

**IN THE MATTER OF THE FINAL
WRITTEN PROPOSAL DATED 26
FEBRUARY 2024 IN RELATION TO
THE SHOW CAUSE ORDER NO. 2022-
004**

PCC Case No. E-2023-002-SCO

SM PRIME HOLDINGS, INC.

Proponent.

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ORDER

Submitted to the Philippine Competition Commission ("PCC") is the *Final Written Proposal*, dated 26 February 2024, filed by Proponent SM Prime Holdings, Inc. ("SM Prime")¹ in relation to the Show Cause Order No. 2022-004, issued by the Competition Enforcement Office ("CEO") on 06 October 2022.

In the Final Written Proposal, endorsed by the CEO for approval by the Commission, SM Prime undertakes to promote fair market competition and makes the following commitments:

- 1) Issuance of a Statement of Commitment to help promote the mandate of the PCC and to uphold competition laws to be posted in B-to-B platforms, private bulletin boards, memos, and SM Supermalls' official website and official social media accounts, and the posting of the same in all SM Supermalls which are established and operational as of date of approval of the Final Written Proposal;²
- 2) Designation of a Competition Protocol Officer who shall attend trainings and seminars to be conducted by the PCC, and shall receive advisories and other updates on competition laws, to be disseminated within the SM Prime;³

¹ Attached to the Memorandum dated 29 February 2024 of the Competition Enforcement Office.

² Part I, Final Written Proposal, dated 26 February 2024.

³ Part II, Final Written Proposal, dated 26 February 2024.



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- 3) Formulation of guidelines and institution of a review mechanism to address any internal incident deemed contrary to competition;⁴
- 4) Attendance by SM Supermalls officers and management to competition law seminars to be conducted by the PCC as part of its efforts in the continuing education on competition law;⁵
- 5) Collaboration with the PCC in launching a nationwide information campaign on the PCC and its mandate as well as competition laws and rules, in lieu of any reasonable imposition of penalty by the PCC;⁶
- 6) Promotion of fair market competition among its food and beverage tenants, particularly on the sale of bottled water and other beverages in their stores;⁷ and
- 7) Submission of reports to the CEO for the monitoring of commitments and other achievements.⁸

Finding the submission of SM Prime to be fair and reasonable as it addresses the competition concerns under investigation, the Commission hereby **ACCEPTS** and **APPROVES** the Final Written Proposal, dated 26 February 2024, a copy of which is hereby attached to form part of this Order.

The CEO is **DIRECTED** to formulate an action plan for the implementation of SM Prime's Final Written Proposal, within fifteen (15) days from receipt of this Order, and to immediately monitor Proponent's compliance thereafter. The period for compliance shall be reckoned from the date of Proponent's receipt of this Order.

Finally, SM Prime is reminded that failure to comply with its commitments as embodied in its Final Written Proposal may result in the imposition of appropriate sanctions.

SO ORDERED.

07 March 2024.

⁴ Part III, Final Written Proposal, dated 26 February 2024.

⁵ Part IV, Final Written Proposal, dated 26 February 2024.

⁶ Part VI, Final Written Proposal, dated 26 February 2024.

⁷ Part VII, Final Written Proposal, dated 26 February 2024.

⁸ Part VIII, Final Written Proposal, dated 26 February 2024.





MICHAEL G. AGUINALDO
Chairperson



MARAH VICTORIA S. QUEROL
Commissioner



MICHAEL B. PELOTON
Commissioner

(On Official Travel)
LOLIBETH RAMIT-MEDRANO
Commissioner

(On Official Travel)
FERDINAND M. NEGRE
Commissioner

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SM PRIME HOLDINGS, INC.,
Respondent.

IN RE: SCU NO. 2022-004

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WRITTEN PROPOSAL

SM PRIME HOLDINGS, INC. (SMPHI), through counsel, respectfully submits the following:

I. Statement of Commitment

1. To help in the promotion of the Honorable Commission's mandate and to uphold competition laws, the following statement will be issued by SM Supermalls:

"SM Supermalls recognizes its enduring partnership with the Philippine Competition Commission (PCC). SM Supermalls believes that fair market competition will lead to a vibrant and inclusive economy, and advance consumer welfare. It likewise shares the PCC's vision that fair market competition serves the interest of consumers by allowing them to exercise their right of choice over goods and services offered in the market.

