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COMPETITION ISSUES IN TELEVISION AND BROADCASTING

Contribution from the Philippines

-- Session II --

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COMPETITION ISSUES IN TELEVISION AND BROADCASTING

-- Philippines[*] --

1. The Philippine Television Broadcasting Industry: Background

1. Broadcasting in the Philippines has significantly changed in the last three decades. During the dictatorship of President Marcos during the '80s, media ownership was limited to a section of the elite that openly collaborated with the regime.[1] In the same period, television and radio ownership and content is controlled by the government. When the Marcos regime ended in 1986, competition not only among local networks, but with cable and satellite television technology as well, began to take off.[2]

2. To date, there are more than 200 television stations serving the Philippines and most are owned by the "Big Three" television networks in the country[3], namely, the Alto Broadcasting System-Chronicle Broadcasting Network (ABS-CBN); Global Media Arts Network, Inc. (GMA 7); and Associated Broadcasting Company (ABC Development Corporation/ABC 5). On the other hand, radio is dominated by seven large broadcasting groups, namely: Manila Broadcasting Company (MBC); ABS-CBN; Radyo Mindanao Network (RMN); BomboRadyo; Catholic Radio Network; GMA Network; and Philippine Broadcasting Service (PBS). Most of these radio broadcasting groups also have interests in television and they operate at least one national flagship radio station on FM and another on Medium Wave.[4]

3. The Philippines is currently using the American National Television System Committee (NTSC) standard for analog television. But plans for the transition to digital transmission have already been set in motion. On June 2010, the National Telecommunications Commission (NTC) officially announced that they shall be adopting the Digital Terrestrial Television (DTT) services that would utilize the Japanese Integrated System Digital Broadcasting Technology (ISDB-T) standard because of its capability to provide three (3) levels of categorized modulation (audio, video and data services) for the use of fixed, portable and handheld devices, without the necessity of installing any further supplementary facility. Japan's ISDB-T platform is expected to provide more business opportunities because the bandwidth that will be assigned for digital TV can also be used to service mobile phones. The technology is also capable of sending emergency warning broadcasts to households.[5]

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* This paper is based on information gathered from the National Telecommunications Commission, news articles, and rules and regulations issued relating to broadcasting. The views expressed in the paper is that of the writer and it does not reflect the views of the Department of Justice Office for Competition.

1 Coronel, Sheila S. "Media Ownership and Control in the Philippines", seen in http://archive.waccglobal.org/wacc/publications/media_development/archive/1998_4/media_ownership_and_control_in_the_philippines (last visited 1/31/2013)

2 *Ibid.*

3 Accessed through https://infoasaid.org/print/book/export/html/11368 (last visited 2/11/2013)

4 Accessed through http://infoasaid.org/guide/philippines/radio-overview (last visited 2/11/2013)

5 http://www.abs-cbnnews.com/business/02/24/11/ntc-wants-digital-tv-service-launched-key-cities-2012

4. In line with the announcement to go digital, the NTC issued Memorandum Circular 02-06-2010[6] which provided for the standard for DTT broadcast service. The same circular also provided for the creation of a technical working group (TWG) that will draft the implementing rules and regulations (IRR) as well as plan for the frequency for the implementation of the DTT service.

5. The transition from analog to digital technology is necessary in order to keep up with the developments in technology. DTT would ensure the competitiveness of the broadcast industry and at the same time, enable them to provide enhanced services to the viewing public.[7] To date, broadcasting networks have already started their transition to digital broadcasting.

2. Legal Framework

6. The Philippines does not have a single comprehensive anti-trust law. On the contrary, the country has several different laws and statutes that, in whole or in part, deal with matters involving competition across varying industries and sectors. Nonetheless, here are some of the laws that cover the broadcasting industry:

1. The 1987 Constitution provides that ownership and management of mass media is limited to citizens of the Philippines or to corporations, cooperatives or associations wholly-owned by Filipinos.The Constitution further provides that Congress shall regulate or prohibit monopolies in commercial mass media when the public interest so requires and that combinations in restraint of trade or unfair competition shall not be allowed.

2. Commonwealth Act. No. 146 (November 7, 1936) otherwise known as, *"The Public Service Law",* while an old law, is the governing law that regulates all entities engaged in the servicing of public utilities, providing also for the rules in the regulation and supervision of the property rights, equipment, facilities and franchises of these public utility companies.

3. Republic Act No. 3846, as amended (November 11, 1963) *"An Act Providing for the Regulation of Public and Radio Communications in the Philippines and for Other Purposes"* has made it mandatory for any person or entity to first secure a legislative franchise from the Philippine Congress prior to engaging in the construction, installation, establishment, or operation of a radio transmitting station, or a radio receiving station used for commercial purposes, or a radio broadcasting station.[8]

4. Executive Order No. 546, series of 1979 (July 23, 1979) *"Creating a Ministry of Public Works and a Ministry of Transportation and Communications"),* created the National Telecommunications Commission and expressly granted it with the power, among others, to: issue Certificate of Public Convenience for the operation of communications utilities and services, radio communications systems, wire or wireless telephone or telegraph systems, radio and television broadcasting system and other similar public utilities; establish, prescribe and regulate areas of operation of particular operators of public service communications; and grant permits for the use of radio frequencies for wireless telephone and telegraph systems and radio communication systems including amateur radio stations and radio and television broadcasting systems.

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6 "Standard for Digital Terrestrial Television (DTT) Broadcast Service", June 11, 2010.

7 M.C. 02-06-2010.

8 Section 1, R.A. 3846, as amended.

5. Executive Order No. 205, series 1987 (June 30, 1987), entitled *"Regulating the Operation of Cable Antenna Television (CaTV) Systems in the Philippines, and for Other Purposes",* provides that the operation of CaTV system in the Philippines shall be open to all citizens of the Philippines, or to corporations, cooperatives or associations wholly-owned and managed by such citizens.[9] The operation of CaTV is granted on a non-exclusive basis and for a period not to exceed fifteen (15) years.

6. Executive Order No. 45, series 2011 (June 9, 2011) entitled, *"Designating the Department of Justice as the Competition Authority".*Through this E.O., the Office of Competition was created under the Department of Justice with the mandate to, among others, enforce competition laws and investigate all cases involving violations of competition laws and prosecute violators to prevent, restrain and punish monopolization, cartels and combinations in restraint of trade.

3. Regulatory Bodies

7. There are several regulatory bodies with respect to the whole broadcasting industry in the Philippines, particularly: the Office for Competition (OFC), the National Telecommunications Commission (NTC), the Movie and Television Review and Classification Board (MTRCB), and the Kapisanan ng mga Broadkasters sa Pilipinas (Association of Broadcasters in the Philippines).

8. As the competition authority in the country, the OFC is working closely with the sector regulator to ensure that competition-related laws will be fully implemented. It also has the mandate to conduct investigations if there are reports of violations of competition-related laws in order to protect consumers from abusive, fraudulent or harmful business practices.

9. The NTC, an attached agency of the Office of the President,[10] is the regulatory and supervising body over radio, television broadcast stations, cable television (CaTV) and pay television. It is worthwhile to note that the NTC's powers are limited only to the allocation of radio and TV frequencies and do not extend to supervision over the content. The Movie and Television Review and Classification Board (MTRCB) is the government agency that has the mandate to see to ensure quality movies and television programs, and its main purpose is to encourage production of globally competitive movies/exhibitions.

10. Another entity, albeit private, that acts as the regulatory body over radio is the Kapisanan ng mga Broadkaster sa Pilipinas (Association of Broadcasters in the Philippines). It is composed of the owners and/or operators of a majority of the radio and television stations in the country. It has its own set of rules and guidelines for news, public affairs and commentaries, political broadcasts, children's shows, religious programming, and including advertising to be followed by and observed by its members.[11]

4. Procedure

11. Before one can engage as a TV, radio, cable or CaTV operator, an application for a certificate of public convenience or any form of authority is needed. It shall be commenced by the filing of the corresponding application and the payment of the required fees[12] before the Legal Department of the NTC.

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9 Section 1, Executive Order No. 205, series of 1987.

10 Executive Order No. 47,series 2011, "Reorganizing, Renaming and Transferring the Commission on Information and Communications Technology and its Attached Agencies to the Department of Science and Technology, Directing the Implementation Thereof and for Other Purposes."

11 http://www.kbp.org.ph/about-kbp

12 NTC Revised Rules of practice and Procedure (2006)

The NTC requires the applicant to prove its legal personality, financial capability to put up the project, financial feasibility of the project, economic viability of the service, and technical feasibility of the project. The application will be published in a newspaper of general circulation to give notice to interested persons. The application can be opposed on any of the following grounds: (1) overlapping in the area of service; (2) an existing franchise will be adversely affected by the application; or (3) the project as presented by the applicant is not financially feasible.

12. For broadcast and cable television services, the general rule is that only one company is entitled to operate as such in every municipality or city. As an exception to the said rule, a city or municipality with a big number of financially-capable residents may be allowed to have two (2) service providers within their area. The basis of the NTC in providing for this one-operator-one city/municipality rule was to prevent "overbuilding". As explained by the NTC, "overbuilding" occurs when there are two (2) or more cable television providers in one localized area that results in a costly price war and excessive attrition rate as subscribers transfer from one provider to another.

5. Challenges in the Regulation of the Broadcasting Industry in the Context of Competition

13. As stated above, the Public Service Act that regulates the broadcasting industry was enacted in 1936. Being an old law, it has several limitations insofar as effectively regulating the industry in this digital age. In addition, the amount of penalties, fines and sanctions provided under the said law are considered insignificant in this era, thereby limiting its effectiveness in mandating compliance with the provisions provided in the said law. Worse, the said law even failed to provide the regulatory body with comprehensive police and contempt powers, which severely limits its authority in the industry that it seeks to regulate.

14. Right now, there are three (3) major broadcasting networks in the country namely: ABS-CBN; GMA 7; and ABC 5. These are the biggest networks in terms of facilities, income and ratings. They have the resources to compete with each other in terms of home-grown talents and the kinds of shows that they produce. Competition among these three networks has become stiff, with one network trying to out-do what the other network does. Needless to say, the smaller networks are having a hard time catching up as they do not have their own pool of talents or resources to purchase rights to international shows thereby resulting to a very limited market for them. Some of the smaller networks have no other choice but to air religious documentaries, educational shows or re-runs of old movies.

15. Consolidations among existing companies across various industries seem to be the trend nowadays in an effort to look for new revenues insofar as the big businesses are concerned. For instance, the Philippine Long Distance Telephone (PLDT) Co. is eyeing to offer digital mobile broadcast TV, which is a combination of TV and mobile phone service. It has been reported that PLDT, through subsidiaries such as Smart Communications, Inc. is looking at offering various media content such as sports, breaking news, and other entertainment events.[13]

6. Conclusion

16. The broadcasting industry in the Philippines is trying to keep up with the demands of the time. Technology plays an important role in the evolution of services to the public. It also enables the consumers to have a wider range of services to choose from. However, keeping up with developments would mean more capitalization requirements– both in terms of financial capacity as well infrastructure requirements - which could prove to be a big hindrance for those who would want to enter the television and broadcasting industry. In the context of competition, it may be argued that the citizenship limitation in the operation of a

[13] www.telecomasia.net/content/philippines-pay-tv-sector-consolidation-mode (last accessed 2/13/2013)

media company in the Philippines contributes to the inability of the broadcasting industry to truly grow. In fact, it can be said that the broadcasting industry is controlled by a few Filipino families -- who have the money and capital to make the broadcasting industry their personal playground.

17. There is also a need to revisit the existing laws, rules, and regulations and give the regulatory body more effective powers insofar as enforcing and implementing competition policy and law in the broadcasting sector.

18. It is imperative that the government take a hard look in the existing broadcasting industry. As consumers, Filipinos are entitled to the best services from the broadcasting companies that the present technology has to offer. In addition, Filipinos must have access to better, reliable, and unbiased information, news, and content, on the basis of the right to information by the people on matters of public concern as enshrined in the Philippine Constitution, which can only be achieved if more players can penetrate the broadcasting business.