

**In the Matter of the Acquisition by  
Grab Holdings, Inc. and  
MyTaxi.PH Inc., of Assets of Uber  
B.V. and Uber Systems, Inc.**

**PCC Case No. M-2018-001  
(MAO Case No. M-2018-012)**

**Grab Holdings, Inc., MyTaxi.PH,  
Inc., Uber B.V. and Uber Systems,  
Inc.**

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**ORDER\***

1. On 3 April 2018, the Philippine Competition Commission (“PCC” or the “Commission”) directed its Mergers and Acquisitions Office (“MAO”) to commence a *motu proprio* review of the acquisition by Grab Holdings, Inc. (“GHI”) and MyTaxi.PH, Inc. (“MTPH” and collectively with GHI “Grab”), of assets of Uber B.V. (“UBV”) and Uber Systems, Inc. (“USI” and collectively with UBV “Uber”) (the “Transaction”) in accordance with Sections 3.3 and 13 of the PCC Rules on Merger Procedure (“Merger Procedure”) on the basis of MAO’s preliminary assessment that there are reasonable grounds to believe that the Transaction may result in a substantial lessening, prevention, or restriction of competition.
2. On the same date, the Commission issued a Notice dated 3 April 2018 (“Notice”) informing Respondents of its intention to impose several proposed interim measures (“Proposed Interim Measures”) with the grounds attendant thereto and directing them to submit written comments on the Proposed Interim Measures and to appear in a public hearing before the Commission to discuss the said measures.
3. On 5 April 2018, the Commission received copies of Comments from Respondents and held a public hearing where the Commission further elaborated on the Proposed Interim Measures and the grounds considered by the Commission for their imposition. Respondents were likewise given an opportunity to present their respective positions on the Proposed Interim Measures and to clarify facts and issues relating to the Transaction. Based on their submission, Respondents confirmed that Uber’s Philippine services will be transitioned to the Grab platform on 8 April 2018 and, by 9 April 2018, the Uber app will no longer be operational.

\* Parts of the Order have been edited to ensure that confidential information is not disclosed. Those parts are shown as [...].

**After due consideration of Respondents' written submissions and oral representations, and in light of the extreme urgency of the matter, the Commission hereby resolves to impose the following interim measures ("Interim Measures"):**

- a. Maintain the independence of their business operations and other conditions prevailing prior to 25 March 2018, which include, among others, ride hailing and delivery platforms; pricing and payment policies including incentives and promotions to riders; product options; customer and rider database; and on-boarding of new partner drivers as well as the fees, charges, and incentives to partner drivers;
- b. Refrain from providing access to or from allowing a party to obtain from the other party any confidential information, including but not limited to information pertaining to pricing, formulas, incentives, operations, marketing and sales policies, promotions, partner drivers, and customers;
- c. Refrain from imposing exclusivity clauses, lock-in periods and/or termination fees to Uber drivers and employees seeking to voluntarily join Grab's platform;
- d. Refrain from performing any act that may lead to reduced viability and saleability of Respondents' businesses;
- e. Refrain from performing any act that will prejudice the PCC's power to review the transaction and impose remedies;
- f. Refrain from executing, or further executing, any final agreement or contract that will transfer any asset, equity, interest including the assumption by Uber of a board seat in Grab, or property of any form and kind, to the other party, pursuant to the acquisition announced by Respondents to the Public on 25 March 2018; and
- g. Refrain from performing any act that may lead and/or further lead to the consummation of the Transaction.

Nothing in this Order shall prevent (i) USI employees from exercising their freedom to seek employment opportunities elsewhere, including MTPH, provided that such employees are not prevented from seeking employment from companies engaged in the same business as USI and MTPH, and (ii) USI drivers from switching to MTPH, and vice versa, or to use both platforms. Should there be any incentives or benefits afforded to employees or drivers absorbed by MTPH, such will not be affected by this Order.

