

## **PCC RULES ON EXPEDITED MERGER REVIEW (as of 16 October 2024)**

### **1. Coverage & Application**

- 1.1. These Rules on Expedited Merger Review are issued by the Philippine Competition Commission (the “**PCC**”), pursuant to Sections 12(b) and 16 of Republic Act No. 10667, otherwise known as the Philippine Competition Act (the “**Act**”) and Rule 4, Section 8 of the Implementing Rules and Regulations of Republic Act No. 10667 (the “**IRR**”).
- 1.2. These Rules on Expedited Merger Review prescribe the procedure for the notification and review of mergers and acquisitions qualified for expedited review.
- 1.3. The Rules on Merger Procedure and other issuances of the PCC shall apply in a suppletory character.
- 1.4. These Rules on Expedited Merger Review are issued to ensure the efficient use of the PCC’s limited resources and to facilitate the review of qualified cases that are less likely to pose competition concerns.
- 1.5. The term “**Merger**” or “**Transaction**” refers to mergers, acquisitions, or joint ventures notifiable to the PCC.
- 1.6. The term “**Expedited Review**” refers to a simplified type of review which does not observe the usual review periods<sup>1</sup> under the PCC Rules of Merger Procedure.
- 1.7. These Rules shall be liberally construed to effectively carry out the mandate of the PCC to penalize all forms of anti-competitive mergers and acquisitions.

### **2. Qualification and Eligibility.** Any of the following Mergers may qualify for Expedited Review:

- 2.1. There are no horizontal overlaps or vertical relationships (including complementary) between the Notifying Groups of the acquiring Entity and the acquired Entity;
- 2.2. The Merger is between foreign entities whose presence in the Philippines is through subsidiaries that act merely as business conduits including, but

<sup>1</sup> 30-day Phase 1 review period and 60-day Phase 2 review period.

not limited to, manufacturers, assemblers, testers, processors, or suppliers of products or services, at least ninety-five percent (95%) of whose services or products are exported to their subsidiaries, affiliates, or even to third parties; *Provided* that the remaining five percent (5%) of their products or services constitute a minimal<sup>2</sup> portion of products or services sold or supplied to the Philippines;

2.3. The Merger will result in the acquiring entity acquiring sole control of an entity over which it has joint control,<sup>3</sup> *Provided*, that the Acquiring Entity or any other entity within its Notifying Group is not operating in the same market as the joint venture entity; and

2.4. Joint ventures<sup>4</sup> formed primarily for the development of real estate.

### 3. Assessment of Eligibility/Qualification

3.1. A Transaction falling under any of the categories defined in Section 1.5 of these Rules qualify for expedited review. Prior to notification under these Rules, parties are strongly encouraged to request a Pre-Notification Consultation with the Mergers and Acquisitions Office ("**MAO**") in accordance with Rule 4, Section 4 of the IRR, by sending an e-mail request to [mergers@phcc.gov.ph](mailto:mergers@phcc.gov.ph).

3.2. Even if a transaction is qualified for Expedited Review, the parties may be required to file a regular notification form if the MAO determines that the transaction merits a full review to evaluate possible competition concerns. Likewise, parties to a Transaction that qualify for expedited merger review are not precluded from availing of the regular notification and merger review process.

### 4. Submission of Notifications of Transactions under Expedited Review

4.1. The ultimate parent entities ("**UPE**") of the acquiring and acquired entities in a Transaction qualified for expedited review, or any entity authorized by the UPE to file the notification on its behalf ("**Notifying Party**"), must each submit an accomplished Expedited Review Notification Form ("**Expedited Review Form**").<sup>5</sup>

4.2. Parties to a notifiable Transaction must submit their Expedited Review Forms within thirty (30) calendar days after the signing of definitive

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<sup>2</sup> "**Minimal**" shall be presumed to comprise of not more than 10% of total domestic sales in the Philippines. In this regard, parties shall submit studies or any relevant documents evidencing such.

<sup>3</sup> Joint control refers to the ability of the JV Partners to substantially influence or direct the actions or decisions of the joint venture, whether by contract, agency or otherwise. Also, see **PCC Guidelines on Notification of Joint Ventures** on other elements of joint control.

<sup>4</sup> A joint venture refers to a business arrangement whereby an entity or group of entities contribute capital, services, assets, or a combination of any or all of the foregoing, to undertake an investment activity or a specific project, where each entity shall have the right to direct and govern the policies in connection therewith, with the intention to share both profits and risks and losses subject to agreement by the entities (**Rule 2 (i) of the Philippine Competition Act Implementing Rules and Regulations**).

