



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PHILIPPINE LONG DISTANCE
TELEPHONE COMPANY,
Petitioner,

G.R. No. 163037

Present:

- versus -

SERENO, *CJ.*,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, *JJ.*

EASTERN TELECOMMUNICATIONS
PHILIPPINES, INC.,
Respondent.

Promulgated:

FEB 06 2013

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D E C I S I O N

LEONARDO-DE CASTRO, J.:

This Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court seeks the reversal of the Amended Decision² dated November 19, 2003 and the Resolution³ dated March 30, 2004 of the Court of Appeals in CA-G.R. SP No. 71103. In the assailed Amended Decision, the appellate court set aside its earlier Decision⁴ dated December 26, 2002; while in the assailed Resolution, the appellate court denied the Motion for Reconsideration⁵ filed by petitioner Philippine Long Distance Telephone Company (PLDT) on the Amended Decision.

The factual and procedural antecedents of the case are as follows:

¹ Rollo (Vol. I), pp. 12-83.

² Id. at 86-93; penned by Associate Justice Eubulo G. Verzola with Associate Justices Ruben T. Reyes and Amelita G. Tolentino, concurring.

³ Id. at 96-98.

⁴ Id. at 1000-1017; penned by Associate Justice Candido V. Rivera with Associate Justices Eubulo G. Verzola and Amelita G. Tolentino, concurring.

⁵ Id. at 1048-1094.

On February 9, 1990, Judge Zeus Abrogar of the Regional Trial Court (RTC) of Makati City, Branch 150, rendered a Decision⁶ in **Civil Case No. 17694**, approving the **Compromise Agreement** dated February 7, 1990 submitted by PLDT and respondent Eastern Telecommunications Philippines, Inc. (ETPI). The relevant portions of the Decision read:

DECISION

Acting on the Compromise Agreement submitted by the parties, assisted by their respective counsels, dated February 7, 1990, which is hereunder quoted as follows:

“COMPROMISE AGREEMENT

x x x x

1. In lieu of the revenue sharing provisions in the letter-agreement dated September 29, 1978, the parties hereby agree that the Philippine share of all revenues derived from the incoming and outgoing international public telephone traffic of PLDT using the facilities of ETPI between Singapore-Philippines, Taiwan-Philippines, and Hongkong-Philippines traffic streams, shall be divided as follows:

	PLDT SHARE	ETPI SHARE
January 1, 1987 – To date of this Agreement	42%	58%
Agreement date to December 31, 1990	46%	54%
January 1, 1991 – December 31, 1991	47%	53%
January 1, 1992 – December 31, 1992	48%	52%
January 1, 1993 until termination	60%	40%

PLDT shall be responsible for uncollectible revenue billed by it and for any commissions paid to hotels or other similar establishments for originating messages therefrom and any commission paid on messages originating at public telephones covered by the Agreement. It is understood and agreed that report charges for incomplected calls shall belong to PLDT alone.

2. The Philippine share of revenue available for division between the two parties in terms of Philippine currency under paragraph 1 above will be determined in the following manner:

- (a) On originating calls the total amounts due to be paid to the foreign administration in terms of U.S. dollars based on established accounting rates will be determined at the end of each month. This amount will be converted at the current rate of exchange prevailing at the end of each month which will then be deducted from the

⁶ *Rollo* (Vol. II), pp. 1161-1167.

total amount of Philippine charges on originating calls for the month involved. The balance of the charges collected will then be divided in accordance with paragraph 1 above.

(b) On incoming calls, the Philippine share of revenue in terms of U.S. dollars will be determined at the end of each month through correspondence with each foreign administration involved. This amount will then be converted to Philippine currency at the current rate of exchange prevailing at the end of said month and the total resulting revenue will also be available for division in accordance with paragraph 1 above.

3. PLDT agrees and guarantees to course all outgoing telephone traffic to Singapore and Taiwan through the PLDT and ETPI circuits and facilities connecting the Philippines-Singapore and the Philippines-Taiwan streams in the same proportion as the number of circuits provided separately by both PLDT and ETPI to each such country bears to the total number of circuits separately provided by PLDT and ETPI with Singapore-Telecoms for Singapore and ITA-Taiwan under their respective correspondentship agreements. Both parties agree to exert their best efforts to persuade Singapore-Telecoms of Singapore and ITA-Taiwan of Taiwan to course the incoming telephone traffic to the Philippines in the same proportion. Neither party shall undertake any action to frustrate this intent.

