

**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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RESOLUTION

On 30 August 2018, the Philippine Competition Commission (“PCC” or “Commission”) issued an *Order* (“Show Cause Order”) directing Respondents Grab Holdings, Inc. (“GHI”) and MyTaxi.PH, Inc. (“MTPH”; collectively, “Grab”) and Uber B.V. (“UBV”) and Uber Systems, Inc. (“USI”; collectively, “Uber”) to explain why they should not be penalized under Section 29(b) of the Philippine Competition Act and, in particular, explain why, during the effectivity of the *Interim Measures Order* dated 6 April 2018 (“Interim Measures Order”):

- a. Respondents have failed to show that they have taken concrete steps to (i) keep the operation of their businesses separate and (ii) maintain other conditions prevailing prior to 25 March 2018, in violation of Interim Measure A;
- b. Uber provided Grab access to Uber confidential information, in violation of Interim Measure B;
- c. Respondents have failed to maintain independent operations at pre-Transaction conditions, to the prejudice of the Commission’s review, in violation of Interim Measure E;
- d. Uber assumed a board seat in GHI, in violation of Interim Measure F; and
- e. Respondents have not shown any proof that the USI Shares have reverted to Grab, in violation of Interim Measure G.

In response to the Show Cause Order, the Commission received on 10 September 2018 (1) the *Compliance* dated 7 September 2018 filed by Grab (“Compliance”) and (2) the *Written Explanation* dated 7 September 2018 filed by USI (“Written Explanation”).

In the Compliance and Written Explanation, Respondents stated that they have complied with the Interim Measures Order and prayed that they be held not liable for any violation thereof. Grab, in addition, prayed for it to be provided with copies of certain documents in relation to the Show Cause Order.

On 14 September 2018, the Commission issued a *Notice* of even date clarifying the sources and references mentioned in the Show Cause Order, in relation to Interim

Measures A and E, and granted Respondents a period of five (5) days from receipt of such Notice within which to file its supplemental compliance.

On 26 September 2018, acting on Grab's *Supplemental Compliance* dated 19 September 2018 and USI's *Supplemental Written Explanation* dated 19 September 2018, the Commission directed the Respondents to submit through personal service additional data and documents in support of the allegations in Grab's Compliance and USI's Written Explanation.

On 1 and 2 October 2018, the Commission received copies of USI's *Compliance to the Order dated 26 September 2018* and Grab's *Partial Compliance and Motion for Time* ("Partial Compliance"), respectively, through email, despite the clear instruction of the Commission to file the same through personal service.

On 4 October 2018, the Commission issued a *Notice* of even date granting Grab's prayer in its Partial Compliance to submit the data on rider promotions until 6 October 2018.

On 9 October 2018, the Commission received copies of Grab's *Supplemental Compliance with the Order dated September 26, 2018*, together with the data on rider promotions.¹

On the basis of Respondents foregoing submissions, the Commission now resolves the matters raised therein before it.

Rationale for the Interim Measures Order

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

Pursuant thereto, Sections 2.13(g) and 10.1 of the PCC Rules on Merger Procedure provide instances when the Commission may issue interim orders, namely, 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.

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.² 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. The Commission's assessment is based on information and conditions existing before the transaction takes effect, and it is in this context that a *pre-merger situation* is

¹ On 7 October 2018, the Commission received through email, copies of Grab's Supplemental Compliance with the Order dated September 26, 2018, together with the data on rider promotions.

² Sec. 12 (b), Philippine Competition Act ("PCA").

preserved. With the aid of economic tools and legal framework, the Commission makes an assessment on the likelihood of a substantial lessening of competition in the market. With a pre-merger situation in place, the Commission's assessment is *ex ante* and prospective.

However, the Commission may initiate on its own a review of any merger where the PCC has reasonable grounds to believe is likely to substantially prevent, restrict or lessen competition in the market.³ This entails that the Commission conduct a *motu proprio* review of a transaction which has, most likely, already been consummated. As such, the Commission is not afforded with a *pre-merger situation* in which to make its assessment. In this scenario, interim measures are issued by the Commission to preserve the existing conditions in the relevant market — to replicate the *pre-merger situation* — allowing the Commission to dutifully perform its review function as provided under the PCA.

