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**Roundtable on recent developments in merger control
standards**

Contribution

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Excellencies, distinguished delegates, colleagues, good morning. I would like to thank Teresa for this opportunity for the Philippine Competition Commission (PCC) to share our experience and developments in the merger control standards in our jurisdiction. It is our honor and pleasure to take part once again in this esteemed body to learn from experts and share experiences with other competition agencies.

The PCC is a medium size and relatively young agency which was created by the Philippine Competition Act (PCA) enacted on July 21, 2015.

One of the significant developments in the Philippines is the mainstreaming of the Competition Law and Policy in national development with the adoption of the Philippine Development Plan 2023-2028 which is our blueprint for economic development. The PDP recognizes that ensuring an open and competitive market economy will be crucial to sustain economic development and encourage job creation which is why Chapter 10 of the PDP is devoted to promote competition and improve regulatory efficiency.

Moreover, the PDP emphasizes the full implementation of the PCA through the adoption of a whole-of-government

approach involving coordinated efforts (I mean the legal one) across various government agencies to strengthen market competition as well as promote competition and improve regulatory efficiency in and through digital technologies.

Thus, it is clear that government regulations must always strike that delicate balance of creating a predictable business environment without undermining competition and sacrificing consumer welfare and public interest.

This is the context within which our merger regime was developed which is a hybrid of compulsory, voluntary and *motu proprio* review systems. In the interest of time, I will skip the details as these are in the slides and talk about the strategies and steps that the PCC has implemented or intend to implement in our merger control regime to facilitate the business environment in the Philippines.

Allow me to share that perhaps one of the most telling signs that regulatory efficiency is crucial is the time-bound merger review under the PCA. In fact, if the Commission fails to render a decision within 30 days from the payment of fees for Phase 1 Review or a total of 90 days including Phase 2 review, Section 17 of the law states that **merger or acquisition shall be deemed approved**. This provision surely makes the PCC always on guard and

keeps us on our toes and in some cases, keeps us up late at night.

We fully recognize the importance of ensuring an efficient, transparent, predictable and effective merger control regime in providing a conducive business environment. Toward this end, we have issued the following:

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

1. Non-Horizontal Review Guidelines (May 2023)

- Outline the principal analytical techniques, practices, and enforcement policy of the PCC with respect to non-horizontal MNAs that may have a direct, substantial, and reasonably foreseeable effect on trade, industry, or commerce in the Philippines.
- As informed by decisional practice and agency experience across jurisdictions, a body of analytical techniques, approaches and principles form the core of merger analysis in dynamic industries and digital markets.

2. Guidelines for the Motu Proprio Review of Transactions in Digital Markets (August 2023)

Although the general principles in our 2016 Merger Review Guidelines allow flexibility in dealing with transactions in digital markets; however, with the expanding role of digital markets in the economy, these guidelines identify theories of harm likely to arise in mergers involving digital markets.

This allows merging parties to recognize potential harms that the PCC will consider in determining whether a motu proprio review is warranted. In addition, it outlines indicators which may trigger a motu proprio review within the digital market. It is designed to encourage discussion and consultations between the PCC and entities operating in digital markets. Thus, it is envisaged that these will result in greater transparency & predictability in the assessment of competition issues in the digital market which is in line with achieving regulatory efficiency.

3. Adjustment in the Compulsory Notification Thresholds

- The PCA mandates the updating of notification of threshold on an annual basis.
- Beginning March 2024 the thresholds are:
 - 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

This means that all transactions breaching these thresholds will undergo mandatory review.

4.Guidelines on Merger Remedies

The Guidelines on Merger Remedies is another important tool that we now use internally which we just adopted in May. This issuance provides the framework in assessing remedies for mergers and acquisitions that were found during review to likely result in substantial lessening of competition (SLC) in identified relevant markets. It discusses the design, selection, and implementation of merger remedies, which allows actionable and concrete solutions that directly address or mitigate the harmful effects of mergers.

Likewise, it has a section focused on 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.

4. Cooperation with foreign counterpart agencies

Some transactions on digital markets involve entities whose commercial decisions are informed by the multinational nature of the business. In monitoring these, activating channels and exchanging information with competition authorities in other jurisdictions is a prudent step towards obtaining an accurate picture of a prospective merger.

In the case of a food delivery platform which was in the early stages of negotiation with potential acquirer, our Merger & Acquisitions Office 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. We believe that the quality and accuracy of the assessment is largely a function of the accurate data and information obtained during the review process; hence, we echo the sentiments expressed yesterday that we cannot overemphasize the value of cooperation if we are to fulfil our mandates in merger review, enforcement and even advocacy.

We have supported other competition authorities in terms of capacity building such as:

Cambodia Competition Commission (CCC) which had a study visit to the PCC to learn about: organizational set-up and operations, formulation of competition Enforcement Strategic Plan for CCC/CCF; and, development of a

Roadmap on the establishment of National Competition Policy.

MyCC's Benchmarking visit to PCC

Several officers from Malaysia Competition Commission 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.

PCC-Malaysia Competition Commission (MyCC) Training on Merger Control. 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.

I am pleased to inform this body of two important developments in the ASEAN Region which the Philippines participated in:

Concluded the ASEAN Framework Agreement on Competition (AFAC) just last month, the negotiations of which I had the pleasure and honor of chairing. The AFAC 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.

Development of the ASEAN Merger Information Sharing Portal (MISP):

In December 2023, the ASEAN Expert Group on Competition (AEGC) which the Philippines is the former Chair, 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.

In closing, these are among the developments that the PH has implemented and took part in to implement a merger control regime that seeks to facilitate the business environment in the country. Admittedly, a lot more needs to be done, we are grateful to UNCTAD for convening the Intergovernmental Group of Experts on Competition so we can continue to learn from each other and share experiences particularly on complex issues such as digital platforms and artificial intelligence which are continuously evolving and difficult to navigate. The PCC remains a partner and will continue to support and lend our assistance in any capacity.

Maraming salamat!