

On the Adjustment of the Thresholds for Compulsory Notification of Mergers and Acquisitions



The Philippine Competition Act (Section 17) requires that mergers and acquisitions (M&As) with transaction values exceeding one billion pesos (₱1,000,000,000.00) be notified to the Philippine Competition Commission (Commission) prior to the consummation of the transaction.

Under Section 12 (b) and Section 19, the Commission is authorized to determine thresholds for notification. Further, Section 17 (par. 1) provides the Commission the power to promulgate other criteria for notification. By virtue of these enumerated powers, the Commission conducted a review to determine whether the current one-billion peso notification threshold:

- » allows for the review of M&As that are more likely to pose harm on the market while excluding those that are less likely to do so;
- » reflects economic growth and inflation over the years, both of which increase the nominal value of businesses; and
- » covers a rational number of transactions over which the Commission can effectively implement its merger policy, given its current limited resources.

Section 3 of the Implementing Rules and Regulations (IRR) defines transaction value under Section 17 of the Act on the basis of:

- » the value of the assets or revenues of the acquired entity (“Size of Transaction”); and
- » the value of assets or revenues of the Ultimate Parent Entity (UPE), including entities it controls, of at least one of the parties (“Size of Party/ Person”).

In accordance with the Act, the IRR sets the Size of Transaction (SoT) and Size of Party/Person (SoP) thresholds at one billion pesos.

Upon review, the Commission has deemed it reasonable to increase the values of the notification thresholds. Beginning on 20 March 2018, the SoT threshold will be increased to two (2) billion pesos, and the SoP threshold will be increased to five (5) billion pesos.

In addition, beginning on 1 March 2019, and for every subsequent year, the notification thresholds will be indexed based on the official estimates by the Philippine Statistics Authority (PSA) of the nominal Gross Domestic Product (GDP) growth for the previous calendar year.

The following are the bases for the new notification thresholds:

1. Actual notifications to date show that M&As with SoT values below two (2) billion pesos and whose parties have SoP values less than five (5) billion pesos are characteristically less likely to raise competition concerns.

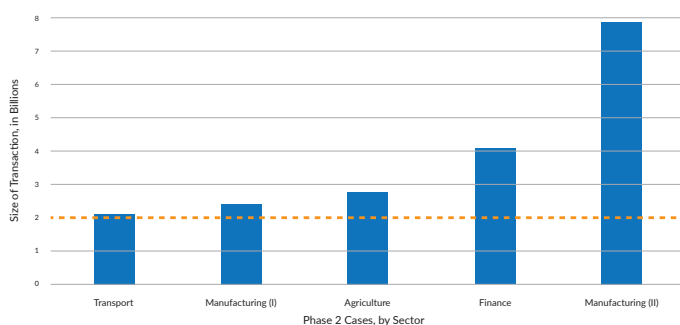
In 2017, the Commission reviewed 46 proposed M&As.¹ Of these, 15 proposed M&As (33 percent) had an SoT below 2 billion pesos or an SoP below 5 billion pesos. The data further indicate that these transactions of relatively smaller SoT and SoP tend to be those that are, by nature, less likely to raise competition concerns. The parties to these transactions either (i) had no horizontal or vertical overlaps, (ii) operated within relevant markets that are global, or (iii) would have relatively small market shares post-merger. These 15 transactions were all cleared in Phase I, with the exception of one (1) transaction which was reviewed in Phase II, then subsequently cleared with the offer of voluntary commitments.

2. Past transactions that had entered Phase II review had SoT values within the 2 to 8 billion peso range, suggesting that such higher SoT values could indicate potential harm to the market.

Under the PCC Merger Review Procedures, if after the conduct of a Phase I review, the Commission is unable to conclude that a transaction does not raise competition concerns, the transaction enters a Phase II review. This allows the Commission to request more information, to facilitate a more in-depth assessment of a proposed transaction as to whether this could substantially lessen competition.

Figure 1, which plots the five (5) proposed M&As that have entered a Phase II review by SoT value, suggests that an SoT threshold above two (2) billion pesos risks the loss of opportunity for the Commission to address through mandatory review competition concerns posed by some potentially harmful transactions.

Figure 1. Size of Transaction of M&As that underwent Phase II Review, 2017



3. Setting the SoP threshold higher than the SoT threshold allows for a more effective filter of notified transactions.

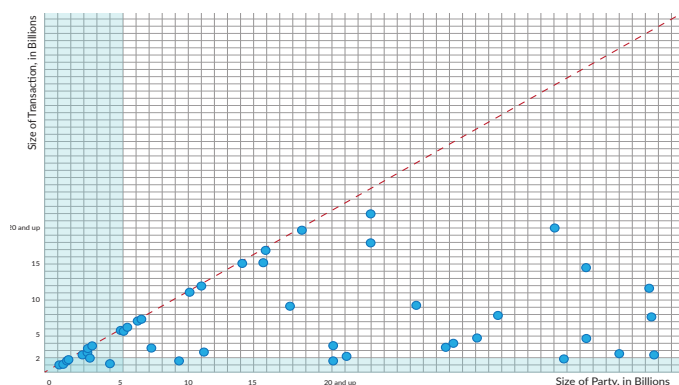
Figure 2, which plots transactions according to the SoP and SoT values, shows that all transactions fall below the red diagonal line, where SoP and SoT values are equal.

This indicates that all 2017 transactions had SoP values equal to or greater than SoT values. In fact, SoP values often significantly exceed SoT values.

Furthermore, Figure 2 shows that setting the SoP threshold to two (2) billion pesos, at the same level as the SoT threshold, renders the SoP threshold as an ineffective filter. By setting the SoP threshold higher than the SoT threshold, the Commission is able to ensure that compulsory notification only covers transactions that involve large entities, and consequently, are more likely to raise competition concerns.

