

NOTIFICATION FORM  
FOR MERGERS AND ACQUISITIONS

INSTRUCTIONS

**GENERAL**

The Notification Form (the “Form”) is required to be submitted pursuant to Rule 4 of the Implementing Rules and Regulations of Republic Act No. 10667 (the “Rules”).

**Information**

The central office for information and assistance concerning the Rules and the Form is:

Mergers and Acquisitions Office  
Philippine Competition Commission  
25<sup>th</sup> Floor, Vertis North Corporate Center,  
North Avenue, Quezon City  
Telephone: (+632) 7719-722  
Email: mergers@phcc.gov.ph

Copies of the Form, Instructions and Rules are available at [www.phcc.gov.ph](http://www.phcc.gov.ph).

**Definitions**

The definitions and other provisions governing this Form are set forth in the Rules. Additional clarification on items mentioned in the Form is provided below.

“Acquired entities” refer to those entities whose assets, voting securities or non-corporate interests are being acquired.

“Acquired group” refers to the acquired entities, its ultimate parent entity and all its affiliates.

“Acquiring entities” refer to those entities making the acquisition.

“Acquiring group” refers to the acquiring entities, its ultimate parent entity and all its affiliates.

“Affiliate” refers to any entity who, alone or together with any other entity, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the subject entity. “Affiliates” include:

- (1) A subsidiary company and a parent company; and
- (2) Subsidiaries, directly or indirectly, of a common parent.

“Horizontal relationship” refers to a situation where two or more persons both operate as sellers or both operate as buyers in the same market.

“Vertical relationship” refers to a situation where an entity operates in a market that is immediately upstream or downstream of a market in which another entity operates, such that the two entities are in an actual or potential buyer-seller relationship.

N.B.: There may be other types of economic or commercial relationships that are not strictly characterized as horizontal or vertical, on which information may nonetheless be required to be provided the Mergers and Acquisitions Office (MAO).

**Responses**

Attach additional appendices as necessary in answering each item. Indicate an identifying appendix number on the upper right corner of the first page of each appendix.

**Year**

Unless otherwise stated, all references to “year” refer to calendar year. If the data are not available on a calendar year basis, supply the requested data for the fiscal year reporting period which most nearly corresponds to the calendar year specified.

**Filing**

Prior to filing, notifying parties are encouraged to seek pre-notification consultation (“PNC”) with the MAO staff and seek guidance in filling up their draft Form. PNCs are most useful when the merging parties can provide the PCC with a draft Form and confirm what information PCC is likely to require pursuant to the Form in relation to their transaction. Particularly, the merging parties are encouraged to validate their identified markets with the PCC during the PNCs in order to avoid submitting an insufficient Form.

Notifying parties must complete and submit the Form, along with all documentary attachments, to:

Mergers and Acquisitions Office  
Philippine Competition Commission  
25<sup>th</sup> Floor, Vertis North Corporate Center,  
North Avenue, Quezon City

Determination of sufficiency of the notification shall commence after all notifying parties have submitted their respective Notification Forms.

The PCC should likewise be provided, in a secure electronic storage device, an electronic version of the completed Form and all attachments, simultaneous with the submission of the hard copy. **Each attachment must be saved as a separate file, and the file name should include the identifying appendix number.** For the hard copy, separate each appendix with a labelled tab.

Submissions will only be accepted from 9:00 a.m. to 5:00 p.m., Monday to Friday.

**ITEM BY ITEM CLARIFICATIONS**

**Item 1.1.**  
Indicate whether the filing is made pursuant to a tender offer, as defined in Chapter VI, Sec. 19 of the Securities Regulations Code, otherwise known as R.A. 8799.

**Item 1.2.**  
Indicate whether the acquired entity is undergoing insolvency proceedings.

**Item 1.3.**  
“Ultimate Parent Entity” (UPE) is the juridical entity that, directly or indirectly, controls a party to the transaction, and is not controlled by any other entity as defined in Rule 2(m) of the IRR.

**Item 1.9.**  
Provide a contact within the filing entity other than the external legal counsel representing the entity.

**Items 1.12 – Item 1.16.**

For reference on the amount for filing fees, refer to PCC Memorandum Circular No. 16-003. Payments should be made by manager's cheque upon filing.

**Items 3.2 – 3.19.**

For the value of the proposed transactions, kindly refer to the IRR for clarification, specifically the thresholds provided under Rule 4, Section 3.

**Item 5.4.**

Provide a level of disaggregation for each principal category of product(s) and/or service(s) that is as detailed as practicable, subject to further disaggregation if deemed necessary by the MAO.

**Item 6.1.**

- (a) For the acquiring entity, initially provide the specified information only for the entities within its Notifying Group which operated in the same line of business with the acquired entity and the entities it controls.
- (b) For the acquired entity, initially provide the specified information only for the acquired entity and entities it controls which operated in the same line of business with the acquiring entity and entities within its Notifying Group.
- (c) MAO may nevertheless require submission of information on the entities within the Notifying Group of the acquired entity.
- (d) For each overlapping lines of business, description of product(s) and/or service(s) should be made per type of product or service and per brand (for products).

**Item 6.2.**

- (a) For the acquiring entity, initially provide the specified information only for the entities within its Notifying Group which were in a vertical relationship in a market with the acquired entity and entities it controls.
- (b) For the acquired entity, initially provide the specified information only for the acquired entity and entities it controls which were in a vertical relationship in a market with the acquiring entity and entities within its Notifying Group.
- (c) MAO may nevertheless require submission of information on the entities within the Notifying Group of the acquired entity.

