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**Recent Developments in Merger Control Standards:
Philippines**

Presentation

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Ensuring businesses compete and consumers benefit

Recent Developments in Merger Control Standards: Philippines

Commissioner Lolibeth Ramit-Medrano

Geneva, Switzerland | 05 July 2024



Philippine Development Plan 2023-2028

Whole-of-government
approach

Promote Competition and
Improve Regulatory
Efficiency



Merger Review Regime

Compulsory Notification

- Mandatory notification if the Parties or Transaction breach the thresholds set
- Thresholds updated yearly to reflect the growth or contraction of the Philippine economy

Voluntary Notification

Entities that do not meet the threshold may voluntarily notify



Merger Review Regime

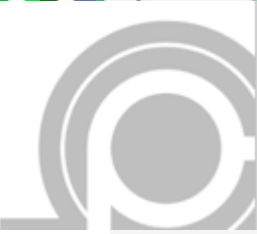
Motu Proprio

- Parties to a transaction do not notify the PCC, but are investigated for possible competition issues
- Pursuant to its market surveillance function, the PCC may investigate and subject to a *motu proprio* review mergers and acquisitions that the PCC has reasonable grounds to believe is likely to substantially prevent, restrict or lessen competition in the market.



Merger Control Strategies

What strategies and steps does the PCC implement or intend to implement in its merger control regime to facilitate the business environment in the Philippines?



Time-bound Merger Review

- **Section 17. Compulsory Notification** (*Philippine Competition Act*)

Phase 1 Review – 30 days

- Unless further information reasonably necessary and directly relevant to the transaction and parties request for extension

Phase 2 Review – + 60 days

- No case shall the total period for review exceed ninety (90) days from initial notification by the parties.

- **If periods have expired and no decision has been promulgated, the merger or acquisition shall be deemed approved**



Recent Developments on Merger Control Standards



- for a more efficient, predictable and effective merger control regime:

1. Non-Horizontal Review Guidelines (May 2023)
2. Guidelines for the Motu Proprio Review of Transactions in Digital Markets (August 2023)
3. Adjustments of the Compulsory Notification Thresholds (March 2024)
4. Guidelines on Merger Remedies (May 2024)



Non-Horizontal Review Guidelines

- Posted on the PCC Website on 18 May 2023
- Outline the principal analytical techniques, practices, and enforcement policy of the PCC with respect to non-horizontal mergers and acquisitions that may have a direct, substantial, and reasonably foreseeable effect on trade, industry, or commerce in the Philippines.
- Provide analytical techniques, approaches and principles which form the core of merger analysis in dynamic industries and digital markets.



Guidelines for the Motu Proprio Review of Transactions in Digital Markets

- **Date of effectivity:** 04 August 2023
- General principles in the 2016 PCC Merger Review Guidelines allow flexibility in dealing with transactions in digital markets.
 - with the expanding role of digital markets in the economy, these guidelines identify theories of harm likely to arise in mergers involving digital markets



Guidelines for the Motu Proprio Review of Transactions in Digital Markets

- This allows merging parties to recognize potential harms that the PCC will consider in determining whether a motu proprio review is warranted.
- Outlines indicators which may trigger a *motu proprio review* within the digital market
- Encourage discussion and consultations between the PCC and entities operating in digital markets



Guidelines for the Motu Proprio Review of Transactions in Digital Markets

- Greater transparency & predictability in the assessment of competition issues in the digital market



Adjustment in the Compulsory Notification Threshold

- **Effective date:** Commission Resolution No. 2024 – 01 dated 21 February 2024, adjusted thresholds are effective on 01 March 2024
 - Size of Party is worth PHP 7.8 billion (CHF 120 million | USD 132 million)
 - Size of transaction is worth PHP 3.2 billion (CHF 49 million | USD 54 million)
 - Where an entity acquires at least 35% voting power in another entity
 - Based on Philippine Statistics Authority's official estimate of the nominal Gross Domestic Product growth of the Philippines of the previous year.



Guidelines on Merger Remedies

- Date of approval: 09 May 2024
- Framework in assessing remedies for mergers and acquisitions that were found during review to likely result in SLC in identified relevant markets.
- Discussion of the design, selection, and implementation of merger remedies, which allows actionable and concrete solutions that directly address or mitigate the harmful effects of mergers.



Guidelines on Merger Remedies

- section for specific remedies relevant to mergers in digital markets which provides discussion on firewall provisions, access provisions, and on research and development commitments. It also has provisions for remedies specific to multi-jurisdictional mergers.



Cooperation with foreign counterpart agencies

- activating channels and exchanging information with competition authorities in other jurisdictions is a prudent step towards obtaining an accurate picture of a prospective merger.
- food delivery platform which was in the stages of negotiation with potential acquirer, our MAO started monitoring the potential transaction and reached out to other competition agencies in the region (i.e. Singapore, Thailand, Malaysia, Indonesia, Vietnam, and Cambodia) for a possible concerted activity in the review of the transaction.



PCC Cooperation with Other Competition Authorities:

- **Cambodia Competition Commission's (CCC) study visit to the PCC** in March 2023. The Program designed for CCC to:
 - learn about institutional set-up and operations;
 - develop a Competition Enforcement Strategic Plan for CCC/CCF for effective competition enforcement in Cambodia; and,
 - create a Roadmap on the establishment of National Competition Policy.
- **MyCC's Benchmarking visit to PCC** in August 2023.
- Several officers from Malaysia visited the PCC to learn about the operation and management of a competition authority with merger enforcement as Malaysia is in the process of amending its competition law to include a merger control regime.
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PCC Cooperation with Other Competition Authorities:

- **PCC-Malaysia Competition Commission (MyCC) Training on Merger Control** in September 2023.
- The Program covers an overview of the Philippine merger control regime, notification proper, review procedures, competitive effects analysis, remedies, and other important considerations which Malaysia can consider in the amendment of their competition law.



Regional Developments:

- **Concluded the ASEAN Framework Agreement on Competition** (June 14, 2024)
 - aims to provide a fair and competitive business environment in ASEAN through cross-border cooperation between competition agencies, promote the internalization of competition policy into regional and domestic economic policies, and provide effective measures to deal with competition issues of mutual interest.
- **ASEAN Merger Information Sharing Portal (MISP):**
 - In December 2023, the ASEAN Expert Group on Competition (AEGC) discussed the establishment of the MISP. MISP aims to facilitate the sharing of merger information obtain among competition agencies of the ASEAN Member States to increase the effectiveness and efficiency of cross-border mergers investigation and to avoid conflicting outcomes.





PHILIPPINE COMPETITION COMMISSION

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