On 3 April 2018, the Commission commenced a *motu proprio* review of the acquisition by Grab of the assets of Uber ("Transaction"). On 6 April 2018, the Commission determined that interim measures should be imposed in order to prevent prejudice to the Commission's review of the Transaction, to prevent prejudice to the Commission's power to impose remedies and based on reasonable grounds to believe that substantial lessening of competition was likely to exist from the Transaction.

First, the Interim Measures Order was crucial to prevent prejudice to the Commission's review of the Transaction. The Commission generally adopts the prevailing conditions of competition or the *pre-merger situation* as the counterfactual against which to assess the impact of the merger. When businesses are integrated, the ability on the part of a competition authority to observe and obtain information on the independent operations of the relevant parties is lost. Information gained from parties after such integration may not be as reliable because the sources of information tend to alter or tweak the information to be given knowing that they are already being subject to a review.

Second, the Interim Measures Order also sought to prevent prejudice to the Commission's power to impose remedies. Under the PCA, the Commission can issue adjustment or divestiture orders, including orders for corporate reorganization and divestment.⁴ Further consummation of the Transaction may affect the value of Uber's business operations in the Philippines, and thus also affect the feasibility of divesting Uber's operations to a third party. The Commission also took into consideration the possible difficulties in unwinding the Transaction in the event of a prohibition.

Finally, the Interim Measures Order was necessary considering that the Commission had reasonable grounds to believe that substantial lessening of competition was likely to exist. The imminent integration of the operations of the Respondents, which were the only two major players in the relevant market, would effectively result in Grab being a virtual monopoly post-Transaction. The Commission noted that Grab was still free to set the price per kilometer closer to the maximum allowable price and without any competitive pressure from Uber.⁵ Uber's non-discriminatory features, which would no

³ PCA, Sec. 20.

⁴ *Id.*, Sec. 12 (h).

⁵ Order dated 6 April 2018.

longer be available to the market, also appeared to be a reduction of service quality. Existing firms appeared to exert little to no competitive constraint to Respondents because of higher price and lower quality of service. There was a perceived barrier to entry in the market, considering that there was no indication at that time that any Transportation Network Company ("TNC") applications would be timely approved by the Land Transportation Franchising and Regulatory Board ("LTFRB").

For the reasons mentioned above, the Commission found it necessary to issue the following interim measures, for the duration of the *motu proprio* review, after due notice and hearing, in light of public announcements made by Respondents regarding the consummation of the Transaction on 25 March 2018 and the cessation of Uber App's operation in the Philippines by 9 April 2018:

- 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.

The Commission issued the Interim Measures Order to preserve the pre-merger conditions in the relevant market, so as to properly assess the competitive effects of the Transaction. Such order was to be effective only until the Commission completed its review of the Transaction, since it is only at the end of such review that the Commission can make a proper determination of whether to allow or prohibit the Transaction. The Interim Measures Order did not require the parties to unwind the

Transaction but only to maintain the conditions in the relevant market prior to such Transaction.

Upon a review and consideration of the Respondents' explanations and submissions, the Commission finds Respondents to have committed the following acts in violation of the Interim Measures Order:

Interim Measure A: Maintenance of independent business operations and other conditions prevailing prior to 25 March 2018

Interim Measure A requires Respondents to "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."

In the Show Cause Order, Respondents were ordered to explain why they failed to show that they have taken concrete steps to (i) keep the operation of their businesses separate, and (ii) maintain other conditions prevailing prior to 25 March 2018, the date of the Transaction.

With respect to the obligation to keep their businesses separate, Respondents were ordered to explain why Uber failed to show any proof that the assignment to Grab of Uber's legal relationship with its riders regarding the "license of [its] mobile software application through which [riders] can seek transportation services," as announced by Uber to its riders on 27 March 2018,⁶ was suspended pursuant to the Interim Measures Order.

On the other hand, with respect to the obligation to maintain conditions prevailing prior to the date of the Transaction, Respondents were ordered to explain why they failed to maintain pre-Transaction incentives to drivers and promotions to riders⁷ as well as the pre-Transaction quality of their ride-hailing services⁸ during the effectivity of the Interim Measures Order.

