

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("Agreement"), dated 15 February 2019, is entered into by and between:

The **DEPARTMENT OF TRADE AND INDUSTRY** ("DTI"), with office address at Trade & Industry Building, 361 Senator Gil J. Puyat Avenue, Makati City, represented herein by its Secretary, **RAMON M. LOPEZ**;

- and -

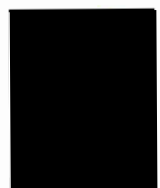
The **PHILIPPINE COMPETITION COMMISSION** ("PCC"), with office address at 25/F Vertis North Corporate Center 1, North Avenue, Quezon City, represented herein by its Chairperson, **ARSENIO M. BALISACAN**.

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

RECITALS:

- (A) The DTI was organized to be the primary coordinative, promotive, facilitative, and regulatory arm of the government in the area of trade, industry, and investments, and is mandated to act as catalyst for intensified private sector activity in order to accelerate and sustain economic growth through comprehensive industrial growth strategy, a progressive and socially responsible liberalization program, policies designed for the expansion and diversification of trade, and policies to protect Filipino enterprises against unfair foreign competition and trade practices.
- (B) The PCC was organized and created under 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, and hear and decide cases involving anti-competitive conduct, abuse of dominant position, anti-competitive agreements, and other violations of the PCA.
- (C) 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 on the acceptable modes of coordination and cooperation between them.
- (D) Each Party has obtained all approvals, 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. *Notification of Matters.* – Where one Party receives or otherwise becomes aware of any matter¹ that falls within the jurisdiction of the other Party or the regulatory mandate of both Parties, as the case may be, such Party shall promptly inform the other Party of such matter (the “Notified Matter”), with a view to coordinating, as appropriate, on the actions or measures to be taken by each Party in relation to the Notified Matter. Subject to Section 2 of this Agreement, a notification under this Section 1.1 shall be transmitted together with copies of all documents and records pertaining to the Notified Matter that are within the custody or control of the notifying Party. Nothing in this Section precludes the Parties from initiating, when appropriate, an investigation or inquiry on matters that fall within their respective jurisdictions.
- 1.2. *Investigation and Enforcement Support.* – Upon receipt of a request for assistance by one Party, and subject to resource and other operational considerations, and to such limitations as their respective legal mandates may provide, the other Party shall provide investigation and enforcement support to the requesting Party on matters relating to the PCA and other competition laws.
- 1.3. *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.
- 1.4. *Capacity-Building.* – Subject to resource and operational considerations, the Parties may agree to organize joint capacity-building activities for the purpose of promoting coordination and cooperation under this Agreement. The Parties may also mutually agree in writing to arrange temporary secondments of staff to one another when, on a case by case basis, determined to be appropriate
- 1.5. *Consultative Meetings.* – The Parties may conduct consultative meetings regarding matters of common concern, including the effective implementation of this Agreement and the Parties’ respective mandates.
- 1.6. *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.* – Subject to the requirements of the Data Privacy Act on data sharing, each Party, upon the request of the other, shall promptly provide access to information and documents (e.g., reports, analysis, papers, assessments, notices, opinions, and guidelines) 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 laws. Access to information and documents under this Section shall be subject to the Data Privacy Act and other applicable rules on confidentiality and privilege under relevant laws, rules, and regulations.

¹ Reference to a “matter” or “matters” under this Section 1.1 includes complaints or queries received by a Party, matters which come to the attention of a Party as a result of inquiries, investigations, examinations, or audits made by a Party, and matters that are otherwise brought to the attention of a Party.

- 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 or privileged nature arising from or in any way related to this Agreement, and furnished directly or indirectly by one Party to the other.

For purposes of this Agreement, information of a confidential or privileged nature shall refer to information disclosed by one Party to the other which is labeled or designated as confidential or privileged by the disclosing Party, or is determined to be confidential or privileged pursuant to applicable rules on confidentiality and privilege under relevant laws, rules, and regulations.

- 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 for lawful purposes and in pursuance of 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 DTI: [REDACTED] and [REDACTED]

For PCC: [REDACTED] and [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 transmission of said electronic mail.

- 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 DTI: [REDACTED]
Undersecretary for Industry Development and Trade Policy Group

For PCC: [REDACTED]
Chief, Legal Services Division

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.* – This Agreement shall become effective upon execution by the Parties 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 immediately upon 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. Should the parties fail to agree amicably, the matter shall be settled in accordance with P.D. No. 242 dated July 9, 1973 in relation to E.O. 292 dated July 25, 1987.
- 4.6. *Amendments.* – Subsequent 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.
- 4.9. *No Waiver.* - No failure, omission, or delay of any of the parties in exercising any of its rights, privileges, or remedies hereunder shall operate as a waiver thereof. No waiver or departure from the terms of this Agreement shall be valid unless made in writing and signed by the party's authorized representative. Such waiver shall be effective only in the specific instance and the purpose for which it was given.



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 Trade and Industry:



Signature

Name:

Title: Secretary

For the Philippine Competition Commission:



Signature

Name:

Title: Chairperson

Witnessed By:



Signature

Name:

Title: Undersecretary



Signature

Name:

Title: Commissioner