

MEMORANDUM OF AGREEMENT

This **MEMORANDUM OF AGREEMENT** (“Agreement”), dated 17 August 2022, is entered into by and between:

The **NATIONAL BUREAU OF INVESTIGATION (“NBI”)**, an attached agency of the Department of Justice (“DOJ”) with principal office address at V-TECH TOWER, 1257 G. Araneta Ave., cor. Ma. Clara St., Quezon City, 1104 Metro Manila, represented herein by its Director, **ATTY. MEDARDO G. DE LEMOS**;

- and -

The **PHILIPPINE COMPETITION COMMISSION (“PCC” or “COMMISSION”)**, with office address at 25/F Vertis North Corporate Center 1, North Avenue, Quezon City, represented herein by its *Officer-in-Charge*, **ATTY. JOHANNES BENJAMIN R. BERNABE**.

WITNESSETH

WHEREAS, the PCC was organized and created under Republic Act No. 10667¹, as an independent quasi-judicial body vested with the original and primary jurisdiction over the enforcement of the PCA, which includes, among others, the power to conduct inquiries, investigate, and hear and decide cases involving anti-competitive conduct, abuse of dominant position, anti-competitive agreements, and other violations of the PCA;

WHEREAS, Section 12 (a) of the PCA provides that the Commission has the power to conduct inquiries, investigations, hear and decide cases involving any violation of the PCA and other existing competition laws motu proprio, or upon receipt of a verified complaint from an interested party, or upon referral by a concerned regulatory agency, and institute the appropriate civil or criminal proceedings;

WHEREAS, Section 12 (i) of the PCA provides that the Commission has the power to deputize any and all enforcement agencies of the government or enlist the aid and support of any private institution, corporation, entity or association, in the implementation of its powers;

WHEREAS, Section 14 of the PCA prohibits anti-competitive agreements by restricting competition as to price, components or other terms of trade;

WHEREAS, the NBI is vested with primary jurisdiction to undertake investigation of violations of commercial, economic, and financial or white-collar crimes and other offenses against the laws of the Philippines under Republic Act No. 10867²;

WHEREAS, the NBI as the premier investigative agency of the country, wishes to offer its investigative expertise in aid of the administration's campaign against anti-competitive conduct and agreements, as well as, other violations of the PCA and other relevant laws and regulations;

¹ Otherwise known as the “Philippine Competition Act” (“PCA”).

² Otherwise known as the “National Bureau of Investigation Reorganization and Modernization Act”.

WHEREAS, for the purpose of achieving the declared State policy of implementing the National Competition Policy as mandated by the PCA and NEDA-PCC Joint Memorandum Circular No. 01-2020 and in recognition of the significant synergism of working together in the enforcement of competition law in the Philippines, the Parties have agreed to formalize an effective mechanism to ensure coordination and enhance cooperation.

WHEREFORE, the Parties have agreed on the following:

ARTICLE I COOPERATION AND COORDINATION

Section 1. Competition Task Force

A Competition Task Force (“Task Force”) shall be created, with members composed of those appointed and designated by each Party in such number as shall be mutually determined and agreed upon.

Prior to any modification, including substitutions or additions to the composition of the Task Force, each Party making such modification shall give prompt notice to and consult with the other Party on the same. Any such modifications shall give due consideration to any ongoing business of the Parties and continuity in servicing pending assignments.

Parties may also mutually agree in writing to arrange temporary secondments.

Section 2. Central Coordinating Unit

The PCC shall be the central coordinating unit of the Task Force.

Consultative meetings regarding matters of common concern such as, but not limited to, updating on competition issues and formulation of policy recommendations, case conferences, shall be organized by the Parties.

Subject to the availability of resources and operational considerations, Parties shall organize joint capacity-building activities on competition law and enforcement, including but not limited to specialized trainings, case conferences, and roadshows. The Parties shall provide resource persons, ensure participation of their respective personnel, and provide such other support as appropriate.

Section 3. Case Monitoring

In the spirit of cooperation, the Parties agree and understand that they have a shared responsibility in the monitoring of anti-competitive conduct and other competition-related violations and issues.

A registry of cases filed for violation of the PCA and other competition-related laws shall be maintained, regularly monitored and updated by the PCC.

ARTICLE II

ACCESS TO AND USE OF INFORMATION

Section 4. Access to Information and Documents

Each Party, upon written request of the other, shall promptly provide access to information and documents within the custody or control of the requested Party and which are relevant and necessary to the requesting Party for the effective enforcement of this Agreement, the PCA, and other competition-related laws.

Should the requested information and/ or documents be deemed classified by the requested Party, the requesting Party shall obtain written approval of the same from the Head of Agency of the requested Party. Access to information and documents under this Section shall be subject to applicable rules on confidentiality, data privacy, and privilege under relevant laws, rules, and regulations.