This is why SM Supermalls accepts and supports all kinds of goods and businesses—from clothing to hardware, from gadgets to bottled water—regardless of brand. At SM, everyone is always welcome here.

SM Supermalls recognizes its role in promoting fair competition and will endeavor to campaign towards the promotion of fair trade practices."

2. To ensure optimum dissemination to both internal and external stakeholders, the Statement of Commitment will be posted in B-to-B platforms, private bulletin boards, memos, and SM Supermalls' official website and official social media accounts. These channels are more specifically described as follows:

- a. B-to-B platforms — The Statement of Commitment will be uploaded in the private secured online portal where SM Supermalls

and its tenants interact with each other regularly, where SM Supermalls posts all of its notices to its tenants and where, in turn, the tenants send their responses and comments.

- b. Bulletin Boards – Printed copies of the Statement of Commitment will be conspicuously posted in each mall's private bulletin boards located in the lobby or hallway of its Mall Administration Office.
- c. Memos – The Statement of Commitment will also be circulated through hard and soft copies of memos addressed to SM Supermalls' personnel and tenants.
- d. Social Media – The Statement of Commitment will be posted in SM Supermalls' official website and its official accounts in Facebook and Instagram with the hashtag: #YoureAlwaysWelcomeHere. The statement will be posted for a period of two (2) years.

To date, SM Supermalls' official Facebook pages have a total of around 32 Million followers.

3. The physical posting of the Statement of Commitment will be implemented in all SM Supermalls established and operational on the date of the approval of this Written Proposal. A list of these SM Supermalls is attached as Annex "1" hereof.

4. SMPHI respectfully submits that SM Supermalls' zoning consideration and leasable space allocation depend on several factors that will allow it to generate the best opportunity for its tenants to flourish in their businesses, the formula or design for which constitutes trade secrets and proprietary rights.

II. Competition Protocol Officer

5. A Competition Protocol Officer will be designated to attend trainings and seminars conducted by the Honorable Commission, and to receive advisories and other updates pertaining to competition laws, to be disseminated within the company. The person to be designated to this position shall have the following qualifications:

- i. A senior manager or higher;

- ii. Has knowledge of the leasing operations of SM Supermalls; and
- iii. Has attended trainings/seminars conducted by the Honorable Commission.

III. Non-Compliance

6. To further ensure that competition laws are upheld within the company, guidelines will be formulated and a review mechanism will be instituted to address any internal incident which may be deemed contrary to competition. They may include routine inspections of the company's business establishments and periodic reviews. As applied to SM Supermalls' personnel, the incident will be handled in accordance with the applicable administrative due process by the Human Resources Department. Moreover, the Competition Protocol Officer will primarily be responsible for ensuring that non-compliance with competition laws shall be duly addressed.

IV. Continuing Education on Competition Law

7. In accordance with SM Supermalls' Competition Law Policy Program, officers of SM Supermalls and SM affiliates engaged in retail leasing operations will attend seminars to be conducted by resource speakers from the Honorable Commission, and to be attended by Regional Management and/or Mall Management teams. In consideration of their respective locations and volume of work, the seminars will be attended via videoconferencing.

8. As part of its information campaign, the mall level orientation seminars for new tenants and tenants' crew members will contain a portion discussing the procedure for ordering SM Bottled Water, with emphasis that the sale of the same product is not mandatory. The same topic will likewise be included in the annual orientation of existing tenants and their crew members. Samples of the presentations for the orientation seminars are attached as Annexes "2" and "3" hereof.

9. For purposes of the Honorable Commission's monitoring and records, SM Supermalls will submit photographs or videos of the portions of these orientation seminars where the competition law policy program is being discussed. These photographs or videos will be included in the reports to be submitted by SM Supermalls. It is respectfully submitted that the data of the participants and the business processes and procedures exclusive to SM Supermalls deserve privacy. It is for this reason that the attendance and participation in these seminars are limited only to authorized parties.

V. Leniency Program

10. Should there be a need, SM Supermalls will avail the benefits of the Honorable Commission's Leniency Program. Moreover, the designated Competition Protocol Officer will primarily be responsible in determining whether there is a need to avail these benefits.

VI. Cooperation with the Philippine Competition Commission

11. SM Supermalls expresses its willingness to cooperate with the Honorable Commission in the implementation of its mandate and the promotion of competition laws. SM Supermalls will partner with it, particularly as regards its Competition Law Policy Program and the relevant updates on competition laws and rules.