Respondents failed to keep the operation of their businesses separate

On the suspension of Uber's assignment of its legal relationship with its riders to Grab, Uber neither denies the existence of such assignment nor makes any representation that such assignment was suspended.⁹ Instead, Uber argues that the Interim

⁶ Email sent by Uber to its riders on 27 March 2018.

⁷ Based on publicly available information accessible through various social media platforms.

⁸ Statement of Concerns issued by the Mergers and Acquisitions Office on 22 May 2018 (hereinafter, "SOC").

⁹ See USI's Written Explanation (Re: Order dated 30 August 2018).

Measures Order does not require it to undo such assignment.¹⁰ Grab, for its part, states that Uber did not make such assignment.¹¹

We find Respondents' explanations to be without merit.

Uber claims it did not fail to comply as there is no obligation under the Interim Measures Order to undo the assignment in the first place. However, Interim Measure A did not require that Respondents undo the assignment already made. Uber simply had to suspend the assignment of its legal relationship with its riders to Grab during the effectivity of the Interim Measures Order. Unfortunately, aside from Respondents' general statements that they complied with the order to keep the operation of their businesses separate, no other evidence was shown to support such compliance.

The lack of specific instruction from the Commission to suspend the assignment of legal relationship is not an acceptable excuse to the blatant intention of Uber to assign the legal rights despite the clear order that Respondents' business operations remain separate. The fact that a mere suspension of the assignment would have been a simpler way to remedy the violation and yet Uber intentionally failed to address the same, shows a clear intent on the part of Uber to defy the Interim Measures Order.

Respondents failed to maintain pre-Transaction pricing

Grab in its Supplemental Compliance argues that the increase in surge pricing post-Transaction cannot be attributed to Grab as this was caused by variables outside its control.¹²

We find Respondent's explanation to be without merit.

Grab does not dispute that there was an increase in price. This in itself is a breach of the Interim Measures Order which requires Respondents to maintain conditions prevailing prior to the Transaction, including the actual prices of trips.

The Commission's analysis of Grab's own submissions of randomized samples of roughly 1,000 to 1,200 trips per day¹³ shows that post-Transaction, prices for Grab's services had been increasing.¹⁴ The same data indicates that pre-Transaction, the trend in the average prices of trips offered by Grab were flat to declining. However, post-Transaction, the average prices were climbing at an increased rate.¹⁵

Grab would like the Commission to believe that the changes in price were due to simple supply and demand forces.¹⁶ However, a look into Grab's own pricing formula belies this argument.

¹⁰ USI's Written Explanation, par. 74.

¹¹ Grab's Compliance with the Order dated August 30, 2018, par. 11.

¹² Grab's Supplemental Compliance, pars. 13-14.

¹³ Everyday for the periods of 1 May 2014 to 31 July 2014; 18 February 2015 to 18 May 2015; and the first quarter of 2018 to 22 April 2018.

¹⁴ SOC, pars. 151 -152.

¹⁵ *Id.* at par. 152.

¹⁶ Grab's Supplemental Compliance, par. 12.

First, the Commission notes that Grab's pricing model includes a base fare, a distance rate (per kilometer), a time rate (per minute) and a surge rate, structured as follows:¹⁷

$$Price_{Firm} = 40 + (\beta x)a|_{O'} + (2y)a|_{O'}$$

where:

x = kilometers

y = minutes

β = is the distance rate, such that $10 \leq \beta \leq 14$ for Grab and $\beta = 5.7$ for Uber

$O' = 1$ when surge rate is applied, and 0 otherwise

a = value of the surge, such that $1 < a \leq 2$ when $O' = 1$, and $a = 1$ when $O' = 0$

The fare is computed by adding together the *base fare*, *distance charge*, and *time charge*.¹⁸ The surge rate is determined by an algorithm that adjusts in real time, based on supply and demand conditions and other variables such as location and time. The surge rate is then applied to the distance charge and time charge, depending on the prevailing demand and supply conditions, which are estimated based on booking requests (demand) and idle drivers (supply).¹⁹

Contrary to its claim, Grab clearly has the flexibility and the ability to charge higher prices. This is further strengthened by the fact that Grab has access to and knowledge of each driver's and rider's preferences through the data that the Grab application ("Grab App") gathers every minute of the day.²⁰

The Commission recognizes that immediately after the Transaction, there was a faster transfer of riders than drivers from Uber to Grab. This resulted to a higher demand for rides and a lower supply of drivers, justifying the increase in Grab's prices. However, after the substantial transfer of vehicles from Uber to Grab and the stabilization of both rider demand and driver supply, the Commission still observed an upward trend in Grab's price.²¹ Grab cannot claim the excuse of having no control over shocks or unexpected changes in rider demand and driver supply, because even after the situation has stabilized, Grab's prices remained high.