## DISCUSSION

### *Background*

4. Sometime in March 2018, Respondents were reported to have entered into the Transaction, particularly in the Philippines, through a Bill of Sale and Assignment and Assumption Agreement dated 25 March 2018, which provided for MTPH's acquisition of USI's Philippine-based assets comprising mainly of leasehold rights to various properties, prepaid insurance and rent, leasehold improvements, and deposits.<sup>1</sup>
5. MTPH and USI both operate as Transportation Network Companies ("TNC") accredited by the Land Transport Franchising and Regulatory Board ("LTFRB"). As TNCs, they provide "pre-arranged transportation services for compensation using an internet technology application or digital platform technology to connect passengers with drivers using their personal vehicles."<sup>2</sup>
6. GHI is a holding company incorporated in the Cayman Islands while MTPH is a corporation organized and existing in the Philippines. UBV, a holding company organized and existing under the laws of Netherlands, wholly owns USI, a Philippine corporation.
7. As disclosed to the Commission, the Bill of Sale forms part of a South East Asian ("SEA") wide agreement between the Parties. In consideration of the Transaction, Uber will acquire a 27.5% share and one (1) board seat in Grab.<sup>3</sup>
8. On 3 April 2018, the Commission directed its Mergers and Acquisitions Office ("MAO") to commence a *motu proprio* review of the Transaction in accordance with Sections 3.3 and 13 of the PCC Rules on Merger Procedure ("Merger Procedure") on the basis of MAO's preliminary assessment that there are reasonable grounds to believe that the Transaction may result in a substantial lessening, prevention, or restriction of competition.
9. On the same date, the Commission issued the Notice informing Respondents of its intention to impose several proposed interim measures designed to (i) prevent undue prejudice to the Commission's review of the Transaction and the exercise of its power to impose appropriate remedies; (ii) prevent Respondents from incurring substantial costs and causing further harm to competition in the market; (iii) protect the riding public from material and adverse effects; and (iv) ensure that the Commission can effectively exercise its powers under Section 20 of the PCA should the Transaction be deemed to be in violation thereof (collectively, the "Proposed Interim Measures").
10. In the Notice, Respondents were likewise directed to submit written comments on the Proposed Interim Measures and to appear in a public hearing before the Commission.
11. On 5 April 2018, the Commission received copies of Grab's *Comment (Re: Notice dated April 3, 2018 in Relation to the Proposed Interim Measures)* and

<sup>1</sup> Schedule 1. Local Acquired Assets, Bill of Sale and Assignment and Assumption Agreements

<sup>2</sup> Section 4, DOTC Department Order No. 2015-011 dated 8 May 2015

<sup>3</sup> Public hearing held on 5 April 2018

Uber's *Comment To The Proposed Interim Measures dated 3 April 2018*, both of even date.

12. During the public hearing held on 5 April 2018, the Commission further elaborated on the Proposed Interim Measures and the grounds considered by the Commission for their imposition. Respondents were likewise given an opportunity to present their respective positions on the Proposed Interim Measures and to clarify facts and issues relating to the Transaction.
13. After due consideration of the Respondents' written submissions and oral representations, the Commission has resolved to impose on the Respondents the Interim Measures.

*The Commission's power to impose interim measures*

14. The Philippine Competition Act ("PCA") grants the Commission express powers to impose interim measures. Section 12(f) of the PCA empowers the Commission to issue interim orders such as show cause orders and cease and desist orders after due notice and hearing in accordance with the PCA's implementing rules and regulations.
15. Under Rule 2.13 of the Merger Procedure, such interim orders include show cause orders and cease and desist orders. The Merger Procedure also states that interim measures to be imposed by the Commission may include ordering a party, its subsidiaries or affiliates, including their respective directors, officers, agents or employees, to temporarily cease or desist from the performance of certain acts, including but not limited to:<sup>4</sup>
  - a. Prohibiting a party from performing acts of consummation of a merger, or prohibiting the layoff of certain staff members;
  - b. Limiting exchange of commercially sensitive information; or
  - c. Ordering preservation of documents including, but not limited to, computer memory, computer disks, data compilations, e-mail messages sent and received and all back-up computer files or devices.
16. Under the same rules, the Commission may impose interim measures in the following instances:<sup>5</sup>
  - 16.1. In order to prevent any action that may prejudice the Commission's ability to investigate mergers or its ability to impose appropriate remedies;
  - 16.2. When the Commission finds reasonable grounds to believe that a merger has resulted or may result in substantial lessening of competition in the market; or
  - 16.3. When the Commission considers the interim measures necessary to protect the integrity of its review or the adjudicatory process.

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<sup>4</sup> Rule 10.3, PCC Rules on Merger Procedure

<sup>5</sup> Rule 10.1, PCC Rules on Merger Procedure

17. In the case of the subject Transaction, the Commission finds that all three (3) instances are present and thus warrant the imposition of the Proposed Interim Measures.

**The Interim Measures are necessary to prevent prejudice to the Commission's on-going review of the Transaction and power to impose remedies, and to protect the integrity of the on-going review of the Transaction**

Prejudice to the Commission's Review

*Maintenance of Independence of Business Operations*

18. Under Section 4.12 of the Merger Review Guidelines, the Commission generally adopts the prevailing conditions of competition or pre-transaction situation as the counterfactual against which to assess the impact of the merger. In this case, if Respondents are allowed to perform any acts that the interim measures seek to prevent, the Commission's construction of the counterfactual would be severely impaired.
19. In constructing the counterfactual, the Commission requires information on the independent operations of the merger parties. The ability to observe and obtain information on the independent operations of parties is lost when the business is transferred, operations are integrated, and information is shared between them.
  - 19.1. The complete shutdown of the Uber platform in the Philippines will effectively force partner drivers to migrate to MTPH, while USI employees who stand to potentially lose the benefits they have accumulated in USI, to join MTPH so as not to lose such benefits. Naturally, once these persons have shifted their loyalties to Grab, they would be hesitant to provide complete, accurate and unbiased statements. This will negatively impact the quality of information the Commission may obtain during the review.
20. Likewise, continued consummation would hamper accurate review as any data gathered during this time would not accurately reflect the true conditions after the consummation of the Transaction. Actions of parties during the pendency of a case or controversy are generally self-serving. Hence, the possibility of accurate assessment is lost, defeating the purpose of the *motu proprio* review. As such, the issuance of these interim measures is necessary to protect the integrity of the review of the Transaction.
21. Thus, it is imperative that the information and data must be gathered and collated free from any deviations or irregularities that may be brought about by the intermingling of business operations of Respondents.

## Prejudice to the Commission's Power to Impose Remedies

### *Prohibition Against Information Sharing*

22. In addition to the Commission's power to prohibit mergers and acquisitions that substantially prevent, restrict, or lessen competition,<sup>6</sup> the Commission is also expressly empowered to impose structural remedies such as adjustment orders and divestiture orders, including orders for corporate reorganization and divestment.<sup>7</sup> These remedies would be ineffective if information sharing has occurred. To illustrate, the remedy of divestment generally involves the sale of a line of business of a merger party to a third-party buyer. However, a third-party potential buyer may not be willing to purchase a business whose trade secrets, know-how, key business practices, or other commercial information have been accessed by a competitor. As such, it is necessary to prohibit information sharing between the Respondents by the imposition of this interim measure.

23. The Commission notes that Respondents declared during the 5 April 2018 hearing that they are not engaged in and do not intend to engage in the sharing of confidential information. Grab also asserts in its submission that:

There has been absolutely no sharing of coding algorithms, trade secrets or policies relating to products, sales, marketing, incentives, promotions, operations, or payment whatsoever between Grab and Uber.<sup>8</sup>

24. If so, preventing Respondents from sharing information of this nature in order to maintain status quo should not constitute an undue imposition on Respondents.

25. While the Commission notes that Respondents have expressed willingness to cooperate with the investigation and the proceedings,<sup>9</sup> the integration of Respondents' operations as in this case lends itself to a high probability of information leak. The Commission cannot shirk from its duty to ensure that no anti-competitive exchanges of information will occur between competitors while it reviews the Transaction, the Respondents' assurances notwithstanding.

### *Prohibition Against Reducing Saleability and Viability of Business*

26. The interim measure of prohibiting against the reduced saleability and viability of business is necessary to preserve the options available to the Commission. Should Respondents engage in any acts that would detract from the value of Uber's business operations in the Philippines, it would affect the feasibility of sale to a third party should the Transaction be prohibited.

