

## REVISED GUIDELINES ON LETTERS OF NON-COVERAGE FROM COMPULSORY NOTIFICATION

These Guidelines are issued to guide the public in submitting to the Mergers and Acquisitions Office (“MAO”) Letters of Non-Coverage from Compulsory Notification (“Letter”) and supporting information on the proposed merger or acquisition (“Transaction”).

1. Parties may seek confirmation of non-coverage from compulsory notification for Transactions falling under the following grounds:
  - a. Transactions that do not breach the notification thresholds provided under Section 17 of the Philippine Competition Act<sup>1</sup> (“PCA”) and Rule 4, Section 3 of the Implementing Rules and Regulations of Republic Act No. 10667 (“IRR”), as amended by PCC Memorandum Circular No. 18-001;
  - b. Internal restructuring covered by PCC Clarificatory Note No. 16-002 (“C.N. No. 16-002”)<sup>2</sup>;
  - c. Consolidation of ownership under PCC Clarificatory Note No. 18-001 (“C.N. No. 18-001”)<sup>3</sup>; or
  - d. Certain land acquisitions per PCC Clarificatory Note No. 19-001 (“C.N. No. 19-001”).<sup>4</sup>
2. The Letter must be addressed to the MAO, specifically indicating the purpose of the correspondence in the subject heading. Letters and supporting information enumerated hereunder must be filed by either the acquiring or acquired entity, or their respective Ultimate Parent Entity.
3. The Letter, regardless of the ground for the application, must provide the following information:
  - a. Names of the acquiring and acquired (or “target”) entities (collectively the “Parties”), and their respective ultimate parent entities (“UPE”);
  - b. Latest General Information Sheets of the Parties and their identified UPEs;

<sup>1</sup> Rep. Act No. 10667 (2015).

<sup>2</sup> Issued 16 September 2016.

<sup>3</sup> Issued 21 September 2018.

<sup>4</sup> Issued 08 January 2019.



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- c. Definitive agreement or preliminary agreement relating to the proposed transaction;<sup>5</sup>
  - d. Description of the proposed transaction;
  - e. Objective of the proposed transaction;
  - f. For the respective Notifying Groups<sup>6</sup> of the acquiring and acquired entities, provide:<sup>7</sup>
    - i. A description of their lines of business,
    - ii. Products and services for each line of business,
    - iii. Revenues derived by the Notifying Group for each line of business in the most recent year, and;
    - iv. The geographical areas in the Philippines where they supply each product or service;
  - g. For mergers, the most recent draft of the Plan of Merger and Articles of Merger;
  - h. For joint ventures, relevant documents showing the degree of participation and management roles of each JV partner, respective rights and powers in the management of the JV, and division of profits, risks and losses;
  - i. Identity of the authorized representatives of each Party to the Transaction, including the designation/ position, email address, business address, and phone number.
4. *For mergers and acquisitions that do not breach the notification thresholds.* For transactions that do not breach the thresholds for compulsory notification under the PCA and IRR, the parties must also submit information such as, but not limited to:
- a. Diagrams or charts showing the relationship between the Notifying Group of the acquiring entity and the acquired entity before and after the proposed transaction; and
  - b. Description of the assets, shares, or other interests being acquired.
    - i. For acquisition of assets, a description of all the classes of assets to be acquired, the value of each class of asset, and the basis of the valuation thereof;

<sup>5</sup> Refer to PCC Clarificatory Note no. 16-001. If only a draft definitive agreement is submitted, Parties must undertake to submit the final signed agreement within three (3) days from the execution thereof.

<sup>6</sup> The Notifying Group is comprised of the filing Ultimate Parent Entity and all entities it controls, whether directly or indirectly.

<sup>7</sup> If the parties have previously submitted to the Mergers and Acquisitions Office such documents within the last 12 months immediately preceding the submitted Letter, please coordinate with the MAO.



- ii. For acquisition of shares, a description of all classes of shares of the acquired entity and entities it controls, and the features of each class of shares;
    - iii. For joint ventures (JV), a description of all the assets or shares to be combined or contributed, the value of each class of asset and the basis of the valuation thereof or in case of shares, the features of each class of shares; and
    - iv. For mergers, provide the information required in (i) or (ii) for each asset or share of the absorbed entity and entities it controls.
  - c. Latest Audited Financial Statements or last regularly prepared financial statement of the Parties and their respective UPEs.
- 5. *For mergers and acquisitions involving internal restructuring under C.N. No. 16-002.* For transactions claimed to be internal restructuring within a group of companies having the same ultimate parent entity (therefore involving no change in control), the parties must also submit evidence of control by the Acquiring Entity over the Acquired Entity such as, but not limited to:
  - a. Shareholders' agreement;
  - b. Board resolutions and minutes of the meeting;
  - c. Voting trust agreements;
  - d. Management contracts;
  - e. Nominee agreements;
  - f. Trust agreements; and
  - g. Any other agreements of a similar nature or analogous to those abovementioned.
- 6. *For mergers and acquisitions involving consolidation of ownership under C.N. No 18-001.* For transactions claimed to involve consolidation of ownership over several entities in the same natural person(s), the parties must also submit the following:
  - a. A list of all entities in which each of the common beneficial owners of the acquiring and target entities have an interest, together with information on:
    - i. The type and extent of the beneficial owner's interest
    - ii. The lines of business of each entity in which the beneficial owners have an interest
    - iii. Products and services in each line of business.
  - b. Latest General Information Sheet and Audited Financial Statements of all entities identified in 6(a);