An SoP threshold of five (5) billion pesos rather than at two (2) billion pesos filters an additional number of transactions that a two-billion peso SoT threshold alone would not achieve.

Figure 2. M&As Notified to the PCC by Size of Party and Size of Transaction, 2017



Note: shaded region shows the M&As that fall below the new notification thresholds

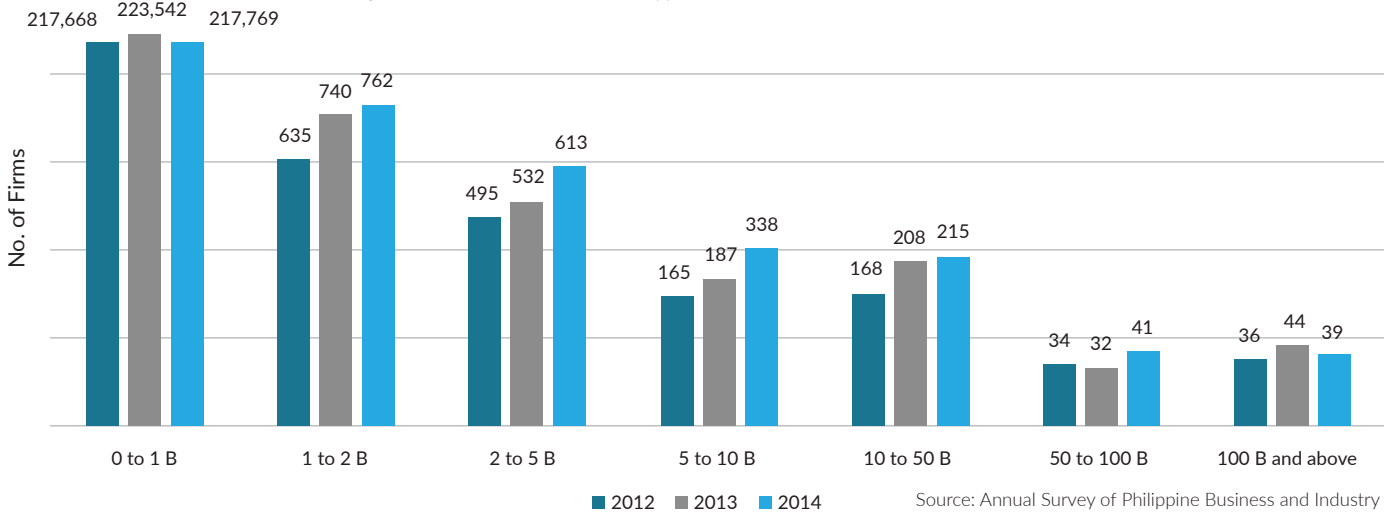
4. The annual adjustment based on nominal GDP growth ensures that the thresholds maintain their real value over time.

Each year, with economic growth and inflation, a greater number of businesses will breach the threshold if left unadjusted, even if those businesses are not growing in real terms.

As shown in Figure 3, about 1,500 businesses owned assets valued over one billion pesos in 2012. This number has grown to 1,750 businesses in 2013, and 2,000 businesses in 2014. This growth in assets could be due to both real business expansions as well as increases in price. Given the recent performance of the economy, the upward trend of business growth shown in Figure 3 continues to the present. As a result, the proportion of firms that would be subject

¹Based on transactions that were notified in 2017 and proceeded to Phase I review. Related transactions are counted as one.

Figure 3. Asset Distribution of All Philippine Businesses (in billion PhP), 2012 to 2014



to compulsory notification has increased from 0.7 to 0.9 percent. Under the new thresholds, only approximately 0.6 percent of businesses will now be subject to compulsory notification.

A well-designed threshold must be reflective of the country's economic condition, such that the scope of merger control remains faithful to the intent of the law.

5. The new notification thresholds will consequently allow for the efficient use of Commission resources.

Assuming the same profile of M&As this year, the Commission expects a 33 percent reduction in the intake of notifications. This will allow the Commission to deploy resources towards the effective implementation of a holistic merger control policy. In fulfilling its mandate of prohibiting anti-competitive M&As, the Commission has, in the past, largely focused its resources on compulsory notification. Fewer notified M&As would also allow the Commission to engage in other equally important elements of a merger control regime. These include the dissemination of information and engagement of stakeholders, which help foster a culture of competition. In addition, the Commission can increase efforts in market monitoring, policy advocacy, competition enforcement, and conduct of market studies.

Conclusion

The Commission finds that it is reasonable to increase the notification thresholds provided by the law. The Commission will continue to monitor developments in the market, with focus on the effects of these new notification thresholds. One particular consideration is the effectivity of the new notification thresholds in light of the archipelagic nature of the country, which may give rise to sub-national relevant markets. A transaction value of two (2) billion pesos may seem relatively small in a national market, but may be considered large in terms of smaller geographic markets.

While increasing notification thresholds is one way to streamline the intake of cases, the Commission is considering the use of supplemental methods to identify transactions which are unlikely to pose competition concerns. The law provides the Commission the authority to determine criteria for certain transactions to be exempt from compulsory notification. Notification thresholds rely on the SoT to predict the prospect of market harm. The Commission, however, remains cognizant of and will continue to examine other equally effective predictors of harm to market competition.

All data in the graphs of this Policy Statement are from Discussion Paper No. 18-01 of the PCC.



Ensuring businesses compete and consumers benefit

📍 25th Floor Vertis North Corporate Center 1
North Avenue, Quezon City 1105

✉ queries@phcc.gov.ph
📘 www.facebook.com/CompetitionPH
🐦 www.twitter.com/CompetitionPH
🌐 www.phcc.gov.ph