Moreover, the fact that Grab can change its pricing policy in compliance with the orders of the LTFRB (e.g., the suspension²² and subsequent reinstatement²³ of the Php2 per minute charge) contradict Grab's position that their algorithm cannot be subject to alterations to conform with PCC's orders. It is very clear that, despite having the ability to maintain its pre-Transaction pricing and to comply with the Interim Measures Order, Grab deliberately chose to disregard the same.

¹⁷ SOC, par. 145.

¹⁸ *Id.*, par. 147.

¹⁹ *Id.* at par. 146.

²⁰ *Id.* at par. 149.

²¹ *Id.* at par. 152.

²² LTFRB Order dated 18 April 2018.

²³ LTFRB Memorandum Circular 2018-019 dated 4 September 2018.

On the part of Uber, the Commission notes the reports of prolonged duration and increased frequency of surge pricing post-Transaction up until the effectivity of the Cease and Desist Order (“CDO”) issued by the LTFRB,²⁴ despite the issuance of the Interim Measures Order. In the same vein, Uber took no steps to maintain its pre-Transaction pricing, disregarding compliance with the Interim Measures Order.

Respondents failed to maintain pre-Transaction rider promotions and driver incentives

Grab argues in its Compliance that changes in its promotions and incentives should not be deemed a violation of Interim Measure A because Grab should be free to exercise its business judgment on purely commercial matters, which is consistent with the directive to maintain the independence of its business.²⁵

Grab further argues that the reduction in the promotions and incentives was not a change in circumstance since there was already a downward trend in its promotions and incentives since the fourth quarter of 2017, and thus was only a “continuation of the conditions prevailing to the [Interim Measures] Order”.²⁶

On the other hand, Uber argues that it was obliged to turn off the promotions and incentives under the Transition Services Agreement (“TSA”) executed by Respondents as part of the Transaction.²⁷

We find Respondents’ explanations to be without merit.

As to Grab’s argument that the reduction in the promotions and incentives was only a continuation of the downward trend beginning the fourth quarter of 2017, a data analysis of Grab’s rider promotions and driver incentives shows that the trend after the issuance of the Interim Measures Order is not a mere continuation of the prevailing conditions prior to the Interim Measures Order.²⁸

A statistical test conducted by the Commission confirms that there exists a structural break in the trend of rider promotions and driver incentives from pre- to post-Interim Measures Order (see Annex “A”). A structural break that is found within a period of interest is an indication that a significant change in the level and/or trend exhibited by a variable (e.g., rider promos and driver incentives) has occurred. The existence of such structural break leads the Commission to believe that there was a change in Grab’s rider promotions and driver incentives post-Interim Measures Order.

The identified structural breaks showed that a change had occurred — that the average levels and the rate of reduction in promotions and incentives were lower post-Interim Measures Order compared to pre-Interim Measures Order. Because of these

²⁴ Based on interview conducted by the MAO from 18 to 27 April 2018 as well as independently obtained data.

²⁵ Grab’s Compliance with the Order dated August 30, 2018, par. 15.

²⁶ *Id.*, par. 16.

²⁷ USI’s Written Explanation, par. 77.1.

²⁸ The study involves the analysis of the All Booster incentive, a fixed payout, on top of fares and other incentives, paid to Grab drivers who have met ride requirements for different time periods.

changes, it became more difficult on the part of the Commission to objectively assess the long-term prospects for the substantial lessening, prevention, or restriction of competition caused by the Transaction.

In the case of rider promotions, Grab provides in its Supplemental Compliance that it had shifted from giving riders direct discounts on rides to providing riders the opportunity to earn points for every ride taken through the GrabRewards Program.²⁹ This shift out of direct discounts essentially shows that Grab had changed the structure of its rider promotions, in violation of the Interim Measures Order.