PLDT guarantees that all the outgoing telephone traffic to Hongkong destined to ETPI's correspondent therein, Cable & Wireless Hongkong Ltd., its successors and assigns, shall be coursed by PLDT through the ETPI provided circuits and facilities between the Philippines and Hongkong.

4. The parties hereto agree that the revenue sharing under this Agreement applies only to traffic passing [through] ETPI provided circuits originating or terminating in the Philippines, and to and from the telephone administrations in Hongkong (Cable & Wireless Hongkong Ltd., its successors and assigns), Singapore, (Singapore-Telecoms) and Taiwan (ITA-Taiwan) with which ETPI has and continues to maintain operating agreements involved in the public telephone service during the life of this agreement.

In the event ETPI obtains correspondentships with other telephone administrations, it may enter into separate agreements with PLDT.

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7. During the effectiv[ity] of this Agreement:

(a) The parties agree to adopt a common accounting rate for the existing as well as for all the additional circuits that may be activated after the date of this Agreement in their respective relationships with the foreign administrations with which both parties hereto have correspondentships.

(b) Transit traffic will be allowed the use of the facilities supplied by the parties to optimize the utilization of said facilities. The Philippine share or revenues derived from this traffic, using the circuits provided by ETPI, shall be divided between the parties in accordance with paragraph 1 hereinabove.

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11. Neither party shall use or threaten to use its gateway or any other facilities to subvert the purposes of this Agreement.

12. Upon (a) the approval of the respective Boards of ETPI and PLDT, and (b) the approval of this Honorable Court, this Agreement shall take effect and shall continue in effect until November 28, 2003, provided that a written notice of termination is given by one party to the other not later than November 28, 2001. In the absence of such written notice, this Agreement shall continue in effect beyond November 28, 2003 but may be terminated thereafter by either party by giving to the other a prior two year written notice of termination.

The parties agree that in the event ETPI commences to operate its own international gateway in the Philippines and PLDT is legally obligated to interconnect ETPI's gateway to PLDT's telecommunications system, this revenue sharing agreement shall be terminated effective upon ETPI and PLDT entering to an agreement on an access charge or other superseding agreement or PLDT being ordered by competent authority to interconnect upon ETPI's paying an access charge in an amount mandated by the proper government agency.

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15. In the event of breach, the parties may obtain judicial relief, including a writ of execution.

16. The parties hereto have secured the approval of the resolutions by their respective boards authorizing the signatories hereto to execute this Compromise Agreement and bind the respective companies thereto. The certificates of the respective Corporate Secretaries are attached hereto and made an integral part hereof."

and finding the foregoing Compromise Agreement to be not contrary to law, morals, good customs, public order and public policy, as prayed for, the Court APPROVES the same, and renders judgment ordering the parties thereto to comply with all the terms and conditions of said agreement.

IN VIEW THEREOF, this case is considered CLOSED. No pronouncement as to costs. (Emphases ours.)

Thereafter, on September 4, 1997 and December 24, 1998 ETPI filed, respectively, a Motion for Enforcement/Execution and an Urgent Motion, alleging, among others, that PLDT violated the terms of the above Compromise Agreement. For its part, PLDT filed its Opposition with Compulsory Counter-Motion, claiming that it was ETPI that breached their

Compromise Agreement by failing to pay the revenue shares of PLDT and by engaging in toll bypass activities.

Subsequently, PLDT and ETPI jointly moved for a suspension of the proceedings in order for them to explore the possibility of an amicable settlement of the case. The RTC agreed thereto.

Thereafter, on March 29, 1999, PLDT and ETPI arrived at a **Letter-Agreement**, the pertinent terms of which state:

March 29, 1999

Mr. Manuel V. Pangilinan
President and CEO
PHILIPPINE LONG DISTANCE TELEPHONE CO.
7th Flr., Ramon Cojuangco Building
Makati Avenue, Makati City

Dear Mr. Pangilinan:

We appreciate your decision to interconnect our International Gateway Facility (IGF) with your telecommunication systems with a view of providing more adequate and efficient telephone services to the public.

