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## PCC Issues Rules Implementing Section 4(eee) of Bayanihan 2 on the Transaction Value Threshold for the Exemption from Compulsory Notification

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The Philippine Competition Commission (PCC) has issued the rules for the implementation of Section 4(eee) of Republic Act No. 11494, the “Bayanihan to Recover as One Act” (Bayanihan 2)<sup>1</sup> on October 5, 2020 and these rules (PCC Rules on Bayanihan 2)<sup>2</sup> were published, and thus became effective, from the same date.

To recall, Section 4(eee) of Bayanihan 2 provides for the following, as part of the government’s economic recovery measures, and for the stated purpose of “promot[ing] business continuity and capacity building”:

- (a) exempts from the compulsory notification requirement under Section 17 of the Philippine Competition Act all mergers and acquisitions with transaction values below Php50 billion if entered into within two years from Bayanihan 2’s effectivity; and
- (b) exempts such transactions from the power of the PCC to review mergers and acquisitions *motu proprio* (or on the PCC’s own initiative) for a period of one year from Bayanihan 2’s effectivity.

We have issued a briefing on these measures under Bayanihan 2.<sup>3</sup>

<sup>1</sup> <https://www.officialgazette.gov.ph/downloads/2020/09sep/20200911-RA-11494-RRD.pdf>.

<sup>2</sup> <https://phcc.gov.ph/crn22-2020-merger-rules-sec4eee-ra11494-baro/>.

<sup>3</sup> See [Bayanihan 2 Increases Compulsory Merger Notification Threshold to Php50 Billion for 2 Years](#).

## PCC Implementing Rules on Transaction Value Threshold for the Exemption from Compulsory Notification

The PCC Rules on Bayanihan 2 now clarify that the Php50 billion “transaction value” threshold applies to both “size of party” and “size of transaction” thresholds, which are the compulsory notification thresholds historically applied by the PCC. In other words, for a transaction to be compulsorily notifiable, both of the following must be at least Php50 billion: (a) the size of party (which refers to the aggregate gross Philippine revenues, or value of Philippines assets of the ultimate parent entity of at least of the acquiring or acquired entities, including that of all entities that such ultimate parent entity controls), and (b) the size of transaction (which varies depending on the nature of the transaction, e.g., joint venture formation, voting shares acquisition, acquisition of assets inside the Philippines, etc.).

The PCC Rules on Bayanihan 2 also clarify that for a transaction to benefit from Bayanihan 2, the “definitive agreement” must be signed within two years from the effectivity of Bayanihan 2 (which is reckoned by the PCC from September 15, 2020).

The PCC Rules on Bayanihan 2 emphasize that:

- (a) it is the continuing policy objective of the PCC to ensure the “efficiency of market competition”;
- (b) transactions entered into during the effectivity of Bayanihan 2 (which is from September 15, 2020 to September 15, 2022) may be reviewed by the PCC *motu proprio* (or on its own initiative) after one year from the effectivity of the Bayanihan 2; and
- (c) transacting parties may avail of voluntary notification even where their transaction is exempt from compulsory notification under Bayanihan 2.

The foregoing seems to indicate that the PCC will not hesitate to review transactions *motu proprio* starting September 16, 2021 and that transacting parties may be better off voluntarily notifying their transaction if it is subject to a risk of being viewed by the PCC as a transaction that can lead to a substantial lessening of competition in the relevant market.

The PCC Rules on Bayanihan 2 have shortened the review periods for voluntary notification. The Phase 1 review period is now for 45 days (instead of the 75 days provided under the Merger Review Procedure or MRP) while Phase 2 review is for 90 days (reduced from 120 days under the MRP).

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It should be noted however that availing of a voluntary notification would be considered a waiver of the exemption under Bayanihan 2. What this highlights is the need for transacting parties – to a transaction where there are horizontal overlaps or vertical relationships between and among the seller, the buyer, and the target companies and assets -- to conduct a competitive assessment of their transaction to (a) assess whether or not the transaction would raise competition-related concerns, (b) consider the risks of the PCC conducting a *motu proprio* review after one year from the effectivity of the Bayanihan 2, (c) prepare possible defenses that may be asserted in the event that such a *motu proprio* review is conducted, and (d) evaluate if a voluntary notification would be the more prudent course of action to obtain deal certainty and avoid a subsequent review by the PCC.

For more information about the legal issuance discussed in this briefing, please contact any of the following:

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This briefing was prepared by the firm's Competition and Anti-trust practice group which is under the Special Projects Department.

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We are active in the area of policy development, having worked closely with the PCC in developing implementing regulations and having provided critical feedback on rules relating to joint ventures and land acquisition.

## PCC Implementing Rules on Transaction Value Threshold for the Exemption from Compulsory Notification

This briefing contains a summary of the legal issuances discussed above. It was prepared by SyCip Salazar Hernandez & Gatmaitan (SyCipLaw) to update its clients about recent legal developments.

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