PHILIPPINE COMPETITION COMMISSION
Ensuring businesses compete and consumers benefit

25/F Vertis North Corporate Center I,
North Avenue, Quezon City 1105
www.phcc.gov.ph
queries@phcc.gov.ph
(+632) 8771 9722
(+632) 8771 9713

IN THE MATTER OF THE PROPOSED ACQUISITION BY FRONTIER TOWER ASSOCIATES PHILIPPINES, INC. OF ASSETS OF SMART COMMUNICATIONS, INC. AND DIGITEL MOBILE PHILIPPINES, INC.
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MAO Case No. M-2023-013

COMMISSION DECISION NO. 14-M-013/2023

This refers to the proposed acquisition by Frontier Tower Associates Philippines, Inc. (Frontier) of assets of Smart Communications, Inc. (SMART) and Digitel Mobile Philippines, Inc. (Digitel) (hereinafter shall be collectively referred to as "Parties"). This acquisition (Transaction) is submitted to the Philippine Competition Commission (the Commission) for review.[1]

Upon careful review of the submissions of the existing market conditions, various submissions and representations of the Parties to the Commission, the application of the PCA, its Implementing Rules and Regulations, related issuances, and based on the findings and recommendation of the Mergers and Acquisitions Office (MAO), the Commission finds that the Transaction will not likely result in the substantial prevention, restriction, or lessening of competition in the relevant market for the reasons discussed below.

The Parties

Frontier is a domestic company registered as an independent tower company (ITC).[2] It is engaged in the telecommunications infrastructure business, which includes the building, managing, and leasing of towers. The company is also involved in software development and other related activities. Its ultimate parent entity (UPE) is KKR Management LLP (KKR), a US-based company primarily involved in security and data protection solutions, software solutions, and hybrid cloud platforms.

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1 The Philippine Competition Commission conducts reviews of mergers and acquisitions, including joint ventures, pursuant to Sections 16 and 17 of Republic Act No. 10667, otherwise known as the Philippine Competition Act (PCA), and Section 1, Rule 4 of the Implementing Rules and Regulations of the PCA.

2 Sec. 3(m), DICT, Department Circular No. 008-2020 (29 May 2020). Policy Guidelines on the Co-Location and Sharing of Passive Telecommunications Tower Infrastructure for Macro Cell Sites. Refers to Independent Tower Companies as a private entity duly organized and existing under the laws of the Philippines, registered with the DICT as an ITC, and engaged in the business of establishing or operating one or more Shared PTTIs, that is neither a private sector MNO nor a "Related Party" thereto, as defined by the rules and regulations issued by the SEC.

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SMART is one of the leading mobile telecommunications companies in the Philippines. It is engaged in the provision of cellular mobile services and fixed wireless broadband throughout the country.

Digitel is another local telecommunications company engaged in the business of providing cellular mobile services. The company operated the Sun mobile brand before transferring the same to SMART.[3]

The UPE of SMART and Digitel is PLDT, Inc. (PLDT).[4] PLDT owns 100% of SMART and has a [redacted] interest in Digitel.

The Transaction

The Transaction under review is the proposed acquisition of approximately 1,012 passive telecommunications towers infrastructure (towers), located across various provinces throughout Luzon, that are currently owned and held by SMART and Digitel. The acquisition will also include the accompanying accessories of the towers together with the associated passive telecommunication infrastructure, equipment, [redacted] (collectively referred to as "tower assets").

The transfer of tower assets is subject to a non-exclusive leaseback to SMART in accordance with the relevant share purchase agreement and other related agreements.

The Transaction only involves the sale, transfer, and lease back of the identified assets. It will not result in any change in ownership or control of the Parties or their respective UPEs.

The Relevant Market

In the review of a merger or acquisition, the Commission examines all the relevant markets[5] that may be potentially affected by the transaction to determine whether

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[3] Digitel operated Sun Mobile from 2003 to 2020. Sun's prepaid and postpaid accounts were rebranded as Smart Prepaid and Postpaid accounts, respectively, as a consequence of the transfer. Despite this rebranding, Digitel continues to support the operations of SMART.

[4] PLDT's primary purpose is to provide telecommunications services, such as fixed line and fixed wireless telecommunications services.