Furthermore, the statistical test shows a structural break exists between November and December 2017, and another between March and April 2018. The value of monthly rider promos significantly dropped in April 2018, after the issuance of the Interim Measures Order. The trend post-Interim Measures Order is much flatter relative to the trend for the period of December 2017 to March 2018. These results can be interpreted either as less aggressive incentives for purposes of promoting exclusivity, or as a result of increased market power. Verily, the failure of the Respondents to maintain pre-Transaction rider promotions created possible alternative conclusions which brought additional difficulty to the Commission in its careful review of the Transaction.

In the case of driver incentives, Grab provides in its Supplemental Compliance that the All-Day Booster and GrabShare Fare Multiplier were discontinued, and the KaGrab Rewards and Subsidy programs were introduced on the same week to replace the former incentives. These show that Grab had introduced changes in their driver incentives, in violation of the Interim Measures Order.

These changes also caused a similar structural break as that for rider promotions post-Interim Measures Order. On one hand, this new trend could be suggesting less aggressive incentives, consistent with an assertion of a lower likelihood of lessening of competition as this works against drivers' incentive to stay exclusive to Grab. On the other hand, the reduction in drivers' incentives could be interpreted as the effect of a significant increase in market power post-merger, where Grab maintains a virtual monopoly. In the same manner as above, the failure of the Respondents to maintain pre-Transaction driver incentives created possible alternative conclusions which caused additional difficulty for the Commission in its careful review of the Transaction.

Further, Grab's argument that it is free to exercise its business judgment and management prerogatives in its marketing schemes, confirms that Grab deliberately and intentionally effected changes in its rider promotions and driver incentives, in outright violation of the Interim Measures Order.

On Uber's part, it argues that it stopped its promotions and incentives pursuant to the provisions of Transition Services Agreement ("TSA"), an agreement recognized by the Commission. However, the Commission notes that the same TSA provides that:

... if a Governmental Authority requires the continued operation
of the Seller Rider App, Seller Driver Partner App, Seller

²⁹ Grab's Supplemental Compliance dated 5 October 2018.

Marketplace App, Seller Delivery Partner App and/or Seller Merchant App beyond the Food Delivery Cutover or Ride Hailing Cutover, as applicable, **Purchaser shall have the right to extend the Term to adequately address the requirements of such Governmental Authority** upon notice to Seller for the duration that is necessary in order to maintain compliance with the requirements of the applicable Governmental Authority³⁰ [emphasis supplied]

The TSA, a document containing Respondents' agreement while riders and drivers transitioned from Grab to Uber, granted the parties the right to address and comply with the requirements of governmental authorities. It is the same TSA that allows the Respondents to extend the term of the TSA to comply with the Interim Measures Order. Respondents could have implemented the TSA and kept the Uber App running without violating the requirement for the continued provision of pre-Transaction promotions and incentives. Failing to do what was allowed and contemplated under the TSA shows that Uber made no attempts to comply with the Interim Measures Order.

Respondents failed to maintain pre-Transaction quality of their ride-hailing services

With the failure of Respondents to maintain pre-Transaction incentives and promotions, the quality of Respondents' ride-hailing services post-Transaction was likewise affected. In particular, the Commission notes the reports relating to increased difficulty in booking rides, longer waiting times, and increased driver cancellations on the part of Grab, as well as the decrease in completed rides on the part of Uber.

Both Grab and Uber claim that such changes were beyond their control as these pertain to the behavior of drivers and riders.³¹ Grab additionally claims that these changes resulted from the migration of Uber riders to Grab, which was faster compared to the migration of Uber drivers to Grab.³²

Uber, on the other hand, argues that it does not have the ability to "force its drivers to accept riders and/or to force consumers to use its [Uber App]". Uber also noted that the cessation of the availability of the Uber App beginning 16 April 2018 was not due to its conduct but due to the CDO issued against it by the LTFRB.³³

We find Respondents' explanations to be without merit.

While it is true that after the issuance of the Interim Measures Order, the Uber App was still made available to the public, using the same was practically futile. In fact, in a study commissioned by the Mergers and Acquisitions Office, Uber showed

³⁰ Transition Services Agreement dated 25 March 2018, Services and Pricing Schedule 1, p. 11.