<sup>5</sup> See most recent version posted on the PCC website.

agreements<sup>6</sup> relating to the Merger (“**Notification Period**”), and prior to any acts of consummation.<sup>7</sup>

- 4.3. In case of justifiable circumstances, the parties may request the MAO in writing and no later than five (5) calendar days before the lapse of the Notification Period, for an extension to submit the Expedited Review Forms. The extension may only be granted once, and shall not exceed thirty (30) calendar days.
- 4.4. A party filing an Expedited Review Form must upload the same together with appendices electronically.
  - 4.4.1. To upload, the party must request access the PCC SharePoint Facility through the MAO E-Notification system.
  - 4.4.2. The electronic copy of the Expedited Review Form must be uploaded to the PCC SharePoint Facility with each attachment saved as a separate file, and each file name indicating the corresponding appendix number.
  - 4.4.3. The electronic copy of the Expedited Review Form must be saved in searchable PDF, Word, or spreadsheet format, in both protected and editable versions.
- 4.5. Within five (5) business days from electronic filing, the parties must submit the original hard copies of the Expedited Review Form and its appendices.
  - 4.5.1. The hard copy of the Expedited Review Form must be submitted together with an affidavit by the filing party's authorized signatory<sup>8</sup> certifying that the hard copies and the electronic copies are complete and accurate copies of each other.
  - 4.5.2. Hard copy submissions must be securely bound, with each attachment labelled and properly tabbed.
- 4.6. Upon submission by the parties of their Expedited Review Form, the MAO will determine the compliance with the following formal requirements:
  - 4.6.1. The Expedited Review Form is signed and certified by a general partner of a partnership, an officer or director of a corporation, or in the case of a natural person, the natural person or his/her legal representative;
  - 4.6.2. The Expedited Review Form is duly notarized;

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<sup>6</sup> A definitive agreement sets out the complete and final terms and conditions of a merger or acquisition, including the rights and obligations between or among the transacting parties. See **Clarificatory Note No. 16-001: Definitive Agreements and Binding Preliminary Agreements in Mergers & Acquisitions**.

<sup>7</sup> Under Clarificatory Note No. 16-001, a merger or acquisition is consummated when the parties have acted in exercise to their rights and obligations as transacting parties under the definitive agreement.

<sup>8</sup> In relation only to the affidavit required under Section 3.5.1 of these Rules, 'authorized signatory' may also include duly authorized external counsels and consultants who can certify to that the electronic and hard copies are complete and identical with each other.

- 4.6.3. In the case of a partnership or a corporation, the Expedited Review Form is accompanied by an original Secretary's Certificate or Special Power of Attorney, or its equivalent in foreign jurisdictions, issued by the pre-transaction UPE or the acquiring or acquired entity, naming the signatory of the Form as possessing actual authority to make the certification on behalf of the Notifying Party, and naming the persons authorized to file and represent them before the MAO and Commission;
- 4.6.4. The Expedited Review Form is accompanied by an original affidavit by the party's authorized signatory attesting to the fact that:
- 4.6.4.1. Each party has the intention of completing the agreement in good faith;
- 4.6.4.2. The information submitted is true, correct, and complete to the best of his/her personal knowledge or based on authentic records;
- 4.6.5. Documents executed abroad must be duly apostilled or authenticated by the Philippine embassy or consulate in the country of execution; and
- 4.6.6. The Expedited Review Form must be accompanied by a written consent signed by the parties' authorized signatories granting PCC staff permission to access the submitted documents and information outside the premises of the PCC.
- 4.7. The MAO shall not accept Expedited Review Forms that do not comply with all the formal requirements under Section 4.6 of these Rules, or Expedited Review Forms that are not substantially in the prescribed form. The non-acceptance of the Expedited Review Form shall result in the removal of the same from the PCC SharePoint Facility without prejudice to any subsequent re-filing by the parties.
- 4.8. Within two (2) business days from receipt of the electronic copies of the Expedited Review Forms of all notifying parties, the MAO shall verify if the Merger qualifies for expedited review and determine if the Expedited Review Forms and the information and documents submitted therewith are complete.
- 4.9. If the MAO determines that the Expedited Review Forms are sufficient and the Merger is qualified for expedited review, an Order of Payment directing the parties to pay the non-refundable filing fee in the amount of Three Hundred Fifty Thousand Pesos (PhP 350,000.00)<sup>9</sup> shall be sent to the party indicated in the Expedited Review Form.
- 4.10. Notifying parties must pay the filing fees within seven (7) business days from the issuance of the Order of Payment. Failure to do so shall result in the return of the Expedited Review Forms, without prejudice to re-filing.

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<sup>9</sup> Filing fee of PhP 346,500 payable to the Philippine Competition Commission, and legal research fund of PhP 3,500 payable to the PCC for the account of the University of the Philippines.

