

**COMPETITION ENFORCEMENT
OFFICE OF THE PHILIPPINE
COMPETITION COMMISSION,**

Complainant,

- versus -

**GREENFIELD DEVELOPMENT
CORPORATION AND LEOPARD
CONNECTIVITY BUSINESS
SOLUTIONS, INC.,**

Respondents.

X-----X

PCC Case No. E-2020-003

For: Violation of Section 15 (b) and
15 (i) of R.A. No. 10667

COMMISSION DECISION NO. 03-E-003/2022

THE CASE

This case involves an alleged violation of Section 15 (b)¹ and Section 15 (i)² of the Philippine Competition Act ("PCA") for abuse of dominant position that substantially prevents, restricts, or lessens competition by preventing the entry of another internet service provider ("ISP") to supply fixed-line internet to the residential units of a condominium development in Mandaluyong City.

FACTS

On 29 December 2020, the Competition Enforcement Office (the "CEO") filed a *Statement of Objections* ("SO") against Respondents Greenfield Development Corporation ("Greenfield") and Leopard Connectivity Business Solutions, Inc. ("Leopard"). In the SO, the CEO alleged the following:

"Greenfield", a duly incorporated diversified real estate company, developed Twin Oaks Place ("TOP"), a vertical residential development in the Greenfield District in Mandaluyong City. The TOP is outfitted with Fiber-to-the-Home ("FTTH") technology, allowing for a smart, automated, and future-ready home.³ TOP consists of the TOP West Tower ("TOP 1") and TOP East Tower ("TOP 2").

¹ (b) Imposing barriers to entry or committing acts that prevent competitors from growing within the market in an anti-competitive manner except those that develop in the market as a result of or arising from a superior product or process, business acumen, or legal rights or laws

² (i) Limiting production, markets or technical development to the prejudice of consumers, provided that limitations that develop in the market as a result of or due to a superior product or process, business acumen or legal rights or laws shall not be a violation of this Act

³ Statement of Objections, ¶ 9 and Verified Answer ¶ 47 (a).



Under the Master Deed and Declaration of Restrictions of TOP, Greenfield has control over the installation, management and use of the Twin Oaks Place Fiber Network ("TOPFN"),⁴ the fiber optic backbone and lateral cable system of TOP.⁵

Leopard, on the other hand, is a duly incorporated domestic corporation formed to manage the TOPFN, and provide internet service in all Greenfield properties including TOP.⁶ Leopard is listed as one of Greenfield's subsidiaries wherein the latter holds 100% economic interest.⁷

On 2 January 2014, a grant of usufruct for a period of fifty (50) years over the components constituting the TOPFN infrastructure was executed between Respondents. Under the usufruct, Leopard will use the TOPFN infrastructure to provide Value-Added Services ("VAS") and Voice-Over Internet Protocol services to Greenfield developed properties in the Greenfield District.⁸ To fulfill the usufruct, Leopard applied for and was granted by the National Telecommunications Commission ("NTC") on 9 December 2015 a five (5) year Certificate of Registration allowing Leopard to, among others, offer internet access in Greenfield properties.⁹

In 2017, Greenfield engaged Globe Telecom Inc. ("Globe") to provide indoor base stations or pico cell infrastructure for wireless internet facilities in the TOP. While Globe was contracted only to provide wireless facilities, Globe offered a fixed-line internet service to Greenfield in the TOP. Greenfield allegedly refused Globe's offer notwithstanding Globe's viability and readiness to provide fixed-line internet as Leopard already provides fixed broadband service in the TOP.¹⁰

The CEO further alleged that it received complaints and statements from four unit-owners of TOP regarding Leopard's services. From these statements, the CEO argued that numerous residents have complained of Leopard's expensive rates for a small bandwidth, slow internet speed, and unreliable connection that has negatively impacted their work.¹¹

The CEO thus, concluded that Greenfield's denial of the services of Globe constituted a barrier to the entry of a competitor and limited the market of broadband internet service to a sole provider – Leopard; and as a result, the consumers suffered from lack of choice and were exploited on higher prices for poorer quality of service.

In their Verified Answer, Respondents questioned the evidence presented by the CEO. They argued that the CEO's evidence on the alleged offer and subsequent denial was vague, uncertain, and based on patches of recollection of the interviewees - some of which were even hearsay.¹²

Respondents maintained that no violation of competition law has occurred and offered affirmative defenses to justify the absence of other ISPs in TOP. According to

⁴ Statement of Objections, Annex "C," ¶ 3.5.

⁵ Statement of Objections, Annex "C," ¶ 1.1.

⁶ Statement of Objections, ¶ 13 and Verified Answer ¶ 47 (j).

⁷ Statement of Objections, ¶ 12 and Verified Answer, ¶ 6.

⁸ Statement of Objections, Annex "E," ¶ 4.a.

⁹ Statement of Objections, Annex "F."

¹⁰ Statement of Objections, ¶¶ 60 and 75.1.

¹¹ Statement of Objections, ¶ 85; Annexes "N," "O," "P" and "Q."

¹² Verified Answer, ¶¶ 54-55.

Respondents, Greenfield launched the TOP project in 2009 with the aim of being the first with fiber-to-home facilities in the Philippines, starting with TOP 1.¹³ At the time, none of the local ISPs provided for this kind of service.¹⁴

Greenfield installed an IP Multilayering Architecture using multimode fiber ("multi-mode system") which turned out to be incompatible with the Gigabit Passive Optical Network technology ("single-mode system") used by local ISPs.¹⁵ This incompatibility would necessarily result in additional and substantial costs to the local ISPs if they were to provide fixed-line internet to TOP 1 residents.¹⁶ Thus, Greenfield changed its infrastructure for TOP 2 and all its other developments, installing a single-mode system compatible with local ISPs.¹⁷

Greenfield then established Leopard, its own ISP, to immediately provide internet services to its residents.¹⁸ This was allegedly necessary, according to Greenfield since other ISPs refused to enter the market due to the different technology used.¹⁹ Greenfield had to install its own fiber infrastructure because it needed to make sure that unit owners immediately had access to fiber internet connection and waiting for local ISPs to come in would take a while due to the substantial cost needed.²⁰ Respondents clarified that it was just too expensive for any other ISP to enter TOP after the turnover of the project, especially when in 2017, TOP had a low occupancy rate.²¹

Greenfield likewise claimed that it began discussions as early as 2013 with other ISPs including PLDT, SkyCable and Globe for possible entry into TOP.²²

Respondents questioned the CEO's allegation that Globe's offer was at no cost to Respondents, arguing that when it previously asked Globe through an email in 2019 if Globe could install internet in Zitan and Greenfield Tower, Globe's response was that the costs of putting up the required equipment is the responsibility of Greenfield.²³

Furthermore, Respondents countered the CEO's allegations that numerous residents complained of Leopard's services stating that such complaints were not numerous with one of the named unit owners even expressing its satisfaction with the service provided by Leopard.²⁴

In its Reply, the CEO refuted Respondents' argument that the claim of denial from Globe's representatives was merely hearsay, stating that the denial was based on first-hand knowledge and unequivocal testimony from an employee of Globe who personally handled the negotiations of fixed-line internet in TOP.²⁵ Further, the CEO

¹³ Verified Answer, ¶ 47 (a).

¹⁴ Verified Answer, ¶ 47 (a) and (b).

¹⁵ Verified Answer, ¶¶ 47 (e) and (f); Annex "1," p.26-27, Exhibit "4."

¹⁶ Verified Answer, ¶ 47 (g).

¹⁷ Verified Answer, ¶ 47 (i).

¹⁸ Verified Answer, ¶ 47 (j).

¹⁹ Verified Answer, Annex H, p.18, 22-23.

²⁰ Verified Answer, Annex G, pp. 27-28, 30.

²¹ Verified Answer, ¶ 48.

²² Verified Answer, ¶ 49. Greenfield failed to attach in its Verified Answer, Annex 2 purporting to be a Judicial Affidavit dated 12 March 2021 of a Mr. Joseph Vincoy used to support this claim.

²³ Verified Answer, Annex "1" ¶ 33, Exhibit "5."

²⁴ Verified Answer, ¶ 40.

²⁵ Reply [Re: Verified Answer dated 12 March 2021], ¶ 25.

argued that Respondents' statements on supposed discussions with other ISPs for the installation of fixed-line internet since December 2013 are irrelevant as Leopard became the sole and incumbent ISP in TOP on 9 December 2015 when it was granted a Certificate of Registration for VAS by the NTC. Thus, according to the CEO, any discussions prior to such period warrant no consideration.²⁶

On 12 May 2021, Respondents filed a Manifestation dated 11 May 2021 attaching a copy of proposals from other ISPs to prove that Greenfield has actively been seeking out ISPs to offer broadband services to TOP residents.²⁷ Most required the condominium corporation or Greenfield to install, at its own expense, the fiber distribution box and the horizontal cable going to each unit.²⁸ Respondents emphasized Globe's proposal which allegedly contradicts its own representatives' statements as it showed that it requires Greenfield or the condominium corporation to install, at its own expense, the fiber distribution box and the horizontal cable to each unit.²⁹

With the submission of the Statement of Objections, Verified Answer and Reply, the case was submitted for decision.

ISSUE

The case at bar revolves on the proper determination of what constitutes a violation of Section 15 (b) - imposition of barriers to entry or preventing competitors from growing into the market.

In determining whether there was such an infraction the following facts must be established:

- 1) Whether Globe tried to enter the market and provide fixed-line internet service to residents of TOP;
- 2) Whether Respondents prevented entry of Globe or committed any acts the prevent Globe from growing in the market.

DISCUSSION

Without needing to enter into a lengthy discussion on the substantive elements of the case, the Commission finds that there is no substantial evidence to show that there were concrete acts on the part of Globe to enter the market.

Alleged refusal to allow other ISPs to enter the market for fixed-line internet in TOP as a

²⁶ Reply [Re: Verified Answer dated 12 March 2021], ¶ 28.

²⁷ Manifestation, ¶ 1.

²⁸ Manifestation, ¶ 2.

²⁹ Manifestation, ¶ 4.

***barrier to entry or acts that
prevent growth in the market***

To constitute a violation of Section 15 (b) of the PCA, the following elements must concur:

- 1) One or more entities are dominant in the relevant market;
- 2) Said entity or entities abuse their dominant position by imposing barriers to entry or committing acts that prevent their competitors from growing within the market in an anticompetitive manner and such barrier or act would substantially, prevent, restrict or lessen competition;
- 3) The barrier is not a result of nor arises from a superior product or process, business acumen, or legal rights or laws.

Generally, a barrier to entry is any conduct or factor that constitutes a hurdle for potential competitors to enter the market. While this term has eluded precise definition and has taken on several versions, it has been commonly characterized as high sunk costs, poor access to key inputs and distribution outlets, regulation, economies of scale, network effects, and other exclusionary behavior³⁰.

In this case, the CEO primarily alleged that Respondents had violated Section 15 (b) of the PCA by refusing Globe to enter TOP despite its alleged readiness and willingness to provide fixed-line internet to the residential units in TOP.

Before any full determination of the case can be made, it must first be clearly established that all the elements of the violation are present. In the case at bar, there was a failure to establish the existence of the second element – that Respondents had abused their dominant position by refusing Globe's offer to enter and provide fixed-line internet services to TOP.

Lack of substantial evidence

In administrative cases, the burden of proof required is only substantial evidence or that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion.

The standard of substantial evidence is satisfied when there is reasonable ground to believe that respondent is responsible for the misconduct complained of, even if such evidence might not be overwhelming or even preponderant. Moreover, the fundamental rule in administrative proceedings is that the complainant has the burden of proving the allegations in his complaint.³¹

In evaluating the evidence presented by the CEO to support its allegations, the Commission is guided by the legal precept that the complainant must rely on the strength of its evidence and not the weakness of the defense³².

Evidently, the CEO's allegations relied solely on the interviews with Globe's representatives, statements by four (4) TOP unit owners and comparative tables on price and speed of internet services offered by ISPs.

³⁰ Whish, R., & Bailey, D. (2021). *Competition law*. Oxford University Press.

³¹ Cabadonga v. Ortiz-Liquido, OCA IPI No. 17-2946-MT (Notice), (3 November 2020)

³² Cahilog v. Andresan, A.C. No. 10649 (Notice), 5 March 2018; Spouses De Guzman, Jr. v. Court of Appeals, G.R. No. 185757, 2 March 2016.

The interviews used by the CEO as their primary evidence are not under oath, unclear, contradictory, and based on secondhand information. A perusal of the transcript of the interviews also show that they involved conversations by Globe employees with supposed staff or employees of Respondent Greenfield. The identities of the persons referred in the interviews and their capacity to bind Respondent Greenfield were not established by CEO.

The statement by a Globe employee as to the alleged refusal³³ seems to be based on an online conversation wherein she was informed by another employee of the refusal³⁴. The electronic message was sent on 14 August 2020 and mentioned the PCC. The conversation therefore appears to have been prompted by a query from the PCC in response to a possible complaint, years after the alleged refusal occurred, and not as a result of informing one's superior of a meeting that just took place.

The CEO relied heavily on the interview attached as Annex "M" to support its allegation of a denial. An examination of the transcript of the interview would show the Globe business development manager for TOP 2 could not recall the important circumstances surrounding the supposed denial or provide clear details as their supposed offer to provide fixed-line broadband service in TOP.³⁵

None of the interviewees from Globe were present during the negotiations for TOP 1.³⁶ During the interview, the Globe representatives stated that it was a former employee who negotiated the entry of picocells into TOP 1 – the entry of fixed-line service was also discussed.³⁷

Atty. Sana:	The former business development manager, xxx? xxx.
Globe employee:	Yes.
Atty. Sana:	What's her full name, xxx, if you don't mind us asking. I just – I Mean, for the record lang po.
Globe employee:	xxx.
Atty. Sana:	xxx?
Globe employee:	xxx. xxx.
Atty. Sana:	Okay, xxx. Okay, siges po. And then, when xxx was negotiating the entry of the picocells, the fix line wires-entry of fixed-line service was also discussed and it was specifically declined. Correct?
Globe employee:	Yes.

The CEO argued that Greenfield refused entry despite Globe's ability and willingness to do so at no cost to Greenfield.³⁸ It again cited the interviews with Globe's representatives.³⁹ However, the statement that it would be easy for Globe to enter is

³³ Statement of Objections, Annex "M".

³⁴ Statement of Objections, Annex "L".

³⁵ Statement of Objections, Annex "M".

³⁶ Statement of Objections, Annex "M".

³⁷ Statement of Objections, Annex "K," pp. 14-15

³⁸ Statement of Objections, ¶¶ 59, 60, 75 and 75.1.

³⁹ Statement of Objections, Annex "K," pp. 50-51 and Annex "M," p. 32.

heavily grounded on the presumption that there are no issues as to the technical configurations installed in the building.

Atty. Santos: Okay. Just a hypothetical. It's a bit hypothetical question, Ma'am, for instance Twin Oaks Place or Greenfield now says "Okay, Globe. There are no obstacles to you coming in, you can come in if you want, would Globe be willing to come in and install facilities that no costs or at minimal cost to Greenfield? For example, they say "We're not imposing any restrictions now." If they say that?

Ms. Dumlao: Yeah.

Ms. Ora: Yes

[crosstalk 00:55:51-00:55:52]

Ms. Ora: Yes, it should be easy for us to provide our broadband facilities because #1, we already have an existing room that houses our equipment for our picocells. #2, we already have fiber terminated into the building.

Ms. Dumlao: Yeah, that was the—

Ms. Ora: Because—

Ms. Dumlao: The transmission.

Ms. Ora: Diba? That's the transmission so it's already there.

Ms. Dumlao: Yup.

Ms. Ora: So, I think it's really just putting in our broadband equipment, and also, terminating it to their MDF.

Ms. Dumlao: Yes.

Ms. Ora: Assuming there is available conduct from our telco room to their common MDF.

Ms. Dumalo: Yeah.

Ms. Ora: Barring any ocular that needs to happen.

Ms. Dumalo: Yeah, yeah.

Ms. Ora: Oo.

Ms. Ora: Kasi we need to still check—okay! What's the the end-user with no degradation of services?

Ms. Dumlao: Yes.

Ms. Ora: We need to make sure that the speeds that we offer can be ably supported by the facilities both provided by Twin Oaks and Globe.

Atty. Santos: Okay. So, just to confirm, entry will be very easy for Globe and no costs will be imposed on Greenfield.

Ms. Ora: Oo. Barring any technical ano, sir, ha?

Ms. Dumlao: Technical—

Atty. Sana: Configuration.

Ms. Dumlao: Yes po.

Ms. Ora: Oo.
Atty. Santos: Okay.

Thus, the statement that installation is at no cost to Greenfield is a mere presumption and largely depends on whether the equipment available in TOP is compatible with Globe's technology. This was also the presumption in the interview with the Globe representative who handled TOP 2 negotiations.

Atty. Santos: Just for the record. Were you able to determine what would be needed for Globe fixed line service?

Ms. Joaquin: Hmm, yes. Actually, it's the standard for all of the buildings for residential development...the [unclear 36:21]
xxx

Atty. Santos: Okay. So, what costs would have to be incurred by Twin Oaks Place for these items? How—could—would this be a large amount? Or—

Ms. Joaquin: Ahm, it's standard. It's already part of the build of the building. You cannot make a building without any telco room provision. Yeah. Or else, there won't be any telco facilities in the—in the building. So, it's similar to—like, provisioning for power or water. It has to have a place in a building for the service utility providers to come in and provide their service.

Atty. Santos: So—so, there are no special costs that would have to—

Ms. Joaquin: And as mentioned before, Globe provides these facilities at no charge.

Atty. Santos: Okay.⁴⁰

This presumption is not well-founded. Respondents argued that the lack of other ISPs providing fixed-line internet in the buildings was due to the difference in the system installed in TOP 1. In support of this statement, Mr. Donn Canon, Assistant Vice President of Leopard stated, under oath, that they asked PLDT to come in when a unit owner wanted to avail of fixed-line internet service from PLDT. However, PLDT allegedly stated that it could come in if Respondents changed their entire infrastructure.

Atty. Sana: Ano po 'yung lumabas ng 2016?

Mr. Canon: Well, sinasabi nil ana 'yun nga, we need to change. Kasi way back 2016, there's this unit owner who wants PLDT. So, sabi ko, "Okay". I asked PLDT, "PLDT, can you serve your ano... Your prospective client or prospective subscriber here if you want." Sabi nila, "Well, if you change your whole infrastructure, then we can." So, sabi ko, "Why not put up your own infrastructure again? Sabi niya, "Well..." Ayaw nilang sabihin na kami ang magpu-put up. 80% of the cost will be coming from Greenfield and 20% will be just shouldered by PLDT.

⁴⁰ Statement of Objections, Annex "M", pp. 31-32.

Respondents likewise attached an email thread between Mr. Canon and a PLDT representative from 20 to 21 January 2016 discussing the possible installation of internet lines in TOP 1. In the email, PLDT listed conditions necessary for it to provide fixed-line internet in TOP 1.⁴¹

Even the sworn statement from a unit owner wherein he was asked if he tried to apply with any other fixed-line internet service provider, demonstrated the lack of other ISPs in TOP as a direct result of the difference in infrastructure installed and that used by other ISPs.

12. QUESTION: Have you tried to apply with another fixed-line internet service providers? If yes, indicate which providers and why? If no, why not?

ANSWER: Yes, had attempted some inquiries with PLDT Fiber Packages but feedback provided was that PLDT does not have available facilities within the Twin Oaks Place buildings at consumer level unless they will setup their own system or lease the existing Fiber Optic Infrastructure managed by Leopard Connectivity Business Solutions, Inc., but it will be too expensive at their end.⁴²

Notably, the Globe representatives interviewed by the CEO also made representations to the effect that there are instances when the developer shoulders the cost of certain infrastructures, one of which is when there is a difference in the system installed.

Atty. Sana: In the case, Ms. Ora, Ms. Dumlao, in the case that certain configurations would be made or the differences in the multi-mode and single mode. Who would shoulder the cost? To convert the facilities to accommodate the single mode set up of Globe? Would it be Globe or should it be the developer?

Ms. Ora: If it is a backbone provided by them, sila 'yun, Bing, no? Kasi kanila 'yun, diba?

Ms. Dumlao: Oo, inside wire. Ano nila kasi 'to, inside wiring ng building.

Atty. Sana Okay.⁴³

xxx

Atty. Santos: Was there any negotiations on who will provide the horizontal fiber lines or was the proposal outright declined without any further negotiations?

Ms. Joaquin: Ah, with the horizontal lines? It's actually standard for all service providers. It's the same set up with all building that the vertical fiber would be provided by service provider and the horizontal is with the building owner.

Atty. Santos: Ah...

Ms. Joaquin: Because this is already in place in the building. So, from the telco room, which is usually in the basement or ground floor, and then going up to all level rooms of each floor, and in the-

⁴¹ Verified Answer, Exhibit "1".

⁴² Statement of Objections, Annex "P".

⁴³ Statement of Objections, Annex "K", p. 28.

⁴⁵ Verified Answer, Exhibit "5".⁴⁶ Statement of Objections, Annex "K", p.18

the horizontal is the one distributed for units. So, this is provided by the building owner.

This undermined Globe's claim that their provision of fixed-line services will be at no cost. Furthermore, serious doubt was cast as to the willingness of Globe to enter in the first place considering that in an email sent by Ms. Joaquin of Globe to Mr. Donn Canon, they specifically requested that Respondents provide the horizontal cable trays for their Broadband facilities⁴⁴.

Lastly, the Commission observed inconsistencies in the assertions by Globe's representatives that the discussion on fixed-line allegedly did not progress because of the difference in the building's design. When asked if this means that Globe had the opportunity to inspect the facilities, Ms. Ora replied that she did not "think it got to that point" because Respondents no longer allowed them.

Atty. Sana: Ms. Dumlao, should we take this to mean that Globe had the opportunity to inspect the current facilities that's there in Twin Oaks Place?

Ms. Dumlao: Ahmm.

Atty. Sana: Was Globe able to do it?

Ms. Ora: I don't think it got to that point, sir, because at that moment, they were no longer allowing us to serve nga, diba, Bing?

Ms. Dumlao: Oo eh.

Ms. Ora: Hindi na natin-oo. Parang I think, it also table top the discussions based on what they showed us.⁴⁵

However, Globe's business development manager for TOP 2 stated that they were able to inspect Twin Oaks Place.

Atty. Santos: So, for the next question, were you able to inspect Twin Oaks Place?

Ms. Joaquin: Hmm! Yes.

Atty. Santos: So, you were able to – I-I think you already answered it but-

Ms. Joaquin: Hmm.

Atty. Santos: Just for the record. Were you able to determine what would be needed for Globe fixed line service?

Ms. Joaquin: Hmm, yes. Actually, it's the standard for all of the buildings for residential development...the [unclear 36:21]⁴⁶

Failure to overcome burden of proof

The lack of material evidence to support the CEO's allegation of abuse of dominance enjoins the Commission from finding any violation in this case. Despite this, the

⁴⁵ Statement of Objections, Annex "K", p.18

⁴⁶ Statement of Objections Annex "M", pp. 30-31.

Respondents and other entities engaged in a similar business are reminded of their continuing role in enhancing economic efficiency and promoting free and fair competition to ensure that customers get the best service available in the market.

The Commission is not blind to the length of time that has lapsed since the end of the construction of TOP. However, this case failed to satisfy the substantial evidence requirement to show that an anti-competitive conduct has transpired.

DISPOSITIVE PORTION

WHEREFORE, the *Statement of Objections* dated 29 December 2020 is hereby **DISMISSED**. No pronouncement as to costs.

SO ORDERED.

17 March 2022.



ARSENIO M. BALISACAN
Chairman

JOHANNES BENJAMIN R. BERNABE
Commissioner



EMERSON B. AQUENDE
Commissioner



MARAH VICTORIA S. QUEROL
Commissioner



MICHAEL B. PELOTON
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SEPARATE OPINION

AQUENDE, C.:

I find that the Competition Enforcement Office (“CEO”) failed to present substantial evidence that Greenfield Development Corporation (“Greenfield”) rejected the offer of Globe Telecom Inc. (“Globe”) to provide fixed line internet service to residents of the Twin Oaks Place (“TOP”) so as to result to a violation of Sections 15(b) and 15(i) of the Philippine Competition Act (“PCA”).

1. There Was No Substantial Evidence that Globe Submitted an Offer to Greenfield.

At the outset it bears emphasizing that the CEO did not present to the Philippine Competition Commission (“PCC”) any documentary evidence of the offer submitted by Globe to Greenfield to provide fixed line internet service to the residents of the TOP.

The evidence of the CEO consisted principally of the statements given by Globe’s employees and residents of the TOP in interviews by the CEO. These statements are notably not made under oath and, thus, must be evaluated carefully as to their evidentiary weight.

A careful review of these statements, however, does not yield any clear, direct and definitive pronouncement from any one of those interviewed that Globe had submitted a specific offer to Greenfield for fixed line internet. At best, the statements about the alleged offer of Globe to Greenfield were unclear and vague. In the transcript of interview¹ with Ms. Jacqueline Joaquin (“Ms. Joaquin”), member of Globe’s Enterprise Group, she did not answer the question whether Globe submitted a proposal, to wit:

Atty. Santos Ah, thank you... can you recall the part of the conversation discussion regarding the wiring of Globe for fixed line? Can you tell us how... how the denial came about? Was it-it was sent to you orally? Do you remember what his words were? Or when it happened? How it happened? Ms. Joaquin, you’re on mute.

Ms. Joaquin [unclear 9:50] when we meet with the property developer. We always present the facilities of Globe. So, our primary

¹ See Annex “M” of the Statement of Objections filed by the Competition Enforcement Office, 29 December 2020.

business actually for residential development is broadband internet, it's the primary [unclear 10:04] we provide. Actually, for the wireless, it's a common know that we provide wireless facilities, so, it's really broadband. So, when we come in, and then we would submit a-like for example, a proposal for a design, they will not approve. Okay? So, and then here is... we would have... I think these documents are also with the team of Ms. Mich Ora for the NDPs that was submitted to GDC... because when we come in, we would ask for a telco room in their development.

Atty Santos **So, as you were negotiating with Mr. Donn Canon, you submitted a proposal? Is that correct?**

Ms. Joaquin **Hmm.**

Atty Santos And, ah, for wiring? And then, this was denied?

Ms. Joaquin **Hmm, yes. Denied approval.**

(emphasis supplied)

2. There is Also No Substantial Evidence that Greenfield Denied the Offer of Globe.

The statements as to the alleged denial by Greenfield of the offer of Globe to provide fixed line internet service to TOP West Tower were clearly hearsay. As pointed out in the decision in this case, none of the Globe employees who were interviewed by the CEO were actually present when the denial was allegedly made. These interviewees were merely relating as to what a former co-employee had told them (see p. 6 of Decision).

Further, as to the TOP East Tower, Ms. Joaquin had a very vague recollection of the alleged denial so as to meet the requirement of substantial evidence. All she could remember was the denial but could hardly provide any details as to the verbal statements made by Donn Canon to communicate the denial, which is very important if only to know what exactly was being denied. Without the details of the conversation where the alleged verbal denial was made, it would be very difficult to rely on Ms. Joaquin's statements to conclude that Greenfield was preventing the entry of competition into the TOP, specially with her own admission of difficulty in recollecting, to wit:

Atty. Santos Okay. Would you remember exactly how the... how the denial – how the conversation took place? Did they tell you explicitly? What – what did Mr. Donn Canon tell you? Would you remember his words?

Ms. Joaquin **Ah, not exactly. That would be very difficult to remember all.**

(emphasis supplied)

The reliability of Ms. Joaquin's statement is further weakened by the fact that she was not under oath at the time she was interviewed.

Based on the foregoing, I join the Commission in dismissing the Statement of Objections for failure to prove the allegations by substantial evidence.

17 March 2022.



EMERSON B. AQUENDE
Commissioner