banc* will generally require the Chief Executive Officer / President of each of the acquired and acquiring entity, and their respective UPEs to regularly submit a compliance statement separately certifying the compliance of the Interim Measures. Based on reasonable grounds, the Commission *En Banc* may require the appointment of a monitoring trustee and a hold separate manager in accordance with Rule ____.

25. MONITORING OF COMMITMENTS

- 25.1. *Monitoring of Compliance.* These Rules shall govern the monitoring of parties' compliance with decisions or orders of the Commission *En Banc*.
- 25.2. *Commencement of Monitoring.* Upon the execution of the Undertaking by the parties and issuance of the commitment decision by the Commission, or when the decisions and orders of the Commission has become final and executory, the monitoring of the parties' compliance with the commitment decision will be transferred to the assigned Monitoring Office, unless otherwise stated or instructed in the commitment decision.
- 25.3. *Submission of Compliance.* All submissions made by parties and other stakeholders in relation to the relevant Commission's decisions or orders must be filed with the respective Monitoring Offices and third-party monitor, trustee or external expert, if applicable. The manner in which the submission is made shall follow Rule ____, Section ____.
- 25.4. *Evaluation of Compliance.* The Monitoring Office shall conduct an evaluation of the submitted documents, data or information, including the results of the analysis made by the independent monitor, trustee or external expert. During evaluation of the Compliance, the Monitoring Office may issue a Request for Information or Request for Interview to the Parties and third-parties or conduct any other investigating activities to verify the documents and data submitted by the Parties.
- 25.5. *Complaints filed by third parties.* The Monitoring Office shall investigate Complaints received from third-parties and consider them in the evaluation of the compliance by the Parties. The Monitoring Office may issue Request for Information, Request for Interview, to the Parties and third-parties or conduct any other investigating activities in verifying the information provided in the Complaint.
- 25.6. *Findings.* If upon evaluation of the submissions the Monitoring Office finds that the Parties violate the commitments stated in the Commission's decision or order,

the proceedings for Sec. 29 (b) on Failure to Comply with the Order of the Commission, as stated in Section ___ will apply.

- 25.7. *Appointment of an independent monitor, trustee or expert.* In cases where there is a need to appoint a monitor, trustee, expert, or other similar position which can be enlisted from any private institution, corporation, entity or association, the party covered by the commission decision or orders shall provide a shortlist based on the qualifications set forth by the Commission in its decision or order. The Commission shall appoint the best candidate from the shortlist and commission the latter as an officer of the Commission for the purpose of perming the functions as the Commission may direct based on its decision or order.
- 25.8. *Findings of the independent monitor, trustee or expert.* The submission by the independent monitor, trustee or expert shall be subject to verification and assessment of the Commission through its Monitoring Offices. The findings and conclusions of the independent monitor, trustee or expert may be challenged by the parties or the Monitoring Offices and shall not be conclusive upon the Commission, which may, in whole or in part, adopt such findings and conclusions subject to verification.
- 25.9. *Compensation of the independent monitor, trustee or expert.* The Compensation for the services of the independent monitor, trustee or expert shall be solely borne by the parties covered by the Commission decision or order, unless otherwise provided and subject to the relevant rules and regulations in government procurement of consultancy services.

26. APPLICATION TO VARY, SUBSTITUTE, OR RELEASE A COMMITMENT

- 26.1. *Rules.* Where these rules governing applications to vary, substitute, or release a commitment are silent, all other rules herein shall apply, unless inconsistent with the rules herein.
- 26.2. The Commitment Decision may be varied, substituted, or released in three (3) ways: (i) at the application of the party subject to the Commitment Decision, (ii) by the MAO's recommendation, or (iii) by the Commission's own initiative.
- 26.3. Parties may request that the Commitment Decision be varied, substituted, or released. Any submission making such a request should set out clearly the following:
- 26.3.1. Description of the terms of the proposed varied or substitute commitment;
- 26.3.2. An explanation as to the impact which the variation or substitution of the commitment will have on the SLC concerns identified by the Commission in the Commitment Decision;

