
**EXPEDITED REVIEW NOTIFICATION FORM
FOR MERGERS AND ACQUISITIONS**

INSTRUCTIONS

GENERAL

The Expedited Review Notification Form (the “Form”) is required to be submitted pursuant to Rule 4 of the Implementing Rules and Regulations of Republic Act No. 10667 (the “Rules”) and the Rules on Expedited Merger Review of the Philippine Competition Commission (“PCC”).

Copies of the Form, these Instructions, Rules, and the PCC Rules on Expedited Merger Review are available at www.phcc.gov.ph.

Information

The central office for information and assistance concerning the Rules and the Form is:

MERGERS AND ACQUISITIONS OFFICE
Philippine Competition Commission
25/F Vertis North Corporate Center 1
North Avenue, Quezon City 1105
Phone: +632 7719-PCC [7719-722]
Email: mergers@phcc.gov.ph

Pre-Filing

At least two (2) days prior to the target submission date of the Forms and after pre-notification consultations (“PNC”) have been held with representatives of the MAO, Notifying parties must each inform the MAO through email of their intention to submit their respective Forms.

Filing

Notifying parties must submit the Form, along with all documentary attachments, to:

MERGERS AND ACQUISITIONS OFFICE
Philippine Competition Commission
25/F Vertis North Corporate Center 1
North Avenue, Quezon City 1105

Submissions will only be accepted from 8:00 a.m. to 5:00 p.m., Monday to Friday. Notifying parties must, however, **arrive before 3:00 p.m.** to allow the MAO to determine if the Forms, together with their attachments, being submitted by the notifying parties are complete and may be accepted.

Submissions must be bound (e.g., ring or spiral binding), properly tabbed, and printed on A4-sized paper. Submissions must comply with all the formal requirements under Section 3.4 of the PCC Rules on Expedited Merger Review with all attachments complete.

Filing fees must be paid upon submission of the Forms, otherwise, the Forms shall not be accepted, in accordance with Section 3.6 of the PCC Rules on Expedited Merger Review.

Responses

The required information may be provided on the Form or in appendices.

Appendices must be submitted together with the Form. The appendix reference number must correspond to the section of the Form being addressed. Indicate the appendix reference number on the upper right corner of the first page of each appendix.

Appendices must be individually tabbed.

The Notifying Parties should likewise provide, in a secure electronic storage device (e.g. universal serial bus [“USB”] flash drive), an electronic version of the completed Form and all attachments, simultaneous with the submission of the hard copy. Each attachment must be saved as a separate file identified by the appendix reference number.

Year

Unless otherwise stated, all references to “year” refer to calendar year. If the data is not available on a calendar year basis, supply the requested data for the fiscal year reporting period which most closely corresponds to the calendar year specified.

Definitions

The definitions and other provisions governing this Form are set forth in the Rules, the PCC Rules on Merger Procedure, and the PCC Rules on Expedited Merger Review. Additional clarification on Sections mentioned in the Form is provided below.

“Acquired entity” or target entity refers to the entity to be merged or to the entity whose assets, voting securities or non-corporate interests are being acquired.

“Acquiring entity” refers to the entity making the acquisition.

“Acquiring group” refers to the acquiring entity, its ultimate parent entity and all its affiliates.

“Proposed Candidate market” is the relevant market identified by the parties during the preliminary stage of the Notification which may be affected by the proposed transaction (see “Relevant Market”). The Mergers and Acquisitions Office (MAO) is not bound by the proposed candidate market identified by the Parties in their Notification.

“Horizontal relationship” refers to a situation where two or more persons all operate as sellers or where all operate as buyers in the same market.

“Notifying group” refers to the filing ultimate parent entity and every entity directly or indirectly controlled by the filing ultimate parent entity. Nothing precludes MAO from including in the Notifying group, entities controlled by or under common control by the ultimate beneficial owner or controller of the identified ultimate parent entity.

“Notifying Parties” or Notifying Entities are parties to a merger or acquisition that breach the notification thresholds in Rule 4, Section 3 of the Rules (as may be adjusted pursuant

to PCC Memorandum Circular No. 18-001) and which are required to notify the PCC before the execution of the definitive agreements relating to the transaction.

“Relevant Market” is one that could be subject to an exercise of market power that would likely result in significant harm to competition, rather than anticompetitive effects that are insignificant or transient in nature. The Relevant Market considers both product and geographic dimensions. The Commission assesses market definition within the context of the particular facts and circumstances of the merger under review.

“Relevant Product Market” comprises all those goods and/or services that are regarded as interchangeable or substitutable by the consumer or the customer, by reason of the goods and/or services’ characteristics, their prices, and their intended use.

“Relevant Geographic Market” comprises the area in which the entity concerned is involved in the supply and demand of goods and services, in which the conditions of competition are sufficiently homogenous and which can be distinguished from neighboring areas because the conditions of competition are different in those areas.

