

01 June 2021

SENATOR GRACE L. POE
Chairperson
Committee on Public Services
Senate of the Philippines
Pasay City

Dear **Senator Poe**:

We are pleased to submit the Department's additional inputs in relation to ongoing discussions on the proposed legislation, entitled:

Senate Bill No. 2094¹

"An Act Amending Commonwealth Act No. 146, Otherwise Known as the Public Service Act, as Amended"

We reiterate our position that telecommunications and common carriers are not public utilities as these industries are not considered natural monopolies, a primary criterion to be categorized as a public utility.

"Sec. 4. A new Section 13 (d) of Commonwealth Act No. 146, as amended, is hereby inserted to read as follows:

'(d) Public utility. – xxx

No other person shall be deemed a public utility unless otherwise subsequently provided by law. the National Economic and Development Authority (NEDA) through its board, in consultation with the Philippine Competition Commission (PCC) and the concerned administrative agencies, may recommend to Congress the classification of a public service as a public utility on the basis of the following criteria:

XXX

2) The commodity or service is a natural monopoly that needs to be regulated when the common good so requires;

XXX"

¹ In consideration of House Bill No. 78, "An Act Providing for the Definition of Public Utility, Further Amending for the Purpose Commonwealth Act No. 146, Otherwise Known as the 'Public Service Act', as Amended"

OFFICE OF THE SECRETARY

Technological progress and innovation have substantially reduced economies of scale and barriers to entry in many industries, including telecommunications^{2,3,4} and land,^{5,6} air,^{7,8} and maritime transportation,⁹ making market competition not only possible but also desirable.

Telecommunications serve as the backbone to many technology-related industries, connecting them within and across borders and allowing for rapid and free flow of information.¹⁰ A modern and competitive telecommunication infrastructure facilitates access to international commodity and financial markets, leading to the smooth flow of foreign investment, positive value of net exports, and increasing value addition.¹¹ Complementary to this, effective modes of transportation facilitate the movement of persons and commodities thus ensuring the effective functioning of the economy.

Foreign equity restrictions in these strategic industries will continue to limit competition and condone the dominance of monopolies to the detriment of industries that rely on these integral services and the consuming public.

Among the Association of Southeast Asian Nations (ASEAN) member nations, the Philippines has lagged in terms of mobile internet speed and the affordability of mobile data and broadband and has ranked low on the productive capacity of its information and communications technology (ICT) (See *Annex A*). The Philippines has also not fared well in measures of its logistics performance, productive capacity for transport, and traffic (See *Annex B*).

Liberalizing the telecommunications and transportation industries is vital in improving the country's rankings in terms of competitiveness, digital competitiveness, and smart cities (See *Annex C*). These would redound to benefits for the Filipino consumer through more and better choices, higher quality, and lower prices. With the Public Service Act having been in place for 85 years, the Department opines that it is high time to facilitate competition in these integral industries as domestic players have already been afforded adequate protection.

We would also like to reiterate our recommendation to delete the proposed section disallowing foreign state-owned enterprises (SOEs).

~~"Sec. 15. Investments by Foreign State-owned Enterprises.—Foreign state-owned enterprises shall be prohibited from owning capital in any public service classified as critical infrastructure: Provided, that the prohibition shall apply~~

² Kim, S. and Horn, A. (1999). Regulation policies concerning natural monopolies in developing and transition economies. DESA Discussion Paper No. 8

³ Boylaud, O. and Nicolletti, G. (2001). Regulation, Market Structure and Performance in Telecommunications. OECD Economic Studies No. 32

⁴ Spulber, D. (1995). Deregulating Telecommunications.

⁵ Posner, R. (1997). Economic Analysis of Law.

⁶ Gagnepain, P., Ivaldi, M., and Muller-Vibes, C. (2011). The Industrial Organization of Competition in Local Bus Services. Handbook of Transport Economics.

⁷ Zhang, A., Zhang, Y., and Clougherty, J. (2011). Competition and Regulation in Air Transport. Handbook of Transport Economics.

⁸ Manuela, W. (2007). Airline Liberalization Effects on Fare: The Case of the Philippines. Journal of Business Review.

