
PRESS RELEASE
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PCC rules on Udenna-KGLI transaction as 1st non-notification case

The Philippine Competition Commission (PCC) has fined Udenna Corporation and KGL Investment Cooperatief U.A. (KGLI Coop) the amount of P19.6 million, equivalent to 1% of the value of their merger transaction, which both companies failed to run by the government agency as required by law.

The transaction involved the sale to Udenna by KGLI Coop of all its shares in KGL Investment B.V. (KGLI-BV). At the time of the transaction, KGLI-BV owned 39.71% of KGLI-NM Holdings, Inc. (KGLI-NM), a Philippine company that partly owns Negros Navigation Co. Inc. (NENACO).

In an en banc decision released on February 19, the Commission found the transaction, worth USD120 million, met the P1-billion threshold, and as such, the transacting parties should have notified the PCC of the acquisition.

Under Section 17 of the Philippine Competition Act (PCA), parties who fail to notify the PCC of a transaction that meets the threshold are slapped with a fine ranging from 1% to 5% of the transaction value, and their business deal voided.

“The law is clear: an agreement consummated in violation of the competition law’s compulsory notification requirement shall be fined and is considered void,” read the Commission decision.

The PCC got wind of the transaction when it was tipped off by a letter complaint on December 28, 2016.

In its investigation, the PCC Mergers and Acquisitions Office (MAO) found that Udenna bought the entire shareholdings of KGLI-BV as signed by the two parties through a Share Purchase Agreement dated July 28, 2016, and the deal consummated as reflected in a Deed of Transfer dated August 19, 2016.

Udenna and KGLI Coop initially sought to be excused from notification, claiming that the buyout satisfies the “size of person test,” but not the “size of transaction test” required under the PCA and its implementing rules. But MAO’s investigation found that the transaction met the threshold based on both tests. The aggregate annual gross revenues in, into or from the Philippines, or the value of the assets in the Philippines of Udenna were both above P1 billion at the time of the transaction. The parties also admitted that the acquisition involved the entire shareholdings or 100% of KGLI-BV.

“It’s one thing for transactions to be found as anti-competitive during the review. It’s another thing when businesses evade the legal requirement of notification in the first place,” said PCC.

“This is a reminder for companies to comply with the Philippine Competition Act, including filing a sufficient notification prior to consummation of a merger that meets the thresholds,” PCC said.

With respect to remedies that might be available to Udenna, PCC said one thing that the parties can do is file a proper notification, and go through the merger review process.

Udenna is a domestic holding company whose subsidiaries are engaged in the distribution and retailing of petroleum products, commercial shipping, ship management, logistics, financial services, environmental services and property development. KGLI Coop and KGLI-BV are both domiciled in the Netherlands.

Under the PCA, the country’s anti-trust body is mandated to review mergers and acquisitions to ensure that these deals will not prejudice the interest of the consumers.

Commission Decision Link: [PCC Case No. M-2017-001: In the Matter of Udenna Corporation and KGL Investment Cooperatief U.A.’s Alleged Violation of the Compulsory Notification Requirements Under Section 17 of the Philippine Competition Act and Rule 4, Section 3 of the Rules and Regulations to Implement Republic Act No. 10667](#)

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