DRAFT PRESS RELEASE: COURT OF APPEALS INJUNCTION AGAINST PHILIPPINE COMPETITION COMMISSION REVIEW OF SMC-PLDT-GLOBE TRANSACTION

The Joint Foreign Chambers in the Philippines (JFC) expresses its concern over the preliminary injunction issued by the Court of Appeals enjoining the Philippine Competition Commission (PCC) from reviewing the SMC-PLDT-Globe transaction in May 2016. Since the announcement of the acquisition by PLDT and Globe of the telecommunications assets of what could have been a third player in the industry, the JFC has raised the issue of possible anti-competitiveness of the deal. The telecommunications industry in the Philippines has become dominated by PLDT and Globe, leaving consumers with no alternative service providers despite complaints of high costs and poor service. The prospect of a third player last year gave consumers hope of better and more cost-friendly services either by the new player itself or as a result of the potential competition by additional players to the two telecommunications companies.

With the injunction stopping the PCC from conducting further review of the transaction and allowing the deal to proceed, the hope for any new players has been frustrated if not completely shattered. It is unfortunate that the CA decision talks only of the rights of PLDT and Globe and their falling stock prices but misses how the transaction affects the wider public interest. In its decision, the CA ordered PLDT to post a PhP1 million bond to answer for damages that the PCC might suffer in case PLDT is not entitled to the relief. However, although the party to the case is PCC, it is not so much PCC that stands to lose here, but the consumers.

Earlier, the PCC published a Preliminary Statement of Concerns on the Joint Acquisition by Philippine Long Distance Telephone Company and Globe Telecom, Inc. of Vega Telecom, Inc., Bow Arken Holding Company, Inc. and Brightshare Holdings Corporation (M-037/2016). The PCC found several horizontal and vertical overlaps in the markets of PLDT, Globe, and the SMC telco assets and identified multiple theories of harm. The preliminary findings show that, indeed, the deal potentially forecloses the entry of a new player and eliminates competition in the industry.

Independent technical studies further indicate that if not for the acquisition by PLDT and Globe of all of SMC's telco assets, the market could be open for niche players in high data wire-line services needed by businesses such as BPOs/KPOs. Such players could carve out a market that requires higher capacity and data rates, which is a trend of the future. Given these preliminary findings, the JFC believes that a review by the PCC of the acquisition is necessary in order to ensure that the market remains open for new entrants, whether direct competitors of PLDT and Globe, or niche players.

The JFC views the telco transaction as a test case, not just for the PCC but for the Philippine business community at large, on their willingness to abide by the precepts of fair competition. We are asking for the PCC to be allowed to exercise its legal mandate and ensure that this business deal does not foreclose competition. If the review ultimately results in a finding that it is not anti-competitive, then all concerned should be satisfied that the review process was completed. On the other hand, if it is anti-competitive, then PCC should be allowed to identify remedies to foster fair competition and protect consumer welfare.

Finally, the JFC notes that if the parties to the deal themselves maintain that the transaction does not violate the provisions on anti-competitive agreements, mergers and acquisitions, and abuse of dominant market position, and would result in improved service for the consumers, then there should be no reason to block or delay the PCC's review.