

**MERGERS AND ACQUISITIONS  
OFFICE,**

*Complainant,* **PCC Case No. M-2019-006**

- versus -

For: Violation of the Compulsory  
Notification Requirements Under  
Sections 2.1 of the PCC Rules on  
Merger Procedure

**WINGTECH TECHNOLOGY, CO, LTD.  
and NEXPERIA HOLDING B.V.**

*Respondents*

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## COMMISSION DECISION NO. 26-M-020/2019

### I. STATEMENT OF THE CASE

This case involves the alleged violation by Wingtech Technology, Co. Ltd. (“Wingtech”) and Nexperia Holding B.V. (“Nexperia”, and together with Wingtech, the “Respondents”) of the compulsory notification requirement provided under the Philippine Competition Commission’s (the “Commission”) Rules on Merger Procedure (“Merger Rules”) with respect to the proposed acquisition by Wingtech of shares in Nexperia (“Proposed Transaction”).

Wingtech, a listed company in the Shanghai Stock Exchange, primarily operates as an original design manufacturer of smartphones. It is engaged in the research, development, and manufacture of artificial intelligence, Internet of Things, automotive electronic, and other intelligent hardware products.

Nexperia, meanwhile, is a Dutch company that is engaged in the business of developing, manufacturing, and selling discrete semiconductors for general application, which can be used in any sector or end-product such as mobile devices, cars, and other electronic products.

On 6 May 2019, the Respondents submitted their respective Merger Notification Forms (“Forms”) on the Proposed Transaction with the Mergers and Acquisitions Office (“MAO”).<sup>1</sup> Based on the Respondents’ submission, the Asset Purchase Agreement, which constitutes the Proposed Transaction’s definitive agreement, was executed on 24 October 2018.

On 25 July 2019, MAO issued to the Respondents a Notice to Explain why their notification was filed beyond the prescribed period.

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<sup>1</sup> PCC Case No. 2019-M-006, MAO Final Report dated 6 August 2019, para. 2.

On 31 July 2019, the Respondents filed their response to the Notice to Explain. In their response, the Respondents did not contradict MAO's allegation that the Forms were submitted beyond the notification period.<sup>2</sup>

On 6 August 2019, MAO issued its Final Report ("MAO Report") finding the Respondents to have violated Section 2.1 of the Merger Rules (Failure to Notify within the Period for Notification) when they submitted their Forms only on 6 May 2019, or One Hundred Ninety-Four (194) days from the signing of the definitive agreement.<sup>3</sup> MAO recommended the imposition of a fine of Seven Hundred Sixteen Thousand One Hundred Fifty Pesos (PhP 716,150.00) pursuant to Section 16.2 of the Merger Rules.

On the same day, the Commission, acting on the MAO Report, directed the Respondents to file their respective Verified Comments on the MAO Report within fifteen (15) days from receipt of the notice.<sup>4</sup>

On 14 August 2019, the Commission received the Respondents' counsel's Entry of Appearance with Manifestation, where the Respondents manifested that they shall no longer be filing a Verified Comment to the MAO Report.<sup>5</sup> The case was thus submitted for resolution.

## II. ISSUE

Considering that the Respondents did not dispute the fact that the Forms were submitted beyond the notification period under Section 2.1 of the Merger Rules, the same is hereby deemed admitted by the Respondents.

The Commission finds no reason to depart from MAO's findings that the Respondents violated Section 2.1 of the Merger Rules.

Thus, the only issue left for the Commission's resolution is the penalty to be imposed on the Respondents for their violation of Section 2.1 of the Merger Rules.

## III. DISCUSSION

### ***Amount of Fine***

Section 16.2 of the Merger Rules provides a fine equivalent to **½ of 1% of 1% of the value of transaction**, which in no case shall exceed the statutory limit of Two Million Pesos (PhP2,000,000.00).

Under Section 16.4 of the Merger Rules, the fine shall be based on the value of transaction. The value of the transaction is PhP 14.323 Billion.<sup>6</sup> The equivalent of ½

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<sup>2</sup> Wingtech's response received on 31 July 2019 to MAO's Notice to Explain sent on 25 July 2019.

<sup>3</sup> *Id.*

<sup>4</sup> PCC Case No. 2019-M-006, Notice dated 6 August 2019.

<sup>5</sup> PCC Case No. 2019-M-006, Wingtech's Entry of Appearance and Nexperia's Entry of Appearance both received by the Commission on 14 August 2019.

<sup>6</sup> JAC and Wingtech's responses to Section 3.10 of the Form

of 1% of 1% of the value of transaction is Seven Hundred Sixteen Thousand One Hundred Fifty Pesos (PhP 716,150.00). This amount shall be the imposable fine under Section 16.2 of the Merger Rules.

#### **IV. DISPOSITIVE PORTION**

**WHEREFORE**, the Commission finds Respondents Wingtech Technology, Co. Ltd. and Nexperia Holding B.V. in violation of Section 2.1 of the Rules on Merger Procedure (failure to notify within the period for notification). Respondents are hereby directed to pay a fine of **SEVEN HUNDRED SIXTEEN THOUSAND ONE HUNDRED FIFTY PESOS (PHP 716,150.00)** within forty-five (45) days from the promulgation of this Decision.

**SO ORDERED.**

28 August 2019.

  
**ARSENIO M. BALISACAN**  
Chairman

  
**JOHANNES BENJAMIN R. BERNABE**  
Commissioner

  
**AMABELLE C. ASUNCION**  
Commissioner

  
**MACARIO R. DE CLARO, JR.**  
Commissioner

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