

# MERGER REGULATION IN THE PHILIPPINES



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## Country Overview



Population (2010 census)	92.34 million
Population growth rate (2010)	2.05%
Annual per capita poverty threshold (2009)	USD 400
Poverty incidence among families (2009)	20.9%
Economic growth (2 <sup>nd</sup> Qtr 2012)	5.9%

Source: National Statistical Coordination Board

## Law on Mergers/Consolidation



- Section 79, Corporation Code

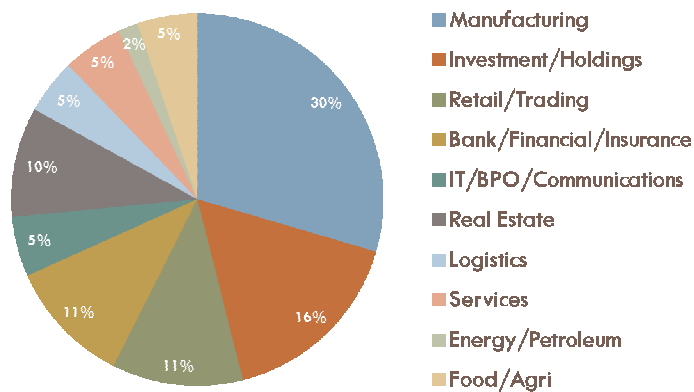
**Effectivity of merger or consolidation.** - The articles of merger or of consolidation, signed and certified as herein above required, shall be submitted to the Securities and Exchange Commission in quadruplicate for its approval...

- Seek favorable recommendation from other agencies for banks and special corporations.
- To ensure that the proposed merger or consolidation is contrary to or inconsistent with the provisions of this Code or existing laws.

## Merger Statistics



- 2008-2013 → 276 Merger Applications received
- Capitalization → From P100,000 – P37 Billion



# Competition Law Framework



- **Over 30 competition laws** dealing with monopolies, combinations in restraint of trade, restrictive business practices, price control measures and consumer protection, e.g. Constitution, An Act Prohibiting Monopolies and Combinations in Restraint of Trade (1925), and Revised Penal Code (1932).

*Ex. Art. 186. Monopolies and combinations in restraint of trade*

*“Any person who shall enter into any contract or agreement or shall take part in any conspiracy or combination in the form of a trust or otherwise, in restraint of trade or commerce or to prevent by artificial means free competition in the market”*

*(Penalty is imprisonment for 6 months and 1 day to 2 years and 4 months or a fine ranging from 200 to 6,000 pesos, or both.)*

- **Sectoral approach** with over 60 sector regulators

# Office for Competition



- Executive Order No. 45, series of 2011 created the Office for Competition (OFC) under the Department of Justice

Functions	
a. Investigate cases	d. Monitor and implement measures
b. Enforce CPL	e. Prepare studies and reports
c. Supervise competition in markets	f. Promote international cooperation and trade relations

## SEC-OFC Memorandum of Agreement



- SEC notifies OFC of merger applications which appear inconsistent with competition/anti-trust laws.
  - i. SEC makes initial determination to refer merger application
  - ii. OFC conducts an investigation and determines if the proposed merger will violate competition/anti-trust laws
  - iii. If OFC determination is adverse, the SEC will give the merging parties an opportunity to comment on the OFC's findings.
  - iv. SEC will decide if the merger shall push through or be aborted.
  
- Provision on consultations between the SEC and OFC.

## Philippine Competition Bill



*Sec. 7 Anti-Competitive Merger. No entity engaged in trade, commerce or industry shall acquire, directly or indirectly, the whole or any part of the stock or other share capital, assets or voting rights of one or more entities engaged in any trade, commerce or industry where the object or effect of such conduct is likely to prevent, restrict or lessen competition.*

*The Securities and Exchange Commission **shall not approve** the articles of merger or consolidation of any entity engaged in trade, commerce or industry, or any amendment thereto, unless accompanied by a certificate of authority/favorable recommendation issued by the Office for Competition...*

## Possible Solutions



- Suggested criteria for SEC notification:
  1. Identify key industries → Ex. Public Utilities, Telcos
  2. Use quantitative thresholds → Ex. Capitalization  
Number of market players  
Herfindahl–Hirschman Index
  3. Requests from other sector regulators.
  
- Remedies for Anti-Competitive Mergers
  1. Structural → Ex. Divestiture or “Spinning-out”
  2. Behavioral → Ex. Access to intellectual property,  
Dismantling exclusive agreements, etc.

多謝

**Thank you!**

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