We confirm our agreement to sign PLDT's standard interconnection agreement(s) with a provisional ready for service (PRFS) date of May 1, 1999, as we further agree as follows:

- a) Notwithstanding our signing of the Interconnection Agreement(s), **we shall continue to negotiate within the shortest possible time for a mutually acceptable agreement which will amend our existing Compromise Agreement which was approved by the Court on February 9, 1990 in Civil Case No. 17694.**
- b) We shall continuously endeavor to improve the quality, capacity and efficiency of our interconnections.
- c) In the meantime, PLDT shall continue coursing outbound telephone calls as provided in paragraph 3 of the Compromise Agreement through the ETPI provided circuits. With respect to the issue regarding New World Telephone as embodied in our Urgent Motion dated December 24, 1998 in Civil Case No. 17694, ETPI agrees to withdraw said urgent motion provided PLDT limits traffic passing through its circuits with New World Telephone to calls from Hongkong to the Philippines.
- d) PLDT's claims involving alleged uncompensated bypass of PLDT's systems after June 30, 1998 shall be submitted to the National Telecommunications Commission for resolution. Until final resolution is rendered, PLDT's bypass compensation claims after June 30, 1998 shall be held in abeyance.

e) **Without prejudice to other claims of PLDT and ETPI against each other, which they endeavor to settle amicably or through arbitration,**

- ETPI and PLDT agree to submit ETPI's claims for underreporting of ETPI share of revenues under the Compromise Agreement (based on SGV Audit) to arbitration.
- ETPI agrees to pay PLDT the amount of PHP207,900,000 representing PLDT's share under the revenue sharing provisions of the Compromise Agreements as of June 30, 1998. Further, all subsequent settlements would be rendered regularly in accordance with the provisions of the Compromise Agreement.
- PLDT agrees to pay ETPI the amount of PHP67,500,000 representing settlement of ETPI's claim with respect to Philippines-Hongkong traffic shortfall and ETPI's alleged share of revenue generated from the activation of additional or growth circuits in the Philippine-Singapore traffic stream, both up to June 30, 1998.
- Without admitting any liability therefor, but merely in the spirit of cooperation to facilitate the execution of its Interconnection Agreements, ETPI agrees to pay PLDT the amount of PHP40,000,000 for alleged uncompensated network bypass of PLDT's system for the period ending June 30, 1998

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We likewise agree that to facilitate the resolution of our respective claims and the execution of a new agreement which shall supersede the Compromise Agreement, both PLDT and ETPI shall not take any action that will in any way violate the Compromise Agreement.

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Sincerely yours,

(Signed)
SALVADOR C. HIZON
President
Eastern Telecommunications Philippines, Inc.

CONFORME:

(Signed)
MANUEL V. PANGILINAN
President
Philippine Long Distance Telephone Company⁷ (Emphases ours.)

⁷

Rollo (Vol. I), pp. 187-189.

In light of the above agreement, PLDT and ETPI filed a Joint Omnibus Motion to Withdraw⁸ ETPI's aforestated Motion for Enforcement/Execution and Urgent Motion, as well as PLDT's Opposition with Compulsory Counter-Motion.

In an Order⁹ dated August 11, 1999, the RTC granted the Joint Omnibus Motion to withdraw "without prejudice to the submission to the Court of any arbitral award for enforcement."

In a series of letters¹⁰ dated June 5, 2000, January 4, 2001 and July 31, 2001, ETPI advised PLDT that the former agreed to the proposals of REACH Hong Kong to have the Total Accounting Rate (TAR)¹¹ for telephone service between the Philippines and Hong Kong reduced.

In a letter¹² dated August 27, 2001, PLDT made known to ETPI its objection to the reduction of accounting rates, stating that it was not consulted thereon. As such, PLDT advised ETPI that the latter should be accountable to the former for any financial impact resulting from the difference in the accounting rate arrangement between PLDT and ETPI and that of ETPI and REACH. PLDT also demanded that ETPI settle its arrears in the amount of ₱10,940,801.76 for the period of January 1999 to June 2000.

Subsequently, in a letter¹³ dated October 3, 2001, PLDT advised ETPI that it would be implementing a complete blocking of telephone service traffic from REACH Hong Kong carried on the ETPI-REACH circuits effective midnight of October 31, 2001 if the settlement rate arrangements for telephone service between Hong Kong and the Philippines were not resolved on or before said date. PLDT explained that the settlement rate arrangements between ETPI and REACH were causing substantial losses to PLDT and that there were no other recourse available but to completely block all incoming traffic from Hong Kong through the ETPI-REACH circuits.

In the month of October 2001, the parties held several meetings on the issues that needed to be settled but the same apparently did not resolve their differences.

On October 23, 2001, ETPI filed with the RTC an **Urgent Motion for Enforcement (With Prayer for *Status Quo* Order)**.¹⁴ ETPI alleged therein, among others, that due to competition and market forces brought about by the deregulation of the telecommunication industry in Hong Kong,

⁸ Id. at 190-193.