Section 5. Notification of Matters

Where the NBI receives, takes cognizance of or otherwise becomes aware of any matter that relates to violations of the PCA, the PCC shall be promptly informed with a view to coordinating appropriate action.

Nothing in this Section shall preclude the Parties from initiating, when appropriate, an investigation or inquiry on matters that fall within their respective jurisdictions.

Section 6. Confidentiality

Except as may otherwise be required or allowed by law, the Parties shall keep confidential and shall not, without the prior written consent of the other, divulge or provide to any third party any documents, records, data, or other information of a confidential and/or classified, private, or privileged nature, arising from or in any way related to this Agreement, that have been furnished, directly or indirectly, by one Party to the other.

For purposes of this Agreement, information of a confidential and/or classified, private, or privileged nature shall refer to information disclosed by one Party to the other which is labeled or designated as confidential and/or classified, private, or privileged by the disclosing Party, or is determined confidential and/or classified, private, or privileged pursuant to applicable rules on confidentiality, privacy, and privilege under relevant laws, rules, and regulations.

Except when the information:

- a. Is or will be part of the public domain; and
- b. Is under the obligation to be disclosed pursuant to the applicable laws or regulations, or orders of the court or other government authorities.

The unauthorized disclosure of any confidential information by the personnel by any Party shall be deemed disclosure of such confidential information by such Party, which Party shall be held liable for breach of this Agreement. Any official or personnel of any of the parties found to have authored the unauthorized disclosure shall likewise be the subject of applicable criminal/administrative proceeding(s).

This Section shall survive the termination of this Agreement for any reason.

Section 7. Communications to the Public

The Parties, where appropriate, shall liaise with each other in preparing statements and responses relating to matters of media interest and as regards arrangements for the publication of information for and consultations with relevant stakeholders.

Section 8. Access and Use of Information and Documents

The Parties agree to limit and restrict the use of any and all information and documents obtained pursuant to this Agreement to purposes deemed consistent with the objectives of this Agreement as well as the respective mandates of the Parties.

A receiving Party is expected to limit access to information it receives from the providing Party solely to personnel who are authorized to receive, store and process the same in order to perform the function of this Agreement.

ARTICLE III COMPETITION ENFORCEMENT

Section 9. Detection, Investigation, and Prosecution of Anti-Competitive Conduct and Other Violations of the PCA

The Parties undertake to closely coordinate and collaborate in the detection, investigation, and prosecution of anti-competitive conduct and other violations of the PCA.

Within their respective mandates, the Parties shall extend all reasonable assistance to each other in the detection, investigation, case build-up and prosecution of anti-competitive conduct, violations of the PCA and other competition-related laws.

Section 10. Investigative Assistance

The Parties acknowledge that the PCC has the power to deputize any and all enforcement agencies of the government, in the enforcement of the PCA.

In the exercise of such authority, the PCC, through this Agreement, in recognition of the technical and operational capability of the NBI, may deputize the latter, on a case-by-case basis, to conduct and handle of investigations and assist in the prosecution of those cases. The PCC shall issue the necessary document(s) to give effect to such Deputization Order.

The investigative assistance of the NBI shall include, but not be limited to:

- a. Information sharing subject to the applicable laws on confidentiality;
- b. Case build-up and investigation, including but not limited to surveillance and other undercover activities;
- c. Technical and logistical support during implementation of inspection orders and other warrants;

- d. Use of facilities, equipment and other resources; and
- e. Where applicable, testifying in administrative and court proceedings.

Nothing in this Agreement shall be construed as derogating from the power of the President or the Secretary of Justice to direct the NBI to investigate any crime when public interest so requires, nor deprive the NBI of its authority to investigate cases falling within its exclusive/primary jurisdiction.

In the exercise of its deputized functions, NBI Agents and Personnel shall enjoy the same immunity from suit granted under Section 42 of the PCA.

In order to augment the operational resources of the NBI and to ensure the continuous discharge of its authorities under the present Agreement, the PCC shall provide inter-agency fund transfer in the amount equivalent to the estimates of requirement for pre-approved operations or activities as indicated in the special order/mission order. All disbursements made from the said fund transfer shall be in accordance with COA Circular No. 94-013 dated 13 December 1994. Likewise, the COA Auditor of the NBI shall audit the disbursement incurred and thereafter, NBI-Finance shall provide a copy of the audit report to the PCC.

Section 11. Case Build-Up

The PCC shall provide guidance on legal, economic and other matters relevant to building up a case for successful prosecution.

Section 12. Filing Cases

Unless otherwise provided by applicable law, rules or regulations, criminal complaints for violation of the PCA and other competition-related laws shall be filed by the PCC before the DOJ as mandated by Sec. 31 of the PCA.