³¹ Grab's Compliance with the Order dated August 30, 2018, par.7. USI's Written Explanation, pars. 77.2, 77.3 and 77.5.

³² Grab's Supplemental Compliance, par. 9.

³³ USI's Written Explanation, par. 89.2.

significantly high failed booking rates of 82.80%, mainly due to the unavailability of drivers.³⁴

Although Uber cannot force its drivers to continue using the Uber App, Uber could have reassured and encouraged its drivers to remain online if its intention was to comply with the Interim Measures Order. It is not unexpected for drivers to be uncertain on whether despite the Respondents' announced combination of operations and the subsequent announcement by Grab in its statement dated 9 April 2018 regarding the existence of the Interim Measures Order, the same pre-Transaction conditions (pertaining to their payment for trips and incentives) would still be available to them. Respondents failed to show any evidence of their efforts to comply with the Interim Measures Order in good faith.

Further, while we recognize that the cessation of the Uber App beginning 16 April 2018 was due to the CDO issued by the LTFRB on 11 April 2018, we note that Uber failed to exhaust all remedies available to it in order to comply with the Interim Measures Order, including filing a Motion for Reconsideration to the CDO with the LTFRB which, under the LTFRB Revised Rules of Practice and Procedure, would have had the effect of staying the implementation of the CDO.³⁵ Such efforts to file a Motion for Reconsideration on the part of Uber could have shown its sincere intention to comply with the Interim Measures Order. Instead, Uber deliberately chose to accept the CDO and use the same in its advantage to cease operations in the Philippines in order to justify its non-compliance with the Interim Measures Order. Nevertheless, the Commission takes note of the possibility of LTFRB denying such Motion for Reconsideration.

Above all, as a means to dismiss all of Respondents' arguments, the Commission takes note that the Respondents were mindful and aware of the possibility of antitrust concerns brought about by the Transaction and did so consciously craft and insert provisions in their Purchase Agreement dated 25 March 2018 that bound them to resolve objections, issues, or concerns under antitrust law, including a pre-arranged set of remedies and a cost-sharing mechanism.³⁶ The Purchase Agreement gives the parties great flexibility in resolving matters required in the Interim Measures Order. Seeing how the Respondents failed to perform acts consistent with the intent and purpose of the Interim Measures Order despite their clear ability to do so shows that Respondents had no intent to comply with the same.

We note further that in addition to the prejudice caused to the Commission's review of the Transaction, Respondents' violations, resulting in increased difficulty in booking rides, longer waiting times, increased driver cancellations, and decrease in completed rides also caused direct harm to riders.

Given the foregoing, the Commission thus finds Grab to have gravely failed to comply with Interim Measure A because of the following violations: (1) failure to suspend the assignment to Grab of Uber's legal relationship with the latter's riders; (2) failure to maintain pre-Transaction pricing; (3) reducing promotions to riders post issuance of the Interim Measures Order; (4) reducing incentives to drivers post issuance of the

³⁴ SOC, par. 179.

³⁵ Sec. 11, LTFRB Revised Rules of Practice and Procedure.

³⁶ Purchase Agreement dated 25 March 2018, p. 65-67, Sec. 6.4.

Interim Measures Order; and (5) and failure to maintain pre-Transaction conditions by actual reduction of quality of its services³⁷ for more than four (4) months or from 7 April 2018 up to 10 August 2018.

On the part of Uber, the Commission finds that Uber failed to comply with Interim Measure A for the following violations: (1) failure to suspend the assignment to Grab of Uber's legal relationship with the latter's riders; (2) failure to maintain pre-Transaction pricing; (3) turning off promotions to riders; (4) turning off incentives to drivers; and (5) reduction of quality of its services³⁸ from 7 April 2018 up to 15 April 2018, when the LTFRB CDO took effect.

Interim Measure F: Refrain from executing or further executing final agreements, including the assumption of a board seat

Interim Measure F requires Respondents to "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."

In the Show Cause Order, Respondents were ordered to explain why Uber assumed a board seat in GHI, in violation of Interim Measure F.