[5] Philippine Competition Act, Section 4(k). *Definition of Terms.* – Relevant market refers to the market in which a particular good or service is sold and which is a combination of the relevant product market and the relevant geographic market, defined as follows:
(1) A relevant product market comprises all those goods and/or services which are regarded as interchangeable or substitutable by the consumer or the customer, by reason of the goods and/or services' characteristics, their prices, and their intended use; and
(2) The relevant geographic market comprises the area in which the entity concerned is involved in the supply and demand of goods and services, in which the conditions of

significant harm to competition is likely to occur in any of them.[6]

The Commission has determined that the relevant market is the nationwide market for the development, operations, and leasing of passive towers.

The Parties do not compete in the telecommunication services market and passive tower development and leasing market. Frontier and its UPE, KKR, have no existing business in telecommunications, while no entity within the PLDT group is registered as an ITC. Consequently, no horizontal relationship exists among the Parties.

Although there is no horizontal overlap between the Parties and their subsidiaries, there exists a vertical relationship related to the lease of tower assets. PLDT currently leases a number of *build-to-suit* towers from Frontier, apart from the tower assets subject of this Transaction. The Parties' existing vertical relationship shall be reinforced by SMART's leaseback of the subject towers that will be owned, operated, and maintained by Frontier.

Aside from the acquisition of existing brownfield towers[7] from Mobile Network Operators (MNOs) that are divesting part of their tower portfolio, and leasing out of telecommunication towers to MNOs, Frontier is also engaged in the construction of greenfield or *build-to-suit* towers. These overlapping lines of business and vertical relationships between the Parties were considered as a starting point in defining the relevant market as the nationwide market for the development, operations, and leasing of passive towers.

The Commission finds the relevant geographic market to be nationwide. The paramount consideration for ITCs is the operational demands of their customers. ITCs offer a nationwide scope in their development operations. Frontier and other ITCs own towers located all over the Philippines. The passive towers constructed and/or acquired by ITCs are accordingly configured to accommodate and anticipate the needs of the MNOs and their relevant customers. MNOs who are keen on improving mobile infrastructure and accelerating current co-location schemes are incentivized to diversify tower locations, which in turn will enable competition among ITCs that will drive prices and/or rents down and will enhance the latter's operational capabilities. Conversely, ITCs seeking to complement their existing footprints by securing relationships with MNOs would find it in their best interest to expand their revenue base by constructing and/or acquiring towers in as many regions possible.

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competition are sufficiently homogenous and which can be distinguished from neighboring areas because the conditions of competition are different in those areas.

6 Section 2.5, PCC Merger Review Guidelines.

7 ITCs can commence operations in two ways: (1) by building new towers, often referred to as greenfield or bult-to-suit towers, which are constructed from the ground up based on the specifications of the MNO; or (2) by acquiring existing portfolio of tower assets from MNOs which are seeking to divest, referred to as brownfield towers.

Competition Assessment

Regulatory Framework

The Commission takes cognizance of the DICT's Department Circular No. 008-2020 or the Common Tower Policy.[8] The Common Tower Policy allows the shared use of passive ITC infrastructure to provide free internet access in public places in the Philippines.[9] It mandates all passive towers built, improved, renovated, retrofitted, upgraded, or updated after the issuance of the policy to provide ample access slots for all MNOs and for the DICT, for purposes of co-location, mounting, and installation of radio-communications and ITC equipment.[10] Agreements under co-location in shared passive towers are required to be based on fair, cost-based, reasonable, competitive, transparent, non-exclusive, and non-discriminatory terms based on global and domestic standards, and relevant rules and regulations.[11]

The Common Tower Policy further provides that only duly registered ITCs with relevant construction experience and licenses are authorized to construct, manage, and operate towers in the Philippines, rendering such line of business highly specialized with no substitutable product or service.[12] Under the Common Tower Policy, the MNOs are required to divest their tower portfolios in favor of ITCs.[13]

The Commission recognizes that this existing policy provides an environment that is conducive to healthy competition.

In the course of assessment, the Commission considered the counterfactual or the conditions that would likely prevail if the Transaction between the Parties does not proceed. If Frontier will not acquire PLDT's tower assets, PLDT would simply find alternative buyers. PLDT plans to sell these towers to optimize costs and rationalize its operations. However, if the Transaction proceeds, SMART will be leasing the towers acquired by Frontier, which may strengthen the existing vertical relationship between the Parties.

