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What are mergers and acquisitions, and why are they important?

A merger occurs when two (2) or more firms join to form a single firm. Acquisitions refer to the purchase by one firm of shares of another firm.

Mergers and acquisitions can be good for consumers because they can enable businesses to operate more efficiently,

and bring the prices of their products down. They can result in economies of scale and scope, enable transfer of technologies, broaden access to capital, and increase productivity, which will in turn enhance the global competitiveness of Philippine companies.

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What are anti-competitive mergers and acquisitions?

ANTI-COMPETITIVE MERGERS AND ACQUISITIONS refer to merger or acquisition transactions that lead to a substantial lessening of competition, or significantly impede effective competition in the relevant market.

Simply put, there are mergers

and acquisitions that can lead to a market that is disadvantageous to consumers because they could be harmful to competition. In particular, some mergers, especially those that involve dominant companies, could potentially turn a competitive market into one that is not.

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How does the Philippine Competition Commission (PCC) deal with anti-competitive mergers and acquisitions?

The PCC is empowered by the Philippine Competition Act to review mergers and acquisitions in order to determine if these will significantly reduce competition in the market, leading to higher prices, fewer choices, and lower quality of goods and services.

If PCC determines that a given merger or acquisition could substantially prevent, restrict, or lessen competition in the market, it has the authority to prohibit, or impose conditions on mergers and acquisitions.

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Do companies have to submit all merger or acquisition agreements for review and approval by the PCC?

Under the Philippine Competition Act (PCA) and its Implementing Rules and Regulations, parties to an M&A agreement in which the notification threshold is breached must notify the PCC before consummating the transaction.

In line with PCC Memorandum Circular No. 18-001 released in 2018, the thresholds for compulsory notification of M&As will be adjusted annually based on the nominal gross domestic product (GDP) of the previous year.

Nonetheless, the Commission is empowered to issue supplementary rules or guidelines that identify other criteria (for example, increased market share in the relevant market in excess of minimum thresholds) that would trigger this notification requirement.

In these instances, the parties are not allowed to consummate their agreement without the approval of the Commission until 30 days after such notification.

Failure to comply with this requirement will render the merger or acquisition void and could subject the parties to an administrative fine of between 1% to 5% of the value of the transaction.

The Commission, motu proprio or on its own, may also review even those mergers and acquisitions that do not require notification, if such transactions could potentially be harmful to competition.

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How might the Commission undertake a review of a merger or acquisition agreement?

Such a review will involve rigorous economic analysis and investigation.

The Philippine Competition Commission will need to obtain relevant information and data from the parties to the merger, as well as third parties in the market (e.g. suppliers, customers). It may also generate such necessary information and data through its own resources.

The PCC will need to define the relevant market. It will look at the number of actual and potential players in that market, and their respective market shares, among others. In its analysis of the effect of a merger or acquisition on competition, other key factors that may be considered include:

- Number of competitors in a market: A market with only a handful of players will raise concern. Fewer players in the market will obviously have

an implication on the level of competition. Mergers that result in a lessening of the number of competitors in a market would concern the competition authority.

- Entry barriers: The higher the entry barriers are, the more circumspect a competition authority will be in approving a merger in a market with only a few players. Entry barriers may

come in the form of high costs of investment in entering the market, regulatory barriers, and ownership restrictions, among others.

- **Current level of competition:** Markets with a vibrant competition culture, with flexible consumers and competitors, can raise fewer concerns when reviewed. But a merger can cause a complete change of incentives for players. Even a market with “bubbling” competition can stagnate as a result of tacit collusion to form a merger.
- **Switching cost for consumers:** Both actual and perceived switching costs can be a barrier to entry and growth of existing and potential competitors. The higher the switching cost for consumers, the more concerns a merger will raise, as the flexibility of the market and the potential for new

entrants is limited. An example for high switching costs can be long-term agreements with consumers such as “exit-fines”, those typically signed by subscribers of cellular service suppliers or cable providers. These are not necessarily illegal, but they do affect how a merger or acquisition agreement between competitors will impact the market.

- **Eliminating a “Maverick”:** In markets where a new entrant has developed into a “maverick”—a creator of competition—there is an incentive for established players to try and remove the competitor by simply buying it. The result of such mergers is, in many cases, the “call of death” for competition. The new entrant created a vibrant market, resulting in reduced prices, and introduction of new products

and technologies from competitors.

Large existing players may find that simply buying the new entrant will get the lost customers and market share back. It also relieves pressure from making future investments in technological upgrades and improvements. This is convenient for competitors, but is a disadvantage for consumers.

In markets with few players, a merger between a large player and a maverick can be destructive to competition.

- **Potential for collusion:** If the merger results in fewer competitors with similar market shares, the potential for collusion, and therefore the threat to competition, is much higher.