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<sup>6</sup> Sec. 20, Philippine Competition Act

<sup>7</sup> Sec 12(h), Philippine Competition Act

<sup>8</sup> Par. 5.3.1, Grab's Comment dated 5 April 2018

<sup>9</sup> Pars. 53 and 65, Uber's Comment

## *Prohibition Against Execution of Any Further Agreements or Consummation of the Transaction*

27. The interim measure prohibiting Respondents from execution of any further agreements or consummation of the Transaction is intended for several purposes, for the mutual benefit of Respondents and the public. A finding that the Transaction is anti-competitive may result in the prohibition of the Transaction, where the Commission will require Respondents to unwind it. Further consummation would render unwinding more difficult for the Respondents.
28. The prohibition from continuing any further act of consummation also ensures the protection of the riding public. Such a measure ensures that the public will continue to have a choice between the services provided by Grab and Uber.
29. Respondents do not make any substantive assertion or provide any convincing argument as to why interim measures preventing the execution of further agreements or consummation of the Transaction should not be issued. Grab merely provides a blanket statement that "sufficient competitive pressure will continue to exist even after the Transaction and consumer welfare is promoted by the Transaction."<sup>10</sup>
30. USI makes the assertion that this interim measure would interfere with contractual commitments of Respondents. We note, however, that settled in our jurisdiction is the principle that the freedom to contract is not absolute. As held by the Supreme Court, all contract and all rights are subject to the police power of the State:

Settled is the rule that the non-impairment clause of the Constitution must yield to the loftier purposes targeted by the government. The right granted by this provision must submit to the demand and necessities of the State's power of regulation.<sup>11</sup>

We reiterate that the Commission, as a regulator, is expressly empowered to stop the performance of certain acts by the issuance of interim orders.<sup>12</sup> The Commission's issuance of this order prohibiting execution of further agreements and the consummation of the Transaction is an exercise of its mandate to protect competition and consumer welfare.

### **There are reasonable grounds to believe that the Transaction may result in substantial lessening of competition**

31. Respondents, in their comments and during the 5 April 2018 hearing, propose a relevant market that includes, among others, transportation services such as taxis, buses, jeepneys, and even tricycles and pedicabs, in order to justify their claim that no substantial lessening of competition will occur as a result of the

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<sup>10</sup> Par. 5.7, Grab's Comment dated 5 April 2018

<sup>11</sup> *Beltran v. Secretary of Health*, G.R. No. 133640, 25 November 2005

<sup>12</sup> Section 12(f), Philippine Competition Act

Transaction. The relevant market defined by the Respondents is overly broad. The candidate relevant market, as determined by the Commission in its preliminary assessment, is limited only to TNCs. Based on this preliminary assessment, the Commission finds reasonable grounds that substantial lessening of competition may result from the Transaction, adversely affecting the TNC<sup>13</sup> market.

32. The TNC market is a two-sided market in which two sets of consumers-- namely riders and drivers, interact through the ride-sharing platform. A two-sided market is characterized by network effects such that "the value that a customer on one side realizes from the platform increases with the number of customers on the other side."<sup>14</sup> For this case, the greater availability of transport network vehicle service ("TNVS") attracts riders to use a platform due to lower prices and shorter waiting time. Similarly, the greater number of riders who have signed up in a platform attracts more drivers due to greater probability of booking riders.

*The Transaction results in the creation of a dominant firm with significant market power in a highly-concentrated market*

33. The LTFRB has set the "common supply base" of TNVS as 66,750 units nationwide.<sup>15</sup> A total of 59,020 active unique partner-vehicles are registered under MTPH and USI, of which 55,720 are active unique drivers.<sup>16</sup> Grab has approximately 29,446 drivers. Uhop has an estimated number of 4000 drivers.<sup>17</sup>

33. 1 If the Transaction is carried out, and the Uber app ceases to be operational, there is reason to assume that all drivers of USI will transfer to MTPH post-acquisition as a result of network effects. In this scenario, MTPH will hold ~93.22% shares of the TNC market.

