

Mergers & Acquisitions

PCC Issues Rules for the Implementation of Provisions from “Bayanihan to Recover as One Act” Relating to the Review of Mergers and Acquisitions

On September 24, 2020, the Philippine Competition Commission (“PCC”) issued its “Rules for the Implementation of Section 4(eee) of Republic Act No. 11494, otherwise known as the ‘Bayanihan to Recover as One Act’, Relating to the Review of Mergers and Acquisitions” (the “Rules”). The Bayanihan to Recover as One Act is a new law meant as a recovery measure for the Philippines in light of the COVID-19 pandemic. It took effect on September 15, 2020.

Mergers and acquisitions which meet thresholds set by the PCC or by law must be notified to and, prior to their consummation, be approved or deemed approved by, the PCC pursuant to Section 17 of the Philippine Competition Act (“PCA”; Republic Act No. 10667). Prior to the Bayanihan to Recover as One Act, the PCC in February 2020 had set the size of party and size of transaction thresholds for covered mergers at PhP6.0 billion (approximately US\$124 million) and PhP2.4 billion (approximately US\$49.5 million), respectively.¹ The new law increased to PhP50 billion (approximately US\$1.03 billion) the “transaction value” thresholds for mergers and acquisitions subject to compulsory notification to and approval by the PCC, albeit temporarily. The increased threshold under the new law has a two-year duration. Mergers and acquisitions below that threshold will not be subject to compulsory notification with the PCC for two years from the effectivity of the law, or to the PCC’s power of *motu proprio* review for one year from the effectivity of the law.

To implement the foregoing, the Rules clarify that the new law’s PhP50 billion “transaction value” threshold applies (a) to the size of the party test, i.e., the aggregate annual gross revenues in, into or from the Philippines, or the value of the assets in the Philippines, of the ultimate parent entity of at least one of the acquiring or acquired entities and all entities controlled by the ultimate parent entity; and (b) to the size of the transaction test. Depending on the actual structure of the transaction, that refers (i) to

¹ See PCC Commission Resolution No. 02-2020 dated February 11, 2020 – Adjusting the Merger Notification Thresholds Pursuant to Memorandum Circular No. 18-001.

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the aggregate value of the assets in the Philippines owned by the target company and entities it controls, or their gross revenues in, into or from the Philippines (if the transaction is an acquisition of voting shares); (ii) to the aggregate value of the assets in the Philippines of the acquiring entity and the aggregate gross revenues generated in or into the Philippines by assets acquired in the Philippines and any assets acquired outside the Philippines (in case of a merger or acquisition of assets inside and outside the Philippines); and (iii) to the aggregate value of the assets that will be combined in the Philippines or contributed into the proposed joint venture, or the gross revenues generated in the Philippines by assets to be combined in the Philippines or contributed into the proposed joint venture (in case of a joint venture).²

The Rules reiterate that the increased thresholds apply to mergers and acquisitions entered into within two years from the Bayanihan to Recover as One Act's effectivity date. Consistent with previous PCC issuances, under the Rules, a merger or acquisition transaction is entered into upon signing by the parties of a definitive agreement, which is an agreement setting out the complete and final terms and conditions of a merger or acquisition, including the rights and obligations between or among the transacting parties.³

The Rules also say that transactions entered into within one year from the effectivity of the Bayanihan to Recover as One Act shall not be subject to the PCC's power to review mergers and acquisitions *motu proprio*.⁴ Mergers and acquisitions entered into during the effectivity Bayanihan to Recover as One Act may be reviewed by the PCC *motu proprio* after one year from the effectivity of the law pursuant to Section 20 of the PCA. Notifiable transactions pending review before the PCC prior to the effectivity of the Bayanihan to Recover as One Act shall remain subject to review and investigation.⁵

Finally, the Rules allow for voluntary notification by parties to a merger or acquisition with transaction values below Php50 billion, which will be considered a waiver of the exemption under the Bayanihan to Recover as One Act. The review periods, which shall only apply during the effectivity of the Rules, are as follows: (a) 45 days for Phase I, and (b) 90 days for Phase II.⁶

² See Rules, Section 5.

³ See Rules Section 4.3.

⁴ See Bayanihan to Recover as One Act, Section 4(eee).

⁵ See Rules, Section 4.2.

⁶ See Rules, Section 7.

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