- 26.3.3. For applications for release, an explanation as to whether the SLC concerns sought to be addressed by the commitment which the party is seeking release from still exist;
 - 26.3.4. Full contact details of the main competitors, customers and clients of the party subject to the commitment; and
 - 26.3.5. Other reasons to support the variations, substitution, or release from the Commitment Decision, such as but not limited to, (i) the expiration of the Commitment Period; (ii) commitments that are affected by new legislation; or (iii) commitments that are affected by changes in market conditions.
- 26.4. All explanations should be accompanied by supporting documents and certified under oath by an authorized representative of the party.
 - 26.5. The MAO may also submit a recommendation to vary, substitute or release a party from the Commitment Decision in accordance with Section ___ of these Rules. Upon receipt of the Recommendation Report, the Commission shall notify the parties subject to the Commitment Decision. Such notice may include an order for the parties to submit a verified comment and attendance to Clarification Hearing.
 - 26.6. The Commission may also review the Commitment Decision on its own initiative. If the Commission decides to proceed to vary, substitute, or release a party from the Commitment Decision, the Commission shall notify the parties of the Commission's decision to review the Commitment Decision. Such notice may include an order for the parties to submit a verified comment and attendance to Clarification Hearing.
 - 26.7. In all cases, the Commission shall refer the application to the MAO or to an *ad hoc* committee consisting of members from different Operating Units to evaluate the application or recommendation report, or review the comments to vary, substitute or release from the Commitment Decision. The MAO or the *ad hoc* committee has the following general powers and responsibilities:
 - 26.7.1. Schedule a clarification conference to obtain information and hear the positions of the market participants and stakeholders;
 - 26.7.2. Issue requests for information, conduct ocular inspections, or issue compulsory processes for a full review of the merits of the application; and
 - 26.7.3. Submit a Recommendation Report to the Commission setting forth its findings and recommendations within a specified period.

26.8. The MAO or the *ad hoc* committee will endeavor to conduct its evaluation as efficiency as possible. However, the time taken to conduct an evaluation will vary depending on the complexity of the issued involved, the available resources at the time, and the extent to which parties engage in a timely manner.

A. Assessment

26.9. Upon receipt of a complete written application, the MAO or the ad hoc committee will consider whether the initial submissions from all relevant parties are sufficient to allow it to reach a recommendation. Where the MAO or the *ad hoc* committee has identified the need for further information and/or analysis, it may invite or request submission from the applicant and other parties. The Commission *En Banc* shall issue a Call for Comments to public and competitors, customers, and clients of the party subject to the commitment and publish the same to the PCC website. The Call for Comments shall include the following:

26.9.1. The commitments sought to be varied, substituted or vacated;

26.9.2. Description of the terms of the proposed varied or substitute commitment;

26.9.3. A request to provide written inputs on the application within a certain period; and

26.9.4. Other information necessary to solicit comments.

26.10. Upon receipt of the ad hoc committee's recommendation report, the Commission shall issue Clarification Hearing and proceed to hear from the relevant stakeholders and the applicant. The Commission may require the submission of Position Papers with any other relevant documents or information to aid in its disposition of the application.

26.11. The Commission will consider all submissions received during the consultation period. The Commission decision and the reasons for it shall be published.

26.12. If the Commission finds no basis to vary, substitute, or release the Commitment Decision, the existing commitments remain in force and continue to bind the parties.

26.13. If the Commission Decision finds basis to vary, substitute, or release the Commitment Decision, the Commission shall publish an appropriate Amended Commitment Decision.

26.14. The applicant may file a motion for reconsideration of the Commission Decision in accordance with Section ___ of these Rules.