33. 2 Post-transaction Herfindahl-Hirschman Index<sup>18</sup> figures show the resulting market will increase substantially in an already highly-concentrated market.<sup>19</sup>

<sup>13</sup> A TNC, as defined by Department of Transportation and Communication (now Department of Transportation) Department Order No. 2015-011, is an "organization whether a corporation, partnership or sole proprietor, that provides pre-arranged transportation services for compensation using an internet-based technology application or digital platform technology to connect passengers with drivers using their personal vehicles

<sup>14</sup> OECD Policy Roundtables Two-Sided Markets. 2009

<sup>15</sup> Per LTFRB Memorandum Circular No. 2018-005 issued February 2018, the maximum number of accredited Transport

<sup>16</sup> Data provided by LTFRB during the 5 April 2018 hearing

<sup>17</sup> 3,300 drivers are "dual appers" or are accredited to both Grab and Uber

<sup>18</sup> Herfindahl-Hirschman Index, a tool for measuring market concentration. It is calculated by the summing the shares of all the firms acting in the market. The higher the HHI is, the more likely it is that the market is controlled by fewer firms

<sup>19</sup> Computation of pre-transaction HHI and post-transaction HHI results are 4,427 and 8,736, respectively



*MTPH historically charges higher fares than USI*

34. The PCC finds that USI historically charges lower fares than MTPH. Based on Respondents' submission, USI's fare structure has a lower per kilometer rate than that of MTPH.<sup>20</sup>

35. Based on news reports, the public is generally alarmed at the possibility the merged firm will be a "virtual monopoly" in the TNC market. The PCC has received complaints from TNVS users that, among others:

35.1. MTPH has significantly increased prices especially during rush hours.

35.2. For some areas, consumers have experienced a loss of choice in the TNC market such that they opt to book with MTPH.

36. The Commission also monitored the prices of MTPH and USI after their announcement of the Transaction from 28 March 2018 and 4 April 2018 and found that, more often than not, MTPH's prices are significantly higher in the monitored time and routes. Based on the monitored data, on 28 March 2018, shortly after announcement of the Transaction the price difference of GrabCar and UberX was PhP 140.00. Subsequently, during the period of 2-4 April 2018, when migration of drivers became more significant, the fare difference went up to as high as PhP 200.00. This might indicate greater ability to influence fares by MTPH.

*Price regulation does not sufficiently address concerns that prices will not increase post-transaction*

37. Respondents claim that increase of price by the merged party cannot be easily implemented because fares are subject to LTFRB regulation. Fares charged by TNCs are based on the following formula:

$$\text{Base Fare} + [(\text{Price per kilometer} \times \text{distance in kilometers}) + (\text{Rate per minute} \times \text{travel time in minutes})] \times \text{surge factor} = \text{Fare}^{21}$$

38. For both Respondents, base fare is pegged at PhP40.00 and rate per running time is set at PhP 2.00 per minute. However, price per kilometer varies across parties. For Uber, the approved price per kilometer is PhP5.70 while for Grab, it ranges from PhP10.00 to PhP14.00. Respondents are allowed a maximum surge factor of 2 on the per kilometer and per minute rate. Actual fares collected are determined by dynamic pricing algorithms, which take into account demand and supply, among other considerations.

39. Given that the base fare and the rate per minute are the same for both, the competition in price may happen in the price per kilometer. With the presence of Uber, Grab is constrained to price competitively at the lower limit of its allowable range.

<sup>20</sup> Grab's Comment dated 5 April 2018; Uber's Comment dated 5 April 2018

<sup>21</sup> Source: LTFRB

40. Thus, price regulation and imposition of surge caps by the LTFRB do not sufficiently address concerns that prices will increase post-transaction. Notwithstanding price regulation and surge caps, competitive pressure provided by USI compels MTPH to price below its maximum allowable price as approved by the LTFRB. The loss of this competitive pressure as a result of the Transaction increases the ability and incentive of MTPH to set prices closer to the maximum allowable price.

*Non-discriminatory features of the USI app*

41. General public sentiment shows fear that TNC services will significantly worsen due to loss of access to USI's features which offer distinct advantages to consumers.

41.1. According to Respondents' representations, the MTPH app gives the driver access to rider's information (i.e. drop off location and total fare), giving them leeway to accept or reject a booking. Public comments have revealed how this was abused, leading to rider discrimination, difficult booking experience, and prevalent cancellations.

41.2. On the other hand, the USI app does not disclose price and drop-off points per trip which precludes rider discrimination. While MTPH alleges that a similar feature is being developed for Grab, they cannot commit a specific time frame for its roll out in the Philippines.

