PHILIPPINE COMPETITION COMMISSION
Ensuring businesses compete and consumers benefit

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PCC fines Grab, Uber P16M for violating Interim Measures Order

The Philippine Competition Commission (PCC) has fined a total of P16M on Grab Philippines and Uber for violating key provisions of the Interim Measures Order (IMO) during the merger review period of the antitrust authority.

The IMO was issued to the parties to maintain pre-transaction conditions in order to prevent any action that may prejudice PCC's ability to review the merger or to impose appropriate remedies.

"The IMO is a mechanism that protects the integrity of the PCC review and adjudicatory process. It requires full compliance by both Grab and Uber and these fines reflect their deficiencies and violations. Undue difficulties generated by the parties become efficiency challenges in PCC's review process," said PCC Chair Arsenio M. Balisacan.

In particular, the parties were collectively fined P4M for failure to keep their businesses separate. It also penalized both Grab and Uber for their failure to delay Uber's assumption of a board seat in Grab during the review period.

Grab, on its own, was found liable to pay the penalty of P8M for failure to maintain the conditions before the transaction, such as pricing policies, rider promotions, driver incentives, and service quality.

Uber, as the acquired party, was fined P4M or half of Grab's fine for the same set of violations. The Commission noted that Uber had to comply with the cease and desist order by the Land Transportation Franchising and Regulatory Board set at that time.

The parties committed ten (10) acts of violation referring to two (2) out of the seven (7) measures in the order. Each act of violation corresponds to a fine ranging between P50,000 to P2 Million.

The interim measures, as enumerated below, were meant to preserve the market conditions before Grab's takeover of Uber. In issuing the IMO, the PCC recognizes that non-compliance with the measures would affect and prejudice the quality of the review at that time.

- Maintain the independence of their business operations and other conditions prevailing prior to 25 March 2018 (i.e. platforms; pricing and payment policies; incentives; promotions; database; on-boarding of drivers; etc.)
- Refrain from executing any final agreement or contract that will transfer any asset, equity, interest, including the assumption by Uber of a board seat in Grab;
- Refrain from providing access between parties any confidential information (i.e. pricing, formulas, incentives, operations, marketing and sales policies, promotions, customer and driver database);
- Refrain from imposing exclusivity clauses, lock-in periods and/or termination fees to drivers;
- Refrain from acts that may lead to reduced viability and saleability of businesses;
- Refrain from acts that will prejudice the PCC's power to review the transaction and impose remedies; and
- Refrain from performing any act that may lead and/or further lead to the consummation of the transaction.

PCC had earlier asked Grab and Uber to explain why they should not be penalized for (i) their failure to keep their businesses separate, (ii) failure to maintain independent operations at pre-transaction conditions, (iii) Grab's access to Uber's confidential information, (iv) Uber's assumption of board seat in Grab, and (v) further consummation of the transaction in Grab despite the Interim Measures Order.

The Commission also cited the parties' own Transition Services Agreement that acknowledged Grab and Uber are obliged to comply with the requirements of governmental authorities in places where they operate, including the Philippines.

While Grab Holdings Inc. and Uber B.V. are businesses operating on a global scale, both MyTaxi.PH, Inc. and Uber Systems Inc. were businesses operating in the Philippines at the time of issuance of the IMO, making the transaction within the ambit of the Philippine Competition Act.

"This is a fair reminder to parties subjected to merger reviews to cooperate and comply with the Commission's orders. Selective compliance adds to the burden of the review process, which in turn have real-life consequences on the public. We urge future transactions to observe due diligence," Chairman Balisacan said.

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ABOUT PCC

The Philippine Competition Commission is a national government agency and independent quasi-judicial body established by the Philippine Competition Act (Republic Act No. 10667) to review mergers and acquisitions for possible substantial lessening of competition in the market and investigate anti-competitive conduct by businesses across all sectors. Through its legal mandate, PCC aims to ensure that businesses compete and consumers benefit from fair market competition.

ABOUT THE INTERIM MEASURES ORDER (IMO)

In the context of merger review, interim measures are necessary in the exercise of the Commission's power to review and prohibit mergers and acquisitions that will substantially prevent, restrict, or lessen competition in the market. For transactions subject to compulsory notification under Section 17 of the PCA, parties are prohibited from consummating their agreement until after the Commission clears the transaction. For motu proprio cases involving mergers, relevant rules apply.

Section 12(f) of the Philippine Competition Act expressly bestows upon the PCC the power to issue interim orders such as show cause orders and cease and desist orders in accordance with the PCA implementing rules and regulations.

Moreover, Sections 2.13(g) and 10.1 of the PCC Rules on Merger Procedure authorizes the Commission to issue Interim Orders to prevent any action that may prejudice the Commission's ability to investigate a merger or its ability to impose appropriate remedies; when the Commission finds reasonable grounds to believe that the subject merger has resulted or may result in substantial lessening of competition in the market; or when the Commission considers the interim measures necessary to protect the integrity of the review of such merger.

ABOUT THE FINES

Under Section 29(b) of the PCA, an entity which fails or refuses to comply with a ruling, order or decision issued by the Commission shall pay a penalty of not less than Fifty Thousand Pesos (PhP50,000.00) up to Two Million Pesos (PhP2,000,000.00) for each violation and a similar amount of penalty for each day thereafter until the said entity fully complies, provided that these fines shall only accrue daily beginning forty-five (45) days from the time that the said decision, order or ruling was received.

LINK to 1) Resolution and 2) Annex of Findings:

https://www.phcc.gov.ph/resolution-in-the-matter-of-the-acquisition-by-grab-holdings-inc-and-mytaxi-ph-inc-of-assets-of-uber-b-v-and-uber-systems-inc/

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REFERENCE:
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