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## **PCC issues rules on merger reviews under Bayanihan 2**

The Philippine Competition Commission (PCC) has issued rules to implement Section 4 (eee)<sup>1</sup> of the Bayanihan to Recover As One Act (Bayanihan 2) relating to the review of mergers and acquisitions (M&As).

Published and effective today, the rules detail the exemptions from compulsory notification and *motu proprio* review, computation of new thresholds, and the option for voluntary notification of M&A transactions while Section 4 (eee) of Bayanihan 2 is in effect.

To recall, Section 4 (eee) exempts from compulsory notification M&As with transaction values below PHP 50 billion if entered into within 2 years from the effectivity of Bayanihan 2 on 15 September 2020. Additionally, it suspends PCC's exercise of *motu proprio* review of these transactions for 1 year.

Under the rules, the following M&As are still subject to compulsory notification:

- Transaction value is at least PHP 50 billion; or
- Entered into before the effectivity of Bayanihan 2 and exceed the applicable thresholds when the definitive agreement was signed.

In determining the transaction value, the rules apply PHP 50 billion as the new size of person (SOP) and size of transaction (SOT) thresholds for compulsory notification. Prior to this, the thresholds were adjusted annually and set at PHP 2.4 billion for SOT and PHP 6 billion for SOP for 2020. To date, the PCC is reviewing 5 transactions notified before Bayanihan 2's effectivity.

In terms of *motu proprio* review, the following M&As are not covered by Bayanihan 2's exemption:

- Entered into before the effectivity of Bayanihan 2 which have not yet been the subject of PCC review; or
- Pending review by PCC before the effectivity of Bayanihan 2.

M&As that are likely to substantially lessen competition may be reviewed *motu proprio* after 1 year from Bayanihan 2's effectivity.

Parties to M&As below the PHP 50-billion threshold may choose to voluntarily notify their transaction to undergo merger review. In its discretion, the PCC may give due course to the voluntary notification, with review periods of 45 days for Phase 1 and 90 days for Phase 2.

"The PCC recognizes the need to strike a balance in implementing the policy objectives of promoting business continuity under the Bayanihan 2 and looking after market efficiency and consumer welfare under the Philippine Competition Act," said PCC Chairperson Arsenio M. Balisacan.

"With fewer merger notifications expected, the PCC will intensify action in other areas of enforcing the competition law especially against anti-competitive agreements and abusive practices that harm consumers or unscrupulously take advantage of the crisis," Balisacan added.

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<sup>1</sup> *Bayanihan to Recover As One Act: Sec. 4 (eee)*: "xxx Provided, finally, That the Philippine Competition Commission (PCC) shall promote business continuity and capacity building, as such, all mergers and acquisitions with transaction values below Fifty billion pesos (P50,000,000,000.00) shall be exempt from compulsory notification under Section 17 of Republic Act No. 10667 or the 'Philippine Competition Act' if entered into within a period of two (2) years from the effectivity of this Act, and further, shall be exempt from the PCC's power to review mergers and acquisitions *motu proprio* provided in Section 12 of Republic Act No. 10667 for a period of one (1) year from the effectivity of this Act."

**REFERENCE:**

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