*U-HOP exerts little to no competitive constraint on MTPH and USI*

42. Contrary to Respondent Grab's allegations,<sup>22</sup> U-HOP exerts little to no competitive constraint on MTPH and USI.
- a. Based on information from U-HOP's website,<sup>23</sup> the business model of U-HOP differs significantly from MTPH and USI.
    - i. Unlike MTPH and USI where fees are paid upon completion of the trip, U-HOP charges a monthly membership fee of PHP 3,999.00 to access forty (40) rides.<sup>24</sup>
    - ii. U-HOP's driver partners are charged hefty amounts in order to use the company's platform.<sup>25</sup>
  - b. Based on the ratings and review by U-HOP users, the service is poor due to unavailability of cars and drivers.<sup>26</sup>

*Initial assessment of the market shows barriers to entry*

43. Contrary to Respondents' assertions that entry barriers are low in the TNC market, the Commission finds that, although likely, entry of potential

<sup>22</sup> Par. 3, Grab's Comment dated 5 April 2018

<sup>23</sup> <http://www.fleetshare.ph>

<sup>24</sup> *Id*

<sup>25</sup> <http://news.abs-cbn.com/business/02/09/18/dont-pay-p150000-to-u-hop-ltfrb-tells-drivers>.

<sup>26</sup> Based on reviews posted in the app store, as of 6 April 2018

competitors may not be timely and sufficient to pose competitive constraint to the merged firm.

- a. While pending before the LTFRB, the regulatory body cannot say when these new applications will be approved given that they have yet to comply with all the requirements. There is neither indication nor commitment as to when these will be approved, if at all they will be approved.
- b. There is likewise no data to support that the entry of these new players will be adequate to impair any exercise of the merged firm's market power.
  - i. New entrants to the industry must have substantial resources to cope with losses expected during the initial years of operation.<sup>27</sup>
  - ii. TNCs, as ride-sharing platforms, are characterized by network effects. The merged firm will have a first-mover advantage as (i) users of the USI who want to keep using TNVS have no other option but to migrate to the MTPH app, and (ii) drivers who want to continue in this line of work have no other choice but to sign-up as a MTPH partner.
  - iii. With the first mover advantage enjoyed by the merged firm coupled with significant network effects, new entrants will have difficulty in attracting both drivers and passengers such that it would be difficult to reach a sufficient scale to effectively compete in the market.

#### *Disproportionality of the Interim Measures*

44. While Respondents would have the Commission believe that the Interim Measures are harsh and disproportionate to the ends achieved, the Commission stresses that these measures are not meant to be indefinite, and are effective only while the review of the Transaction is on-going unless earlier lifted by the Commission.

#### **Practicability of the Interim Measures**

45. With respect to the practicability of the Proposed Interim Measures, Respondents have raised the following concerns to argue that said interim measures are impossible to implement:
  - a. Uber has exited the SEA region and no longer has sufficient resources for continued operations in the Philippines.<sup>28</sup>

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<sup>28</sup> Pars. 81 to 84, Uber's Comment dated 5 April 2018; Par. 4.3, Grab's Comment dated 5 April 2018