27. FINES AND PENALTIES

A. General Principles

- 27.1. In line with the continuing efforts to strengthen compliance by Entities with the provisions of the PCA, the Commission has the power to impose sanctions, fines, or penalties for any noncompliance with or breach of the PCA. For purposes of these Rules, the penalties herein shall apply to violations under Sections 17, 20, 29(b), 29(c), and 29(d) of the PCA.
- 27.2. **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.
- 27.3. The imposition and payment of the administrative fines and penalties herein does not prevent the Commission en banc to declare the merger void under Section 17 or prohibit the merger under Section 18 or 20 of the Act.
- 27.4. In fixing the amount of the fine, the Commission will consider the following factors:
- 27.4.1. The gravity of the SLC concerns identified by the Commission;
 - 27.4.2. The time the merger parties took to carry the infringing merger into effect and how long the merged entity has been in place; and
 - 27.4.3. Other relevant factors, such as the deterrent value and the presence or absence of any aggravating or mitigating factors, among others.
- 27.5. The Commission may take into consideration aggravating and mitigating factors. Examples of aggravating and mitigating factors are as follows:
- 27.5.1. **Aggravating circumstances**
 - a. 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;
 - b. Previous violation of the Act at least three times by the same acquiring or acquired entity(ies) or their ultimate parent entities, respectively;
 - c. 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;
 - d. That the Respondent engaged in any of the acts under Sections ____ to _____ of the PCC Rules of Procedure in the same review or

proceeding.

- e. 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.

27.5.2. Mitigating Circumstances

- a. 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;
 - b. Cooperation with the PCC during the conduct of the investigation or review beyond what is required under the Act, the IRR and these Rules;
 - c. Adequate steps have been taken by the Respondents with a view to ensuring compliance with the Commission's directives, orders, or resolutions;
 - d. Respondents with a view to ensuring compliance with the PCC's directives, orders or resolutions.
- 27.6. The schedule of fines shall be increased by the Commission every five (5) years to maintain their real value from the time it was set.
- 27.7. If the Respondents fail to pay the penalty within the date specified in the Commission'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.

B. Computation of fine for non-notification and gum-jumping

- 27.8. *Basis of the Fine.* The fine imposable for violations under Section 16.1 (non-notification of a consummated merger and gun-jumping as defined in Section _____) 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:

27.8.1. The aggregate value of the assets in the Philippines subject of the proposed transaction or owned by the Acquired Group; or

27.8.2. The gross revenues generated by assets subject of the proposed transaction or from sales in, into, or from the Philippines of the Acquired

Group

27.9. In calculating the value of (a) or (b) in Section ____ [19.2], 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, provided that the Commission shall adjust the imposed fines upon securing information on the final and accurate figures, including:

27.9.1. The most recent audited financial statements, or

27.9.2. The last regularly prepared balance sheet or annual statement of income and expense.

27.10. *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 _____ of these Rules, for each violation. Thereafter, if warranted by the circumstances attending the violation, the Commission may adjust such basic amount in the manner prescribed in the subsequent Sections.

27.11. *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.

C. Computation of fine for failure to notify within the period for notification

27.12. *Basis of the Fine.* Merger parties and their Ultimate Parent Entities failing to notify the Commission within the period for notification provided under Section 5.16 of these Rules of these Rules but has yet to consummate the merger. This violation shall be referred to as “late notification” violation.

27.13. *Computation of Fine.* – The parties who committed late notification will be fined 1/2 of 1% of the value of transaction for the first thirty (30) days of delay or fraction thereof. The fine shall be increased by 1% of 1% of the value of the transaction for every additional 30 days of delay or fraction thereof, provided that the total amount of fine to be imposed shall not exceed two million two hundred thousand pesos (PHP 2,200,000.00).” [Based on PCC MC 21-001].

D. Computation of fines for prohibited mergers

27.14. *Basis of the Fine.* The foregoing penalties may be imposed in the following instances:

27.14.1. Where the merger parties consummated either a non-notifiable or notifiable merger which is the subject of a Commission decision

finding that the merger results in an SLC; or

- 27.14.2. Where the merger parties, after having received an unfavorable decision from the Commission with respect to a potential merger, proceeded with an allegedly different merger which is simply a sham restructuring of the potential merger, among others.
- 27.15. Merger parties and their ultimate parent entities found to enter a prohibited merger under Section 17 or 20 of the Act, may be imposed the following fines:
 - 27.15.1. First offense: Fine of up to one hundred ten million pesos (PHP 110,000,000.00);
 - 27.15.2. Second offense: Fine of not less than one hundred ten million pesos (PHP 110,000,000.00) but not more than two hundred seventy-five million pesos (PHP 275,000,000.00);
 - 27.15.3. Third and succeeding offenses: Fine of not less than one hundred sixty-five million pesos (PHP 165,000,000.00) but not more than two hundred seventy five million pesos (PHP 275,000,000.00).