Despite the vertical relationship between the Parties, the Commission finds that the Transaction will not lead to any foreseeable competition concerns. It will likely open the acquired passive towers to other MNOs for lease, which were previously exclusive to SMART and Digitel, pre-Transaction. In any case, the Commission examined the

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8 Department of Information and Communications Technology (DICT), Department Circular No. 008-2020 (29 May 2020): Policy Guidelines on the Co-Location and Sharing of Passive Telecommunications Tower Infrastructure for Macro Cell Sites, *available at* https://dict.gov.ph/wp-content/uploads/2020/06/Department_Circular_No_008_Policy_Guidelines_on_the_Co_Location.pdflicy_Guidelines_on_the_Co_Location.pdf (last accessed on 12 June 2023).

9 DICT Department Circular No. 008-2020, Sec. 2(h).

10 *Id.*, Sec. 11(a).

11 *Id.*, Sec. 11(b).

12 DICT Department Circular No. 008-2020, Sec. 8.

13 *Id.*, Sec. 11.

ability and incentive of the Parties to engage in input and customer foreclosure strategies post-Transaction as will be discussed below.

No ability or incentive to engage in input or customer foreclosure post-Transaction

It appears that the Transaction poses no risk of input foreclosure. On the contrary, Frontier, as the upstream supplier, will open the acquired passive towers to other MNOs for lease. To recall, the Common Tower Policy requires the tower assets to be available for co-location.[14] Any potential exclusivity agreements between the Parties are unlikely to occur and difficult to secure because it would require approval of DICT as an exception to the mandated tower sharing requirement under Section 11(d) of the Common Tower Policy.

The Commission takes notice that there are 19 other DICT-registered ITCs that provide sufficient competitive pressure to stifle any attempt to engage in input or customer foreclosure.[15]

Further, PLDT's entire tower requirement cannot be completely serviced by Frontier considering the latter's portfolio.[16] PLDT is also free to lease towers from Frontier's rivals and has every incentive to look for better deals to increase its profit. In fact, PLDT currently has passive tower engagements with [redacted]

After the careful review of the existing regulatory framework, market conditions, various submissions and representations of the Parties, the application of the PCA, its Implementing Rules and Regulations, and related issuances, the Commission finds that the Transaction is not likely to result in the substantial prevention, restriction, or lessening of competition.

In assessing this Transaction, the Commission recognizes the Common Tower Policy, which aims to ensure universal access to quality, reliable, affordable, and secure ICT services. The divestiture of the subject tower assets for the purpose of converting the same to neutral infrastructure to be used for co-location by other MNOs, thereby encouraging competition in the downstream market of telecommunications services, is a significant step in the right direction.

ACCORDINGLY, the Commission resolves to **CLEAR** the acquisition by Frontier Tower Associates Philippines, Inc. of the subject tower assets of SMART Communications, Inc. and Digitel Mobile Philippines, Inc.

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[14] *Id.*, Sec. 11.
[15] DICT, Registered Independent Tower Companies as of 15 August 2022, *available at* https://commontower.gov.ph/registered-itc/ (last accessed on 12 June 2023).
[16] MAO's Interview with Notifying Parties.

This Decision is rendered solely based on the facts disclosed, circumstances of the proposed Transaction known to the Commission during the review period, and documents submitted by Frontier and PLDT.

SO ORDERED.

26 June 2023.

[redacted]

MICHAEL G. AGUINALDO
Chairperson

[redacted]

MARAH VICTORIA S. QUEROL
Commissioner

[redacted]

MICHAEL B. PELOTON
Commissioner

[redacted]

LOLIBETH RAMIT-MEDRANO
Commissioner

[redacted]

FERDINAND M. NEGRE
Commissioner

Copies Furnished:

Frontier Tower Associates Philippines, Inc.
3F Unit E Active Fun Bldg., 9th Ave. cor.
28th St. BGC, Brgy. Fort Bonifacio
Taguig City 1635
Philippines
[redacted]

Sycip Salazar Hernandez & Gatmaitan Law
Counsel for Frontier Tower Associates Philippines, Inc.
4th Floor SyCipLaw Center
105 Paseo De Roxas
Makati City 1226
[redacted]

PLDT Inc.
Ultimate Parent Entity of Smart Communications, Inc. and Digitel Mobile Philippines, Inc.
Ramon Cojuangco Building
Makati Avenue, Makati City
[redacted]

Picazo Buyco Tan Fider & Santos Law Office
Counsel for PLDT Inc.
Penthouse, Liberty Center-Picazo Law
104 H.V. Dela Costa Street
Salcedo Village, Makati City
[redacted]

Mergers and Acquisitions Office
25th Floor, Vertis North Corporate Center 1
North Avenue, Quezon City
mergers@phcc.gov.ph