

MEMORANDUM OF AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

This **MEMORANDUM OF AGREEMENT** (the "Agreement") is entered into and executed by and between:

The **PHILIPPINE COMPETITION COMMISSION**, an independent, quasi-judicial body duly organized and existing under and by virtue of Republic Act No. 10667, otherwise known as the "Philippine Competition Act", with principal office address at the 2/F DAP Building, San Miguel Avenue, Ortigas Center, Pasig City, represented herein by its Chairman, **ARSENIO M. BALISACAN**, hereinafter referred to as "**PCC**";

- and -

The **SECURITIES AND EXCHANGE COMMISSION**, a government agency duly organized and existing under and by virtue of Commonwealth Act No. 83, otherwise known as the "Securities Act", as amended, and reorganized under Republic Act No. 8799, otherwise known as the "Securities Regulation Code", with principal office address at the SEC Building, EDSA, Greenhills, Mandaluyong City, represented herein by its Chairperson, **TERESITA J. HERBOSA**, hereinafter referred to as the "**SEC**";

(Collectively referred to as the "**PARTIES**" or individually referred to as "**PARTY**")

WITNESSETH:

WHEREAS, Sections 13 and 19, Article XII of the 1987 Constitution provide that the State shall pursue a trade policy that serves the general welfare, utilizes all forms and arrangements of exchange on the basis of equality and reciprocity and regulate or prohibit monopolies when the public interest so requires.

WHEREAS, the Philippine Competition Act, enacted on 21 July 2015, penalizes all forms of anti-competitive agreements, abuse of dominant position and anti-competitive mergers and acquisitions with the objective of protecting consumer welfare and advancing domestic and international trade and economic development.

WHEREAS, Section 12(b) of the Philippine Competition Act vests upon the Philippine Competition Commission (PCC) the power to "review proposed mergers and acquisitions, determine thresholds for notification, determine the requirements and procedures for notification, and upon exercise of its powers to review, prohibit mergers and acquisitions that will substantially prevent, restrict, or lessen competition in the relevant market."



WHEREAS, Section 17 of the Philippine Competition Act provides that parties to a merger or acquisition agreement, wherein the value of the transaction exceeds One Billion Pesos (Php1,000,000,000.00), are prohibited from consummating their agreement until thirty (30) days after providing notification to the PCC, in the form and containing the information specified in the regulations issued by the PCC.

WHEREAS, Section 12(c) of the Philippine Competition Act likewise vests upon the PCC the power to “monitor and undertake consultation with stakeholders and affected agencies for the purpose of understanding market behavior.”

WHEREAS, Section 79 of Batas Pambansa Blg. 68, “The Corporation Code of the Philippines” (Corporation Code), provides that the Securities and Exchange Commission (SEC) shall receive applications for merger or consolidation and shall approve the said applications through the issuance of a Certificate of Merger or Consolidation if the SEC is satisfied that the merger or consolidation is not inconsistent with the provisions of the Corporation Code and existing laws, at which time the merger or consolidation shall be effective;

WHEREAS, Title II, “Incorporation and Organization of Private Corporations” and Section 38 of the Corporation Code grants to the SEC the authority to receive and approve applications for registration of corporations and increase/decrease in authorized capital stock, respectively, as well as those for other corporate matters which may substantially impact competition in the relevant market;

WHEREAS, the PARTIES recognize that effective enforcement of competition laws is important to the efficient operation of markets in all sectors or industries in the Philippines as well as those outside the Philippines but have an effect in the conduct of trade or commerce in the country;

WHEREAS, the PARTIES acknowledge that mergers or consolidations of corporations, as well as other corporate acts, should be consistent with the abovementioned laws to maintain free and fair competition in the market that is beneficial to the economy;

WHEREAS, the PARTIES recognize the need for mutual cooperation in ensuring that proposed mergers or consolidations of corporations and other corporate acts are consistent with existing laws on competition, monopolies, and combinations in restraint of trade.