E. Computation of Fine for violations under Section 29(b), 29(c), and 29(d).

- 27.16. Failure to Comply With an Order of the Commission. – An entity which fails or refuses to comply with a ruling, order or decision issued by the Commission shall pay a penalty of not less than fifty thousand pesos (P50,000.00) up to two million pesos (P2,000,000.00) for each violation and a similar amount of penalty for each day thereafter until the said entity fully complies. Provided that these fines shall only accrue daily beginning forty-five (45) days from the time that the said decision, order or ruling was received.
- 27.17. Supply of Incorrect or Misleading Information. – The Commission may likewise impose upon any entity fines of up to one million pesos (P1,000,000.00) where, intentionally or negligently, they supply incorrect or misleading information in any document, application or other paper filed with or submitted to the Commission or supply incorrect or misleading information in an application for a binding ruling, a proposal for a consent judgment, proceedings relating to a show cause order, or application for modification of the Commission’s ruling, order or approval, as the case may be.
- 27.18. Any other violations shall be penalized by a fine of not less than fifty thousand pesos (P50,000.00) up to two million pesos (P2,000,000.00).
- 27.19. 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.

28. MOTION FOR RECONSIDERATION

- 28.1. *Period to file motion for reconsideration.* A motion for reconsideration of any decision, order, or ruling may be filed within fifteen (15) days from receipt thereof and must be served on concerned parties. The Operating Department may also file a motion for reconsideration.
- 28.2. Grounds for reconsideration. A motion for reconsideration shall be based on any of the following grounds:
- 28.2.1. The evidence on record is insufficient to justify the decision, order, or ruling; or
- 28.2.2. The decision, order, or ruling is contrary to law.
- 28.3. 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.
- 28.4. Comment or opposition to the motion for reconsideration. A comment or opposition to the motion may be filed by MAO within fifteen (15) days from receipt thereof.
- 28.5. Second motion for reconsideration not allowed. A second or subsequent motion for reconsideration shall be prohibited.
- 28.6. 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.

29. PROPOSAL FOR SETTLEMENT

- 29.1. *Settlement Offers.* Any Entity who is subject of an investigation under these Rules which may ripen into an administrative action, or any person already subject of an administrative action, may, at any time, propose in writing to the MAO an offer of settlement subject to the approval of the Commission.
- 29.2. Only settlements offer equal to or more than fifty percent (50%) of the total imposable fine shall be referred to the Commission. However, if the violation involves fraud, deceit, manipulation, willful neglect, deliberate, or reckless disregard of competition laws and regulations, as determined by the MAO, only settlement offers that are equal to or greater than one hundred percent (100%) of

the total imposable fine shall be referred to the Commission.

29.3. *Instances where no settlements are allowed.* A settlement offer can no longer be made after the MAO has referred the case to the Commission for adjudication. Further, the following shall not be the subject of settlement:

- 29.3.1. Non-notification of a notifiable merger transaction which shall be considered void under Section 17 of the PCA
- 29.3.2. Merger or Acquisition agreements that substantially prevent, restrict, or lessen competition in the Relevant Market or in any Other Affected Market which shall be prohibited under Section 20 of the PCA; provided, that the parties are not prevented from proposing remedies whether structural or behavioral subject to the process under Rule ____.
- 29.3.3. Respondents' failure to follow their structural or behavioral undertakings pursuant to the Commission's Commitment Decision; provided that the parties may offer settlement limited to the administrative penalties as provided in Section 29(b) of the PCA or any applicable administrative penalties based on the signed undertakings, memorandum of agreement, or other documents applicable thereof; provided further, that the payment of the administrative penalties shall not extinguish the Respondents' responsibility or excuse the Respondents' obligation to fulfil, correct, implement, or comply with the Commitment Decision.
- 29.3.4. Respondents' failure to comply with an order of the Commission pursuant to Section 29(b) of the PCA; provided that the Respondent may offer settlement limited to the administrative penalties as provided in Section 29(b) of the PCA; provided further, that the payment of the administrative penalties shall not extinguish the Respondents' responsibility or excuse the Respondents' obligation to fulfil, correct, implement, or comply with the Commission Order.
- 29.3.5. Supply of incorrect or misleading information pursuant to Section 29(c) of the PCA; provided that the Respondents may offer settlement limited to the administrative penalties as provided in Section 29(c) of the PCA; provided further, that the payment of the administrative penalties shall not excuse the Respondents from providing the true, accurate, complete, or correct information. Payment of the administrative penalties shall not preclude the Commission from investigating and reviewing the transaction despite favorable ruling under Section 23 of the PCA.