⁹ Brooks, M. (2011). Competition and Regulation in Maritime Transport. Handbook of Transport Economics.

¹⁰ World Economic Forum. (2017). The Global Competitiveness Report.

¹¹ Azim, P., Mahmood, A., and Zahra, K. (2008). Telecommunication Infrastructure Development and Economic Growth: A Panel Data Approach. The Pakistan Development Review.

~~only to investments made after the effectivity of this Act: Provided further, that state-owned enterprises which own capital prior to the effectivity of this law are prohibited from investing in additional capital upon the effectivity of this Act."~~

While we recognize that this inserted provision emanates from national security issues, we view the sufficiency of other proposed measures to address this, including the stipulation below on the review of foreign direct investments (FDI) with recommended revisions to cover transactions by foreign state-owned enterprises. Further, this stipulation empowers the president to prohibit or suspend transactions that threaten to impair the country's national security.

"Sec. 14. Review of Foreign Direct Investment in Covered Transactions.—

(a) National Security Reviews, How Initiated. – The President or the National Security Council ("Council") **IN COORDINATION WITH THE DEPARTMENT OF TRADE AND INDUSTRY (DTI)** shall initiate a review of a covered transaction to determine its effects on the national security of the Republic of the Philippines if—

- (i) the covered transaction is a foreign government-controlled transaction **INCLUDING TRANSACTIONS BY FOREIGN STATE-OWNED ENTERPRISES (SOEs); OR**
- (ii) the transaction would result in control of any critical infrastructure of or within the Republic of the Philippines **OR WILL BE IN GEOGRAPHIC LOCATIONS CRITICAL TO NATIONAL SECURITY.**

XXX

(e) Action by the President. – The President may take such appropriate action including the suspension of a covered transaction involving critical infrastructure that threatens to impair the national security of the Philippines, subject to the following conditions:

XXX"

This is further enhanced by the requirement for an International Organization for Standardization (ISO) certification for information security as a condition for maintaining franchise or authority to operate critical infrastructure.

"Sec. 17. Information Security. – Public services in critical infrastructure shall obtain and maintain certifications from an accredited certification body attesting to compliance with relevant ISO standards on information security: Provided, that the maintenance of these certifications shall be a continuing qualification for retention of franchise or other authority to operate."

Aside from these, existing legislations provide additional safeguards, such as Section 17 of the 1987 Constitution providing for the temporary take over or direct operation of any privately-owned public utilities or businesses with public interest in times of national emergency, Section 7 of Republic Act (RA) No. 10173 or the Data Privacy Act of 2012 empowering the National Privacy Commission (NPC) to issue cease and desist orders for transactions detrimental to national security and public interest, and Section 10 of RA No. 10697 or the Strategic Trade

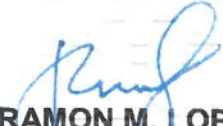
Management Act requiring an authorization from the Strategic Trade Management Office (STMO) for transactions involving strategic goods and related services.

The Department acquiesces that allowing for investments of foreign SOEs in critical infrastructure, subject to the stringent review and monitoring mechanisms in place, furthers the original objective of the proposed legislation to facilitate necessary investments in key industries.

We hope that our comments and recommendations merit the Committee's consideration.

With my best regards.

