Republic of the Philippines
Department of Finance
Securities and Exchange Commission
COMMISSION EN BANC

IN RE: VALUATION OF MANDATORY TENDER OFFER OF PLDT REGARDING THE BLOCK SALE OF DIGITEL SHARES TO PLDT

DIOCELDO S. SY, et al.,
Appellants,

- *versus* -

SEC En Banc Case No. 04-13-289

ENFORCEMENT AND PROSECUTION DEPARTMENT (now Enforcement and Investor Protection Department), rep. by Dir. Jose P. Aquino,
Appellee.

x - x

D E C I S I O N

Before this Commission is the *Memorandum on Appeal* dated 16 April 2013 (the "Appeal") filed by Appellants *Dioceldo S. Sy, Edmund C. Sia, Gary Lim, and Arsenio G. Tan* ("Appellants") on 18 April 2013 assailing the *Order* dated 3 April 2013 (the "Assailed Order") of Appellee *Enforcement and Prosecution Department* ("EPD"), now the *Enforcement and Investor Protection Department* ("EIPD"), confirming the correctness of Philippine Long Distance Telephone Company's ("PLDT") tender offer price of Php1.603 per share.

THE PARTIES

Appellants are all Filipinos, of legal age, and with postal address at c/o Lumaniog and Associates Law Firm, Room 204 Megastate Building, 737 Araneta Avenue, Quezon City. They are the owners of record of a total of One Hundred Eighty Two Million Eight Hundred Sixty Five Thousand (182,865,000) shares[1] at Digital Telecommunications Phils., Inc..

---

[1] Dioceldo S. Sy owns One Hundred Twenty Seven Million Three Hundred Sixty Five Thousand (127,365,000) Digitel shares; Edmund C. Sia owns Fifty Two Million (52,000,000) Digitel shares; Gary Lim owns Two Million Fifty Thousand (2,050,000) Digitel shares, and Arsenio G. Tan owns One Million One Hundred Fifty Thousand (1,150,000) Digitel shares.

Digital Telecommunications Phils., Inc. ("Digitel") is a publicly listed corporation organized and existing under the laws of the Republic of the Philippines, with principal address at G/F Universal Tower Bldg., 1487 Quezon Ave., West Triangle, Quezon City.

Philippine Long Distance Telephone Company ("PLDT"), now known as PLDT, Inc., is a corporation organized and existing under the laws of the Republic of the Philippines with principal address at Ramon Cojuangco Bldg., Makati Ave., Makati City.

JG Summit Holdings, Inc. ("JGSHI") is a corporation organized and existing under the laws of the Republic of the Philippines, with principal address at 43/F Robinsons Equitable Tower, ADB Ave. cor. Poveda St., Ortigas Center, Pasig City.

The related interests of JGSHI are:

a) Express Holdings, Inc., a corporation organized and existing under the laws of the Republic of the Philippines with principal address at 29/F Galleria Corporate Center, Edsa cor. Ortigas Ave., Quezon City;

b) Solid Finance (Holdings) Limited, a corporation organized and existing under the laws of the Republic of the Philippines with principal address at BDO House, Kumul Highway, Vanuatu; and

c) Mrs. Elizabeth Yu Gokongwei, Filipino, of legal age, and with office address at 42/F Robinsons Equitable Tower, ADB Avenue corner Poveda Road, Ortigas Center, Pasig City.

Appellee EIPD is one of the operating departments of the Commission tasked to ensure compliance by all market participants, issuers and persons with the laws, rules and regulations implemented by the Commission, to investigate, *motu proprio*, or upon a verified complaint or referral, and to take appropriate enforcement action for any violation thereof. It is vested with the primary authority to conduct investigations and administrative actions involving, among others, the selling, offering or transacting of unregistered securities without a secondary license, as well as to initiate petitions for revocation of certificate of registration based on grounds within its jurisdiction.

RELEVANT FACTS

On 12 December 2011, Appellants filed with the Commission a Verified Complaint which embodies the following allegations:

(a) Digitel owns 13,420,000 shares of Digitel Mobile Philipines, Inc. ("Sun") which represents one hundred percent (100%) of Sun's issued and outstanding capital stock. Digitel is a subsidiary of JG Summit Holdings, Inc.