“Vertical relationship” refers to a situation where an entity operates in a market that is immediately upstream or downstream of a market in which another entity operates, such that the two entities are in an actual or potential buyer-seller relationship.

“Ultimate Parent Entity” or UPE is the juridical entity that, directly or indirectly, controls a party to the transaction, and is not controlled by any other entity as defined in Rule 2(m) of the Rules. During the review process, the MAO may identify natural persons as the ultimate beneficial owner or controller of the UPE.

N.B.: There may be other types of economic or commercial relationships that are not strictly characterized as horizontal or vertical, on which information may nonetheless be required to be provided the MAO.

SECTION BY SECTION CLARIFICATIONS

Section 1.5

Authorization may be in the form of an original Secretary’s Certificate or Special Power of Attorney or its equivalent in foreign jurisdictions, naming the entity authorized to file and represent them before the PCC.

Sections 1.8 and 1.9

Contact person(s) should be officers of the filing UPE, its designee, or the Acquiring or Acquired Entity duly authorized by the UPE or its designee (identified in Section 1.6 of the Form) to receive correspondence on its behalf.

Section 1.11

If the Notifying Party is assisted by external counsel, names of such counsels must be indicated in this section of the Form.

Counsel must be duly authorized by the filing UPE or his designee (identified in section 1.6 of the Form).

Section 1.12

Indicate the entity to whom the official receipt shall be issued.

Sections 3.2 – 3.19.

To determine the value of the proposed transaction, parties may refer to Rule 4, Section 3 of the Rules, as amended by PCC Memorandum Circular No. 18-001.

Per Section 3 of PCC Memorandum Circular No, 18-001, the notification thresholds shall be automatically adjusted commencing on March 1, 2019 and on March 1st 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 8 shall be rounded up to Php 2.28).

Section 4.5

Notification refers to the submission of the proposed transaction for clearance by competition authorities in other jurisdictions.

Section 5

Parties must submit all information required in the annex pertaining to the ground identified in Section 4.2 which makes their transaction qualified for Expedited Merger Review.

- (a) Indicate the metric or unit of measure used for the figures indicated.
- (b) Documents, reports submitted under these sections must be certified true by the corporate secretary or duly authorized custodian of such records.

Sections 5.1.2, 5.2.2, 5.3.2, and 5.4.2

Provide a level of disaggregation for each product and/or service that is as detailed as practicable and deemed necessary by the MAO.

Sections 5.2 to 5.4

- (a) For the Acquiring Entity, provide the specified information only for the entities within its Notifying Group which operated in the same line of business with the Acquired Entity and the entities it controls.
- (b) For the Acquired Entity, provide the specified information only for the Acquired entity and entities it controls which operated in the same line of business with the Acquiring Entity’s Notifying Group.
- (c) Notwithstanding the foregoing, MAO may nevertheless require submission of information on other entities within the Acquired Entity’s Notifying Group if circumstances warrant.

Section 5.3.8

Submit studies, surveys, analyses and reports on the relevant markets and the viability of the proposed transaction

Section 5.3.12

Prior acquisitions over the past five (5) years refer to acquisitions made of shares, non-corporate interests or assets of entities that have assets in the Philippines or generate revenues from sales in, into or from the Philippines.

Sections 7.1 to 7.2

In the event that a document provided under these sections is executed abroad, it must be authenticated either through an apostille or by the Philippine embassy or consular office of the place where such document was executed if the country of execution is not a signatory to the Apostille Convention. The original copies, and not mere photocopies, must be submitted to the MAO prior to the expiration of the prescribed periods.

Section 7.1

Pursuant to PCC Clarificatory Note 16-001, a definitive agreement may be in the form of a share purchase agreement, asset purchase agreement, joint venture agreement, or other similar agreement. The inclusion of conditions which must be fulfilled by a party or the parties to make the agreement effective against a party or the parties will not negate the definitive nature of the agreement.

In relation to Section 3.2 of the PCC Rules on Expedited Merger Review, parties to a transaction that meet the thresholds and qualified for Expedited Review are required to notify the PCC within thirty (30) days from the signing of the definitive agreement relating to the transaction.

Section 8.2

A short summary describing the transaction and the parties will be posted online for public information. The abstract must not contain confidential business information.

Certification

The Certification should be made in accordance with Rule 4, Section 5(b) and (d) of the Rules. In no case should the Certification be signed by the external counsel of the notifying parties.

FILING OF INCORRECT OR MISLEADING INFORMATION

The filing of incorrect or misleading information to the Commission is penalized under Section 29(c) of the Philippine Competition Act, which states:

“The Commission may likewise impose upon any entity fines of up to one million pesos (P1,000,000.00) where, intentionally or negligently, they supply incorrect or misleading information in any document, application or other paper filed with or submitted to the Commission or supply

incorrect or misleading information in an application for a binding ruling, a proposal for a consent judgment, proceedings relating to a show cause order, or application for modification of the Commission’s ruling, order or approval, as the case may be.”