Very truly yours,


RAMON M. LOPEZ
Secretary



DTS No. EX00164389

ANNEX A

Various Indicators for the Telecommunications Industry

| Indicator | | Philippines | Singapore | Thailand | Vietnam | Malaysia | Indonesia | Cambodia | Lao PDR | Myanmar | Brunei |
|--|------------------------------|-------------|-----------|----------|---------|----------|-----------|----------|---------|---------|--------|
| Foreign Equity Ownership^A | | 40% | 100% | 49% | 53% | 100% | 57% | 100% | - | - | - |
| Mobile Internet Speed 2021^B | Rank (out of 134) | 84 | 20 | 46 | 66 | 81 | 113 | 106 | 85 | - | 32 |
| | Speed (Mbps) | 29.12 | 79.25 | 50.04 | 38.25 | 29.57 | 19.61 | 20.83 | 28.64 | - | 59.19 |
| Fixed Broadband Internet Speed April 2021^B | Rank (out of 176) | 80 | 1 | 7 | 61 | 45 | 113 | 127 | 89 | 124 | - |
| | Speed (Mbps) | 49.31 | 245.50 | 206.81 | 66.38 | 103.34 | 26.31 | 21.43 | 43.98 | 22.75 | - |
| Mobile Data Cost 2021^C | Rank (out of 230) | 97 | 60 | 57 | 15 | 46 | 12 | 40 | 148 | 36 | 116 |
| | Cost of 1GB (USD) | 1.77 | 1.09 | 1.06 | 0.49 | 0.89 | 0.42 | 0.83 | 3.19 | 0.78 | 1.78 |
| Broadband Price 2020^C | Rank (out of 211) | 119 | 65 | 37 | 12 | 59 | 53 | 63 | 118 | 46 | 197 |
| | Average Cost per month (USD) | 53.71 | 33.43 | 23.3 | 11.27 | 31.85 | 29.06 | 33.17 | 53.41 | 27.33 | 137.62 |
| Productive Capacities Index 2018^D | ICT Index | 10.3 | 21.1 | 13.6 | 11.5 | 14.3 | 9.1 | 7.8 | 8.2 | 7.8 | 14.9 |

NOTE: PH rank/score is Among top 50% of ASEAN Among bottom 50% of ASEAN

^A Worldbank

^B Ookla

^C cable.co.uk

^D United Nations Conference on Trade and Development

ANNEX B

Various Indicators for the Transportation Industry

| Indicator | | Philippines | Singapore | Thailand | Vietnam | Malaysia | Indonesia | Cambodia | Lao PDR | Myanmar | Brunei |
|--|--------------------------|-------------|-----------|----------|---------|----------|-----------|----------|---------|---------|--------|
| Foreign Equity Ownership ^A | | 50% | 83% | 49% | 49% | 83% | 49% | 100% | - | - | - |
| Logistics Performance Index 2018 ^A | Rank (out of 160) | 60 | 7 | 32 | 39 | 41 | 46 | 98 | 82 | 137 | 80 |
| | Score | 2.9 | 4 | 3.41 | 3.27 | 3.22 | 3.15 | 2.58 | 2.7 | 2.3 | 2.71 |
| Productive Capacities Index 2018 ^B | Transport Index Score | 12.8 | 29.4 | 17.6 | 14.8 | 15.9 | 11.9 | 16.1 | 12.5 | 7.8 | 22.9 |
| Traffic Index 2021 ^C | Rank (out of 85) | 12 | 36 | 19 | 63 | 25 | 11 | - | - | - | - |
| | Inefficiency Index Score | 244.47 | 148.09 | 225.39 | 117.9 | 188.26 | 241.56 | - | - | - | - |

NOTE: PH rank/score is Among top 50% of ASEAN Among bottom 50% of ASEAN

^A Worldbank

^B United Nations Conference on Trade and Development

^C Numbeo (*higher rank in the traffic index denotes worse traffic*)

ANNEX C

Other Indicators

| Component | | Philippines | Singapore | Thailand | Vietnam | Malaysia | Indonesia | Cambodia | Lao PDR | Myanmar | Brunei |
|---|----------------------------------|-------------|-----------|----------|---------|----------|-----------|----------|---------|---------|--------|
| World Competitiveness Ranking 2020^A | Rank (out of 63) | 46 | 1 | 29 | - | 27 | 40 | - | - | - | - |
| World Digital Competitiveness 2020^A | Rank (out of 63) | 57 | 2 | 39 | - | 26 | 56 | - | - | - | - |
| Smart City Rank 2020^A | Rank (out of 109 capital cities) | 104 | 1 | 71 | 84 | 54 | 94 | - | - | - | - |
| Global Innovation Index 2020^B | Rank | 50 | 8 | 44 | 42 | 33 | 85 | 110 | 113 | 129 | 71 |

NOTE: PH rank/score is Among top 50% of ASEAN Among bottom 50% of ASEAN

^A Institute for Management Development

^B World Intellectual Property Organization