



Republic of the Philippines

**PHILIPPINE COMPETITION COMMISSION**

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**PCC Memorandum Circular No. 17-001**  
**Series of 2017**

TO: **ALL CONCERNED**

SUBJECT: **DETERMINATION OF FINES FOR FAILURE TO COMPLY WITH  
MERGER NOTIFICATION REQUIREMENTS AND WAITING PERIODS**

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Whereas, the 2<sup>nd</sup> paragraph of Section 17, Chapter IV of R.A. 10667 otherwise known as the Philippine Competition Act (“Act”), in relation to Section 12(e) of the Act, and Section 2 and 3 (g), Rule 4 of the Rules and Regulations to Implement the Provisions of the Act (“Rules”), provide that parties to a merger or acquisition that meet the thresholds for compulsory notification under Rule 4 of the Rules (“covered entities”) are required to notify the Philippine Competition Commission (“Commission”) of their transaction and are prohibited from consummating the same during the period within which the Commission is reviewing the transaction (“waiting period”);

Whereas, in order to provide certainty and transparency to covered entities, the determination of the imposable amount of fines are hereby established;

Whereas, in establishing the framework for setting of fines, due regard is made to the circumstances attendant a particular case and the need to deter violations of the Act;

Now, therefore, pursuant to its authority under the Act, the Commission hereby issues the following Determination of Fines for Failure to Comply with the Notification Requirements and Waiting Periods provided under the Act and Rules (“Circular”);

**Section 1. Coverage.** This Circular applies to the failure of covered entities to notify the Commission and the violation of the waiting period provided under the Act and Rules (“Non-compliant Acts”). Fines and penalties provided under Section 29 of the Act shall be covered by a separate circular.

**Section 2. Basis of the Fine.** The fine is based on the value of the transaction which shall be set

with reference to the following, whichever is higher:

- (a) the aggregate value of the assets in the Philippines subject of the proposed transaction or owned by the acquired corporation, including entities it controls, or
- (b) the gross revenues generated by assets subject of the proposed transaction or from sales in, into, or from the Philippines of the acquired corporation, including entities it controls.

In calculating the value of (a) or (b), 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, including:

- i) the most recent audited financial statements, or
- ii) the last regularly prepared balance sheet or annual statement of income and expense.

**Section 3. Liable Entities.** The covered entities, their pre-acquisition ultimate parent entities, and their successors or assigns, shall be solidarily liable for the payment of the fines under this Circular.

**Section 4. 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 2 of this Circular, for each violation of Section 17 of the Act and Rule 4, Section 3 (g) of the Rules. Thereafter, if warranted by the circumstances attending the violation, the Commission may adjust such basic amount in the manner prescribed in Sections 5 and 6 hereof.

**Section 5. 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.

**Section 6. Factors affecting fines.**

- (a) **Aggravating circumstances.** The Commission may consider the following as aggravating circumstances, among others:
  - 1. Previous violation of the Act by the same acquiring or acquired entity(ies);
  - 2. Non-cooperation, interference, obstruction, or any attempt to delay or impede the investigation or review of the Commission, including the failure to comply with an order or issuance by the Commission;
  - 3. Continuing or committing other acts of consummation of the transaction after being informed of its failure to notify or after receipt of an issuance of a cease and desist order from the Commission;
  - 4. Giving incorrect, false or fabricated information.

(b) **Mitigating Circumstances.** The Commission may consider the following as mitigating circumstances, among others:

1. If the covered entities are able to provide evidence that they had ceased to perform acts constituting the violation prior to, or without, the intervention of the Commission;
2. Cooperation with the Commission during the conduct of the investigation or review beyond what is required under the Act and Rules;
3. Adequate steps have been taken by the covered entities with a view to ensuring compliance with the Commission's directives, orders or resolutions.

Section 7. **Procedure for Imposition of Fines.** Upon finding that an entity liable under Section 3 of this Circular has engaged in a Non-Compliant Act, such entity shall be provided adequate opportunity to submit its explanation to the Commission prior to the latter's determination of the imposable fine.


Section 8. **Definition of Terms.** Terms and phrases used but not defined under this Circular shall have the meanings assigned to them under the Rules.

Section 9. **Modifications.** This Circular may be modified, amended, supplemented, or repealed, as may be deemed necessary and proper by the Commission.

Section 10. **Effectivity.** This Circular shall take effect fifteen (15) days after publication in a newspaper of general circulation or in the Official Gazette.

Pasig City, Philippines.

February 13, 2017

  
**Arsenio M. Balisacan**  
Chairman