(b) That on 29 March 2011, JGSHI and related interests entered into a Sale and Purchase Agreement (the "Agreement") with PLDT wherein the latter acquired from the former the following (collectively, the "Purchased Assets"):

i. Three Billion Two Hundred Seventy Seven Million One Hundred Thirty Five Thousand and Eight Hundred and Eighty Two (3,277,135,882) common stock of Digitel representing approximately 51.55% of the issued and outstanding capital stock of Digitel registered in the name of JGSHI and the related interests;
ii. The zero coupon convertible bonds due in 2013 and 2014 issued by Digitel and its subsidiary owned by JGSHI and related interests with an aggregate redemption value of Php17,745,459,286 as of December 31, 2010, which bonds are, at the option of the Convertible Bond holders, convertible or exchangeable into common shares in the capital stock of Digitel at the par value of Php1.00 per shares[2]; and
iii. Advances made by JGSHI to Digitel with a total principal amount plus accrued interest of Php34,118,544,087.00 as of December 31, 2010.

(c) The total consideration under the Agreement for the Purchased Assets is Php69,198,024,410.00 (the "Contract Price"), and the parties allegedly agreed the Contract Price will be fully satisfied with the issuance of PLDT shares at the rate of one (1) PLDT share for each Php2,500 of the consideration payable under the Agreement. Thus, PLDT would have to issue 27,679,210 new PLDT shares representing approximately 12.91% of the issue shares of common stock of PLDT.

[2] JGSHI and PLDT assumed that the Convertible Bonds are convertible into 18,603,265,971 common shares of Digitel; and assumes the conversion or exchange rate of PHP43.405/USD.

(d) The Agreement was approved by the National Telecommunications Commission ("NTC") on 26 October 2011.

(e) Following the approval by the NTC of the Agreement, PLDT acquired 3,277,135,882 shares of common stock of Digitel, representing approximately 51.55% of the issued and outstanding capital stock of Digitel.

On 5 December 2011, PLDT, as the majority owner of Digitel, filed with the Commission its Tender Offer Report (SEC Form 19-1) as a mandatory tender offer to purchase all the remaining 3,079,840,418 common shares held by the public shareholders of Digitel (approximately 48.45% of the issued common stock of Digitel) at the tender offer price of Php1.6033 per share ("Tender Offer Price").

On 3 April 2013, the EIPD issued the Assailed Order declaring that the Tender Offer Price of Php1.6033 is correct and complied with SRC Rule 19.1(9)(b) on the basis of a finding that the same is the highest consideration paid for Digitel shares within the last six (6) months by the bidder. In support thereof, the EIPD cited and summarized the findings of the Company Registration and Monitoring Department (CRMD), the Corporation Finance Department (CFD), and the Office of the General Accountant (OGA), to wit:

(a) The Financial Analysis and Audit Division (FAAD) of the CRMD issued a conformation stating that the agreed valuation of the Purchased Assets, as well as the contemplated valuation of the Digitel shares to be issued to the remaining 48.45% shareholders, are both reasonable as they are within the accepted valuation standards of the Commission. The Purchased Assets refer to the properties that PLDT purchased from Digitel under a Sale and Purchase Agreement which was mentioned in Paragraph 6 of the Verified Complaint. The properties purchased under the Agreement include a total of 3,277,135,882 common stock of Digitel representing approximately 50.55% of the issued and outstanding capital stock of Digitel;
(b) The CFD explained that since the price Php1.6033 is the highest consideration paid for Digitel shares within the last six (6) months by the bidder, the same amount should be the tender offer price. As SRC Rule 19(9)(H) provides, "no tender offer may be made unless the consideration paid to any security holder pursuant to the tender offer shall be the highest consideration paid to the security holder during such tender offer;
(c) Based on its analysis, the OGA concluded that the use of the Php1.603 price per share tracks the historical performance of

> Digitel and that of the industry. The OGA concurred with the findings of both the CRMD and CFD regarding the valuation of the Purchased Assets and the Tender Offer Price.

