

October 27, 2021

**HON. RAMON LOPEZ**

Secretary

Department of Trade and Industry

Trade & Industry Building, 361 Sen. Gil J. Puyat Avenue

Makati City, Philippines

Subject: Proposed Joint Administrative Order (JAO) on Guidelines for Online Businesses Reiterating the Laws and Regulations Applicable to Online Businesses and Consumers

Dear Secretary Lopez:

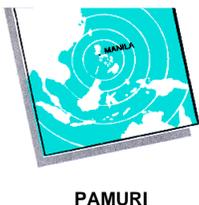
The Joint Foreign Chambers of the Philippines writes in relation to the Proposed Joint Administrative Order (JAO) on Guidelines for Online Businesses.

We share the objectives of the concerned agencies of building consumer confidence in the digital economy. It is to the interest of the industry and of the consuming public, that we formulate safeguards to make online commerce safe and viable for both consumers and merchants.

However, we oppose the issuance of the JAO as the manner by which the Department pursues said objectives, and we recommend that they be accomplished via legislation for the following reasons:

A. Subject matter requires legislation

The subject matter of the JAO is currently pending in the Senate under the proposed Internet Transactions Act (ITA). We agree with DTI statements during the consultation that online business were not yet contemplated when the existing laws (e.g. Consumer Law) were enacted and that the ITA is the legal tool required to address consumer protection. Regulating online business based on existing laws that may not have contemplated the dynamics and complexities of an emerging industry can be a form of over-regulation. We believe that the government cannot impose new obligations or create liabilities without an enabling law nor can penalties be imposed without clear basis under existing laws.



B. Need to balance protection of consumers vs. promotion of e-commerce



The JFC believes that any policy to be crafted should aim not only to improve consumer protection, but also to unlock the vast potential of Philippine e-Commerce. We all acknowledge that the sector’s growth remains sluggish in contrast to its regional neighbors. However, this is a challenge that could in fact worsen if any regulation proposed will fundamentally undercut the open, rapidly evolving nature of the internet. The regulatory framework should be carefully tailored without inadvertently hindering the growth of the digital economy, or stifling innovation in new solutions and technology. Both companies and individuals have benefitted from the safety, ease and convenience provided by online businesses especially during the pandemic. Jobs and businesses were also enabled by e-commerce. Without carefully balancing equally important interests, we run the risk of sacrificing one for the other.



There are provisions in the JAO that could unintentionally impair the growth of the Philippine e-commerce market - a result that is the exact opposite of the JAO’s larger goal. Imposing additional burdens or liabilities on platforms will not only increase their cost that will ultimately be passed on to consumers but also poses as disincentives to new industry participants.



C. Avoid regulatory ambiguity



Any regulation should define covered entities to prevent ambiguities in regulatory scope and enforcement. It must consider the industry realities on the ground, especially the fact that full-fledged e-Commerce Platforms have different user models from participative networked platforms that are principally engaged in social networking, but offer ancillary services that support e-Commerce.



To illustrate, full-fledged e-Commerce Platforms may have more control in onboarding sellers than other non-conventional online platforms, because the former are engaged principally in the business of e-Commerce.



D. Adopt international best practices

Over regulation puts the Philippines out-of-step with global regulatory norms and standards that have allowed e-Commerce Platforms to flourish in many markets. Imposing overly rigid and onerous regulations in the Philippines - where e-Commerce is still in its relative infancy - may actually prevent the progress that the JAO intends to stimulate in the sector.

In closing, we hope that DTI will truly consider the noted concerns of the private sector. It is important at this critical time to have laws and regulations on e-Commerce that are fair and balanced to meet the needs of all parties participating in the e-Commerce Sector. Lastly, we thank you for your consideration on this matter.

Sincerely,



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PHILIPPINES**

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ZEALAND**



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