ARTICLE IV NOTICES AND GENERAL PROVISIONS

Section 13. Notices

Any notice, request, or other communication given under, or in connection with the implementation or enforcement of this Agreement shall be in writing and sent by the concerned Party's Authorized Representative(s) through any of the following modes:

- A. By courier or personal delivery to the addresses stated in this Agreement;
- B. By electronic mail to the following email addresses:

- For the NBI: [REDACTED] or [REDACTED]

- For the PCC: [REDACTED], [REDACTED] and [REDACTED]

A notice is deemed to have been received at the time of delivery if such notice is given by courier or personal delivery. If written notice is given by electronic mail, the notice is deemed to have been received at the time of its transmission on a business day.

Section 14. Authorized Representatives

The Parties hereby designate the following officers as their respective Authorized Representatives, who shall be responsible for the implementation or enforcement of this Agreement:

| Subject | Authorized Representative | Email Address |
|--|--|----------------------|
| For the NBI: | Office of the Deputy Director for Operations (ODDO) | [REDACTED] |
| | Office of the Assistant Director for Investigation Service (OADINVS) | [REDACTED] |
| For the PCC: MOA administration; policy; general, legal, and other concerns | Executive Director | [REDACTED] |

Each Party may appoint additional Authorized Representative(s), as may be necessary for the efficient implementation of this Agreement. Any change in the designated Authorized Representative(s) of each Party shall be notified immediately to the other Party and deemed effective upon the other Party's receipt of said notice.

Nothing in this Section shall preclude the parties from coordinating directly with agents, officers or other employees of either Party in charge of a particular matter, case or issue.

Section 15. Effectivity

This Agreement shall become effective upon execution by the Parties and shall remain and continue to be in force and effect until otherwise amended or revised in writing by the Parties.

Section 16. Continuing Review

The Parties undertake to keep the operation of this Agreement under review and, in light of experience, execute amendments or supplements to this Agreement for purposes of improving its operation and resolving any issue that may arise during its implementation.

Section 17. Legal Effect

Nothing in this Agreement shall limit or constitute a waiver of the statutory functions or powers of any Party.

Section 18. Amendments

Any subsequent revisions, amendments, repeals, and supplements to this Agreement shall be made upon mutual written agreement by the Parties.

Section 19. Separability

If any one of the provisions contained in this Agreement shall be declared invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

Section 20. Counterparts

This Agreement may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original and all of which, taken together, shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 21. Termination

This Agreement may be terminated by any party for just cause by serving a written Notice of Termination specifying the serious reasons therefor, no less than thirty (30) calendar days prior to the date of the intended termination.

IN WITNESS WHEREOF, the Parties through their duly authorized representatives have signed this Agreement on the date first above written.

For the National Bureau of Investigation:

**For the Philippine Competition
Commission:**


Atty. Medardo G. De Lencastre
Director


Atty. Johannes Benjamin R. Bernabe
Officer-in-Charge


Atty. Leo Edwin D. Leuterio
Assistant Director, Legal Service


Kenneth V. Tanate, PhD
Executive Director

Republic of the Philippines)
City of Quezon) s.s.

ACKNOWLEDGMENT

BEFORE ME, a Notary Public for and in the City of Quezon, Philippines AUG 17 2022,
2022, personally appeared:

| Name | Competent Evidence of Identity | Date of Issue |
|------------|--------------------------------|---------------|
| [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] |

Personally known to me or identified by me through competent evidence of identity to be the same persons who presented and executed the foregoing integrally complete agreement entitled MEMORANDUM OF AGREEMENT consisting of eight (8) pages, including the page where this Acknowledgment, and each acknowledged to me that (i) his signature on the agreement was voluntarily affixed by him for the purposes stated in the agreement, (ii) he executed the agreement of his free and voluntary act and deed, and (iii) he has the authority to sign in his capacity as representative of the principal that he represents.

WITNESS MY HAND AND NOTARIAL SEAL, on the date and in the place first above written.

Doc. No. 459;
Page No. 93;
Book No. 32;
Series of 2022.

[REDACTED]
ATTY. MARY CATHERINE A. DAMIAN
Notary Public for Quezon City until December 31, 2022
Per Adm. No. NP-176 (2021-2022)
Unit 9 Bldg. 2, Acacia Support Area, Laurel Avenue, UP Diliman, Quezon City
IBP No. AR21794119; Quezon City Chapter; 01-07-2021 for 2021 and
IBP No. AR934307; 01-08-2021 for 2022
PTR No. 2463451; Quezon City; 01-03-2022
Reg. No. 43743; MCLE Compliance No. VI-0023344; (4-14-2022) Page 1 of 1