- 29.4. *Form and content of settlement offer.* An offer of settlement shall be in writing and signed by the Entity making the offer. If the Entity is a juridical person, the proper board resolution certified by the corporate secretary shall be attached to the offer. An offer of settlement shall state, among others, the following:
- 29.4.1. The amount of settlement offer
 - 29.4.2. Grounds by which the settlement offer should be approved
- 29.5. Upon submission of an offer of settlement, the Entity shall simultaneously tender the amount offered.
- 29.6. *Evaluation of the settlement offer.* In the evaluation of the settlement offer, the MAO shall take into consideration the following:
- 29.6.1. Whether the act or omission is excluded from Section ____.
 - 29.6.2. Whether the act or omission involves fraud, deceit, manipulation, willful neglect, deliberate, or reckless disregard
 - 29.6.3. The amount of administrative fines, actual or estimate, if any
 - 29.6.4. The aggravating or mitigating factors as provided in Section ____;
 - 29.6.5. The gravity of the offense;
 - 29.6.6. The time and other resources spent by or required of the Commission on the case;
 - 29.6.7. The amount of the imposable penalty and the financial capacity of the proposer to pay the same;
 - 29.6.8. The level of cooperation of the proposer in the investigation or proceedings;
 - 29.6.9. Whether the proposer has been found to have previously been violated any laws or rules enforced by the Commission;
 - 29.6.10. The chances of success if the case were to go trial;
 - 29.6.11. Public Interest; and
 - 29.6.12. Other meritorious considerations.
- 29.7. The MAO's statement or position regarding the presence of fraud, deceit, manipulation, willful neglect, deliberate, reckless disregard, or appropriateness of the offer of settlement or participation in a settlement conference shall not be construed by the proponent as bias or prejudgment of the MAO regardless of the views expressed. Neither shall the Commission be bound by such statement or

position.

29.8. *Submission of settlement to the commission.* The MAO shall present the offer of settlement of the Respondent to the Commission with its Recommendation Report; *Provided*, however, that if the MAO's recommendation is unfavorable, the same shall be made known in writing to the Respondent. The Respondent shall be given fifteen days (15) from receipt of the Notice to comment on the unfavorable recommendation of the MAO.

29.9. If the Commission rejects the offer of settlement, the Commission shall notify the Respondent in writing of the Commission's action and the offer of settlement be deemed withdrawn. The rejected offer shall not constitute part of the record in any proceedings against the Respondents.

If the Commission rejects the offer of settlement, the Commission shall notify the Respondent in writing of the Commission's action and the offer of settlement be deemed withdrawn. The rejected offer shall not constitute part of the record in any proceedings against the Respondents.

29.10. In the absence of any period stated in the Commission Resolution, the Respondent shall fully comply with the terms and conditions of the settlement within a period of fifteen (15) days upon receipt of a copy of the said Resolution.

29.11. In case the Respondents fail to fully comply with any of the terms of the settlement offer within the period provided; the Resolution of the Commission on the settlement shall be considered withdrawn and the investigation or proceedings against the proposer shall be reinstated.

29.12. *Applicability of these rules in adjudication stage.* The Commission may use the provisions of this Rule as guide in considering settlement offers made by a Respondent submitted to the Commission at the adjudication stage of the proceedings.

30. EXEMPTION FROM COMPULSORY NOTIFICATION OF CERTAIN JOINT VENTURE AGREEMENTS

30.1. *Purpose.* This _____ aims to establish and institute a framework to exempt joint ventures of private entities formed for a PPP project or between private and government entities for a JV project formed pursuant to the NEDA JV Guidelines ("Project"), consistent with the mandate of the PCC and the objectives of the BOT Law.

30.2. *Coverage.* This _____ shall apply to projects undertaken by agencies and instrumentalities of the government (each an Agency), pursuant to the BOT Law and its Implementing Rules and Regulations ("IRR") as well as to JV between private and government entities for a JV project formed pursuant to the NEDA

JV Guidelines, that is consistent with the mandate of the PCC.