⁹ Id. at 194.

¹⁰ Id. at 230-232.

¹¹ Id. at 163. The Total Accounting Rate (TAR) is the amount per minute charged by international carriers for the use of their international lines.

¹² Id. at 233.

¹³ Id. at 234.

¹⁴ Id. at 236-246.

REACH informed ETPI that it had to reduce the TAR for the Philippine-Hong Kong circuits. ETPI allegedly notified PLDT of the reduction in the TAR beforehand. PLDT, however, disputed the reduced TAR that was to take effect on August 1, 2001 (US\$ 0.16/minute) and insisted that REACH and ETPI revert to the June 1, 2001 TAR (US\$ 0.30/minute for the first 1.8 million minutes [US\$ 0.11 in excess of 1.8 million minutes as settlement rate]).

Moreover, contrary to the Compromise Agreement, PLDT allegedly insisted that REACH and ETPI distinguish between On-net and Off-Net traffic from Hong Kong. ETPI averred that PLDT initially defined On-Net traffic as telephone traffic that initiated in Hong Kong and terminated on all fixed and mobile lines of PLDT and its subsidiaries Pilipino Telephone Corporation (Piltel), Smart Communications, Inc. (Smart), Subic Telecoms, Inc., Clark Telephone, Inc. and Philippine Association of Private Telephone Companies, Inc. On September 27, 2001, PLDT allegedly excluded Piltel and Smart from its definition of On-Net traffic retroactive on January 1, 2001 and charged ETPI higher accounting rates for calls to Piltel and Smart starting on January 1, 2001. Thereafter, PLDT wanted to push back to October 1, 2000 the effectivity of the higher rates for calls to Piltel and Smart. ETPI claimed that it protested PLDT's distinction between On-Net and Off-Net traffic and the higher accounting rates for Off-Net traffic since the Compromise Agreement did not make any distinction between the two.

Despite negotiations to amicably resolve their issues, PLDT threatened to block on October 31, 2001 all calls to and from the REACH-ETPI circuits unless the TAR between REACH and ETPI was increased and PLDT's higher accounting rate for Off-Net traffic was accepted. ETPI, thus, prayed for the issuance of a *status quo* order to maintain the unrestricted flow of telecommunication calls and data between Hong Kong and the Philippines through the REACH-ETPI circuits and to prevent PLDT from using its gateway and facilities to block telephone calls to and from Hong Kong through the REACH-ETPI circuits. ETPI further prayed for the trial court to direct PLDT to comply with the Compromise Agreement, specifically by settling with ETPI in accordance with the prevailing established TAR with respect to the Philippine-Hong Kong telephone traffic passing through the REACH-ETPI circuits, without any qualification as to On-Net/Off-Net telephone traffic.

In its Opposition,¹⁵ PLDT stated that the subject matter sought to be enjoined by ETPI was beyond the jurisdiction of the RTC. PLDT averred that the Compromise Agreement was novated by the Letter-Agreement dated March 29, 1999, which provided that claims between PLDT and ETPI were to be settled amicably or through arbitration. Furthermore, PLDT contended that the motion for the issuance of a *status quo* order had no actual and/or legal basis as ETPI had not established that there was a clear violation of its

¹⁵ Id. at 268-304.

right and that PLDT was guilty of bad faith. PLDT also argued that the issuance of the order sought by ETPI would be tantamount to a prejudgment of the accounting rate controversy between the parties.

Claiming that it needed to mitigate its damages, PLDT proceeded to block at midnight of October 31, 2001 the incoming telephone traffic from Hong Kong to the Philippines through the REACH-ETPI circuits.

In an **Order¹⁶ dated October 31, 2001**, but which was received by PLDT only on November 5, 2001, the RTC disregarded the contentions of PLDT. The RTC declared that it had jurisdiction on the matter sought to be enjoined by ETPI. The trial court reasoned that the Compromise Agreement was, at that time, still subsisting, as there was no written notice of termination presented therefor. The RTC also ruled that PLDT's Letter dated October 3, 2001, which revealed the company's intent to completely block telephone traffic from REACH Hong Kong effective midnight of October 31, 2001, was held to be in contravention of the Compromise Agreement. In addition, the act of PLDT of making a distinction between On-Net and Off-Net traffic was similarly viewed to be violative of the said agreement. The RTC decreed:

WHEREFORE, premises considered, the court hereby directs defendant PLDT to comply with all the terms and conditions of the Compromise Agreement, particularly paragraph 3 thereof and to desist from threatening or pursuing its threat to block telecommunication calls and data to and from Hongkong and the Philippines thru REACH-ETPI Circuits.

This, however, does not preclude the parties from availing of the provisions of Republic Act [7925].

Consequently, on November 6, 2001, PLDT filed an Omnibus Motion for Disqualification with Clarification and/or Reconsideration¹⁷ of the above Order. On even date, ETPI filed an Urgent Manifestation,¹⁸ informing the trial court of PLDT's violation of the Order dated October 31, 2001. ETPI prayed that the RTC initiate proceedings to compel PLDT to show cause why the latter, together with its officers and erring personnel, should not be declared in contempt of court.

On November 19, 2001, ETPI filed an Urgent Motion,¹⁹ praying for the court to issue an order requiring the appropriate officer and/or technical personnel of the National Telecommunications Commission (NTC) to be deputized in order that the Order dated October 31, 2001 be executed.

¹⁶ Id. at 161-168; penned by Judge Zeus C. Abrogar.

¹⁷ Id. at 403-434.

¹⁸ Id. at 439-442.

¹⁹ Id. at 476-479.

In the RTC Order²⁰ dated December 12, 2001, Judge Abrogar partially granted the Omnibus Motion for Disqualification with Clarification and/or Reconsideration of PLDT by inhibiting himself from further hearing Civil Case No. 17694. With respect to the other pending incidents of the case, the same were left for the resolution of the court where the case would be re-raffled.

Thereafter, the case was re-raffled to Branch 60 of the RTC of Makati City, which was presided over by Judge Marissa Macaraig-Guillen.

On January 29, 2002, ETPI filed an Urgent Omnibus Motion,²¹ reminding the RTC of the pending incidents of the case. ETPI likewise prayed for the issuance of a *status quo* order, directing PLDT not to threaten and/or carry out its threat to block all telecommunication calls and data from the Philippines to Hong Kong passing through the REACH-ETPI circuits. If PLDT already carried out its threat, ETPI prayed for an order commanding PLDT to restore the free flow of telecommunication calls and data in the aforesaid REACH-ETPI circuits.

In the **Order**²² **dated April 10, 2002**, the RTC resolved the above pending incidents of the case. Contrary to the position of the PLDT, the RTC ruled that it retained jurisdiction over the case as the Letter-Agreement dated March 29, 1999 did not novate or modify the Compromise Agreement dated February 9, 1990. The trial court held that there was nothing in the terms of the Letter-Agreement to justify the inference that the parties intended the same to supersede or substitute the Compromise Agreement. Moreover, the trial court agreed with PLDT that it had no authority to issue a *status quo* order in the case. Be that as it may, the trial court posited that it could enforce compliance with the terms and conditions of the Compromise Agreement upon mere filing of a motion. While Section 6, Rule 39 of the Rules of Court sought to limit the period within which a party may enforce a final and executory decision of a court to five years from the date of the judgment's entry, the trial court stated that said rule was given to several notable exceptions. One exception is when a compromise agreement approved by the court provides for a period within which the parties are to comply with the terms and conditions of the contract.

The trial court was convinced that the parties' intentions were to allow continued access to the trial court for relief in case of breach of any of the terms of the Compromise Agreement during the entire period the said agreement was in full force and effect. Necessarily, the procedure by which a party could seek redress for the alleged injury suffered by reason of the breach would be through the filing of the appropriate motion, which ETPI complied with in the case.

²⁰ Id. at 507-508.

²¹ Id. at 510-522.

²² Id. at 170-177.

Moreover, since PLDT admitted to blocking the incoming telephone traffic from Hong Kong passing through the REACH-ETPI circuits, even before November 5, 2001, it was clear to the trial court that the same was in violation of paragraph 11 of the Compromise Agreement. As regards the suggestion of PLDT that it was prepared to cut-off the flow of outbound telecommunication calls from the Philippines to Hong Kong passing through the REACH-ETPI circuits, the trial court reminded PLDT of the latter's commitment in paragraph 3 of the Compromise Agreement wherein it guaranteed that "all the outgoing telephone traffic to Hong Kong destined to ETPI's correspondent therein, Cable & Wireless Hong Kong Ltd., its successors and assigns, shall be coursed by PLDT through the ETPI provided circuits and facilities between the Philippines to Hong Kong."

As regards the dispute of the parties on the appropriate TAR that should be applied, the RTC left the same for the parties to decide whether to present their respective evidence before the trial court on said issue or to submit the same for mediation before the Philippine Mediation Center or arbitration.

In the end, the trial court decreed:

WHEREFORE, in view of the foregoing, [ETPI's] Urgent Omnibus Motion is partially GRANTED, in that defendant PLDT is ordered to comply with the court's Decision of 9 February 1990, specifically Sections 3 and 11 of the Compromise Agreement which served as basis for the judgment.

As a consequence of this ruling, defendant PLDT is ordered to restore the free flow of telecommunication calls and data from the Philippines to Hongkong passing through the REACH-ETPI circuits.

Plaintiff ETPI's prayer for the issuance of a *status quo* Order contained in the said Urgent Omnibus Motion is[,] however, DENIED for lack of merit.

In turn, due to their reasons herein provided for, defendant PLDT's Omnibus Motion for Reconsideration of the Court's 31 October 2001 Order is likewise denied for lack of merit.²³

Thereafter, the RTC clarified the second paragraph of the above dispositive portion in its subsequent Orders dated June 7, 2002²⁴ and July 5, 2002.²⁵ The said paragraph was amended to read:

"As a consequence of this ruling, defendant PLDT is ordered to restore the free flow of telecommunication calls and [data] **from Hong Kong to the Philippines** passing through the REACH-ETPI circuits." (Emphasis ours.)

²³ Id. at 176.

²⁴ Id. at 745-748.

²⁵ Id. at 790-791.

Proceedings before the Court of Appeals

Undaunted by the unfavorable rulings of the RTC, PLDT filed with the Court of Appeals on June 11, 2002 a Petition for *Certiorari* Under Rule 65 (With Application for the Issuance of a TRO and/or Writ of Preliminary Injunction),²⁶ which was docketed as **CA-G.R. SP No. 71103**. The petition sought the declaration of nullity of the RTC Orders dated October 31, 2001 and April 10, 2002 in Civil Case No. 17694, which were allegedly issued without jurisdiction and with clear grave abuse of discretion.

In the **Decision dated December 26, 2002**, the Court of Appeals granted the Petition for *Certiorari* of PLDT, disposing thus:

WHEREFORE, the Petition is **GRANTED** and the Orders dated October 31, 2001 and April 10, June 7 and July 5, 2002 are hereby declared as **NULL and VOID** for having been issued without jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.²⁷

The Court of Appeals ruled that the RTC committed grave error in issuing the Orders assailed in PLDT's petition. Contrary to the trial court's judgment, the Court of Appeals opined that the Letter-Agreement modified or novated the prior Compromise Agreement between PLDT and ETPI. According to the appellate court, the Letter-Agreement specified the respective rights and obligations of the parties, particularly "without prejudice to other claims of PLDT and ETPI against each other, which they endeavor to settle amicably or through arbitration." This clearly indicated that both parties agreed to modify paragraph 15 of the Compromise Agreement, which provided that in case of breach, the parties may obtain judicial relief, including a writ of execution. The Court of Appeals likewise disagreed with the finding of the RTC that the Letter-Agreement was merely a provisional arrangement agreed upon by the parties while they tried to settle certain pending issues.

Furthermore, the Court of Appeals took judicial notice of the fact that Section 18 of Republic Act No. 7925²⁸ and its implementing rules and regulations, expressly conferred exclusive and original jurisdiction to the NTC to resolve disputes between telecommunications companies regarding settlement of access charge and/or revenue sharing. Therefore, the appellate court ruled that ETPI should have first availed of the administrative remedies afforded it by Republic Act No. 7925 and sought recourse from the NTC, instead of going back to the trial court. ETPI's premature invocation of the trial court was deemed fatal and rendered its motion susceptible of dismissal for lack of cause of action. The trial court should have recognized and enforced the agreement of the parties to submit their claims to

²⁶ Id. at 108-160.

²⁷ Id. at 1016.

²⁸ An Act to Promote and Govern the Development of Philippine Telecommunications and the Delivery of Public Telecommunications Services.

arbitration. At the very least, the trial court should have suspended the proceedings to allow the parties to submit to arbitration in accordance with the terms of their agreement.

Lastly, the Court of Appeals agreed with PLDT that a *status quo* order functioned as a temporary restraining order (TRO) or a writ of preliminary injunction. Therefore, in ruling that ETPI was not entitled to a *status quo* order, the trial court should not have directed PLDT to do or undo certain acts, which is tantamount to granting ETPI injunctive relief.

