

# Kluwer Competition Law Blog

## Interim merger control in the Philippines – Authority now accepting notifications

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Following over 20 years of deliberations and finally the entry into force of the first cross-sector competition law in the Philippines last summer, the newly established Philippine Competition Commission (“**Commission**”) has published an interim arrangement to accept simplified merger notifications. Notifications are mandatory for transactions which satisfy the transaction value threshold during the interim period.

The Philippine Competition Act prohibits conduct that restricts competition through anti-competitive agreements and abuses of a dominant position and it introduces a compulsory notification regime for certain mergers and acquisitions. It also imposes administrative and criminal penalties for violations of the law.

The regime is being brought into effect in stages, with companies benefitting from a two-year grace period for the provisions against anti-competitive agreements and abuse of dominance. However, pursuant to the interim measures published by the Commission, mergers that fall within the thresholds must be notified to the Commission as of 8 March 2016.

### **A transitional ‘light’ merger notification regime**

Implementing rules for the notification of mergers have not yet been issued and there is, as yet, no clear indication as to when they are likely to be published. However, on 12 February 2016, the Commission published two circulars setting out a transitional notification arrangement. Any transactions which meet the requisite threshold (which is that the merger or acquisition is valued at more than one billion pesos – approximately USD 21 million) and which are “executed or implemented” after 8 March 2016 must be notified by way of a letter to the Commission. At present, it is not clear how the “the value of the transaction” will be interpreted and whether foreign-to-foreign transactions with no nexus to the Philippines will be caught by the new regime. It is expected that the implementing rules that are due to be published by the Commission will provide more clarity on this point but, until this is the case, parties must decide whether to notify the Commission on the basis of their own interpretation of “the value of the transaction”.

### **Effect and timing of the notification**

Any merger or acquisition valued at more than one billion pesos “executed or implemented” after 8 March 2016 must be notified to the Commission in the requisite form. Transactions notified in this

form with the Commission will be deemed to be approved (assuming that no false material information has been provided). Under the transitional arrangements, notification for mergers must occur before the transaction is executed or implemented. For mergers involving at least one SEC-regulated entity, the parties must notify the Commission before the close of business of the first working day after the transaction occurs.

### **Contents of a notification letter**

Transactions must be notified by way of a letter addressed to the Commission, which must contain the following information:

- details relating to the parties to the merger or acquisition;
- name and contact details of the authorised representatives of each of the parties to the merger or acquisition to whom the Commission may address any correspondence;
- a brief description of the businesses of the parties to the transaction;
- type of transaction (whether a merger or an acquisition);
- consideration;
- key terms of the transaction; and
- timing for the execution or implementation of the transaction.

### **Risk for failing to notify**

Mergers and acquisitions effected in violation of the obligation to notify will be considered void and the parties will be exposed to fines of 1% to 5% of the value of the transaction.

### **Fast-moving developments in the Philippines**

Given the relatively low threshold for notification of mergers and acquisitions, notification in the Philippines is likely to be an important consideration for many business active in the M&A space. Until the formal implementing rules have been issued, merging parties benefit from a simple regime to notify mergers and have them automatically approved. In the case of the other provisions introduced by the law last year (including against cartels and abuse of a dominant position), a two-year grace period is built into the law. However, the Philippines government has fast-tracked the establishment of the Commission, indicating that it considers competition policy to be an important priority for its economic development.

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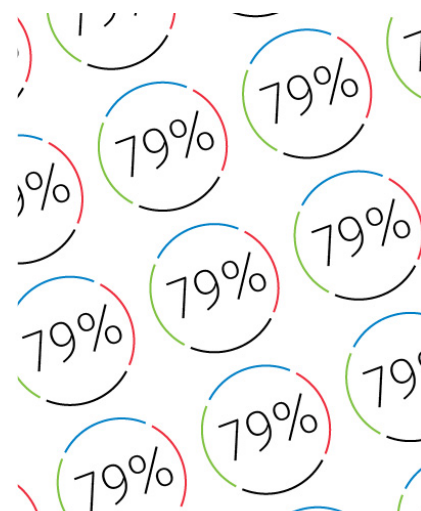
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