- 30.3. For purposes of this _____, all capitalized terms shall have the same meaning ascribed in the PCA, the PCA-IRR, BOT Law, BOT Law IRR, and the NEDA JV Guidelines.
- 30.4. *Inputs to the Project Documents.* The PCC may provide inputs on the tender documents, feasibility study, draft Solicited, Unsolicited Contract or JV, project proposal, eligibility documents and other related documents for review (“Project Documents”). Particularly, the feasibility study submitted to the PCC shall include the following information:
 - 30.4.1. A description of the supply chain of the market/s affected by the Project;
 - 30.4.2. A description of the products or services to be provided through the Project;
 - 30.4.3. A description of the geographic or catchment area where the Project will operate;
 - 30.4.4. Identification of potential competitors (or entities that provide or may provide substitutable products or services with the Project) and their corresponding market shares;
 - 30.4.5. A description of the target users or consumers of the products or services to be provided through the Project (i.e., demographics);
 - 30.4.6. Policy and regulatory framework of the market/s affected by the Project;
 - 30.4.7. Alternatives available to suppliers and users of the Project;
 - 30.4.8. Barriers to entry into the market/s affected by the Project; and
 - 30.4.9. Other information on industry structure and prevailing conditions of the market.
- 30.5. The PCC may provide inputs on how the project may affect competition in the market(s) affected by the Project, using the substantive standards and practices as provided under the PCC Merger Review Guidelines and other PCC related issuances.
- 30.6. In addition to its inputs to the Project Documents, PCC may require undertakings to be complied with by the prospective bidders, likewise to be incorporated in the Project Documents (“Undertakings”). The Undertakings shall refer to a list of commitments that the PCC requires to be complied with by the prospective

bidders, which will address any potential competition issues identified by the PCC.

- 30.7. During the Review Period, PCC may request additional information or documents from the Agency, the PPP Center or the Original Proponent, as necessary. Pursuant to Section 2.1 of the PPP Center-PCC MOA, the PPP Center, upon the request of PCC, shall facilitate obtaining the clearance of the relevant Agencies to provide the latter access to information and documents within the former's custody, which are relevant and necessary to the effective enforcement of the objectives of this Circular.
- 30.8. Exemption from Compulsory Notification. – Within seven (7) business days, [or fifteen (15) business days, for solicited proposals] from submission to the PCC of the final Project Documents evidencing observance of the above procedures and adoption of PCC's inputs, counted from the date of submission of the last Project Document, the PCC shall issue a Certificate of Project Exemption in favor of the prospective winning private sector participant; Provided that, should PCC require Undertakings to be executed by prospective bidders pursuant to its inputs, the PCC shall issue the Certificate of Project Exemption within seven (7) business days, (or ten (10) days, for solicited proposals), from submission by the prospective bidders of their executed Undertakings; Provided further, that the period for issuance of the Certificate of Project Exemption shall start to run from the date of last submission by a prospective bidder.
- 30.9. The PCC may, upon its discretion, commence a motu proprio review of the JV project if a winning private sector participant violates any of its commitments under its Undertakings to the PCC.
- 30.10. Application of compulsory notification and merger review under the PCA. In cases where the PCC's inputs were not implemented by the Agency, or was secured on the basis of fraud or false material information, or where the required Undertakings were not duly executed by the prospective bidders, or in the event of substantial changes to the JV project subsequent to the PCC's review, the PCC shall not be precluded from exercising its mandate to: (a) require the Agency and the winning private sector participant to notify; and (b) conduct full review of the JV transaction.
- 30.10.1. The Agency and the Project Proponent shall have the continuing obligation to inform the Commission of substantial modifications to the transaction, in accordance with Section ___ of these rules.
- 30.11. Applications filed beyond the periods provided under Section ___ of this Circular are not qualified for exemption from compulsory notification under the PCA and the PCA-IRR.

