

Further, Respondent USI, through counsel, admitted that on 1 August 2017, a day prior to the hearing, a public statement was issued by it in relation to the 26 July 2017 Order which was posted in its Twitter account, a copy of which is marked as Exhibit "A", the relevant portion of which reads:

"X X X

Applications for vehicles are **being accepted** but not processed, as we are optimistic that with the ongoing discussions with the LTFRB, ridesharing has a path forward.

X X X"

(Emphasis ours.)

Respondent, as prayed for, was given a period of five days or until 7 August 2017 to file their Comment or Answer to the Show Cause Order. On 7 August 2017, an Answer was filed by Respondent USI. In their Answer, it alleged that their right to due process was violated as they were not given a meaningful opportunity to defend or otherwise explain their side. Further, Respondent USI posit that they acted in good faith and denied that it willfully violated the 26 July 2017 Order of the Board. Specifically, Respondent USI argued the acceptance of new applications does not, in any manner, translate to the activation of new vehicles

On the allegation of denial of due process, the Board rules that the basic requirement of due process was complied with. The Show Cause Order issued, which is basically the template consistently used by the Board, informed the Respondent of the nature of the violation and a hearing was likewise set to hear the respondent personally or through its counsel. "The essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of."¹

Now, the Board rules on the principal issue of whether the Respondent USI violated its 27 July 2017 Order.

The Board's directive in its Order dated 26 July 2017 is plain and unambiguous.

Respondent USI was ordered to refrain from further accepting additional accreditation of Transportation Network Vehicles Service (TNVS) and/or activating their accounts into the respondents' system.

¹ Office of the Ombudsman vs. Antonio T. Reyes, et.al. G.R. No. 170512

The plain and simple reason of this firm directive is precisely to avoid raising false expectation on TNVS to engage in a public transportation service without the necessary permit secured from the Board, in violation of the terms of its Certification of Accreditation². Worst, the tens of thousands TNVS, though without the requisite permit or franchise from the Board, an undetermined number of which reportedly borrowed from banks to purchase vehicles to be used as TNVS, which were accredited and whose accounts were activated into their system, run the serious risk of being apprehended for "Colorum" activities. The Respondent's official statement as cited above is a clear admission on its part that it continued to accept applications despite the explicit Order from the Board.

Also, the violation committed by the Respondent is bolstered by the fact that the Respondent had in fact, accepted and activated vehicles with Plate Nos. WQY132, YZ6788 and VJ6600, sometime on 27 July 2017, through its available on-line process or through the link <http://partners.uber.com> in the course of verifying the compliance by the Respondent on the Board's 26 July 2017 Order. Let it noted that the vehicle with Plate no. WQY-132 is a motor vehicle registered in the name of the Board.

During the examination by the Board, Counsels for the Respondent were asked "what does it mean for USI if a car is **active**" as reflected in the online registration and activation process, Counsels readily replied that they can dispatch a trip or are available for booking rides under the Respondent's system. Vehicles with Plate Nos. WQY132, YZ6788 and VJ6600 were put on "Active" status after they underwent the on-line registration and activation process. Hence, it is undisputable that respondent continued to activate accounts despite the directive of the Board.

The Board wholly comprehends the various concerns attendant to the ongoing issues involving the Transport Network Companies (TNC *for brevity*) and TNVS and are mindful of the social ramifications raised by the riding public. The unique mode of service offered by TNCs is undeniably positive and beneficial for the commuting public for which, time and again, the Board continue to affirm and support the ride sharing technology that it offers.

The core issue that the Board is confronted now is how to strike a delicate balance between innovation and the laws and regulations that govern land-based public transport service. Laws are meant to guide and enrich, not suppress, human conduct as well as promote safety and comfort of society in the greater context of acceptable social behavior. On the other hand, innovation and technology has come about perhaps evolving at a pace that the human mind can possibly imagine or predict.

² Memorandum Circular no. 2015-016, paragraph 17, dated 28 May 2015

It is the common postulate of the Board that technological innovation is but a tool to enhance human convenience but may not dictate what may be morally acceptable social human behavior. Lest we be enslaved by it, the better part of prudence is for us to recognize and uphold the fundamental principles of human conduct, especially when one assumes a public responsibility – fair dealing, transparency and public accountability.

The objective of the Board now is to strike a gentle balance between innovation and the Law for the public good; hardly does this happen, even as we continue to work in earnest to address regulatory reform in our public transport system for the safety and convenience of the riding public.

What takes precedence then? No doubt, it is the Law. The Law which defines fair and suitable regulation is the great equalizer in addressing and fulfilling the common good.

The latest irresponsible act of the Respondent USI is not about pushing innovation in the context of fair regulation, but it is about unduly challenging the limit of fair regulation to continue to engage in business in this country thereby compromising sound business practices. In effect, adversely creating an uneven playing field for the rest of the stakeholders, among them franchise holders of public transport services covering taxis, buses, UV Express and Public Utility Jeepneys, who are also governed by the same regulation.

While the Board commiserates with the plight of Respondent's affected TNVS peers, after a thorough and painstaking deliberation, the Board is constrained to impose the penalty of One (1) month **SUSPENSION** on the accreditation of the Respondent Uber System, Inc. and is hereby ordered to **CEASE** and **DESIST** its operation of their online booking application during the period of suspension.

Likewise, the Board shall hold the Respondent responsible for all its accredited "colorum" TNVS apprehended during the period of suspension should it be discovered that they are accepting passengers using their mobile application.

Finally, the Board strongly recommends to Respondent USI to extend financial assistance to its affected peer-operators during the period of suspension as a form of good faith as their accredited peer-operators would not have suffered the current predicament were it not for the predatory actions of the Respondent.

Let copies of this Order be furnished the Metro Manila Development Authority, Highway Patrol Group-Philippine National Police, Land Transportation Office and all other concerned government agencies for the enforcement of this Order.

This Order takes effect immediately.

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DOCKETED
BY: 12/14/17
DATE: Maestra S. Clarose