

25 January 2021

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 **PCC Memorandum Circular No. 21-001 on Adjusting the Schedule of Fines for Violations of the Philippine Competition Act (PCA) of the 2017 Rules of Procedure of the Philippine Competition Commission and Rules of Merger Procedure.**

The said Memorandum Circular is published on 25 January 2021 in The Philippine Daily Inquirer and The Manila Bulletin.

We hope you find our submission in order.

Thank you.

Very truly yours,



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

PCC MEMORANDUM CIRCULAR NO. 21-001

Subject: Adjusting the Schedule of Fines for Violations of the Philippine Competition Act (PCA) of the 2017 Rules of Procedure of the Philippine Competition Commission and the Rules of Merger Procedure

WHEREAS, Section 12(e) of Republic Act 10667, otherwise known as the Philippine Competition Act (“Act”) grants the Commission the power to, among others, impose fines for any noncompliance with or breach of the Act and its implementing rules and regulations (IRR);

WHEREAS, Section 29 of the Act provides a schedule of administrative fines to be imposed under the Act. It further provides that the schedule of fines *“shall be increased by the Commission every five (5) years to maintain their real value from the time it was set.”*

WHEREAS, the schedule of fines indicated in Section 29 of the Act has been adopted and is reflected in the 2017 Rules of Procedure of the Philippine Competition Commission (“2017 PCC Rules of Procedure”) and Merger Rules of Procedure (“Merger Rules”), and has not been adjusted since the effectivity of the Act on 8 August 2015;

WHEREAS, the Commission recognizes the need to modify and amend the minimum imposable fine prescribed under Section 16.2 of the Merger Rules on belated notification to ensure timely submission to the Commission of mergers or acquisitions subject to compulsory notification and to impose a more effective deterrent;

WHEREAS, the Commission finds the need to adjust the schedule of fines to maintain its real value;

NOW, THEREFORE, pursuant to the power granted by the Act, the Commission hereby increases the fines provided for under Section 29 of the Act, and accordingly amends the 2017 PCC Rules of Procedure and Merger Rules as follows:

Section 1. RULE VI, Article I, Section 6.1 of the 2017 PCC Rules of Procedure is hereby amended to read as follows:

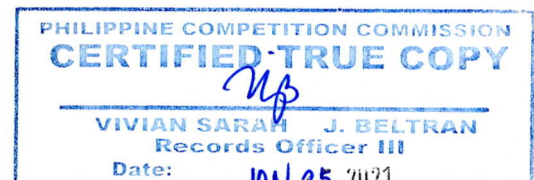
“Section 6.1. Administrative fines. — After due notice and hearing, the Commission may impose the following schedule of administrative fines on any Entity found by the Commission to have violated Sections 14 or 15 of the Act:

First offense: Fine of up to one hundred ten million pesos (P110,000,000.00):



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Second offense: Fine of not less than one hundred ten million pesos (P110,000,000.00) but not more than two hundred seventy-five million pesos (P275,000,000.00); and

Third and succeeding offenses: Fine of not less than one hundred sixty-five million pesos (P165,000,000.00) but not more than two hundred seventy-five million pesos (P275,000,000.00).

Any previous finding of violation under Sections 14 or 15 of the Act by the Commission shall be counted for purposes of determining the minimum imposable penalty according to the above schedule."

Section 2. RULE VI, Article I, Section 6.9 of the 2017 PCC Rules of Procedure is hereby amended to read as follows:

"Section 6.9. Failure to notify the Commission of sale, donation, disposition, or any other transfer during adjudication. — A Respondent that fails to notify the Commission of any sale, donation, disposition, or any other transfer, whether absolute or otherwise, made during adjudication, of its interest in businesses, shareholdings, business units, assets, or any other interest related to matters under adjudication shall, after due notice and hearing, be penalized with a fine of not less than fifty-five thousand pesos (P55,000.00) up to two million two hundred thousand pesos (P2,200,000.00)."