WHEREFORE, the PARTIES agree as follows:

SECTION 1. Referral to the PCC. The SEC, through its Company Registration and Monitoring Department (SEC-CRMD) shall, when approving applications for:

- a) Mergers or consolidations of corporations;
- b) Increase of capital stock where the amount of additional paid-in capital exceeds One Billion Pesos (Php1,000,000,000.00); or

- c) Other corporate acts where a transaction with a value in excess of One Billion Pesos (Php1,000,000,000.00), as that term is defined in the Philippine Competition Act and its Implementing Rules and Regulations,

indicate in the Certificate of Merger or Consolidation, Certificate of Approval of Increase of Capital Stock or other certificate of approval/authorization, that the said approval is subject and without prejudice to the notification requirement of the PCC as provided in Section 17 of the Philippine Competition Act, as well as to the PCC's power to review transactions under Sections 12(b) and 16 of the same law.

SECTION 2. *Monitoring of Applications for Mergers and Consolidation and other Corporate Matters under SEC Supervision.* The SEC-CRMD shall, at the end of every month, send to the PCC's Mergers and Acquisitions Office a summary of all approved applications referred to in Section 1 of this Agreement received by the SEC. The summary shall include the following information:

- a) Name of parties;
- b) Value or consideration involved in the proposed merger or consolidation, increase in capital stock and the additional paid-in capital or other corporate act involving a transaction with a value in excess of One Billion Pesos (Php1,000,000,000.00), computed in accordance with the Philippine Competition Act and its Implementing Rules and Regulations;
- c) Contact information of the parties; and
- d) Other information which SEC-CRMD may deem relevant.

SECTION 3. *Consultations between the PCC and SEC.* Either **PARTY** may request consultations regarding any matter relating to this Agreement. Each **PARTY** shall provide the other with the relevant information necessary to facilitate such consultations.

Where necessary, the SEC and the PCC shall endeavor to jointly issue Joint Guidelines on the Approval of Mergers and Consolidations of Corporations and other Corporate Acts to operationalize the provisions of this Agreement and revisions or addenda hereto.

SECTION 4. *Staff Exchange Program.* To strengthen and expand the cooperation between the **PARTIES**, the **PARTIES** agree to the possibility of exchanges of their respective staff members. In this connection, each **PARTY** shall submit to the other a brief curriculum vitae of the individual who will participate in the staff exchange program, and the plan of activities to be undertaken by such individual during the exchange, *Provided*, that each **PARTY** shall neither recruit nor hire any participant to such program from the other **PARTY** within three (3) years from completion of the exchange program.

SECTION 5. *Confidentiality.* The information shared between the **PARTIES** under the terms of this Agreement is confidential in nature and will be protected from disclosure. The shared information can be used only for the specific purpose for which it is intended, and will not be passed on to any third party without the written consent of the **PARTY** from whom it originated, unless such information is required to be disclosed in a judicial or legislative

SM

proceeding, or otherwise requested or required to be disclosed by law or regulation, *Provided*, that the PCC/SEC, as the case may be, shall timely notify the other PARTY of the required disclosure.

SECTION 6. *Review and Amendment of this Agreement.* The PARTIES agree to review this Agreement as required. Subsequent revisions, amendments, repeals, and supplements to this Agreement shall be made upon mutual written agreement by the PARTIES.

SECTION 7. *Termination.* Either PARTY may terminate this Agreement by giving at least thirty (30) days prior written notice to the other PARTY. In the event of termination, any information obtained under this Agreement will continue to be treated confidentially in the manner prescribed under Section 5 hereof.

SECTION 8. *Separability.* Should any section of this Agreement be declared illegal or unconstitutional or of no legal effect, the other provisions shall not be affected and shall remain in full force and effect.

SECTION 9. *Effectivity.* This Agreement shall take effect on the date of signing by the PARTIES.

Done this 5th day of December 2016 at Pasig City.

PHILIPPINE COMPETITION COMMISSION

By:



ARSENIO M. BALISACAN
Chairperson

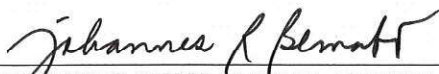
SECURITIES AND EXCHANGE COMMISSION

By:



TERESITA J. HERBOSA
Chairperson

Signed in the presence of:



JOHANNES BENJAMIN R. BERNABE
Commissioner, PCC

FERDINAND B. SALES
Director, SEC-CRMD