

05 October 2020

ATTY. FLORDELIZA C. VARGAS-TRINIDAD

Director
Office of the National Administrative Register (ONAR)
Bocobo Hall, UP Law Complex,
UP Diliman, Quezon City

Dear *Atty. Vargas-Trinidad*:

In compliance with Section 3, Title II, Book VII of the Administrative Code of 1987 requiring all agencies of the Philippine Government to file its adopted rules with the Office of the National Administrative Register, the Philippine Competition Commission (PCC) is respectfully submitting herewith three (3) certified true copies of the **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,** as approved through PCC Commission Resolution No. 22-2020 dated 24 September 2020.

We hope you find our submission in order.

Thank you.

Very truly yours,



JESON Q. DE LA TORRE
Officer-in-Charge, Administrative Office



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COMMISSION RESOLUTION NO. 22-2020

ADOPTING RULES FOR THE IMPLEMENTATION OF SECTION 4 (eee) OF REPUBLIC ACT NO. 11494, OTHERWISE KNOWN AS THE "BAYANIHAN TO RECOVER AS ONE ACT"

WHEREAS, on 8 March 2020, President Rodrigo R. Duterte (the "President"), recognizing the need for a whole-of-government approach to address the COVID-19 outbreak, issued Proclamation No. 922 declaring a State of Public Health Emergency throughout the Philippines;

WHEREAS, due to the continuing existence of a national emergency arising from COVID-19, the Philippine Congress enacted Republic Act No. 11494, otherwise known as the Bayanihan to Recover as One Act ("Bayanihan 2 Act") effective on 15 September 2020;

WHEREAS, pursuant to Section 4 (eee) of the Bayanihan 2 Act, the Philippine Competition Commission ("PCC") is mandated to promote business continuity and capacity-building, and 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 ("PCA"), and further, shall be exempt from the PCC's power to review mergers and acquisitions *motu proprio* provided in Section 12 of the PCA for a period of one year from the effectivity of the Bayanihan 2 Act; and

WHEREAS, the Commission recognizes that there is a need to adopt rules for the implementation of Section 4 (eee) of the Bayanihan 2 Act to ensure that fair market competition and protection of consumer welfare are well-observed, while promoting business continuity and capacity building.

NOW, THEREFORE, in view of the foregoing considerations, the Commission has **RESOLVED**, as it hereby **RESOLVES**, to adopt the *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*;

RESOLVED, FINALLY, that this Resolution shall take effect immediately upon publication in a newspaper of general circulation.



DONE this 24 September 2020 in Quezon City, Philippines.

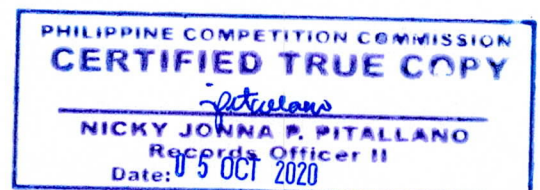

ARSENIO M. BALISACAN
Chairman


JOHANNES BENJAMIN R. BERNABE
Commissioner


AMABELLE C. ASUNCION
Commissioner


MACARIO R. DE CLARO, JR.
Commissioner


EMERSON B. AQUENDE
Commissioner



**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**

PRELIMINARY PROVISIONS

SECTION 1. Title

These Rules (“Rules”) shall be referred to as *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.*

SECTION 2. Purpose

These Rules are issued to implement Section 4 (eee) of the “Bayanihan to Recover as One Act” relating to the power of the Philippine Competition Commission (“PCC” or the “Commission”) to conduct review of mergers and acquisitions. Section 4 (eee) pertinently provides:

SEC. 4. COVID-19 Response and Recovery Interventions. –Pursuant to Article VI, Section 23(2) of the Constitution, the President is hereby authorized to exercise powers that are necessary and proper to undertake and implement the following COVID-19 response and recovery interventions:

(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) 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 year from the effectivity of this Act.

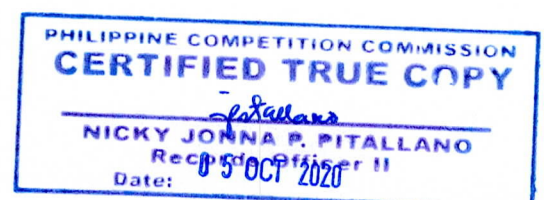
SECTION 3. Interpretation

These Rules shall be liberally construed to ensure the fulfillment of the policy objective of Section 4 (eee) of the “Bayanihan to Recover as One Act” in promoting business continuity and resumption of all economic activities amidst and during recovery from the COVID-19 pandemic while ensuring that the policy objective for the efficiency of market competition under the Philippine Competition Act (“PCA”) is duly observed.



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REVIEW OF MERGERS AND ACQUISITIONS

SECTION 4. Exemption from Compulsory Notification

Mergers and acquisitions entered into within two (2) years from the date of effectivity of the “Bayanihan to Recover as One Act” on 15 September 2020 with transaction values below Fifty Billion Pesos (P50,000,000,000.00) shall be exempt from compulsory notification under Section 17 of the PCA.

4.1. Mergers and acquisitions shall still be subject to compulsory notification when:

- (a) The transaction value is at least Fifty Billion Pesos (P50,000,000,000.00) as provided in Section 5 of these Rules; or
- (b) The transaction is entered into prior to the effectivity of the “Bayanihan to Recover as One Act” and exceeds the thresholds applicable as of the date the definitive agreement was executed.

4.2. Notifiable transactions pending review before the PCC for violation of Section 17 of the PCA prior to the effectivity of the “Bayanihan to Recover as One Act” shall remain subject to review and investigation.

4.3. For purposes of these Rules, a merger or acquisition transaction is “entered into” upon signing by the parties of their definitive agreement.

A “definitive agreement” sets out the complete and final terms and conditions of a merger or acquisition, including the rights and obligations between or among the transacting parties. Such agreement may be in the form of a share purchase agreement, asset purchase agreement, joint venture agreement or other similar agreement. The inclusion of conditions which must be fulfilled by a party or the parties to make the agreement effective against a party or the parties will not negate the definitive nature of the agreement.

SECTION 5. Transaction Values

For purposes of determining the transaction value in the preceding Section, parties to the following merger or acquisition transactions are required to provide notification when:

- (a) The aggregate annual gross revenues in, into or from the Philippines, or value of the assets in the Philippines of the ultimate parent entity of at least one of the acquiring or acquired entities, including that of all entities that the ultimate parent entity controls, directly or indirectly, is Fifty Billion Pesos (P50,000,000,000.00) or more; and
- (b) The value of the transaction is Fifty Billion Pesos (P50,000,000,000.00) or more, as determined in subsections (1), (2), (3) or (4) below:



- (1) With respect to a proposed merger or acquisition of assets in the Philippines if either
 - i. the aggregate value of the assets in the Philippines being acquired in the proposed transaction is Fifty Billion Pesos (P50,000,000,000.00) or more; or
 - ii. the gross revenues generated in the Philippines by assets acquired in the Philippines is Fifty Billion Pesos (P50,000,000,000.00) or more.

- (2) With respect to a proposed merger or acquisition of assets outside the Philippines, if
 - i. the aggregate value of the assets in the Philippines of the acquiring entity is Fifty Billion Pesos (P50,000,000,000.00) or more; and
 - ii. the gross revenues generated in or into the Philippines by those assets acquired outside the Philippines is Fifty Billion Pesos (P50,000,000,000.00) or more.

- (3) With respect to a proposed merger or acquisition of assets inside and outside the Philippines, if
 - i. the aggregate value of the assets in the Philippines of the acquiring entity is Fifty Billion Pesos (P50,000,000,000.00) or more; and
 - ii. the aggregate gross revenues generated in or into the Philippines by assets acquired in the Philippines and any assets acquired outside the Philippines collectively is Fifty Billion Pesos (P50,000,000,000.00) or more.

- (4) With respect to a proposed acquisition of (i) voting shares of a corporation or of (ii) an interest in a non-corporate entity
 - i. If the aggregate value of the assets in the Philippines that are owned by the corporation or non-corporate entity or by entities it controls, other than assets that are shares of any of those corporations, is Fifty Billion Pesos (P50,000,000,000.00) or more; or
 - ii. The gross revenues from sales in, into, or from the Philippines of the corporation or non-corporate entity or by entities it controls, other than assets that are shares of any of those corporations, is Fifty Billion Pesos (P50,000,000,000.00) or more; and
 - iii. If
 - A. as a result of the proposed acquisition of the voting shares of a corporation, the entity or entities acquiring the shares, together with their affiliates, would own voting shares of the corporation that, in the aggregate, carry more than the following percentages of the votes attached to all the corporation's outstanding voting shares:



- I. Thirty-five percent (35%), or
 - II. Fifty percent (50%), if the entity or entities already own more than the percentage set out in subsection I above, as the case may be, before the proposed acquisition; or
- B. as a result of the proposed acquisition of an interest in a non-corporate entity, the entity or entities acquiring the interest, together with their affiliates, would hold an aggregate interest in the non-corporate entity that entitles the entity or entities to receive more than the following percentages of the profits of the non-corporate entity or assets of that non-corporate entity on its dissolution:
- I. Thirty-five percent (35%), or
 - II. Fifty percent (50%), if the entity or entities acquiring the interest are already entitled to receive more than the percentage set out in subsection I immediately above before the proposed acquisition.
- (c) Where an entity has already exceeded the 35% threshold for an acquisition of voting shares, or the 35% threshold for an acquisition of an interest in a non-corporate entity, another notification will be required if the same entity will exceed 50% threshold after making a further acquisition of either voting shares or an interest in a non-corporate entity.
- (d) In a notifiable joint venture transaction, an acquiring entity shall be subject to the notification requirements if either (i) the aggregate value of the assets that will be combined in the Philippines or contributed into the proposed joint venture is Fifty Billion Pesos (P50,000,000,000.00) or more or the gross revenues generated in the Philippines by assets to be combined in the Philippines or contributed into the proposed joint venture is Fifty Billion Pesos (P50,000,000,000.00) or more. In determining the assets of the joint venture, the following shall be included:
- (1) All assets which any entity contributing to the formation of the joint venture has agreed to transfer, or for which agreements have been secured for the joint venture to obtain at any time, whether or not such entity is subject to the requirements of the act; and
 - (2) Any amount of credit or any obligations of the joint venture which any entity contributing to the formation has agreed to extend or guarantee, at any time.
- (e) A merger or acquisition consisting of successive transactions, or acquisition of parts of one or more entities, which shall take place within a one-year period between the same parties, or any entity they control or are controlled by or are under common control with another entity or entities, shall be treated as one transaction. If a binding preliminary agreement provides for such successive transactions or acquisition of parts, the entities shall provide notification on the basis of such



preliminary agreement. If there is no binding preliminary agreement, notification shall be made when the parties execute the agreement relating to the last transaction which, when taken together with the preceding transactions, satisfies the thresholds under this Section.

- (f) For purposes of calculating notification thresholds:
- (1) The aggregate value of assets in the Philippines shall be as stated on the last regularly prepared balance sheet or the most recent audited financial statements in which those assets are accounted for.
 - (2) The gross revenues from sales of an entity shall be the amount stated on the last regularly prepared annual statement of income and expense of that entity.

SECTION 6. Exemption from *Motu Proprio* Review.

Transactions below the thresholds in the preceding Section shall likewise be exempt from the PCC's power to review mergers and acquisitions *motu proprio* provided in Section 12 of the PCA for a period of one year from the effectivity of "Bayanihan to Recover as One Act".

6.1. A merger or acquisition is not covered by this exemption when:

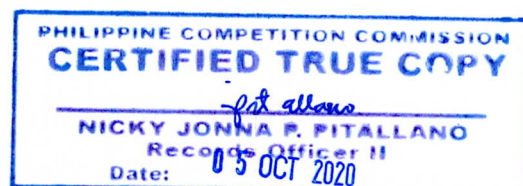
- (a) The transaction is entered into prior to the effectivity of the "Bayanihan to Recover as One Act" which has not yet been the subject of PCC review; or
- (b) The transaction is pending review by the PCC prior to the effectivity of "Bayanihan to Recover as One Act".

6.2. 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 said Act pursuant to Section 20 of the PCA.

SECTION 7. Voluntary Notification.

Nothing in these Rules precludes the parties to a merger or acquisition with transaction values below Fifty Billion Pesos (P50,000,000,000.00) to voluntarily notify under Section 3.2 of the PCC Rules on Merger Procedure ("Merger Rules"). The PCC may, in its discretion, give due course to the voluntary notification subject to the review periods of forty-five (45) days for Phase I and ninety (90) days for Phase II. These review periods for voluntary notification shall only apply during the effectivity of these Rules. The process for notification under the Merger Rules and other pertinent guidelines which the PCC may subsequently issue shall apply.

A voluntary notification shall constitute a waiver to the exemption from review provided in Section 4(eee) of the "Bayanihan to Recover as One Act" and in these Rules.



EFFECTIVITY

SECTION 8. Applicable Law.

Unless otherwise provided in the “Bayanihan to Recover as One Act” and these Rules, the relevant provisions of the PCA, its IRR and other relevant PCC issuances, rules and procedure shall continue to apply.

SECTION 9. Separability Clause.

Should any provision herein be declared unconstitutional or contrary to law, the same shall not affect the validity of other provisions in these Rules.

SECTION 10. Effectivity.

These Rules shall take effect immediately upon publication in a newspaper of general circulation.

Quezon City, Philippines, 24 September 2020.