- 30.12. Unsuccessful negotiation or modifications. In case of an unsuccessful negotiation or substitution of any of the members of an original proponent or if the Negotiated JV project is bid out for competitive selection or the Agency accepts a new Negotiated JV project, the Agency must apply for a new Certificate of Project Exemption observing the relevant PCC issuances.
- 30.13. *Monitoring and reporting of compliance.* The PCC, with the assistance of the PPP Center, shall monitor compliance by the Agency and winning Project Proponent to the terms and conditions of their contract, particularly its provisions which may affect competition in the Philippine markets.
- 30.14. The PCC may require the Agency and the winning Project Proponent, as the case may be, to submit periodic reports or conduct separate, independent inspections to ascertain compliance with the PCA, its implementing Rules and regulations and other issuances relating to competition and prohibition of anti-competitive conduct.

A. Solicited Public-Private Partnership (PPP) Projects

- 30.15. Procedure of review. Agencies may seek exemption from compulsory notification in behalf of their Solicited Project's prospective bidders by filing an application for a Certificate of Project Exemption from the PCC.
- 30.16. In reviewing the Solicited Project, the PCC, through the MAO, shall review:
- 30.16.1. The nature and scope of the project;
 - 30.16.2. The bidding design and process; and
 - 30.16.3. SLC concerns that may arise from the nature and/or composition of prospective bidders and the winning Project Proponent
- 30.17. If necessary, the Commission shall render advisory opinion/s and require undertakings.
- 30.18. To qualify for the exemption, the application shall be made prior to the Project Development Stage. The PCC, through the MAO, shall review the project and provide its inputs under the Project Procurement Stage for a period not exceeding thirty (30) calendar days from receipt of complete documents and information. However, if the application is made after Project Development Stage but prior to the Project Procurement Stage, the PCC may allow the application to proceed, provided that it will be entitled to a total of sixty (60) days to provide its inputs under Project Procurement Stage.
- 30.19. The processing of the PPP project by the Agency and the PPP Center shall continue while the PCC's review is ongoing.

- 30.20. In cases where PCC finds that the documents submitted by the Agency are insufficient for a thorough review of the project, PCC, through the MAO, may request additional information or documents from the Agency or the PPP Center or the Project Proponent, as necessary.
- 30.21. Pursuant to Section 2.1 of the PPP Center-PCC MOU, the PPP Center, upon the request of PCC, shall facilitate obtaining the clearance of the relevant Agencies to provide the latter access to information and documents within the farmer's custody, which are relevant and necessary to the effective enforcement of the objectives of these guidelines.

B. [Unsolicited Public-Private Partnership (PPP) Projects]

- 30.22. *Procedure of Review.* Agencies may seek exemption from compulsory notification in behalf of the Original Proponent ("OP") and prospective bidders (collectively, prospective bidders) by filing an application for a Certificate of Project Exemption with the PCC, subject to PCC's review of the USP in terms of: (1) the nature and scope of the project; (2) the bidding design and process; and (3) competition concerns that may arise from the nature and/or composition of the prospective bidders or the winning Project Proponent, and, if necessary, the PCC shall render advisory opinion/s and require undertakings to address competition concerns, if any.
- 30.23. To order to qualify for the exemption, the application shall be made any time from the commencement of the negotiations with the Original Proponent but prior to the issuance of a Certificate of Successful Negotiation under Section 10.8 of the BOT-IRR.
- 30.24. After receipt of an Agency's application, the PCC shall determine whether all Project Documents have been submitted. Upon complete submission by the Agency of all the Project Documents, the PCC shall issue a Notice of Sufficiency within seven (7) business days stating that it shall commence review of the application on the next business day. Otherwise, PCC shall issue a notice to the concerned Agency of any additional documents or information that must be submitted with the application.
- 30.25. PCC shall review the application and Project Documents, and provide its inputs for a period not exceeding twenty (20) business days from issuance of the Notice of Sufficiency ("Review Period"). However, notwithstanding the expiration of the Review Period, PCC shall be given ten (10) calendar days from receipt to provide its inputs to the most recent draft Unsolicited Contract under Section 10.9 of the BOT-IRR.
- 30.26. The processing of the USP by the Agency shall continue while the PCC's review is ongoing. The Agency may, at any stage, consult with the PCC on matters

affecting competition in the markets affected by the USP.