- b. It will cause confusion to drivers and riders as there were already announcements made that the USI platform will no longer work.<sup>29</sup>
- c. USI cannot compel third parties, such as partner drivers and riders to cease migrating to MTPH or for USI employees to refrain from seeking employment in MTPH.<sup>30</sup>
46. Uber has represented, both in its Comment and at the hearing held on 5 April 2018 that it has already exited the Philippines, and the rest of the SEA region.<sup>31</sup> However, this is misleading considering that as part of the consideration of the Transaction,<sup>32</sup> Uber will acquire a 27.5% share and one (1) board seat in Grab at the regional level, subject to a non-compete clause. This tends to show Uber's integration with Grab at the regional level. This may indicate that the intent of the Transaction is to eliminate a competitor in the ride-sharing market regionally, including the Philippines. Uber will retain a financial interest in Philippine operations, as such, the cessation of Uber's operations as a stand-alone platform in SEA may be motivated by more than just financial losses, as represented by Uber, but the desire to derive monopoly profits from ride-sharing operations regionally.
47. Indeed, while it is Uber's prerogative to unilaterally leave the SEA market, it must be highlighted that the Transaction is subject to the regulatory power of the Commission. Had exit been done via total cessation of business, no review by the Commission would be necessary. However, since USI is exiting the Philippine market through the sale of its assets to its competitor and Uber will acquire shares in Grab, the Transaction is within the jurisdiction of the Commission. The Commission is mandated to assess whether or not it results in a substantial lessening of competition in the market. The reasoning of the Respondents that this is purely a subject of "business judgment" does not avail.
48. The alleged impracticability of the interim measures is disproved by the fact that in another jurisdiction, the Respondents have even offered to extend the operation of the Uber app.<sup>33</sup> [...]
49. The concern raised by Grab that the interim measures will merely cause confusion to the public is easily addressed as Respondents may provide sufficient notice to the public. In fact, the Commission takes note of the high level of public interest in this Transaction, which demonstrates that stakeholders are closely monitoring its progress.
50. Finally, there is no intent to require third parties to comply with the interim measures. Partner drivers, riders and employees are free to seek employment opportunities in Grab, or shift to the Grab platform. The Interim Measures do not prevent:

50.1. USI employees from exercising their freedom to seek employment opportunities elsewhere, including in MTPH, *provided* that such

<sup>29</sup> Par. 4.4, Grab's Comment dated 5 April 2018

<sup>30</sup> Pars. 75 to 80, Uber's Comment dated 5 April 2018; Par. 4.3, Grab Comment dated 5 April 2018

<sup>31</sup> Pars. 81 to 84, Uber's Comment dated 5 April 2018

<sup>32</sup> Public hearing on 5 April 2018

<sup>33</sup> Media Release of Competition & Consumer Commission Singapore dated 6 April 2018

employees are not prevented from seeking employment from companies engaged in the same business as USI and MTPH; and

50.2. USI drivers from switching to MTPH, and vice versa, or to use both platforms.

#### *On the Proposed Alternative Interim Measures*

51. We note that Grab signified willingness to adopt an alternative set of interim measures, particularly: (1) [...] This alternative set of interim measures was likewise adopted by Uber.
52. Unfortunately, the alternative set of interim measures would not be able to serve as a sufficient alternative. [...]

#### **Procedural Issues Raised by Respondents**

##### *On the substantiation of the intended interim measures*

53. Respondents state in their respective Comments that the Notice issued by the Commission failed to substantiate the grounds causing, or expected to cause, the injury or prejudice sought to be prevented by the Proposed Interim Measures. They claim that such requirement under Rule 10.4 of the Merger Procedure, while not applicable to interim measures imposed by the Commission *motu proprio* should nonetheless be applied in this case in the interest of due process.
54. Under Rule 10.2 of the Merger Procedure, there are two (2) ways to issue interim measures: (1) *motu proprio* by the Commission (“*Motu Proprio* Interim Measures”); or (2) by application of MAO or a merger party (“Interim Measures by Application”).
55. For Interim Measures by Application, the MAO or the merger party is required to file a verified application with the Commission specifying and substantiating the grounds causing, or expected to cause, the injury or prejudice sought to be prevented and the relief sought.<sup>34</sup> Once the Commission finds such application sufficient in form and substance, the Commission shall issue an Order to Explain against whom the interim measure is sought, requiring a verified explanation, within a period of ten (10) days, on why the application should not be granted.<sup>35</sup> This procedure, however, does not apply to *Motu Proprio* Interim Measures. Section 12(f) of the PCA only requires due notice and hearing be provided prior to the imposition of interim measures. These requirements were complied with by the Commission in this case.
56. In any case, the Commission elaborated on the grounds during the hearing held on 5 April 2018 and as discussed above.
57. Respondents were given opportunity to, and did in fact, comment and propose alternative measures.

