PHILIPPINE COMPETITION COMMISSION
Ensuring businesses compete and consumers benefit

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PRESS RELEASE
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PCC approves SM Retail's commitments in the acquisition of Goldilocks Bakeshop

The Philippine Competition Commission (PCC) has approved the acquisition by SM Retail Inc. of Goldilocks Bakeshop Inc. after the parties submitted their commitment to address potential competition issues in the transaction.

SM Retail is a subsidiary of SM Investments Corp. (SMIC), which through another subsidiary, SM Prime Holdings Inc. (SMPHI), develops, owns and operates shopping malls. SMPHI operates close to 70 malls in the Philippines, while Goldilocks has a network of more than 500 stores, some of which operate in SM malls. Post-merger, Goldilocks will become a subsidiary of SM Retail.

The voluntary commitment of the SM Group (SM Retail, SMPHI, and SMIC) comes after the PCC's Mergers and Acquisitions Office (MAO) issued a Statement of Concerns (SOC) detailing the potential competition issues arising from the transaction. After the MAO issued the SOC last December 1, the SM Group submitted a comprehensive undertaking on December 22, which undertaking was enhanced following a series of hearings and discussions. The SM Group submitted an amended and final undertaking on December 28 to address the identified competition concerns.

A major finding by the review undertaken by MAO is the possibility of partial or total foreclosure in the supply of retail space in SM malls to competitors of Goldilocks after its acquisition by the SM Group.

"While selection of tenants in a mall is market-driven and based on consumer preferences, a mall operator should not be allowed to discriminate mall tenants and lease applicants, especially those that compete with stores owned by the mall itself," said PCC Chairman Arsenio M. Balisacan.

"Such discrimination or unfair treatment can come in the form of arbitrarily assigning competitor tenants to disadvantageous locations or unfavorable lease terms, which amounts to partial foreclosure. It can also come in the form of giving less favorable lease terms or completely refuse them lease space in the mall, which amounts to total foreclosure," Balisacan added.

'Information firewall'

Another major concern identified by MAO is the potential for the SM Group to share a competing mall tenant's business information to Goldilocks, since the mall operator, through its point-of-sale (POS) system, has access to sales records of tenants.

"Every mallgoer knows that location is important, while every businessman knows that data informs business strategy. In this transaction, what we want is fair opportunities for big and small players," Balisacan said.

In its voluntary commitment, which the Commission approved in a decision issued last December 29, 2017, SMPHI undertook to give Goldilocks' competitors a fair shake in their lease at all times.

SMPHI also committed to data protection; that is, the mall operator will not give Goldilocks access to competing mall tenants' information—including sales data captured by the POS system of SMPHI tenants, whether referring to consolidated sales, product category level or stock keeping unit (SKU) level information, such as prices or quantities sold.

Maintaining this "information firewall" between SMPHI and SM Retail/Goldilocks is meant to ensure that SM Retail/Goldilocks will not be able to use sales data or information of its competitors to its advantage.

"The Commission appreciates SM's move to make these voluntary undertakings– proof that PCC and the business community can work together to promote a culture of competition," Balisacan said.

PCC monitoring team

The SM Group is legally obliged to comply with its commitment and submit reports to the Commission. Over a period of five (5) years, the parties will be monitored periodically by a team of experts from PCC. Monitoring will also include random inspections.

If the monitoring team identifies violations or deficiencies during inspection, the SM Group shall promptly address the concerns. Any breach of the conditions will subject SM to fines, additional remedies, and other measures available to the Commission.

Under the Philippine Competition Act, PCC, the country's anti-trust body, is mandated to review mergers and acquisitions that meet the P1 billion threshold to ensure that these deals will not harm the interest of consumers.

To date, PCC has received 142 merger filings by local and international companies, worth a combined P2.171 trillion. Of the total number of filings, 38 involve global deals. The SM-Goldilocks notification is the last transaction approved in 2017.

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