ETPI duly filed a Motion for Reconsideration²⁹ of the above Court of Appeals Decision and was able to have the same overturned.

In the assailed **Amended Decision dated November 19, 2003**, the Court of Appeals revisited its previous ruling and entered a decree, which stated:

ACCORDINGLY, our Decision dated December 26, 2002 is hereby **RECONSIDERED** and **SET ASIDE**, and the Orders dated October 31, 2001 and April 10, 2002 (as amended by the Order dated June 7, 2002) of the court *a quo* are **AFFIRMED in toto**.³⁰

The Court of Appeals stated that after the approval of the Compromise Agreement by the RTC, the decision based on the judicial compromise between the parties became immediately final and executory. On the basis thereof, the appellate court declared that the trial court is clothed with the residual power to have its judgment executed. By virtue of this power, it is inherent with the court to compel obedience to its judgment, orders and processes.

Furthermore, the Court of Appeals ruled that the invocation of the provisions of Republic Act No. 7925, which transferred jurisdiction of the subject matter with the NTC, did not divest the trial court of its jurisdiction to enforce its judgment through the issuance of the necessary writs. The appellate court reiterated the doctrine that jurisdiction once acquired is not removed by law unless express prohibitory words are used. In this case, Republic Act No. 7925 did not contain any such prohibitory words enjoining the RTC from implementing and enforcing its decision.

With respect to the execution of the Letter-Agreement, the Court of Appeals held that the same did not revise, modify or novate the Compromise Agreement. In the Letter-Agreement, PLDT and ETPI agreed to continue working on a new agreement that would supersede the Compromise Agreement. In the meantime, the appellate court observed that the parties continued to be bound by the provisions of the Compromise Agreement. Despite the existence of an arbitration clause, the appellate court stated that

²⁹ Id. at 1019-1028.

³⁰ Id. at 93.

the case pending before the trial court should be allowed to proceed in the interest of speedy justice and to avoid multiplicity of suits.

Finally, even assuming that the Letter-Agreement modified the Compromise Agreement, the Court of Appeals ruled that the parties were still bound to comply with paragraph 11 of the Compromise Agreement, which in part required them not to use or threaten to use their gateway or any other facility to subvert the purposes of the Compromise Agreement. For the appellate court, a violation of said paragraph should not be subject to arbitration for to do so would be to allow the offending party to have a final judgment reopened by violating the Compromise Agreement and then ask that the case be submitted to arbitration. In the words of the appellate court, “[s]uch an occurrence would throw the case into an unending process.”

PLDT moved for the reconsideration of the above Amended Decision, but the same was denied in the assailed Court of Appeals Resolution dated March 30, 2004.

Hence, the instant petition.

Before this Court, PLDT set forth the following issues:

ISSUES

A.

WHETHER OR NOT THE RTC-MAKATI CEASED TO HAVE JURISDICTION OVER THE SUBJECT MATTER OF CIVIL CASE NO. 17694 IN VIEW OF THE NOVATION OF THE COMPROMISE AGREEMENT BY THE LETTER-AGREEMENT, WHICH PROVIDED FOR ARBITRATION AS THE MEANS FOR SETTLING DISPUTES BETWEEN PLDT AND ETPI THAT COULD NOT BE SETTLED AMICABLY;

B.

WHETHER OR NOT THERE WAS NOVATION OF THE COMPROMISE AGREEMENT BY THE LETTER-AGREEMENT;

C.

WHETHER OR NOT BY VIRTUE OF R.A. NO. 7925 AND ITS IMPLEMENTING RULES AND REGULATIONS, IT IS THE NTC WHICH HAS PRIMARY AND EXCLUSIVE JURISDICTION OVER SETTLEMENT OF ACCESS CHARGES AND REVENUE SHARING AFFECTING TELECOMMUNICATIONS COMPANIES;

D.

WHETHER OR NOT A JUDICIALLY APPROVED COMPROMISE AGREEMENT CAN STILL BE ENFORCED BY MERE MOTION

AFTER THE LAPSE OF FIVE (5) YEARS FROM THE TIME IT BECAME FINAL AND EXECUTORY;

E.

WHETHER OR NOT ETPI WAS ESTOPPED FROM INVOKING THE JURISDICTION OF THE RTC-MAKATI;

F.

WHETHER OR NOT THE ASSAILED AMENDED DECISION, IN COMPELLING PLDT ALONE TO COMPLY WITH THE NOVATED COMPROMISE AGREEMENT, DESPITE THE ESTABLISHED FACT THAT IT IS ETPI WHICH HAD VIOLATED THE SAME, CONTRAVENES THE PRINCIPLE OF CONTRACT LAW THAT CONTRACTS ARE CONSENSUAL AND VOLUNTARY IN NATURE;

G.