- c. Most recent draft(s) of the agreement(s) or executed copy of the agreement(s) to implement the transaction;
  - d. Affidavit from duly authorized officers of the Acquiring and Acquired entity that the transaction is between entities that are controlled by, or under common control of the same ultimate parent entity;
  - e. Evidence of control in cases where the natural person(s) controls a party to the transaction other than ownership of shares.
7. *For land acquisitions not for the purpose of obtaining control.* For land acquisitions not for the purpose of obtaining control as defined under C.N. No. 19-001, the parties must also submit the following information:
- a. Latest Articles of Incorporation, and By-Laws of the parties;
  - b. Deeds, instruments, writings, or documents which transfer, convey, or assign the property, including deeds, instruments, writings or documents which require one party to assume any liability or mortgage arising from the transfer of the property.
  - c. If there is any condition to assume liability or mortgage, the deed, instrument, writing, or document pertaining to the principal liability (e.g. loan agreement) and the mortgage agreement.
  - d. If the transaction involves titled property, certified true copy of the original certificate of title (OCT), transfer certificate of title (TCT), condominium certificate of title (CCT) or other proof of ownership of the property, including pages on Memorandum of Encumbrances issued by the Registry of Deeds within fourteen (14) days prior to submission to the PCC;
  - e. Certified true copy of the latest Tax Declaration of the property, untitled or titled, and any improvement thereto, obtained within fourteen (14) days prior to the submission to the PCC;
  - f. Certificate of No Improvement;
  - g. Appraisal report, if available;
  - h. Financial and accounting records itemizing the (i) property, plant, and equipment, (ii) investment property, (iii) inventory, or (iv) other accounts, where the property is recorded, including, but not limited to, lapsing schedule, subsidiary ledgers, or worksheets showing the purchase price, cost, carrying amount, accumulated depreciation, and other changes (i.e. increase or decrease) of the account.
  - i. Approved location map or, in its absence, a google map satellite image of the land to be acquired, including the text copy of the coordinates; and
  - j. Clear photos of the property, including its boundaries, structures thereon, and right of way, to be captured within thirty (30) days prior to submission of information to the MAO.



8. The submission of the Letter with its accompanying documents does not preclude the PCC from requesting additional information from the parties that are reasonably necessary and directly relevant to the evaluation of the transaction, pursuant to its powers and mandate under Sections 12, 16 and 20 of the PCA.
9. Letters made under these Guidelines must comply with the following formal requirements:
  - a. Accompanied by the original copy of the Secretary's Certificate in case of a corporation, or Special Power of Attorney in case of a partnership, naming the authorized signatory of the letter as possessing actual authority to make the certification on behalf of the entity filing the letter, and naming the persons authorized to file and represent them before the MAO;
  - b. One (1) original hard copy and an electronic version saved in a secure Universal Serial Bus (USB) must be submitted. Each attachment must be saved in the USB as a separate file with a file name that corresponds to the appendix number. The electronic versions must be saved in searchable PDF, Word, or Excel format (for data sets).
  - c. All Letters and subsequent responses to requests for additional information and documents by the MAO must be accompanied by a duly notarized certification from an authorized person of the requesting party that (a) the Letter, together with all appendices and attachments thereto, was prepared under his/her supervision; and (b) the information and data provided are complete, true and correct to the best of his knowledge and/or based on authentic records. The authorized person must be a general partner of a partnership, an officer or director of a corporation, or in the case of a natural person, the natural person or his/her legal representative.
10. A Letter that fails to comply with any of the requirements set forth in these Guidelines will not be accepted by the PCC.
11. All communications and notices issued by the MAO or the PCC regarding Letters shall be based solely on information and documents submitted by the parties. Should the facts turn out to be different than what was represented before the MAO or PCC, all opinions or findings issued by the MAO or the PCC in response to the Parties' Letter shall be deemed to have been obtained on the basis of fraud or false material information, and therefore of no effect. In this regard, the Parties cannot rely on said opinion or finding issued by the MAO or the PCC as basis for not notifying the Commission of the transaction.
12. The issuance of a letter on non-coverage from compulsory notification shall not prevent the Commission from commencing a *motu proprio* review of mergers and acquisitions pursuant to Section 12, 16 and 20 of the PCA.

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