



Republic of the Philippines

## **PHILIPPINE COMPETITION COMMISSION**

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### **PCC MEMORANDUM CIRCULAR NO. 18-001**

Subject: **AMENDMENT OF RULE 4, SECTION 3 OF THE IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 10667**

**Whereas**, parties to a merger or acquisition with a transaction value that satisfies the thresholds under Section 17 of Republic Act No. 10667, otherwise known as the Philippine Competition Act (“Act”) and Rule 4, Section 3 of the Implementing Rules and Regulations of Republic Act No. 10667 (“IRR”) are required to notify the Commission within thirty (30) days from signing of definitive agreements relating to the merger or acquisition;

**Whereas**, Rule 4, Section 3 of the IRR provides that 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 One Billion Pesos (PhP 1,000,000,000.00), and (b) the value of the transaction exceeds One Billion Pesos (PhP 1,000,000,000.00), as determined in subsections (1), (2), (3) or (4) thereof;

**Whereas**, One Billion Pesos (PhP 1,000,000,000.00) was an initial threshold (“Initial Threshold”) provided in the Act and the IRR;

**Whereas**, Sections 12(b) and 19 of the Act respectively grant the Commission the power to determine thresholds for notification under Section 17 of the Act and adopt and publish regulations accordingly;

**Whereas**, the rationale for setting a threshold for notification is to ensure that mergers or acquisitions that are more likely to substantially lessen competition in the market for goods and services are subject to compulsory notification under Section 17 of the Act, and to exclude those that are less likely to pose competition concerns;

**Whereas**, the Commission recognizes the need to adjust the thresholds for notification to reflect inflation and economic growth;

**Whereas**, the Commission aims to set thresholds for notification that ensure the efficient use of its limited resources;

**Whereas**, based on the actual notifications to date, the Commission finds it reasonable to increase the Initial Threshold;

**Now, therefore**, pursuant to its authority under the Act, the Commission hereby amends the IRR as follows:

**Section 1.** Rule 4, Section 3 (a), (b), and (d) of the IRR is hereby amended to read as follows:

**“SECTION 3. Thresholds for compulsory notification.**

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)**.

and

(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.

(1) With respect to a proposed merger or acquisition of assets in the Philippines, if either

i. the aggregate value of the assets in the Philippines being acquired in the proposed transaction exceeds **Two Billion Pesos (PhP 2,000,000,000.00)**; or

ii. the gross revenues generated in the Philippines by assets acquired in the Philippines exceed **Two Billion Pesos (PhP 2,000,000,000.00)**.

(2) With respect to a proposed merger or acquisition of assets outside the Philippines, if

i. the aggregate value of the assets in the Philippines of the acquiring entity exceeds **Two Billion Pesos (PhP 2,000,000,000.00)**; and

ii. the gross revenues generated in or into the Philippines by those assets acquired outside the Philippines exceed **Two Billion Pesos (PhP 2,000,000,000.00)**.

(3) With respect to a proposed merger or acquisition of assets inside and outside the Philippines, if

i. the aggregate value of the assets in the Philippines of the acquiring entity exceeds **Two Billion Pesos (PhP 2,000,000,000.00)**; and

ii. 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 **Two Billion Pesos (PhP 2,000,000,000.00)**.

(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 (PhP 2,000,000,000.00)**; or

ii. The gross revenues from sales in, into, or from the Philippines of the corporation or non-corporate entity or by entities it controls, exceed **Two Billion Pesos (PhP 2,000,000,000.00)**;

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;

or

B. as a result of the proposed 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.

(d) In a notifiable 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 **Two Billion Pesos (PhP 2,000,000,000.00)**, 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 **Two Billion Pesos (PhP 2,000,000,000.00)**.

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.”

**Section 2.** The revised thresholds for notification under Section 1 hereof shall apply to mergers or acquisitions the definitive agreements of which are executed after the effectivity of this Memorandum Circular.

The revised thresholds shall not apply to mergers or acquisitions pending review by the Commission; notifiable transactions consummated before the effectivity of this Memorandum Circular; and transactions already subject of a decision by the Commission.

**Section 3.** Unless otherwise modified or repealed by the Commission, the thresholds set out in Rule 4, Section 3 (a), (b) and (d) of the IRR as amended in Section 1 hereof shall be automatically adjusted commencing on March 1, 2019 and on March 1<sup>st</sup> of every succeeding year, using as index the Philippine Statistics Authority’s official estimate of the nominal Gross Domestic Product growth of the previous calendar year rounded up to the nearest hundred millions (e.g., PhP 2.14 B shall be rounded up to PhP 2.2B).

All mergers or acquisitions the definitive agreements of which are executed prior to the annual adjustment of thresholds contemplated herein are subject to the thresholds for notification that are applicable prior to the adjustment.

**Section 4.** This Memorandum Circular may be modified, amended, supplemented, or repealed, as may be deemed necessary and proper by the Commission.

**Section 5.** If any part or provision of this Memorandum Circular is declared unconstitutional or illegal, the other parts or provisions shall remain valid.

**Section 6.** This Memorandum Circular shall take effect fifteen (15) days from publication in a newspaper of general circulation.


Pasig City, Philippines, 1 March 2018.



**Arsenio M. Balisacan**  
Chairman



**Stella Luz A. Quimbo**  
Commissioner



**Johannes Benjamin R. Bernabe**  
Commissioner



**Amabelle C. Asuncion**  
Commissioner