

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("Agreement"), dated 08 June 2018, is entered into by and between:

The **DEPARTMENT OF JUSTICE** ("DOJ"), with office address at Padre Faura Street, Ermita, Manila, represented herein by the Secretary of Justice, **Menardo I. Guevarra**;

- and -

The **PHILIPPINE COMPETITION COMMISSION** ("PCC"), with office address at 25/F Vertis North Corporate Center Tower 1, North Avenue, Quezon City, represented herein by its Chairperson, **Arsenio M. Balisacan**.

(The DOJ and the PCC are individually referred to in this Agreement as a "Party" and collectively, as the "Parties".)

RECITALS:

- (A) Under Executive Order No. 292, otherwise known as the Administrative Code of 1987, the DOJ is the principal prosecutorial arm of the government mandated to administer the criminal justice system, investigate the commission of crimes, and prosecute offenders.
- (B) The PCC was organized and created under Republic Act No. 10667, otherwise known as the Philippine Competition Act (the "PCA") as an independent quasi-judicial body vested with the original and primary jurisdiction over the enforcement of the PCA, which includes, among others, the power to conduct inquiries, investigate, hear and decide cases involving anti-competitive conduct, abuse of dominant position, anti-competitive agreements, and other violations of the PCA.
- (C) Section 13 of the PCA states that the DOJ, through its Office for Competition, shall only conduct preliminary investigation and undertake prosecution of all criminal offenses arising under the PCA and other competition-related laws (each, a "Covered Offense") in accordance with Section 31 of the PCA, which provides for the sole and exclusive authority of the PCC to initiate and conduct a fact-finding or preliminary inquiry for the enforcement of the PCA.
- (D) Section 31 of the PCA provides that if evidence so warrants, the PCC may file before the DOJ criminal complaints for violations of the PCA or relevant laws for preliminary investigation and prosecution before the court.
- (E) In recognition of the significant synergies and complementarity of working together towards a harmonized approach in performing their respective duties and functions, the Parties have agreed to formalize their understanding with respect to

the various modes of coordinating the proper and effective performance of their respective roles in investigating and prosecuting Covered Offenses.

- (F) Each Party, including their respective representatives, is authorized, or obtained the authority, and has performed all actions necessary to authorize it to enter into this Agreement.

NOW THEREFORE, the Parties have agreed as follows:

Section 1. Coordination and Cooperation

- 1.1. *Referral of Complaints.* – In accordance with Section 31 of the PCA, the DOJ shall ensure through appropriate mechanism that complaints involving Covered Offenses shall be referred to the PCC (“Referred Complaints”), which shall act on the Referred Complaints in accordance with its applicable rules and procedures.
- 1.2. *Advice on Disposition.* – As soon as practicable, the PCC shall inform the DOJ on its disposition of each Referred Complaint, with a view to coordinating on any appropriate action or measure that may be taken by each of the Parties in relation to such complaint.
- 1.3. *Preliminary Investigation of Covered Offenses.* – In line with the PCC’s responsibility under Section 31 of the PCA to determine the sufficiency of evidence to warrant the filing of a criminal complaint involving a Covered Offense, the Parties acknowledge and understand that the preliminary investigation of such offense shall only commence upon the filing of a criminal complaint by the PCC with the DOJ.
- 1.4. *Formulation of Rules and Procedures.* – To the extent possible, the Parties hereby agree to consult and coordinate with each other in the formulation and amendment of their respective rules and procedures involving the investigation and prosecution of Covered Offenses and implementation of the Leniency Program to be developed under Section 35 of the PCA.
- 1.5. *Leniency.* – The Parties hereby agree and understand that entities granted immunity from suit under the PCC’s Leniency Program, whether final or on a provisional basis, shall likewise be immune from criminal prosecution by the DOJ, subject to such entities’ compliance with any conditions to be imposed by the PCC and the DOJ. Further, the DOJ undertakes to consult and coordinate with the PCC prior to granting leniency to entities subject of criminal complaints filed by the PCC.
- 1.6. *Witness Protection Program.* – Whenever applicable, as when a witness-applicant subject of a criminal complaint filed by the PCC for violation of Sections 14(a) and 14(b) of the PCA is qualified for admission into the Witness Protection Security and Benefit Program pursuant to Republic Act No. 6981, the Parties agree and understand that the DOJ shall, as much as practicable and as long as there exists no imminent and serious threats against the witness-applicant, coordinate and consult with the PCC prior to admitting him/her to the Program.