- 4.11.No filing fees shall be required for Expedited Review Forms re-submitted for the same Transaction for the following reasons:
- 4.11.1. The MAO determines that the Transaction should undergo the regular notification process; or
  - 4.11.2. The notifying parties opt to notify the same transaction under the regular notification process.
- 4.12.Parties which opt to re-submit are given a period of thirty (30) calendar days within which to notify the same Transaction.
- 4.13.The filing fee initially paid shall be applied towards the filing fee for regular notification.
- 4.14.The filing fees for notification may be adjusted by the Commission as it deems appropriate.
- 4.15.Expedited merger review shall commence on the next business day following the payment of filing fees. It shall be conducted within a period of fifteen (15) business days.
- 4.16.Within five (5) business days from the payment of the filing fees, the MAO will publish the abstract of the Transaction in the PCC Website and issue a call for comments.
- 4.17.Upon completion of MAO's review and a finding by the Commission that the Transaction will not result in a substantial lessening of competition ("**SLC**"), the Commission shall issue a clearance decision containing the following information:
- 4.17.1. Names of the acquiring and acquired entities, including their respective UPEs;
  - 4.17.2. Nature of the Transaction;
  - 4.17.3. Markets covered by the Transaction;
  - 4.17.4. An explanation or description of the identified markets; and
  - 4.17.5. A statement that the Merger is approved because it does not raise any competitive concerns and it falls within one or more grounds under the Rules on Expedited Merger.
- 4.18.If at any time during the review process, the PCC finds that any information or document required under the Expedited Review Form relevant or material to the PCC's review was withheld from the PCC, the parties shall be given a period of five (5) business days, subject to an extension of five (5) business days, to justify why the withholding of such information or document. If the PCC accepts the parties' explanation, it will require submission of the relevant information. Otherwise, no notification is

considered to have been made to the PCC, and the Expedited Review Forms shall be returned to the parties.

- 4.19. In the event that the information or document does not exist, is not in the custody of the authorized signatory, or cannot be accessed by the parties, and such would render it impossible for the submission of such information or document, a notarized undertaking must be made by the parties to that effect, signed by their respective authorized signatories.
- 4.20. In cases of substantial modification, the parties are required to submit within five (5) calendar days the modification or updates made on the transaction. If, as a result of the substantial modification or updates, the transaction is no longer qualified for expedited merger review, the parties shall be so informed and directed to file a regular notification.
- 4.21. If the PCC finds after completion of the Expedited Review that any information or document required under the Expedited Review Form which was relevant or material to the PCC's review has been withheld, or there were substantial modifications to the Transaction after clearance, the clearance decision shall be rendered void without prejudice to the imposition of penalties under Section 29 (c) of the PCA after due notice and hearing.

## **5. Where Notification is Deficient or does not Qualify for Expedited Review**

- 5.1. The Expedited Review Forms shall be returned for any of the following reasons:
  - 5.1.1. An Expedited Review Form and/or its appendices are deficient;
  - 5.1.2. Unjustified withholding of information or document, under Section 4.19 of these Rules;
  - 5.1.3. The Parties have not paid the filing fees; or
  - 5.1.4. The MAO has determined that the Merger does not qualify for Expedited Merger Review.
- 5.2. In case the Expedited Review Forms are returned, the MAO shall issue a Notice of Return stating the reason/s for the return.
- 5.3. No notification shall be considered to have been made upon issuance of the Notice of Return. Parties, however, are not precluded from filing another Expedited Review Form.
- 5.4. Only authorized representatives of the parties shall be allowed to claim the Expedited Review Form at the PCC Records Office by presenting a copy of the Notice of Return to the PCC Representative. If the claimant is a person other than the authorized representative of the parties, the claimant must submit an original copy of their proof of authority together with a photocopy of a government-issued ID, the original copy of which must likewise be presented for verification to the PCC Representative.

- 5.5. Notifying Parties that have submitted their Expedited Review Forms within the Notification Period will not be held liable for late notification under Section 17 of the Act if they re-submit their Expedited Review Forms beyond the Notification Period; *Provided*, that parties must re-submit their corrected and complete Expedited Review Forms prior to any act of consummation.

## **6. Withdrawal of Notification Forms**

- 6.1. Parties may withdraw their Expedited Review Forms any time during the Expedited Review period, except when (i) the assessment of the Transaction is submitted for approval of the Commission; and (ii) there has been a decision already rendered by the Commission.
- 6.2. The withdrawal of Expedited Review Forms shall be done through the PCC Client Appointment System (“**PCAS**”). External parties are required to secure an appointment through the PCAS at least two (2) business days before visiting the PCC Office.
- 6.3. The withdrawal of the Expedited Review Forms shall not preclude the MAO from making an assessment on the information and documents that have been previously submitted by the Parties.

## **7. Miscellaneous Provisions**

- 7.1. These Rules on Expedited Merger Review supersedes the 2019 Rules on Expedited Merger Review. These Rules shall apply prospectively to all notifiable Transactions qualified for expedited review and notified through the Expedited Review Form.
- 7.2. If any part or provision of these Rules is declared unconstitutional or illegal, the other parts or provisions shall remain valid.
- 7.3. These Rules shall take effect fifteen (15) calendar days after publication in a newspaper of general circulation.