PHILIPPINE COMPETITION COMMISSION
Ensuring businesses compete and consumers benefit

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PCC streamlines merger rules for solicited PPP projects

The Philippine Competition Commission (PCC) has issued rules to streamline its merger review process for joint ventures formed for solicited public-private partnership (PPP) projects.

In PCC Memorandum Circular No. 19-001 issued on July 2, the PCC detailed the procedure in securing a Certificate of Project Exemption, effectively allowing prospective bidders to meet both the requirements of the Philippine Competition Act and the Build-Operate-Transfer Law in the streamlined process. The circular shall take effect on August 16 or 15 days after its publication today.

“This track enables the PCC to inject the necessary competition safeguards early on and pave the way for faster roll-out of these priority infrastructure projects. The measure embodies efficiency of processes by the implementing agency, the PPP Center, and the PCC, while remaining steadfast to our respective mandates,” says PCC Chair Arsenio M. Balisacan.

Under the circular, agencies may seek exemption from compulsory notification in behalf of their solicited project’s prospective bidders by filing an application for a Certificate of Project Exemption from the PCC. The antitrust authority’s involvement will be frontloaded prior to the bidding to address competition concerns that may arise from the project, its bidding process, and bidders. In effect, the review already screens firms for competition concerns and removes the prospect of delays.

The measure presents firms with a more streamlined process from the regular merger review in parallel with the processes of the implementing agency and the Public-Private Partnership (PPP) Center.

The circular is issued pursuant to the Memorandum of Agreement signed between the PCC and the PPP Center in July 2018 geared towards coordinating regulatory approach on projects and concerns that fall under their ambit.

Before the circular, joint ventures formed by prospective bidders that meet the thresholds have to notify and undergo full merger review by the PCC after getting the nod of the implementing agency or PPP Center.

"This has the dual effect of allowing early detection of potential competition concerns and facilitation of the delivery of PPP projects," Balisacan said.

During the project development stage, the PCC may provide inputs on the terms of reference of the transaction advisor or consultant to be procured by the agency for the development of the project feasibility study.

In the project procurement stage, the PCC will evaluate the solicited project's pre-qualification documents, bidding documents, draft PPP contract, and other related documents.

The PCC shall review within 30 to 60 calendar days depending on when it received the application. In addition to the review, the PCC may also require an undertaking in the project to be executed by prospective bidders to ensure potential competition concerns are addressed ahead of the bidding.

PCC shall then issue a Certificate of Project Exemption in favor of the prospective winning bidder. If PCC's inputs or undertaking were not implemented by the agency and winning bidder, or in the event of substantial changes to the PPP project after PCC's review, the transaction may return to the full merger review route.

To ensure the competition safeguards are followed, the PCC shall monitor the project and may launch a *motu proprio* merger review if the winning bidder violates any of its undertakings to the PCC.

Following this issuance, PCC is set to develop the rules for unsolicited PPP projects within the year.

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ABOUT PCC

The Philippine Competition Commission (PCC) is a national government agency and independent quasi-judicial body established by the Philippine Competition Act (PCA). It reviews mergers and acquisitions for possible substantial lessening of competition in the market, and investigates anticompetitive conduct by businesses across all sectors. Through its mandate, PCC aims to ensure that businesses compete and consumers benefit from fair market competition.

ABOUT MERGER REVIEW FOR JOINT VENTURES

Under the PCA and its Implementing Rules and Regulations (IRR), joint ventures as defined under Rule 2(i) of the IRR, between public or private entities, are subject to the compulsory notification requirement under Section 17 of the PCA if the relevant thresholds under the IRR, as amended, are met.

ABOUT COMPULSORY NOTIFICATION OF TRANSACTIONS

Sec. 17 of the PCA requires parties to the merger or acquisition agreement that meet the thresholds (Php5.6B Size of Party, Php2.2B Size of Transaction) to file a notification to the PCC within 30 days after the signing of definitive agreement. An agreement consummated in violation of the notification requirement shall be considered void and subject the parties to an administrative fine of 1% to 5% of the value of the transaction.

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