Both Grab and Uber claim in its Compliance and Written Explanation, respectively, that since Uber assumed the board seat in GHI prior to the issuance of the Interim Measures Order, the Commission cannot require Respondents to revert to pre-Transaction status because the Commission's power to impose interim measures is limited to preserving the *status quo*.³⁹ Grab further claims that the issue of the GHI board seat is beyond the jurisdiction of the Commission as it refers to the consideration of the *entire* Transaction, and not just the Philippine portion of the sale.⁴⁰

We find Respondents' explanations to be without merit.

In relation to the PCC's power to revert to pre-Transaction status, we reiterate our discussion above that the interim measures to be imposed within the power of the Commission include measures that require parties to restore market or competitive conditions, as may be necessary for the effective exercise of the PCC's mandate. This is particularly relevant in this case, since the *motu proprio* review was initiated after the Transaction had already been implemented.

In relation to the issue on jurisdiction, it is clear that the Philippine Competition Act ("PCA") is enforceable

³⁷ SOC, pars. 187-194.

³⁸ *Id.*

³⁹ Grab's Compliance with the Order dated August 30, 2018, pars. 38-40. USI's Written Explanation pars. 93-95.

⁴⁰ Grab's Compliance with the Order dated August 30, 2018, par. 41.

against any person or entity engaged in any trade, industry and commerce in the Republic of the Philippines. It shall likewise be applicable to **international trade having direct, substantial, and reasonably foreseeable effects in trade, industry, or commerce in the Republic of the Philippines, including those that result from acts done outside the Republic of the Philippines.**⁴¹ [emphasis supplied]

Section 3 of the PCA is unequivocal that the PCC has jurisdiction over global transactions with direct, substantial, and reasonably foreseeable effects in the Philippines. In this case, the Transaction refers to the acquisition by Grab (GHI and MTPH) of Uber's (UBV and USI) assets. While GHI and UBV are businesses operating at a global scale, both MTPH and USI are businesses operating in the Philippines. Such business operations have direct and substantial effects in the ride-hailing industry in the Philippines, making the Transaction within the ambit of the PCA.

Grab admits that the GHI board seat intended for Uber's nominee is a result of it holding a 27.5% equity stake in GHI, which was the consideration of the entire Transaction.⁴² With this consideration being regarded by Respondents as indivisible, the assumption by Uber of such board seat in GHI would necessarily include the representation and exercise of Uber's rights to the Philippine shares.

However, despite the Interim Measures Order, requiring the parties to refrain from executing, or further executing, any final agreement that will transfer any asset, equity, interest, including the assumption by Uber of a board seat in Grab, Uber continued to exercise its rights in the board, in clear disregard of the Interim Measures Order. If the Parties intended to comply with the Interim Measures Order, they could have at the least shown proof that they merely held the shares in abeyance, without exercising rights in the board. This the parties failed to do.

In any case, the Interim Measures Order was not meant to be indefinite. Rather, it was meant to be temporary and effective only while the review of the Transaction was ongoing. It could not have been detrimental to the Respondents to wait until after the effectivity of the Interim Measures Order before Uber exercised its rights in the board.

Given the foregoing, for failure to suspend the assumption of a board seat in GHI, which includes representation of the Philippine component of the Transaction, the Commission finds Respondents to be in violation of Interim Measure F. The order to refrain from executing or further executing final agreements, including the assumption of a board seat, was made to ensure that the parties' business operations remain separate and independent, in accordance with Interim Measure A. Allowing a scenario where Uber would be free to exercise its rights in the board of GHI would mean that the Respondents would be one and the same, contrary to the import and objective of Interim Measure A.

For all other preliminary findings of non-compliance identified in the Show Cause Order, the Commission finds the explanations of Respondents sufficient.

⁴¹ PCA, Sec. 3.

⁴² Grab's Compliance with the Order dated August 30, 2018, par. 41.

Penalty for failure to comply with an Order of the Commission

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.

As to the Interim Measures where there is a necessity for Grab and Uber to cooperate with each other in order to comply, such as in the separate operation of their business and assumption of board seat, the same warrants the imposition of solidary penalty.

Meanwhile, for other Interim Measures where both Respondents are found to have committed the same violations, the Commission notes that the difference in the gravity and length of violation call for a different treatment in the imposition of penalty. For Uber, we acknowledge the shorter period of violations given that Uber was constrained to cease operating for the period after the effectivity of the CDO issued by the LTFRB. On the other hand, Grab's continued violation up to the issuance of the Decision dated 10 August 2018 lifting the Interim Measures Order without any acceptable justification warrants the imposition penalty of a higher range.

