



Suspension of PCC's Motu Proprio Merger Review Powers Ends

September 16, 2021

On September 15, 2021, the one-year-long suspension of the Philippine Competition Commission's (PCC) power to review mergers and acquisitions motu proprio under *Republic Act No. 11494 (the Bayanihan to Recover as One Act, or the Bayanihan 2)* ends.

This means that starting September 16, 2021, the PCC may again review mergers and acquisitions motu proprio. This includes mergers and acquisitions that were entered into before September 16, 2021, and those that will be entered into thereafter, even if those transactions do not meet the Php50 Billion threshold for compulsory notification provided under Bayanihan 2, which remains in effect until September 15, 2022.

Parties to mergers and acquisitions that were executed during the one-year suspension of the PCC's motu proprio merger review powers – particularly those transactions that may have a significant impact on competition – should carefully monitor developments on the PCC front and assess the risk of the PCC opening a motu proprio review of their transaction. Notably, the PCC stated in its 2020 Annual Report that its Mergers and Acquisitions Office “focused on capacity-building and market monitoring to gear up for the resumption of its motu proprio review in September 2021.”

On the other hand, parties to mergers and acquisitions that will be executed after September 15, 2021, even if not compulsorily notifiable, should nevertheless carefully: (1) assess whether or not the transaction would raise competition-related concerns; (2) consider the risks of the PCC conducting a motu proprio review upon acquiring knowledge of the transaction; (3) prepare possible defenses that may be asserted in the event that such a motu proprio review is conducted; and (4) evaluate if voluntary notification would be the more prudent course of action to obtain deal certainty and avoid a subsequent review by the PCC. This is especially true in transactions where there are horizontal overlaps and/or vertical relationships between the parties.

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