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PCC streamlines procedure for review of unsolicited PPP projects

The Philippine Competition Commission (PCC) has released yesterday the streamlined procedure in reviewing joint ventures formed for unsolicited Public-Private Partnership (PPP) projects.

In PCC Memorandum Circular No. 20-002, the PCC provided guidelines in exempting from compulsory merger notification unsolicited PPP projects undertaken pursuant to the Build-Operate-Transfer law. The circular shall take effect on 11 July 2020 or 15 days after its publication yesterday.

These new rules complement PCC's exemption rules for solicited PPP projects issued in July last year. Both rules are enabled by the Memorandum of Agreement between the PCC and PPP Center.

Prior to the circular, joint ventures of private entities formed for an unsolicited PPP project that meet the compulsory notification thresholds have to undergo full review by the PCC only after the implementing agency awards the project.

"Unsolicited PPP projects are critical in the government's strategy to accelerate needed infrastructure development. This circular ensures that the implementing agency, the PCC, and the PPP Center conduct their processes in parallel to fast-track the rollout of these projects," said PCC Chair Arsenio M. Balisacan.

Under the circular, implementing agencies may apply in behalf of the original proponent and prospective bidders for a Certificate of Project Exemption with the PCC. The application shall be made any time from the commencement of the negotiations with the original proponent but prior to the issuance of a Certificate of Successful Negotiation.

In this track, the PCC may provide inputs to the project documents (*i.e.*, tender documents, feasibility study, draft contract, project proposal, and eligibility documents) on how the unsolicited proposal may affect competition in the relevant markets. The PCC may also require undertakings from prospective bidders to address potential competition concerns.

Upon adoption of PCC's inputs in the final project documents, the PCC shall issue a Certificate of Project Exemption in favor of the prospective winning project proponent.

In case the agency fails to implement PCC's inputs, or the winning project proponent does not execute the required undertakings, or substantial changes to the project transpired after PCC's review, the PCC shall conduct a full merger review of the transaction. To ensure the competition safeguards are followed, the PCC shall monitor the project and may launch a *motu proprio* merger review if the winning project proponent violates any of its undertakings to the PCC.

(See PCC Memorandum Circular No. 2020-002 [here](#) and Commission Resolution No. 014-2020 [here](#).)

REFERENCE:

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