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Compulsory Notification May Be Exempt for Joint Ventures in Solicited PPP Projects

On 2 July 2019, the Philippine Competition Commission (“PCC”) signed PCC Memorandum Circular No. 19-001 (“Circular”), which outlines the process and requirements for exemption from compulsory notification under the Philippine Competition Act (“PCA”) of entities forming joint ventures for the completion of certain public-private partnership (“PPP”) projects. The Circular took effect on 16 August 2019.

Implications for business in the Philippines

The Circular aims to harmonise the mandate of the PCC to advocate for fair and pro-competitive climate in the Philippines, and the policy of the Philippine government to accelerate the implementation of private sector-funded infrastructure development projects by putting them under minimal government regulation.

Since entities in a joint venture are required to provide compulsory notification to the PCC if the notification thresholds are breached under the PCA Implementing Rules and Regulations (“IRR”), as amended by PCC Memorandum Circular No. 18-011, prospective bidders in a PPP project wishing to form a joint venture are likewise subject to this regulation.

However, the Circular is exclusively applicable to joint ventures formed for Solicited PPP Projects, or those projects defined and identified by the government agency or instrumentality as part of its priority projects.

Significant provisions of the Circular

Procedure of review

During the review process, the PCC has power to render advisory opinion, to require undertakings, if necessary, and to review the following aspects of the Solicited Project:

- nature and scope of the project;
- bidding design and process; and
- competition concerns that may arise from the nature and/or composition of prospective bidders and the winning Project Proponent.

In order to qualify for exemption, the concerned government agency or instrumentality may file an application for a Certificate of Project Exemption with the PCC on behalf of their Solicited Project’s prospective bidders prior to the Project Development Stage.

During the Project Procurement Stage, the PCC shall review the project documents (e.g. draft pre-qualification documents, bidding documents, draft PPP contract and other related documents) and provide its inputs on how they may affect competition in the relevant market/s, based on the standards and practices provided in the PCC Merger Review Guidelines and other related PCC issuances. Furthermore, to address any potential competition issues, the PCC may require undertakings to be complied with by the prospective bidders.

It is worth noting that PCC’s review shall not preclude the concerned government agency or instrumentality and the PPP Center from processing the PPP project.



PCC's mandate after the issuance of a Certificate of Project Exemption

Even after the issuance of the Certificate of Project Exemption, the PCC shall still reserve its right to (a) require the winning bidder to notify; and (b) conduct full review of the transaction based on the following grounds:

- if the government agency or instrumentality does not implement PCC's inputs;
- if PCC's inputs were secured on the basis of fraud or false material information;
- if the prospective bidders did not execute any of the undertakings; or
- if substantial changes to the PPP project take place subsequent to PCC's review.

Lastly, and to determine compliance with the PCA, its IRR and other related issuances, the PCC may also require the government agency or instrumentality and the winning project proponent to submit periodic reports, or conduct separate and independent inspections. The PCC shall monitor such compliance with the help of the PPP Centre.

Conclusion

Recognising the contribution of infrastructure and development projects in the national growth, the PCC and the PPP Center, through the issuance of the Circular, are working hand in hand to fast-track PPP projects while ensuring that the PCA remain enforceable against any person or entity engaged in any business in the Philippines.

If implemented effectively, the Circular can encourage more investors to participate in the construction, operation and maintenance of PPP projects, while boosting competition in the market. In any case, it is not just the Philippine government and the businesses involved which would reap the benefits of this new policy, the general public can also expect the efficient and timely delivery of facilities and services brought by the collaboration between the Philippine government and the private sector.

If you have any questions or require any additional information, please contact [Felix Sy](#) or [Reeneth B. Santos](#) of Insights Philippines Legal Advisors (a member of ZICO Law).

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