Republic of the Philippines
Department of Finance
SECURITIES AND EXCHANGE COMMISSION
SEC Building, EDSA, Greenhills
Mandaluyong City Metro Manila
Philippines

June 23, 2005

Opinion No. 05-08
Re: Sale incidental to a company's service is not considered "retail sale"

DE BORJA MEDIALDEA BELLO GUEVARRA & GERODIAS
21st Floor, Wynsum Corporate Plaza,
F. Ortigas, Jr. (formerly Emerald Avenue) Ortigas Center, Pasig City

Attention: Raul G. Gerodias

Gentlemen:

This refers to your letter dated June 7, 2005 requesting opinion on whether or not the activities of the proposed subsidiary of your client would constitute retail trade.

It was mentioned in your letter that your client is proposing to set up a wholly-owned subsidiary in the Philippines which shall engage primarily in the business of providing repair, assembling, maintenance, support and other services for mobile phones, parts, and accessories, as well as all kinds of appliances, tools, utensils, and implements, and electronic, communications, telecommunications, and information technology-related equipment, products, articles, apparatuses, instruments, gadgets, devices (including peripherals, accessories, components, spare parts and assemblies), networks, solutions and systems; and all other services related thereto.

It was also disclosed in your letter that the replacement of parts and accessories (the cost of which will be charged to the customer) is an integral part of the repair services to be undertaken by the proposed subsidiary. As such, it was your position that the proposed sale and distribution by the said subsidiary of mobile phone parts, accessories, and other related equipment in conjunction

20

with the provision of repair, assembling, maintenance, support and other services, does not constitute retail trade.

Under **Republic Act No. 8762 or the Retail Trade Law,** "retail trade" is defined as "any act, occupation or calling of habitually selling direct to the general public merchandise, commodities or goods for consumption." The law covers only the sale of goods for consumption to the general public as end-user.

In an **Opinion dated May 19, 2003,** addressed to the Philippine Long Distance Telephone Company (PLDT), the Commission declared that the proposed sale and distribution by PLDT of wire-based telephone handsets, accessories, and other related telecommunications equipment through its various business offices nationwide are necessary and incidental to and form an integral component of providing telecommunications services within the Philippines.

In the situation given, it is clear that the main activities of repair, assembling, maintenance and support to be undertaken by the subsidiary will qualify it as a service enterprise. As such, its activities are not covered by retail trade law because the subsidiary does not sell goods to the public. In a **Department of Justice Opinion,** it was held that a person who renders services for hire or pay, or leases services, is not engaged in the retail business because he does not sell goods to the general public.[1]

The "sale" of the mobile phone parts and accessories, being only incidental and reasonably necessary to the repair, assembling, maintenance and support services of the subsidiary, cannot be considered as sale by retail.

It should however be emphasized that any sale of the aforementioned parts and accessories which is not incidental to the repair and assembling services of the company will fall under the general classification of retail trade.

Very truly yours,

VERNETTE G. UMALI-PACO
General Counsel

[1] DOJ Opinion No. 275, s. 1954

19