

## COMMISSION DECISION No. 26-M-12/2018

### 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

The Commission,

Having regard to the acquisition by Grab Holdings, Inc. and MyTaxi.PH, Inc. (collectively, "Grab"), of assets of Uber B.V. and Uber Systems, Inc. (collectively, "Uber"; Grab and Uber collectively, the "Parties"),

Having regard to Sections 16 and 20 of Republic Act No. 10667 and Section 1, Rule 4 of the Rules and Regulations to Implement the Provisions of Republic Act No. 10667,

Has adopted this Decision:

WHEREAS, on 25 March 2018, Grab acquired Uber's Southeast Asia business, including Uber's assets located in the Philippines, in exchange for the issuance to Uber of shares equivalent to 27.5% ownership in Grab (the "Transaction");

WHEREAS, on 3 April 2018, in accordance with Sections 3.3 and 13 of the PCC Rules on Merger Procedure ("Merger Procedure"), the Commission issued Resolution No. 08-2018 directing the Mergers and Acquisitions Office ("MAO") to commence a *motu proprio* review of the Transaction based on the 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;

WHEREAS, on 6 April 2018, the Commission issued an Order imposing interim measures on the Parties for the duration of the *motu proprio* review of the Transaction in order 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;

WHEREAS, on 22 May 2018, the Commission issued a Notice of even date taking cognizance of the Statement of Concerns filed by the MAO with respect

to the Transaction (“SOC”) and ordering the Parties to file their respective verified comments within ten (10) days from receipt of the Notice;

WHEREAS, under the SOC, the MAO found that the Transaction will likely result in a substantial lessening of competition in the market for on-demand private transportation online booking service through a mobile ride-hailing application;

WHEREAS, on 1 June 2018, the Commission received a copy of Grab’s Request for Consideration of Commitments dated 31 May 2018 which sought to address the competition concerns raised in the SOC by proposing voluntary commitments to remedy, mitigate, or prevent the negative effects on competition resulting from the Transaction (“Proposal”);

WHEREAS, pursuant to the Proposal, on 1 June 2018, the review period was suspended for a period of sixty (60) days and the proceedings on the voluntary commitments commenced (“Commitment Review Period”);

WHEREAS, on 30 July 2018, Grab filed a Letter-Request praying for a period of thirty (30) days to extend the Commitment Review Period, which request was granted by the PCC for a period of ten (10) days from 31 July 2018 or until 10 August 2018;

WHEREAS, on 9 August 2018, after several consultations with the PCC, the Parties executed and submitted an Undertaking of even date containing its final proposal for voluntary commitments (“Undertaking”);

WHEREAS, the Commission considered the Undertaking sufficient to address the competition concerns raised in the SOC during the *motu proprio* review;

RESOLVED THEREFORE, on the basis of the Undertaking, the Commission will take no further action with respect to the Transaction, subject to the conditions provided in the Undertaking, to wit:

- I. Grab shall not introduce (i) any exclusivity provision in their agreements with drivers and operators that would prohibit multi-homing (*i.e.*, registration with, and operation under, other Transport Network Companies [“TNCs”]); (ii) any provision in their agreements with drivers and operators or any policy or incentive that would result in exclusive membership in, or use of, the Grab app; or (iii) any rule or policy that would penalize drivers or operators (*e.g.*, forfeiture of incentives, increased commission, banning from the use of the Grab app, or being

disadvantaged in the allocation of bookings) solely by reason of the driver or operator having been found to be registered with or operating under other TNCs (referred to as “Non-Exclusivity Commitments”);

- II. In order to monitor compliance with the Non-Exclusivity Commitments, Grab shall submit to the Commission a report of all incentives that are being provided by Grab to its drivers or operators in the manner provided in the Undertaking and, in case of amendments to such benefits or implementation of new incentives or benefits, Grab shall submit a report to the Commission of such amended or new incentives. Should the Commission find, subject to the procedure provided in the Undertaking, that Grab has breached any of the Non-Exclusivity Commitments, the Commission shall require Grab to implement measures to address the findings within a period of twenty (20) days, provided that benefits that may have already accrued to drivers and operators at the time of the determination by the PCC of a breach of the Non-Exclusivity Commitment shall not be adversely affected. If, after the lapse of the twenty (20) day period, the identified policies and incentives have continued or have not been rectified, Grab shall be subject to appropriate penalties, subject to the range indicated in Section 29(d) of the Philippine Competition Act (“PCA”);
- III. Grab shall continue to provide licensing and regulatory support to drivers and operators although they may be registered with, and operating under, other TNCs (*i.e.*, Grab will continue to operate help-desks to provide information regarding the application requirements and process flow for obtaining Certificates of Public Convenience or Provisional Authorities with the LTFRB). In the event that a driver or operator wishes to cease operating under the Grab app, Grab shall return to the driver or operator, as the case may be, any original documents for the application with the Land Transportation Franchising and Regulatory Board for a Provisional Authority or Certificate of Public Convenience in its possession within three (3) to five (5) working days from receipt of a written request;
- IV. Grab shall maintain the changes made to the Grab app, such as automatic accept option, reduction in acceptable cancellation rate, reduction in penalty threshold, reduction in booking radius, mandatory identity disclosure, increase in the permissible use of set destination function, in accordance with the Undertaking, unless replaced with other features or functionalities that provide equal or greater benefit to riders and/or drivers and operators;