- 1.7. *Investigation and Enforcement Support.* – Subject to resource and other operational considerations, and whenever appropriate, each Party shall provide investigation and enforcement support to the other upon receipt of a request for assistance from the requesting Party.
- 1.8. *Joint Task Forces.* – Whenever appropriate, the Parties may organize joint task forces charged with implementing the coordination and cooperation efforts of the Parties under this Agreement. The Parties shall mutually agree in writing on the purpose, composition, and operational requirements of each joint task force, including the payment of honoraria for its members, if applicable.
- 1.9. *Capacity-Building.* – The Parties may agree to organize joint capacity-building activities and, whenever appropriate, arrange temporary secondments of staff to one another, on a case by case basis, for the purpose of promoting coordination and cooperation, subject to resource and other operational considerations.
- 1.10. *Consultative Meetings.* – The Parties may conduct consultative meetings regarding matters of common concern, particularly those involving the effective implementation of this Agreement and the Parties' respective mandates.
- 1.11. *Continuing Review.* – The Parties undertake to keep the operation of this Agreement under review and, in light of experience, execute amendments or supplements to this Agreement for purposes of improving its operation and resolving any issue that may arise during its implementation.

Section 2. Access to and Use of Information

- 2.1. *Access to Information and Documents.* – Each Party, upon the request of the other, shall promptly provide access to information and documents within the custody or control of the requested Party and which are relevant and necessary to the effective enforcement of this Agreement, the PCA, and other competition-related laws. Access to information and documents under this Section shall be subject to applicable rules on confidentiality, data privacy, and privilege under relevant laws, rules, and regulations.
- 2.2. *Confidentiality.* – Except as may otherwise be required or allowed by law, the Parties shall keep confidential and shall not, without the prior written consent of the other, divulge to any third party any documents, records, data, or other information of a confidential, private, or privileged nature arising from or in any way related to this Agreement, and furnished directly or indirectly by one Party to the other.
- 2.3. *Communications to the Public.* – The Parties, where appropriate, shall liaise with each other in preparing statements and responses relating to matters of media interest and as regards arrangements for the publication of information for and consultations with relevant stakeholders.
- 2.4. *Use of Information and Documents.* – The Parties agree to limit the use of any and all information and documents obtained pursuant to this Agreement to purposes deemed consistent with the objectives of this Agreement as well as the respective mandates of the Parties.

Section 3. Notices and Authorized Representatives

3.1. *Notices.* – Any notice, request, or other communication given under, or in connection with the implementation or enforcement of this Agreement shall be in writing and sent by the concerned Party's Authorized Representative(s) through any of the following modes:

- a) By courier or personal delivery to the addresses stated in this Agreement;
- b) By electronic mail to the following email addresses:

For DOJ: [REDACTED]

For PCC: [REDACTED]
[REDACTED]

or such other email address, as a Party may notify to the other by written notice sent in accordance with this Section.

A notice is deemed to have been received at the time of delivery if such notice is given by courier or personal delivery. If written notice is given by electronic mail, the notice is deemed to have been received at the time of its transmission on a business day.

3.2. *Authorized Representatives.* – The Parties hereby designate the following persons as their respective Authorized Representatives, who shall be responsible for the implementation or enforcement of this Agreement:

For DOJ: [REDACTED]

Undersecretary

[REDACTED]
Assistant Secretary

For PCC: [REDACTED]

Director

[REDACTED]
Chief, Legal Services

Each Party may appoint additional Authorized Representative(s), as may be necessary for the efficient implementation of this Agreement. Any change in the designated Authorized Representative(s) of each Party shall be notified immediately to the other Party and deemed effective upon the other Party's receipt of said notice.

Section 4. General Provisions

4.1. *Effectivity.* – The Parties agree and understand that this Agreement shall become effective as of the date of signing and shall remain in force until terminated in accordance with Section 4.2 hereof.

- 4.2. *Termination.* – Either Party may terminate this Agreement, with or without cause, by serving a written notice of termination to the other Party. Said termination by either Party shall become effective after the lapse of thirty (30) days following the receipt of such written notice by the other Party.
- 4.3. *Reservation of Privileges and Immunities.* – The activities carried out by the Parties on the basis of this Agreement shall be without prejudice to the respective privileges and immunities of each Party, which are specifically reserved and which may be invoked at any time.
- 4.4. *Legal Effect.* – For the avoidance of doubt, nothing in this Agreement limits the powers or constitutes a waiver of the statutory functions or powers of either Party.
- 4.5. *Dispute Settlement.* – The Parties shall exert their best efforts to amicably settle any disputes arising out of or in connection with this Agreement.
- 4.6. *Amendments.* – Any revisions, amendments, repeals, and supplements to this Agreement shall be made upon mutual written agreement by the Parties.
- 4.7. *Separability.* – If any one of the provisions contained in this Agreement shall be declared invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.
- 4.8. *Counterparts.* – This Agreement may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement shall be effective as delivery of a manually executed counterpart of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their duly authorized representatives on the date and place first above written.

For the Department of Justice:



Signature
Name: 
Title: Secretary of Justice

For the Philippine Competition Commission:



Signature
Name: 
Title: Chairperson

Witnessed By:



Signature
Name: 
Title: 



Signature
Name: 
Title: Chief, Legal Services