On 18 April 2013, Appellants filed their *Notice of Appeal* and *Memorandum on Appeal* both dated 16 April 2013. They maintain and assert that the Tender Offer Price for the minority stockholders' shares were allegedly different from the price that PLDT paid for the shares of majority stockholders. Appellants thus insist that they should be paid the amount of the difference between the Tender Offer Price that was paid to them as minority stockholders, and the price paid for the shares of the majority shareholders which was allegedly Php21.12 per share.

On 17 March 2014, EPD, now EIPD, filed its *Reply Memorandum* praying for the dismissal of the Appeal for lack of merit on the ground that the Tender Offer Price of PLDT was correct.

ISSUE

The sole issue is whether the EIPD committed reversible error in sustaining the correctness of the Tender Offer Price.

DISCUSSION

The Appeal is without merit.

It is undisputed that pursuant to and under the Agreement, PLDT acquired the Purchased Assets from JGSHI and related interests for a consideration of Pesos: Sixty Nine Billion One Hundred Ninety Eight Million Twenty Four Thousand Four Hundred Ten (Php69,198,024,410.00). It is also undisputed that the Purchased Assets consisted and covered the following, namely: (1) JGSHI and related interests' common shares of stock in Digitel representing 51.55% of the issued and outstanding capital stock of Digitel; (2) Convertible Bonds issued by Digitel; and (3) Advances made by JGSHI to Digitel.

In the Appeal, Appellants maintain that PLDT violated Section 19 of the SRC when it paid the minority shareholders of Digitel the Tender Offer Price which is allegedly way low than price it paid for the shares of JGSHI and related interests. In support thereof, Appellants made a disquisition on the concept and purpose of mandatory tender offer, and emphasized that under Section 19 of the SRC, when a mandatory tender offer is required, the bidder is compelled to offer the highest price paid by him for such shares during the past six (6) months, and to value any transfer or allotment of securities on an equitable basis.

In support of its position, Appellants vehemently insist that PLDT acquired Digitel shares at Php21.12 per share, which price is derived at by dividing the Contract Price of Sixty Nine Billion One Hundred Ninety Eight Million Twenty Four Thousand Four Hundred Ten (Php69,198,024,410.00) with the number of common shares (3,277,135,882) acquired by PLDT. Appellants thus argue that in determining the tender offer price, the value of the other components of the Purchased Assets i.e. convertible bonds and advances should not be included.

The argument fails to convince.

Rule 19.1 (9)(B) of the Amended Implementing Rules and Regulations ("Amended IRR") of the SRC provides:

> "B. Where a mandatory tender offer is required, **the bidder is compelled to offer the highest price paid by him for such shares during the past six (6) months**. Where the offer involves payment by transfer or allotment of securities, such securities must be valued on an equitable basis." (Emphasis supplied)

At the outset, the Commission notes that Appellants themselves expressly admitted that the Digitel shares were being traded in the Philippines Stock Exchange at the price of Php1.60 per share.[3] This fact was confirmed by no less than the three (3) departments of the Commission i.e. CRMD (FAAD), CFD and OGA, which made a careful analysis on the validity of the Tender Offer Price based on existing records of the Commission. On this basis, We hold that the EIPD did not commit reversible error in finding that the Tender Offer Price was correct and valid on the ground that the same was the highest price paid by PLDT for the Digitel shares during the relevant six (6) month period. The Tender Offer Price thus fully complied with Rule 19.1 (9)(B) of the Amended IRR.

Appellants also insist that while the Digitel shares were being traded at the price of Php1.60 per share, PLDT allegedly purchased and acquired the Digitel shares of JGSHI and related interests at Php21.12 per share under the Agreement. In arriving at this amount, Appellants posit that the Contract Price of the Agreement was the consideration for the 3,277,135,882 Digitel common shares acquired by PLDT from JGSHI and related interest[4], excluding the convertible bonds and advances.

---

[3] See Page 13, Paragraph 3 of the Memorandum on Appeal.
[4] See Page 13, Paragraph 2 of the Memorandum on Appeal.