12. At all times, SM Supermalls shall take into consideration the competition laws and rules in the drafting of its contracts and house rules and regulations intended to promote equal treatment of all goods and services among all brands, without preference for the company's brands, provided that it will not affect their competitiveness in their respective industries.

13. More specifically, SM Supermalls proposes to partner with the Honorable Commission through a collaboration on the following measures, subject to the agreement of both parties:

- a. Use of SM Supermalls' facilities in PCC's official events once a year for a period of two years. For this purpose, SM Supermalls recommends the use of its Event Center located in SM North EDSA Annex which is valued at [REDACTED] per day.
- b. Airing of promotional videos about PCC's functions and programs in SM Cinemas.
 - i. [REDACTED] cinemas throughout the country will air a 30-second promotional video at least thrice a day for 364 days, valued at [REDACTED] with a total valuation of [REDACTED] ([REDACTED] Cinemas x 364 days x [REDACTED]).
 - ii. SM Cinemas has [REDACTED] units of LED poster boxes and directories where a 10-second promotional video can be aired for a month, valued at [REDACTED] per month. The total

valuation for one year is [REDACTED]
[REDACTED] x 12 months).

The material to be shown in these promotional videos will be provided or will be reviewed by the PCC prior to their exhibition.

- c. Publication of SM Supermalls' Statement of Commitment in a newspaper of general circulation.
- d. After a series of discussions with its mall operations department and advertising consultant, and in keeping with the ever-evolving digital landscape used by customers, SM Supermalls seeks to optimize the use of digital platforms to ensure the maximum dissemination of information in lieu of traditional or printed media. By incorporating the information campaign in no less than the customers' shopping experience in SM Supermalls, the message of both SM Supermalls and the PCC will reach the intended audience in a more effective manner. More specifically:
 - i. Digital Mall Directories (with an average of 55 inches). SM Supermalls recommends the use of [REDACTED] units of Digital Mall Directories located in [REDACTED] malls, valued at [REDACTED] per month, with a total valuation of [REDACTED] ([REDACTED] x 12 months).
 - ii. LFD Screens (with an average of 65 inches). SM Supermalls recommends the use of [REDACTED] units of LFD screens in the Cyberzone area of [REDACTED] malls, valued at [REDACTED] per month, with a total valuation of [REDACTED] ([REDACTED] x 12 months).
 - iii. Mall LED Screens (with an average of 3.6 meters by 8 meters). SM Supermalls recommends the use of [REDACTED] units of Mall LED Screens located in [REDACTED] malls located in different regions, valued at around [REDACTED] per

month, with a total valuation of
[REDACTED] x 12
months).

- e. Installation of PCC Section in the Mall Information Desk for a period of two (2) years.

14. SM Supermalls respectfully offers to launch this nationwide information campaign and to cover the costs entailed, as may be commensurate to any reasonable imposition which the Honorable Commission may mete out should it find any failure to meet the standards or ideals stated in the law. The proposed breakdown of costs and expenses for this information campaign is attached as Annex "4" hereof.

VII. Discussion of Policy on Sale of Bottled Water to Tenants

15. SM Supermalls seeks to promote fair market competition. Tenants are allowed to sell other brands of bottled water and other beverages in their stores. They are not required to sell SM Bottled Water. SM Supermalls maintains that SM Bottled Water is being sold by its tenants due to efficiency in terms of costs and logistics.

VIII. Reportorial Requirements

16. SM Supermalls will submit its reports containing an outline of its commitments and their implementation, and other achievements which may include the designation of a Competition Protocol Officer, the posting of the official statement in SM Supermalls' platforms, the seminars attended by its personnel, among others. The reports will consist of the following:

- a. Initial Report within thirty (30) days from the adoption of the Competition Law Policy Program.
- b. Annual Report within one (1) year from the receipt of the notice of the approval of the present proposal, for a period of two (2) years.
- c. Post-Orientation Seminar Report indicating the seminars attended by tenants' personnel and crew members.

Samples of the reports are attached as Annexes "5" and "6" hereof.

Respectfully submitted.

Pasay City for Quezon City, February 26, 2024.

[REDACTED]
[REDACTED]
Roll of Attorneys No. [REDACTED]

IBP OR No. [REDACTED]

PTR OR No. [REDACTED]

MCLE Compliance No. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Explanation: Filing was done through electronic and registered mail due to the limited number of messengers in undersigned counsel's office, making personal filing impracticable.

[REDACTED]
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