- V. For the purpose of improving customer experience, Grab shall remove the “See Destination” feature or any other function in the Grab app that enables drivers to see rider destinations before such driver accepts or rejects a ride request for drivers whose acceptance rate falls below the thresholds provided in the Undertaking, provided that for the fourth quarter from the date of this Decision (“Effective Date”), the “See Destination” feature shall be removed for drivers whose Acceptance Rate falls below 65%. As provided in the Undertaking, the “Acceptance Rate” of a driver means the percentage derived by taking the total number of booking requests accepted by the driver and dividing this by the total number of booking requests received by the driver, determined on a weekly basis. Grab shall submit reports to the Commission showing compliance with this commitment in the manner provided in the Undertaking;
- VI. In addition, for the purpose of improving customer experience, Grab shall, to the extent not inconsistent with the Undertaking (i) implement enhanced driver performance standards, adopt the Driver Code of Conduct, and establish the Grab Driver Academy; (ii) subject to overcoming technical challenges, adopt a new Grab app interface, which includes an emergency SOS feature that would allow reporting of mapping issues via a help center, and a passenger no show feature; (iii) adopt a Passenger Code of Conduct; (iv) upgrade its customer support by maintaining dedicated service lines and entering into expanded customer service agreements with call centers/business processing outsourcing providers, subject to compliance with prevailing labor regulations; (v) adopt a Driver Welfare Program, on the understanding that this does not constitute an admission that the drivers are considered employees of Grab; and (vi) implement a Driver Rewards Program. Any substantial amendments to these improvements shall be reported to the PCC in the manner provided in the Undertaking;
- VII. Grab, in its commitment to provide satisfactory customer experience, shall meet the following service quality metrics:
- (a) The Allocation Rate indicated in the Undertaking to ensure that such Allocation Rate is not unreasonably different pre- and post-Transaction, provided that for the fourth quarter from Effective Date, the Allocation Rate shall not be less than 65%;

As provided in the Undertaking, the Allocation Rate shall refer to the percentage derived by taking the total number of booking

requests accepted by Grab drivers during the relevant period and dividing it by the total number of booking requests received by Grab drivers during the relevant period;

- (b) The Driver Cancellation Rate indicated in the Undertaking, provided that for the fourth quarter from Effective Date, the Driver Cancellation Rate shall be no more than 5%;

As provided in the Undertaking, the Driver Cancellation Rate shall refer to the percentage derived by taking the total number of trips cancelled by Grab drivers during the relevant period and dividing it by the total number of booking requests accepted by Grab during the relevant period;

- (c) A Response Time to Rider Complaints of no more than six (6) hours for non-serious complaints and no more than three (3) hours for serious complaints, to ensure that the level of customer support provided by Grab is not unreasonably different pre- and post-Transaction. Should Grab fail to respond within the specified periods, the PCC, following the procedure provided in the Undertaking, may require Grab to implement measures to mitigate or eliminate the adverse effects of such failure to comply;

As provided in the Undertaking, the Response Time to Rider Complaints pertains to the length of time that Grab responds to a complaint and is measured from the time a complaint is sent by any rider via the Grab app, the Grab website, or the customer hotline or help number until the time Grab acknowledges and acts on the complaint;

- VIII. To ensure compliance with the foregoing service quality metrics, Grab shall submit reports to the PCC in the manner provided in the Undertaking. In the event that Grab fails to comply with any of its commitments to improve customer experience, as may be determined from the reports submitted by Grab in accordance with the Undertaking, Grab shall provide an explanation or justification for its non-compliance;
- IX. Grab, in its commitment to ensure fare transparency, shall revise its Trip Receipt to show the fare breakdown per trip (*i.e.*, distance-based fare, time-based fare, if applicable, amount of fare surge, and discounts or reductions due to promos);