Section 3. RULE VI, Article I, Section 6.10 of the 2017 PCC Rules of Procedure is hereby amended to read as follows:

"Section 6.10. Failure or refusal to comply with a ruling, order, or decision of the Commission. — An Entity that fails or refuses to comply with a ruling, order, or decision issued by the Commission within the period provided therein shall, after due notice and hearing, pay a penalty of not less than fifty-five thousand pesos (P55,000.00) up to two million two hundred thousand pesos (P2,200,000.00) for each violation. In addition, a similar amount of penalty shall accrue for each day of non-compliance beginning forty-five (45) days from the time that the said ruling, order, or decision was served until the said Entity fully complies."

Section 4. RULE VI, Article I, Section 6.11 of the 2017 PCC Rules of Procedure is hereby amended to read as follows:

"Section 6.11. Supply of incorrect or misleading information. — The Commission may, after due notice and hearing, likewise impose upon any Entity fines of up to one million one hundred thousand pesos (P1,100,000.00) where, intentionally or negligently, it supplies incorrect or misleading information in:

(a) Any document, application, or other paper filed with or submitted to the PCC;



- (b) A request for a Binding Ruling;
- (c) An application for a Consent Order;
- (d) Proceedings relating to a Show Cause Order; or
- (e) Application for modification of any ruling, order, or approval, as the case may be.

Supply of incorrect or misleading information shall mean: (a) providing information that is false, inaccurate, or erroneous; or (2) omitting, concealing, or failing to make known information reasonably likely to be relied upon by the PCC in the performance of its official functions: Provided, That such omission, concealment, or failure may mislead, tend to mislead, or otherwise create a false impression on the PCC. Where the incorrect or misleading information is supplied in written or printed form, supply thereof in any single document shall constitute one violation under this Section."

Section 5. RULE VI, Article I, Section 6.12 of the 2017 PCC Rules of Procedure is hereby amended to read as follows:

"Section 6.12. Reprisal or discrimination. — Any Entity that commits any form of reprisal or discrimination against anyone cooperating or furnishing information, document, or data to the PCC in connection with an Investigation or proceeding being conducted, shall, after due notice and hearing, be penalized with a fine of not less than fifty-five thousand pesos (P55,000.00) up to two million two hundred thousand pesos (P2,200,000.00).

Reprisal or discrimination shall include removal, discharge, demotion, suspension, threats, harassment, or any form of retaliation in the terms and conditions of employment, agency, or engagement, as the case may be."

Section 6. RULE VI, Article I, Section 6.13 of the 2017 PCC Rules of Procedure is hereby amended to read as follows:

"Section 6.13. Disclosure, publication, transfer, copying, or dissemination of Confidential Information. — Unless otherwise allowed under the Act, its implementing rules, or other issuances of the PCC, the direct or indirect disclosure, publication, transfer, copying, or dissemination of the following information shall, after due notice and hearing, be penalized with a fine of not less than one million pesos (P1,000,000.00) but not more than five million pesos (P5,000,000.00):

- (a) Confidential Business Information submitted and duly claimed as confidential by an Entity and determined to be such by the PCC, as well as Confidential Business Information provisionally treated as confidential in accordance with Rule XI; or
- (b) Identity of persons who provide information to the PCC under condition of anonymity.



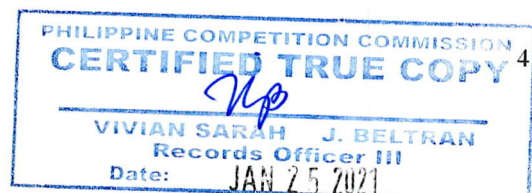
If the direct or indirect disclosure, publication, transfer, copying, or dissemination involves other forms of Confidential Information, the fine shall be from fifty-five thousand pesos (P55,000.00) up to two million two hundred thousand pesos (P2,200,000.00). ”

Section 7. RULE VI, Article I, Section 6.15 of the 2017 PCC Rules of Procedure is hereby amended to read as follows:

“Section 6.15. Obstruction. — The Commission may, after due notice and hearing, impose a fine of not less than fifty-five thousand pesos (P55,000.00) up to two million two hundred thousand pesos (P2,200,000.00) on anyone who commits any of the following acts constituting obstruction of any Investigation or proceedings of the PCC, the implementation of the orders, rulings, or decisions of the PCC, or the enforcement of the Act, its implementing rules, or other competition laws:

- (a) Altering, destroying, suppressing, or concealing papers, records, documents, Electronically Stored Information, other things, or information which relate to any matter relevant to the Investigation or proceeding;*
- (b) Disobedience of or resistance to a lawful writ or process of the PCC, other than acts covered by Section 6.14;*
- (c) Disobedience of or resistance to any agency, officer, or person vested with authority or deputized by the Commission, while acting within the scope of his authority or engaged in the performance of his official duties;*
- (d) Making a motion solely for the purpose of delay or in order to gain undue access to Confidential Information, filing a motion in bad faith, or making a motion that is patently frivolous;*
- (e) Knowingly making a false oral statement, other than acts covered by Section 6.11;*
- (f) Inviting reliance on any document or information that is false, forged, altered, misleading, or otherwise lacking in authenticity;*
- (g) Making, presenting, or submitting any object evidence that is misleading in a material respect; or*
- (h) Engaging in any act that interferes with, impedes, degrades, or frustrates, or tends, directly or indirectly, to interfere with, impede, degrade, or frustrate the speedy or orderly administration of the Act, its implementing rules, or other competition laws.”*

Section 8. RULE VI, Article I, Section 6.16 of the 2017 PCC Rules of Procedure is hereby amended to read as follows:



"Section 6.16. Other violations. — Any other violations not specifically penalized under the relevant provisions of the Act shall be penalized by a fine of not less than fifty-five thousand pesos (P55,000.00) up to two million two hundred thousand pesos (P2,200,000.00)."

Section 9. Section 5.8 of the Merger Rules is hereby amended to read as follows:

5.8. The merger parties should provide complete and correct information to the PCC. Each filing party's authorized representative must certify that the information submitted is correct to the best of his personal knowledge and/or based on authentic records (see Rule 4, Section 5(c) of the IRR). The supply of incorrect or misleading information is subject to a fine of up to one million one hundred thousand pesos (PHP 1,100,000.00) under Section 29 of the Act (refer to Section 16 of these Rules). Where necessary or appropriate, the PCC may gather information or conduct market calls during the Sufficiency Period for a better understanding of the market and to assist it in determining sufficiency of the Form.

Section 10. Section 16.2 of the Merger Rules is hereby amended to read as follows:

"16.2. Failure to notify within the period for notification. Merger parties and their ultimate parent entities failing to notify the PCC within the period for notification provided under Section 2 of these Rules but has yet to consummate the merger will be fined 5% of 1% of the value of transaction for the first thirty (30) days of delay or fraction thereof. The fine shall be increased by 1% of 1% of the value of the transaction for every additional 30 days of delay or fraction thereof, provided that the total amount of fine to be imposed shall not exceed two million two hundred thousand pesos (PHP 2,200,000.00)."

Section 11. Section 16.3 of the Merger Rules is hereby amended to read as follows:

"16.3. Prohibited mergers. Merger parties and their ultimate parent entities found to have violated Section 20 of the Act may be imposed the following fines:

(a) First offense: Fine of up to one hundred ten million pesos (PHP 110,000,000.00);

(b) Second offense: Fine of not less than one hundred ten million pesos (PHP 110,000,000.00) but not more than two hundred seventy-five million pesos (PHP 275,000,000.00);

(c) Third and succeeding offenses: Fine of not less than one hundred sixty-five million pesos (PHP 165,000,000.00) but not more than two hundred seventy-five million pesos (PHP 275,000,000.00).



Any previous finding of violation under Sections 17 or 20 of the Act by the PCC shall be counted for purposes of determining the minimum imposable penalty according to the above schedule."

Section 12. The revised schedule of fines under Sections 1 to 11 hereof shall only apply to violations committed after the effectivity of this Memorandum Circular.

Section 13. This Memorandum Circular may be modified, amended, supplemented, or repealed, as may be deemed necessary and proper by the Commission, in accordance with the provisions of the Act and other relevant existing laws and rules.

Section 14. If any part or provision of this Memorandum Circular is declared unconstitutional or illegal, the other parts or provisions shall remain valid.

Section 15. This Memorandum Circular shall take effect fifteen (15) days after its publication in two (2) newspapers of general circulation and filing with the Office of the National Administrative Register of the U.P. Law Center.

Quezon City, Philippines, 19 January 2021.


ARSENIO M. BALISACAN
Chairman


JOHANNES BENJAMIN R. BERNABE
Commissioner


EMERSON B. AQUENDE
Commissioner