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<sup>34</sup> Rule 10.4, PCC Rules on Merger Procedure

<sup>35</sup> Rule 10.5, PCC Rules on Merger Procedure

*On the period granted to Respondents to Comment on the Proposed Interim Measures*

58. Respondents also claim that the two (2)-day period given to them by the Commission to submit comments on the Proposed Interim Measures was not in accordance with Rule 10.5 of the Merger Procedure which states that an Order to Explain shall be issued by the Commission to the party subject of the interim measure to explain within a period of ten (10) days why the application for interim measure must not be granted.
59. As previously mentioned, such an Order to Explain is a requirement for Interim Measures by Application. It does not apply to *Motu Proprio* Interim Measures. Nevertheless, the Commission in this case gave Respondents the opportunity to be heard.
60. We also underscore the consistent ruling of the Supreme Court that the requirements of administrative due process are satisfied when parties are given the opportunity to explain their side. Thus, in *Calma v. Court of Appeals*,<sup>36</sup> the High Court held that:

Administrative due process requires notice and an opportunity to be heard before judgment is rendered. So long as the parties are given the opportunity to explain their side, the requirements of due process are satisfactorily complied with.<sup>37</sup>

61. We also stress that the deadline given to Respondents to file their Comments to the Proposed Interim Measures by 5 April 2018 was in response to the intent of Respondents to complete the combination of their operations and Uber drivers' transition of their services via the Grab platform by 9 April 2018. If the Proposed Interim Measures were to be imposed beyond such date, such measures would be rendered nugatory or ineffectual.

**WHEREFORE**, premises considered, Grab Holdings, Inc., MyTaxi.PH, Inc., Uber B.V. and Uber Systems, Inc. are hereby ordered to immediately comply with the following interim measures upon service of this Order:

- a. Maintain the independence of their business operations and other conditions prevailing prior to 25 March 2018, which include, among others, ride hailing and delivery platforms; pricing and payment policies including incentives and promotions to riders; product options; customer and rider database; and on-boarding of new partner drivers as well as the fees, charges, and incentives to partner drivers;
- b. Refrain from providing access to or from allowing a party to obtain from the other party any confidential information, including but not limited to information pertaining to pricing, formulas, incentives, operations, marketing and sales policies, promotions, partner drivers, and customers;
- c. Refrain from imposing exclusivity clauses, lock-in periods and/or termination fees to Uber drivers and employees seeking to voluntarily join Grab's platform;

<sup>36</sup> G.R. No. 122787, 9 February 1999

<sup>37</sup> *Id.*

- d. Refrain from performing any act that may lead to reduced viability and saleability of Respondents' businesses;
- e. Refrain from performing any act that will prejudice the PCC's power to review the transaction and impose remedies;
- f. Refrain from executing, or further executing, any final agreement or contract that will transfer any asset, equity, interest including the assumption by Uber of a board seat in Grab, or property of any form and kind, to the other party, pursuant to the acquisition announced by Respondents to the Public on 25 March 2018; and
- g. Refrain from performing any act that may lead and/or further lead to the consummation of the Transaction.

Nothing in this Order shall prevent (i) USI employees from exercising their freedom to seek employment opportunities elsewhere, including MTPH, provided that such employees are not prevented from seeking employment from companies engaged in the same business as USI and MTPH, and (ii) USI drivers from switching to MTPH, and vice versa, or to use both platforms. Should there be any incentives or benefits afforded to employees or drivers absorbed by MTPH, such will not be affected by this Order.

Should the Respondents fail to comply with item (a) above within five (5) working days from service of this Order, Respondents shall show cause within twenty-four (24) hours from the end of the aforementioned five (5) day period as to why they should not be held in contempt and subjected to penalties.

Respondents are further ordered to submit to the Commission, periodic verified compliance reports, together with supporting documents, the first of which shall be submitted within fifteen (15) days from service of this Order. Succeeding compliance reports shall be submitted every twenty (20) days thereafter.

This Order shall remain effective for the duration of the *motu proprio* review of the Transaction unless otherwise ordered by the Commission.

**SO ORDERED.**

6 April 2018, Pasig City, Philippines.

  
**ARSENIO M. BALISACAN**  
Chairman

  
**JOHANNES BENJAMIN R.  
BERNABE**  
Commissioner

  
**STELLA LUZ A. QUIMBO**  
Commissioner

  
**AMABELLE C. ASUNCION**  
Commissioner

*Copies furnished:*

**Grab Holdings, Inc.**  
Respondent

**MyTaxi.PH, Inc.**  
Respondent

**Uber B.V.**  
Respondent

**Uber Systems, Inc.**  
Respondent