- X. Grab shall ensure that its pricing behavior is not unreasonably different pre- and post-Transaction. Differences in pre- and post-Transaction pricing will be monitored in terms of the Deviation Measure, which is defined as the deviation of the actual fare from the minimum allowed rate as a percentage of the Range of Allowable Rates;

The threshold for an increase in the mean Deviation Measure is twenty-two (22) percentage points such that if a mean Deviation Measure in the Post-Transaction Sample is twenty-two (22) percentage points higher than the corresponding Deviation Measure in the Baseline Sample, and this increase is statistically significant, then such is considered an Extraordinary Deviation;

Should there be a finding of an Extraordinary Deviation in 30% of the weeks covered in each quarter, the Commission shall notify Grab in the manner provided in the Undertaking, and require Grab to provide an explanation or justification for such finding. Upon consideration of Grab's explanation or justification in accordance with the Undertaking, the Commission shall impose a penalty equivalent to five percent (5%) of Grab's commissions in respect of all the trips taken in the specific Route-Time Combination and for the weeks identified as having Extraordinary Deviation, which shall be subject to the limits indicated in Section 29 (d) of the PCA;

- XI. Grab's compliance with the commitments, the Undertaking, and this Decision shall be monitored, through an impartial third-party monitoring trustee, appointed by the PCC ("Monitor");
- (a) The Monitor shall be appointed in accordance with the provisions in the Undertaking;
  - (b) The appointed Monitor shall work under the supervision of, and shall be accountable to, the PCC, and shall carry out its responsibilities under this Undertaking in a fair, independent and impartial manner;
  - (c) Grab shall bear the costs associated with the appointment and retention of the Monitor, subject to a fee cap of PhP12 Million (*i.e.*, PhP3 Million per quarter) for all services rendered in connection with the Undertaking. Any fees in excess of the cap shall be borne by the PCC;

- (d) Grab shall submit all reports, together with supporting data, to the PCC in accordance with the Undertaking. Should there be a finding by the PCC that data, documents, and reports submitted by Grab are fraudulent or constitute false material information, Grab shall be subject to appropriate penalties under Section 23 and 29(c) of the PCA;
- (e) Grab shall furnish the Monitor with a copy of all reports and data required to be submitted to the PCC under the Undertaking. Grab shall also exert commercially reasonable efforts to assist the Monitor, as may be necessary, to enable the Monitor to execute the latter's functions;
- (f) In the execution of the Monitor's functions, it shall have the authority to request data and documents relating to reports that Grab is required to submit, conduct interviews, or require the production of appropriate documents and reports other than those specifically enumerated in the Undertaking. The Monitor shall make reports to the PCC subject to the terms and conditions required by the PCC. Should the Monitor's reports include findings of non-compliance, the PCC shall furnish Grab a copy of the pertinent portion of such reports;

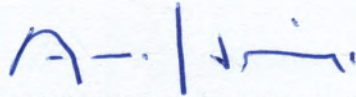
XII. The Undertaking shall be effective from the date of this Decision and shall continue to be in effect for a period of one (1) year, subject to the provisions in the Undertaking for the amendment, substitution, and release from commitments.

This Decision is rendered based on the foregoing conditions, the Undertaking, and submissions of the Parties in relation to said Undertaking, without final adjudication on the Statement of Concerns dated 22 May 2018.

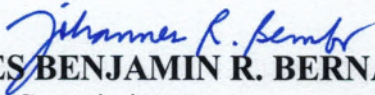
The Order dated 6 April 2018 is henceforth lifted, without prejudice to the Commission's authority to issue a separate order or resolution disposing of the Parties' compliance with the same, pursuant to Section 16.12 of the Merger Procedure.

Any breach of the conditions set forth herein will subject the Acquiring Party to fines, additional remedies, and such other measures as the Commission may deem necessary, including nullification of this Decision.

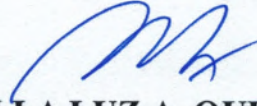
DONE, this 10<sup>th</sup> day of August 2018, Quezon City, Philippines.



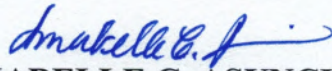
**ARSENIO M. BALISACAN**  
Chairman



**JOHANNES BENJAMIN R. BERNABE**  
Commissioner



**STELLA LUZ A. QUIMBO**  
Commissioner



**AMABELLE C. ASUNCION**  
Commissioner