C. NEDA JV Guidelines

- 30.27. *Procedure of Review.* – Agencies may seek exemption from compulsory notification on behalf of their prospective bidders or proponent by filing an application for a Certificate of Project Exemption from the PCC.
- 30.28. The PCC, through the MAO, shall review the JV project in terms of:
- 30.28.1. the nature and scope of the JV project;
 - 30.28.2. the bidding design and process; and
 - 30.28.3. competition concerns that may arise from the nature and/or composition of prospective bidders, original proponent, comparative proponents (collectively, “prospective bidders”) or the winning private sector participant, and, if necessary, the PCC shall render advisory opinion/s and require undertakings to address competition concerns, if any.
- 30.29. To qualify for the exemption, the application shall be made:
- 30.29.1. For projects under Competitive Selection process – prior to the issuance of the Invitation to Apply for Eligibility and to Submit a Proposal;
 - 30.29.2. For Negotiated JV projects – prior to the issuance of Certification of Successful Negotiation or Conferment of Original Proponent (“OP”) Status.
- 30.30. After receipt of an Agency’s application, the PCC, through the MAO, shall determine whether all Project Documents have been submitted. Upon complete submission by the Agency of all the Project Documents, PCC shall issue a Notice of Sufficiency within seven (7) business days stating that it shall commence review of the application on the next business day. Otherwise, PCC shall issue a notice to the concerned Agency of any additional documents or information that must be submitted with the application.
- 30.31. The PCC shall review the application and Project Documents and provide its inputs for a period not exceeding twenty (20) business days from issuance of the Notice of Sufficiency (“Review Period”). The processing of the JV project by the Agency shall continue while the PCC’s review is ongoing. The Agency may, at any stage, consult with the PCC on matters affecting competition in the markets affected by the JV project.

31. MISCELLANEOUS PROVISIONS

- 31.1. *Applicability.* These Rules and any amendment to these Rules shall apply retroactively to all existing merger cases and all investigations of all violations that occurred or were alleged to have occurred prior to the Rules taking effect and investigations pending before the Commission when the Rules are or the amendment is adopted, except that anything already done need not be redone to comply with the Rules or with the amendment
- 31.2. *Separability Clause.* If any part or provision of these Rules is declared unconstitutional or illegal, the other parts or provisions shall remain valid.
- 31.3. *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.
- 31.4. *Effectivity.* These Rules shall take effect fifteen (15) days after publication in a newspaper of general circulation.

ANNEX __. Pre-merger Exchange of Information

1. To prevent inappropriate dissemination of Confidential Information during the merger review process, and to safeguard competition in the event the merger or acquisition does not take place, is delayed or modified, the PCC prescribes the following measures to guide the notifying parties:
 - 1.1.1. Notifying parties are strongly discouraged from consulting or employing the same counsel regarding a Transaction, including the preparation of the Notification Forms and any other submissions to the PCC.
 - 1.1.2. Notifying parties should undertake an assessment if it should engage the same counsel to represent them in their pre-merger activities and filings with the PCC. Counsels may likewise find it useful to evaluate if there is a necessity to avoid conflicts of interest in representing competitors at the same time, for the same transaction, and handling their respective competitively significant information.
 - 1.1.3. Authorized representatives and contact persons designated by a notifying party in its Form must be different and independent from those designated by the other notifying party.
 - 1.1.4. Information necessary for due diligence must be narrowly tailored and reasonably related to a specific due diligence or pre-merger integration planning issue.
 - 1.1.5. If Confidential Information must be exchanged for due diligence and pre-merger integration planning, parties are advised to employ independent third-party consultants bound by non-disclosure agreement to limit the dissemination and use of that information within the parties' respective businesses teams involved in the merger. The group of individuals ("clean team") who shall assemble, review, and analyze sensitive and other confidential data under certain protocols and prior to regulatory approval or consummation of the merger should not include or share Confidential Information with any personnel responsible for competitive planning, procurement, sales, pricing, or strategy.
 - 1.1.6. Personnel who will be granted access to Confidential Information must be properly identified and strictly monitored and sign a Non-Disclosure Agreement.
2. Should counsel discover sharing of Confidential Information not in accordance with these guidelines during the waiting period, the said counsel should instruct the

parties to stop the information exchange immediately and inform the PCC on how the information was used, and the extent of the information exchanged.

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