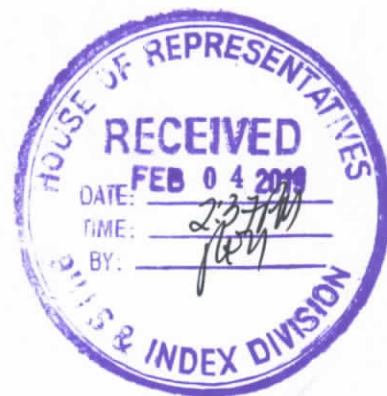


Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SEVENTEENTH CONGRESS
Second Regular Session

House Bill No. 9020



Introduced by HON. DANILO E. SUAREZ

EXPLANATORY NOTE

Two years since its creation, the Philippine Competition Commission (the "Commission") has already reviewed and approved a total of 146 covered transactions under the initial threshold of P1Billion value of transaction set forth in Republic Act No. 10667 or the Philippine Competition Act. However, the Commission faces administrative challenges in exercising its pre-notification review powers with the influx of numerous transactions falling under the notification low initial threshold under Republic Act No. 10667.

Section 17 of Republic Act No. 10667, the Commission promulgated the Rules to Implement Republic Act No. 10667 authorizes the Commission to promulgate other criteria for notification of a Transaction to the Commission.

Pursuant thereto, the Commission has promulgated regulations adding as a qualitative, percentage pertaining to voting and economic interests and other criteria for compulsory notification to the Commission for a transaction. For one, the Commission's implementing regulations require parties to proposed acquisitions of voting shares of corporations or interests in non-corporate entities to notify the Commission if the acquisition of shares or interest will result in the acquiring entity holding at least thirty five-percent (35%) voting interest in the acquired corporation or at least thirty five percent (35%) economic interest in the non-corporate entity. Notification to the Commission is also required if an entity has already exceeded the 35% threshold for an acquisition of voting shares, or the 35% threshold for an acquisition of an interest in a non-corporate entity, if the

same entity will exceed 50% threshold after making a further acquisition of either voting shares or an interest in a non-corporate entity.

With these thresholds, the Commission, in 2017 alone received 53 notifications but only 46 turned out to be notifiable – all of which were approved after Commission finding that that such transactions do not result in substantial lessening of competition.

Likewise, the wide latitude and even blanket authority of the Commission's to create criteria for mandatory pre-notification of transactions has brewed ambiguity and has been criticized as undue delegation of legislative powers which substantially restrict commerce and on the basis of which significant penalties may be imposed.

On 01 March 2018, the Commission increased the notification threshold to P5 billion for the Size of Party, and to P2 Billion for the Size of Transaction.

Despite the increase, there remains clamor from the business sector to rationalize the notification thresholds, further increase the value thresholds, and to make the interest criterion more consistent with the standard definition of control.

For one, the current interest thresholds of 35% or 50% appear arbitrary and not consistent with provisions of the Corporation Code of the Philippines, which provides for at least a simple majority to carry or adopt corporate resolutions or authorizations.

The voting thresholds should likewise, at the minimum, be at par with standards of the ASEAN and global markets, and the rule-making power of the Commission to set criteria for notifiable transactions must take these into consideration.

In line with the mandate of the Constitution to give all sectors of the economy and all regions of the country the optimum opportunity to develop, the adjustment to the current notification threshold of the Competition law proves to be a necessity.

In view of the foregoing, the immediate passage of this bill is earnestly sought.



DANILO E. SUAREZ

Representative

Third District, Quezon Province

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SEVENTEENTH CONGRESS
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1 **AN ACT AMENDING SECTION 17 OF REPUBLIC ACT NO. 10667, OTHERWISE**
2 **KNOWN AS THE PHILIPPINE COMPETITION ACT, AND FOR OTHER**
3 **PURPOSES**

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

4 **SECTION 1.** Section 17 of Republic Act No. 10667 is hereby amended to read as
5 follows:

6 "Sec. 17. Compulsory Notification. – Parties to the merger or acquisition agreement
7 referred to in the preceding section wherein the value of the transaction exceeds
8 twenty billion pesos (Php 20,000,000,000.00) are prohibited from consummating
9 their agreement until thirty (30) days after providing notification to the
10 Commission in the form and containing the information specified in the
11 regulations issued by the Commission: Provided, that as a minimum criterion with
12 respect to proposed acquisitions of voting shares in corporations and proposed
13 acquisitions of interest in non-corporate entities, the acquiring entities should
14 acquire at least fifty-five percent (55%) voting interest in the acquired corporations,
15 or should hold an aggregate interest in the non-corporate entity that entitles the
16 acquiring entity to receive at least fifty five percent (55%) of the profits of the non-
17 corporate entity or assets of that non-corporate entity on its dissolution.

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19 **Section 2. Implementing Rules and Regulations.** – Within sixty (60) days from the
20 effectivity of this Act, the Philippine Competition Commission, in consultation with the

1 concerned sector regulators, shall promulgate the necessary implementing rules and
2 regulations for the implementation of this Act.

3 **Section 3. Separability Clause.** – In the event that any provision of this Act is
4 declared unconstitutional, the validity of the other provisions shall not be affected by
5 such declaration.

6 **Section 4. Repealing Clause.** – All laws, decrees, orders, rules and regulations and
7 other issuances or parts thereof which are inconsistent with the provisions of this Act are
8 hereby repealed or modified accordingly.

9 **Section 5. Effectivity.** – This Act shall take effect fifteen (15) days following its
10 publication in the Official Gazette or in at least two (2) newspapers of general circulation.

11 Approved.