The Commission cannot however, give credence to the foregoing argument because the same is contrary to the very admission presented and made by Appellants in their appeal, to wit:

> "On 29 March 2011, **JGSHI and related interests entered into a Sale and Purchase Agreement with PLDT wherein the latter acquired from the former**:
>
> a. Three Billion Two Hundred Seventy Seven Million One Hundred Thirty Five Thousand and Eight Hundred and Eighty Two (3,277,135,882) **common stock** of Digitel owned by JGSHI and the related interests;
> b. the **zero coupon convertible bonds** due 2013 and 2014 issued by Digitel and its subsidiary owned by JGSHI and related interests with an aggregate redemption value of ₱17,745,459,286 as of December 31, 2010, which bonds are, at the option of the Convertible Bond holders, convertible or exchangeable into common shares in the capital stock of Digitel at the par value of ₱1.00 per shares; **and**
> c. **Advances** made by JGSHI to Digitel with a total principal amount plus accrued interest of ₱34,118,544,087.00 as of December 31, 2010.
>
> **The total consideration for the aforesaid Sale and Purchase Agreement is the aggregate amount of PhP69,198,024,410.00** to be satisfied in its entirety by the issue by PLDT of PLDT shares at the rate of one new PLDT share for each 2,500 of the consideration payable under the Sale and Purchase Agreement."[5] (Emphasis supplied)

By earlier claiming and admitting that the Contract Price was paid in consideration of the Purchased Assets i.e. common shares, convertible bonds and assets, Appellants cannot now claim that the same Contract Price was paid in consideration only of the common shares for the purpose of showing that tender offer price should be Php21.12 per share.

More importantly, the records show that Appellants allegations that PLDT purchased the Digitel shares of JGSHI and related interests at the rate of Php21.12 per share based on the Agreement, is not supported by evidence. In the Appeal, Appellants alleged and claimed that PLDT has not submitted a copy of the Agreement and its related documents, and has in fact filed a motion for the issuance of a subpoena *ad testificandum* and *duces tecum* to secure the same. Given these admissions, Appellants' allegations relative to the computation and the amount paid by PLDT for the Digitel shares of JGSHI and related interests are mere speculations to say the least. Having admitted that they did not have the original copy of the Agreement, this Commission cannot give credence to, more so accept the position of Appellants on the

[5] See Pages 5&6 of the Memorandum on Appeal

valuation of the Digitel shares, especially in the light of the reports and findings of the CRMD, CFD and OGA on the same.

In *Navarro v. Cerezo*[6], the Supreme Court emphasized the rule that allegations must be supported by proof to satisfy the quantum of evidence required, thus:

> "In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. Further, the complainants have the burden of proving by substantial evidence the allegations in their complaint. The basic rule is that mere allegation is not evidence, and is not equivalent to proof." (Emphasis supplied)

Moreover, in *Morales, Jr. v. Carpio-Morales, et. al.*[7], the Supreme Court emphasized the fundamental rule in evidence that bare allegations, unsubstantiated by evidence are not equivalent to proof, to wit:

> "The basic rule is that mere allegation is not evidence and is not equivalent to proof. Charges based on mere suspicion and speculation likewise cannot be given credence. When the complainant relies on mere conjectures and suppositions, and fails to substantiate his allegations, the complaint must be dismissed for lack of merit." (Emphasis supplied)

In the instant case, the Assailed Decision was anchored on the reports and findings of three independent departments of the Commission which all reached the same conclusion that the Tender Offer Price was valid as the same was the highest price paid by PLDT for the Digitel shares during the relevant six (6) month period which complied with Rule 19.1 (9)(B) of the Amended IRR; and the said findings were admitted by Appellants.

The foregoing satisfied the evidentiary requirement and sufficiently proved that the Tender Offer Price was the highest price paid by PLDT for the Digitel shares during the past six (6) months, which complied with Rule 19.1 (9)(B) of the Amended IRR. The bare allegations of Appellants that under the Agreement, PLDT acquired JGSHI and related interests' Digitel shares at Php21.12/share did not overcome the evidence presented by the EIPD as the same did not constitute proof.

WHEREFORE, premises considered, the Memorandum on Appeal is hereby **DENIED** for lack of merit. The Order dated 3 April 2013 of EPD is hereby **AFFIRMED**.

---

[6] Navarro v. Cerezo, A.M. No. P-05-1962 (Formerly OCA IPI No. 04-1853-P), February 17, 2005
[7] G.R. No. 208086. July 27, 2016

SO ORDERED.

Pasay City, Philippines; 13 October 2020.

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner