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MERGERS AND ACQUISITIONS OFFICE,

Complainant,

- versus -

CITY SAVINGS BANK, INC. and BANGKO KABAYAN, INC.,

Respondents.

x---------- x

PCC Case No. M-2020-001
For: Violation of Section 17 of the Philippine Competition Act, and Sections 2.1 of the PCC Rules on Merger Procedure

COMMISSION DECISION NO. 06-M-029/2020

STATEMENT OF THE CASE

This case involves the alleged violation of City Savings Bank, Inc. ("City Savings") and Bangko Kabayan, Inc. ("Bangko Kabayan") (collectively, "Respondents") of the compulsory notification requirement provided under the Philippine Competition Act ("PCA") and the Philippine Competition Commission's (the "Commission") Rules on Merger Procedure ("Merger Rules") with respect to the proposed acquisition by City Savings of 49% of the total outstanding shares of Bangko Kabayan (the "Transaction").[1]

City Savings is a domestic corporation licensed as a thrift bank by the Bangko Sentral ng Pilipinas ("BSP") which primarily engages in granting teacher's loans.[2] It is a thrift-banking arm of the Union Bank of the Philippines ("UBP"), which is the ultimate parent entity of City Savings and UBP Investments Corporation ("UBPIC") (collectively, the "Union Bank Notifying Group").

Bangko Kabayan is a domestic corporation licensed as a thrift bank by the BSP which provides financial services to farmers, employees, entrepreneurs, commercial, manufacturing and industrial enterprises and other persons or entities that require financial intermediation.[3] Based on its 2018 Audited Financial Statement ("2018 AFS"), Bangko Kabayan has assets valued at PhP 3,098,890,120.00.[4]

On 6 February 2019, a Share Purchase Agreement (the "Agreement") for the sale of a total of 1,801,922 common shares, or 49% of the total outstanding shares of Bangko Kabayan, was executed between Francis S. Ganzon, for himself and as representative of the controlling stockholders of Bangko Kabayan, and City Savings and Union

1 Share Purchase Agreement, par. 2.1 (B) attached as Annex A to the Complaint.
2 Complaint, par. 1.
3 Complaint, par. 2.
4 2018 AFS of Bangko Kabayan attached as Annex E to the Complaint.

Properties Inc.[5] As a result of the agreement, UBP will now own 70% of Bangko Kabayan's outstanding shares through City Savings and UBPIC. The total transaction value based on Bangko Kabayan's 2018 AFS is PhP 3,098,890,120.00.[6]

On 21 October 2019, Bangko Kabayan, and City Savings and UBPIC on behalf of UBP, filed with the Commission their Merger Notification Forms pertaining to the Transaction.

On 7 January 2020, the Commission received a *Complaint* (the "*Complaint*") from the Mergers and Acquisitions Office ("MAO"), alleging that the Respondents violated Section 17 of the PCA and Section 2.1 of the Merger Rules for their failure to comply with the requirement to file the notification within 30 days from the execution of the definitive agreement. According to the MAO, the Respondents filed their Merger Notification Forms two hundred fifty-seven (257) days from the lapse of the notification period.[7]

On 9 January 2020, the Commission issued a *Notice* directing the Respondents to file their respective verified comments to the *Complaint* within fifteen (15) days from receipt of the *Notice*.[8]

On 17 January 2020, the Commission received Respondent City Savings' *Comment with Manifestation and Motion* ("City Savings' *Comment*") where it manifested that it will no longer contest the recommended imposition of the penalty. City Savings moved that a decision be rendered by the Commission on the basis of the *Complaint* and that the relevant payment order be issued accordingly.[9]

On 24 January 2020, the Commission received Respondent Bangko Kabayan's *Verified Comment* dated 21 January 2020, where it disagreed with the MAO's statement in the *Complaint* that Bangko Kabayan was a party to the Agreement[10] and prayed that the Complaint against it be dismissed. However, without admitting any liability, Bangko Kabayan submitted that a judgment be rendered in accordance with City Savings' *Comment*, and that a payment order be issued against City Savings. [11]

The Commission now resolves the Complaint based on the foregoing submissions.

THE ISSUE

Whether Bangko Kabayan is an entity required to notify the Commission of the Transaction under Section 17 of the PCA.

DISCUSSION

The Commission finds no reason to depart from the MAO's findings that the Respondents violated Section 17 of the PCA and Section 2.1 of the Merger Rules for

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5 Section 2.1 (B) of the Share Purchase Agreement attached as Annex A to the Complaint.
6 Annex E of the Complaint.
7 Final Report, par. 13.
8 PCC Case No. M-2020-001, Notice dated 9 January 2019.
9 City Savings Bank, Inc.'s Comment with Manifestation and Motion, pars. 3 and 4.
10 Complaint, par. 3.
11 Bangko Kabayan, Inc.'s Verified Comment, par. 4.

failing to notify the Commission about the Agreement within the prescribed 30-day period.

Bangko Kabayan is an entity required to Notify the Transaction with the PCC

Bangko Kabayan in its *Verified Comment* argues that it is not obligated to notify because only parties to a merger or acquisition agreement are required to do so, as provided under Section 17 of the PCA and Section 2.1 of the Merger Rules. Thus, since Bangko Kabayan is not a party to the Agreement, it cannot be expected to file the Notification Forms with the Commission.

Respondent Bangko Kabayan's argument is without merit.

Rule 4, Section 2 of the PCA Implementing Rules and Regulations ("PCA IRR") provides guidance on who has the responsibility of notifying the Commission of the Transaction:

> a) **Parties to a merger or acquisition that satisfy the thresholds in Section 3 of this Rule are required to notify the Commission** before the execution of the definitive agreements relating to the transaction.
>
> (b) If notice to the Commission is required for a merger or acquisition, then **all acquiring and acquired pre-acquisition ultimate parent entities or any entity authorized by the ultimate parent entity to file notification on its behalf must each submit a Notification Form** (the "Form") and comply with the procedure set forth in Section 5 of this Rule. xxx

Rule 4, Section 5 of the PCA IRR further provides:

> **Each party to a merger or acquisition required to give notification to the Commission shall submit the Notification Form and pay such applicable fees** as may be determined by the Commission.

Bangko Kabayan is the entity whose shares are being acquired under this transaction, and as such, is the acquired entity referred to in Section 2 above. As discussed below, it is the entity whose revenues and assets are assessed for purposes of determining whether the acquired entity meets the thresholds for notification set forth under the law and the IRR. This has consistently been the interpretation and approach adopted and practiced by the Commission. Further, Bangko Kabayan cannot be said to have an ultimate parent entity because its shares are owned by individual shareholders. Under par. (m) of Rule 2 of the IRR, "ultimate parent entity" is defined to be a juridical entity that controls a party, i.e., either the acquiring or acquired party, to the transaction. Hence, the individual shareholders cannot be considered as the ultimate parent entities of Bangko Kabayan. In this case, it is Bangko Kabayan which is itself the ultimate parent entity being acquired, and subject to the notification requirement of par.(b) cited above.

As alluded to in the preceding paragraph, while it is true that Bangko Kabayan is not an actual party to the Agreement, the Commission holds that Bangko Kabayan must still notify, in accordance with Section 3 of the same Rule.

Under Rule 4, Section 3 of the PCA IRR, as amended by PCC Memorandum Circular No. 18-001, parties to a merger or acquisition are required to notify the Commission if they satisfy both the Size of Party Test and the Size of Transaction Test. Moreover, parties are likewise obliged to notify if the acquisition results in the acquiring entity obtaining thirty-five percent (35%) of the acquired entity's outstanding shares (the "Control Threshold"):

> Parties to a merger or acquisition are required to provide notification when:
>
> (a) The aggregate annual gross revenues in, into or from the Philippines, or value of the assets in the Philippines of the ultimate parent entity of at least one of the acquiring or acquired entities, including that of all entities that the ultimate parent entity controls, directly or indirectly, exceeds Five Billion Pesos (PhP 5,000,000,000.00).
>
> (b)The value of the transaction exceeds Two Billion Pesos (PhP 2,000,000,000.00), as determined in subsections (1), (2), (3) or (4), as the case may be.
>
> xxx
>
> (4) With respect to a proposed acquisition of (i) voting shares of a corporation or of (ii) an interest in a non-corporate entity
>
> i. If the aggregate value of the assets in the Philippines that are owned by the corporation or non-corporate entity or by entities it controls, other than assets that are shares of any of those corporations, exceed Two Billion Pesos (PhP2,000,000,000.00);
>
> xxx
>
> and
>
> iii. If
>
> A. as a result of the proposed 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.
>
> xxx

In order to establish the Size of Party Test, the aggregate annual gross revenues of, among others, the acquired entity must be determined. On the other hand, the Size of

Transaction Test is established by looking at the aggregate value of the assets in the Philippines of the acquired entity. The Commission notes that in determining the satisfactions of these tests, the relevant or material interests are those of the merging entities as a whole, not that of each shareholder.

Additionally, the Control Threshold looks into the resulting percentage of voting shares in the acquired entity by the acquiring entity. The determination of these thresholds exists to allow the examination of the interests and control of each entity in order for the Commission to anticipate the effect of the transaction on the market.

Based on these tests, Bangko Kabayan is effectively the acquired entity in this Transaction:

First, Bangko Kabayan's shares are the subject of the Agreement. It should, therefore, be included in determining whether the Transaction has reached the mandatory notification threshold.

Second, based on the Agreement, 49% of Bangko Kabayan's shares were sold by its shareholders to City Savings, thereby increasing UBP's shares to 70%. This percentage clearly satisfies the notification threshold test under Rule 4, Section 3 (4) (iii) (A).

It must be noted at this point that Bangko Kabayan was clearly aware of its responsibility as the acquired entity, together with the acquiring entity, to notify the Commission of the Transaction as it filed, together with the Union Bank Notifying Group, Merger Notification Forms on 21 October 2019.[12] More so, Bangko Kabayan averred in its Explanation Letter dated 25 November 2019 to the MAO that:

> "... then BK had up to 21 October 2019 within which to submit the Notification Forms to the Commission. Considering that BK submitted the Notification Forms on 21 October 2019, then BK is deemed to have complied with the notification requirement under the Merger Rules."[13]

To subscribe to Respondent Bangko Kabayan's argument that it is not a party to the acquisition agreement negates the very purpose of the thresholds set by the PCA and its rules and regulations. The PCA and the PCA IRR do not contemplate a situation where the Commission assesses each individual shareholder's transaction but considers the effect of the transaction as a whole to the acquiring and acquired entities. Otherwise, the thresholds would be rendered virtually pointless and consequently, the power of the Commission to review mergers and acquisitions, ineffectual.

In view thereof, the Commission finds that the MAO correctly identified Bangko Kabayan as a proper party required to notify the Commission of the Transaction.

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12 1.6 and 1.7 of Bangko Kabayan's Notification Form.

13 Page 5 of Bangko Kabayan's Explanation Letter dated 25 November 2019 attached as Annex D to the Complaint.

Amount of Fine

Considering that the Respondents did not dispute the fact that the Merger Notification Forms were submitted beyond the notification period under Section 2.1 of the Merger Rules and the amount of penalty to be imposed, the same are hereby deemed admitted.

Section 16.2 of the Merger Rules provides a fine equivalent to ½ of 1% of 1% of the value of the transaction, which in no case shall exceed the statutory limit of Two Million Pesos (PhP2,000,000.00).

Considering the value of the transaction is PhP 3,098,890,120.00, then the imposable fine is One Hundred Fifty-Four Thousand Nine Hundred Forty-Four Pesos and Fifty-One Centavos (Php 154,944.51).

DISPOSITIVE PORTION

WHEREFORE, premises considered, Bangko Kabayan is deemed a party required to notify the Commission. Accordingly, the Commission finds City Savings Bank, Inc. and Bangko Kabayan, Inc. in violation of Section 17 of the Philippine Competition Act and Section 2.1 of the Rules on Merger Procedure. Respondents are hereby directed to pay solidarily a fine of **ONE HUNDRED FIFTY-FOUR THOUSAND NINE HUNDRED FORTY-FOUR PESOS AND FIFTY-ONE CENTAVOS (PhP 154,944.51)** within forty-five (45) days from the promulgation of this Decision.
SO ORDERED.

18 February 2020.

ARSENIO M. BALISACAN
Chairman

JOHANNES BENJAMIN R. BERNABE
Commissioner

AMABELLE C. ASUNCION
Commissioner

MACARIO R. DE CLARO, JR.
Commissioner

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