Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

July 22, 2019

SEC-OGC Opinion No. 19-27
Re: Foreign Ownership Limit; Foreign Investment Act

NOW CORPORATION
Unit 5-I, 5th Floor, OPL Building
100 C. Palanca Street, Legazpi Village
Makati City, 1229

Attention: Miguel Antonio S. Regal
Compliance Officer

Mr. Regal,

This refers to your letter dated July 31, 2018 requesting an opinion regarding the foreign investment limit of NOW Corporation ("NOW Corp.").

As stated in your letter, NOW Corp. is a duly organized corporation under the laws of the Philippines and based on its Articles of Incorporation, its primary purpose is as follows –

> "To engage in the business of **providing telecommunications, media and information technology** products and services, such as but not limited to the research, development, production, management, marketing and operation of the following: **telecommunications value added services** through companies duly licensed to engage in wired and wireless, fixed and mobile communications; software and hardware technology, business process outsourcing, call center, and other information technology applications; **digital media and other media except mass media**; and to do all activities directly and indirectly connected therewith or incident thereto."

In view thereof, you raised the following queries:

1. Whether or not NOW Corp. is subject to foreign equity limits given the purposes for which it is established; and

2. If NOW Corp. is subject to a foreign equity limits, what is the foreign limit on the Corporation.

frtn 7/23/19

We note that your corporation, formerly known as "Information Capital Technology Ventures, Inc." (ICTV), has already requested for an opinion regarding the same facts and queries presently raised before us.[1]. In resolving the same, the Commission considered exactly the same primary purpose that you also presented here in this instant request for opinion.

OPERATION OF MASS MEDIA

Mass media in the Constitution, as opined by the Department of Justice, is "any medium designed to reach the masses and that tends to set standards, ideals and aims of the masses. The distinctive feature of which is the dissemination of information and ideas to the public or a portion thereof."[2] Republic Act 9211[3] further defined mass media as "any medium of communication designed to reach a mass of people" which includes the use of "electronic media such as but not limited to the internet."

A careful perusal of NOW Corp.'s Articles of Incorporation shows that it engages, among others, in the "development, production, operation and marketing... xxx...of **digital media** except mass media**"**. In the previous opinion involving your corporation, the Commission held, thus –

> "...xxx The digital media produced, marketed, and operated by ICTV appears to cover a wide range. As mentioned earlier, it is the dissemination of information and ideas to the public that makes the activity covered under the purview of mass media. It appears that the digital media produced and operated by ICTV are as well marketed by it. This marketing constitutes dissemination of information to the public or a portion thereof."[4]
>
> The latter part of ICTV's primary purpose enumerates the media products and services to be digital media and other media except mass media. However, despite this excluding phrase, it is the nature of the activities undertaken by a corporation that will ultimately determine whether or not it is engaged in mass media. In a previous opinion, the Commission ruled that notwithstanding the clause 'but in all cases without however engaging in mass media' in the corporation's primary purpose, the nature of the activities the corporation engages in – generally, acting as producer and providing production services including post-production services and facilities, fall within the activities contemplated by mass media. ..xxx"

Digital media as used in the primary purpose of NOW Corp. is wide-ranging as it is not qualified or limited by any qualifying or excluding words nor does it provide for a specific type of digital media to be marketed, to the effect that it may include activities that constitute mass media. Hence, notwithstanding

---

[1] SEC Opinion 14-15, dated 07 July 2014, addressed to Information Capital Technology Ventures, Inc.

[2] DOJ Opinion 40, s. 1998, dated 19 March 1998.

[3] RA 9211, "The Tobacco Regulation Act of 2003", § 4(f).

[4] *supra* note 1.

the excluding phrase "*except mass media*", the nature of NOW Corp's activities falls within the ambit of mass media.

OPERATION OF PUBLIC UTILITY

Under Article XII Section 11 of the Constitution, and as reiterated in the Eleventh Foreign Investment Negative List, operation of public utilities is allowed only to Philippine citizens or domestic corporations or associations at least sixty per cent (60%) of whose capital is owned by Philippine citizens. In this connection, it is now settled that telecommunications business is a public utility.[5]

As previously held by the Commission –

> "Applying to ICTV's case, while the enumeration of the products and services first mentions 'telecommunications value added services,' the list does not appear to be exhaustive. It should be noted that the phrase 'such as but not limited to' is present, which means that the telecommunications product and services of the ICTV is providing is not restricted to value added services, allowing ICTV to engage in telecommunications activities."[6]

Based from the foregoing, no foreign ownership of NOW Corp. is allowed, as it is engaged in mass media activities. Assuming that it is not engaged in mass media, foreign equity is limited to a maximum of forty per cent (40%), as it is also engaged in the operation of a public utility.

It shall be understood, that the foregoing opinion is rendered based solely on the facts and circumstances disclosed and relevant solely to the particular issue raised therein. It shall not be used in the nature of a standing rule binding upon the Commission in other cases or upon the courts whether of similar or dissimilar circumstances.[7] If, upon further inquiry or investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void

Please be guided accordingly.

CAMILO S. CORREA
General Counsel

---

[5] DOJ Opinion No. 11, s. 1992, dated 28 January 1992.
[6] *supra* note 1.
[7] SEC Memorandum Circular 2003-15, No.7