**Item 6.3 (c).**

- (a) For vertical relationships, the economic participants refer to other entities in the supply chain where the acquiring and acquired entities are operating.
- (b) For horizontal overlaps, the economic participants refer to the competitors of each party to the overlapping lines of business.

**Item 6.6.**

- (a) Prior acquisitions over the past five (5) years refer to acquisitions made of shares, non-corporate interests or assets of entities that have assets in the Philippines or generate revenues from sales in, into or from the Philippines, which are related to the notified transaction, e.g. those between the same parties or their affiliates, or where the assets previously acquired and are to be acquired under this notification belong to horizontally or vertically related markets.
- (b) Contemporaneous or concurrent related acquisitions are those acquisitions that are related to the notified transaction, e.g. those between the same parties or their affiliates or where the assets acquired and are to be acquired under this notification belong to horizontally or vertically related markets.

**Items 6.2 – 6.6.**

In a situation where the entities in the acquiring and acquired Notifying Group are not in a purely horizontal or vertical

relationship, the information required in Items 6.2 to 6.6 should in any case be provided by the notifying parties, with guidance from the MAO, where appropriate.

**Items 7.2–7.4.**

Documents, reports submitted under these sections may be certified by the corporate secretary or duly authorized custodian of such records within the submitting entity.

**Items 8.1 to 8.2.**

In the event that a document provided under these sections is executed abroad, it must be authenticated before the Philippine embassy or consular office of the place where such document was executed. The original copies, and not mere photocopies, must be submitted to the MAO prior to the expiration of the relevant periods.

**Item 9.2.**

A short summary of the transaction will be posted online for public information.

**Certification**

The Certification should be made in accordance with Rule 4, Section 5(b) and (d) of the IRR. In no case should the Certification be signed by the external counsel of the notifying parties.

**CLARIFICATION ON HORIZONTAL AND VERTICAL RELATIONSHIPS**

In assessing possible competitive effects, the PCC examines the relevant market/s that will potentially be affected by the merger as starting point of analysis. It is then critical for notifying parties to provide information on all their horizontal and vertical relationships to allow PCC to define the relevant market/s. In the case of mergers and acquisitions involving conglomerate firms, identifying the horizontal and vertical relationship is not limited to specific subsidiaries and affiliates, but involves all business activities undertaken by the Ultimate Parent Entities of the merging firms.

**Horizontal Relationships or Overlaps**

In determining whether horizontal overlaps exist and need to be declared under Item 6 of the Form, the following criteria may be used as a guide. Horizontal overlaps exist if, among others:

- (a) The notifying parties or any entity within its notifying groups are active in the same product market and same level of business, as in the case of a merger between two manufacturers, two wholesalers, or two distributors; or
- (b) The notifying parties or any entity within its notifying groups produce, sell, or offer products and/or services that may not necessarily be identical but are substitutable to some degree, whether by feature or function; or
- (c) The notifying parties or any entity within its notifying groups cater to and derive revenues from the same or similar set of customers; or
- (d) The notifying parties or any entity within its notifying groups produce, sell, offer, or import products and/or services in the same geographic market.

The notifying parties need not be one another's direct competitor prior to the merger to constitute a horizontal relationship. The Form covers relationships involving a firm that is a potential or emerging competitor to the firm which currently operates in the identified market/s.

The notifying parties may consider referring to the most recent four-digit classification of the Harmonized Commodity Description and Coding System or Harmonized System (HS-4) or the four-digit classification of the Philippine Industry Standard Classification

(PSIC) to assist them in identifying their horizontal relationships. This may, in particular cases, likewise assist the Commission in its initial determination of the relevant product market.

#### **Vertical Relationships**

In determining whether vertical relationships exist and need to be declared under Item 6 of the Form, the following criteria may be used as a guide. Vertical relationships exist if, among others:

- (a) The parties or any entity within its notifying groups are active, potentially active, or operate at different but complementary levels of an industry supply or distribution chain, from the purchase of raw materials until end-user consumption; or
- (b) The upstream firm or any entity within its notifying groups produce, sell, or offer products and/or services that are currently used or can potentially be used as inputs to the downstream firm's production; or
- (c) The upstream firm or any entity within its notifying groups supply products and/or services which the downstream firm purchases or can potentially purchase as a substitute for products and/or services it currently uses.

Analysis of vertical relationships will be conducted regardless of the geographic area where the relationships occur as long as any of the parties' products and/or services are produced, sold, or offered in the Philippine market.

A direct supply or purchase arrangement between the merging parties is not necessary to constitute a vertical relationship. If the upstream firm supplies products and/or services to a competitor of the downstream firm, and vice versa, the parties are still required to disclose information requested under Item 6 of the Form.

#### **FILING OF INCORRECT OR MISLEADING INFORMATION**

Notifying parties are hereby informed that the filing of incorrect or misleading information to the Commission is penalized under Section 29(c) of the Philippine Competition Act, which states:

"The Commission may likewise impose upon any entity fines of up to one million pesos (P1,000,000.00) where, intentionally or negligently, they supply incorrect or misleading information in any document, application or other paper filed with or submitted to the Commission or supply incorrect or misleading information in an application for a binding ruling, a proposal for a consent judgment, proceedings relating to a show cause order, or application for modification of the Commission's ruling, order or approval, as the case may be."

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