Respondents failed to comply with mode of service as ordered in Order dated 26 September 2018

The Commission notes that despite express language in its Order dated 26 September 2018 ordering Respondents to submit, **by personal service**, the relevant data and documents within a period of five (5) days from receipt, both Respondents filed their submissions via registered mail, in direct contravention with the Order.

The Commission emphasizes the importance of strict adherence to its rules. Respondents are hereby given a warning not to repeat such violation and that similar violations in the future will be dealt with more severely.

WHEREFORE, in view of the foregoing considerations, the Commission finds Respondents Grab Holdings, Inc., MyTaxi.PH, Inc., Uber B.V., and Uber Systems, Inc. to have committed acts in violation of Interim Measures A and F under the Order dated 6 April 2018. Pursuant to Section 29(b) of the PCA, Respondents are directed to settle the following administrative penalties within 45 days from receipt of this Resolution:

A. Respondents **Grab and Uber** are **solidarily** liable to pay an administrative penalty of **Four Million Pesos (PhP4,000,000.00)**, broken down as follows:

1. Two Million Pesos (PhP2,000,000.00), for their failure to keep the operation of their businesses separate for the period 7 April 2018 to 9 August 2018, by failing to suspend the assignment to Grab of Uber's legal relationship with its riders, in violation of Interim Measure A; and

2. Two Million Pesos (PhP2,000,000.00), for their failure to suspend the assumption of a board seat in GHI which includes representation of the Philippine component of the Transaction for the period 7 April 2018 to 9 August 2018, in violation of Interim Measure F;

B. Respondent **Grab** shall, on its own, be liable to pay an administrative penalty of **Eight Million Pesos (PhP8,000,000.00)**, broken down as follows:

1. Two Million Pesos (PhP2,000,000.00), for its failure to maintain its pre-Transaction pricing policies for the period 7 April 2018 to 9 August 2018, in violation of Interim Measure A.
2. Two Million Pesos (PhP2,000,000.00), for its failure to maintain its pre-Transaction promotions to riders for the period 7 April 2018 to 9 August 2018, in violation of Interim Measure A;
3. Two Million Pesos (PhP2,000,000.00), for its failure to maintain its pre-Transaction incentives to drivers for the period 7 April 2018 to 9 August 2018, in violation of Interim Measure A; and
4. Two Million Pesos (PhP2,000,000.00), for its failure to maintain the pre-Transaction quality of its ride-hailing services for the period 7 April 2018 to 9 August 2018, in violation of Interim Measure A;

C. Respondent **Uber** shall, on its own, be liable to pay an administrative penalty of **Four Million Pesos (PhP4,000,000.00)**, broken down as follows:

1. One Million Pesos (PhP1,000,000.00), for its failure to maintain its pre-Transaction pricing policies for the period 7 April 2018 to 15 April 2018, in violation of Interim Measure A;
2. One Million Pesos (PhP1,000,000.00), for its failure to maintain its pre-Transaction promotions to riders for the period 7 April 2018 to 15 April 2018, in violation of Interim Measure A;
3. One Million Pesos (PhP1,000,000.00), for its failure to maintain its pre-Transaction incentives to drivers for the period 7 April 2018 to 15 April 2018, in violation of Interim Measure A; and
4. One Million Pesos (PhP1,000,000.00), for its failure to maintain the pre-Transaction quality of its ride-hailing services for the period 7 April 2018 to 15 April 2018, in violation of Interim Measure A.

SO ORDERED.

11 October 2018, Quezon City, Philippines.


ARSENIO M. BALISACAN
Chairman


JOHANNES BENJAMIN R. BERNABE
Commissioner


STELLA LUZ A. QUIMBO
Commissioner


AMABELLE C. ASUNCION
Commissioner


MACARIO R. DE CLARO, JR.
Commissioner

Copies furnished:

Grab Holdings, Inc.
Respondent

MyTaxi.PH, Inc.
Respondent

Uber B.V.
Respondent

Uber Systems, Inc.
Respondent