WHETHER OR NOT THE RTC-MAKATI CEASED TO HAVE JURISDICTION OVER THE SUBJECT MATTER OF CIVIL CASE NO. 17694 BECAUSE BY ITS OWN TERMS THE COMPROMISE AGREEMENT EXPIRED ON 28 NOVEMBER 2003;

H.

WHETHER OR NOT PLDT'S PETITION IS MOOT; AND

I.

WHETHER OR NOT PLDT SHOULD HAVE IMPEADED JUDGE GUILLEN AS A NOMINAL PARTY IN THIS CASE.³¹

PLDT ascribes error on the part of the Court of Appeals for ruling that the RTC retained jurisdiction over the subject matter sought to be enjoined by ETPI. The Letter-Agreement allegedly novated the Compromise Agreement when the former expressly provided that the parties' respective claims against each other should be settled amicably or through arbitration. PLDT also argues that ETPI prematurely invoked the intervention of the RTC without first complying with Republic Act No. 7925 and its Implementing Rules. Under the doctrines of primary jurisdiction and exhaustion of administrative remedies, the NTC had primary and exclusive jurisdiction to resolve disputes between telecommunications companies regarding the settlement of access charges and/or revenue sharing.

PLDT also claims that the Court of Appeals erred in failing to consider that ETPI should have filed an action, and not a mere motion, to enforce the Compromise Agreement. Furthermore, PLDT alleges that ETPI was estopped from invoking the jurisdiction of the RTC when it partially complied with the provisions of the Letter-Agreement.

³¹ *Rollo* (Vol. II), pp. 1390-1391.

On the assumption that the RTC did not lose jurisdiction over the subject matter sought to be enjoined by ETPI, PLDT faults the Court of Appeals for finding that only PLDT violated the Compromise Agreement as ETPI was equally guilty of breaching the said agreement. Similarly, assuming *arguendo* that the RTC retained jurisdiction over the subject matter sought to be enjoined by ETPI, PLDT asserts that the trial court subsequently lost jurisdiction to enforce the Compromise Agreement when, by its own terms, the same expired on November 28, 2003. Nevertheless, PLDT posits that its petition was not moot since there remained other claims to be resolved based on the Letter-Agreement.

On the other hand, ETPI submits that the present petition of PLDT is already moot and academic, given the expiration of the Compromise Agreement between the parties. Assuming that the petition is not moot, ETPI argues that the Court of Appeals correctly ruled that the RTC had jurisdiction to enforce its own Decision based on the Compromise Agreement. ETPI also alleges that the Letter-Agreement did not novate the Compromise Agreement between the parties. Moreover, ETPI contends that the flagrant violation of paragraph 11 of the Compromise Agreement was not arbitrable and that the Compromise Agreement could be enforced by mere motion.

After a thorough review of the facts and issues of the instant petition, the Court finds that, indeed, the same is already moot.

To recapitulate, the instant petition challenged the Amended Decision dated November 19, 2003 and the Resolution dated March 30, 2004 of the Court of Appeals in CA-G.R. SP No. 71103. The assailed decision resolved the Petition for *Certiorari* Under Rule 65 (With Application for the Issuance of a TRO and/or Writ of Preliminary Injunction) filed by PLDT, which questioned the Orders of the RTC dated October 31, 2001 and April 10, 2002 in Civil Case No. 17694.

The RTC Order dated October 31, 2001 arose from the filing of ETPI of an Urgent Motion for Enforcement (With Prayer for *Status Quo* Order) to prevent PLDT from using its gateway and facilities to block telephone calls to and from Hong Kong through the REACH-ETPI circuits, as well as to direct PLDT to abide by the provisions of the Compromise Agreement. In the Order dated October 31, 2001, the RTC directed PLDT to comply with the terms and conditions of the Compromise Agreement, particularly paragraph 3 thereof, wherein PLDT guaranteed that all outgoing telephone traffic to Hong Kong destined to ETPI's correspondent therein shall be coursed by PLDT through ETPI provided circuits and facilities between the Philippines and Hong Kong. The RTC likewise commanded PLDT to desist from threatening or pursuing its threat to block communication calls and data to and from Hong Kong and the Philippines through the REACH-ETPI circuits.

On the other hand, the RTC Order dated April 10, 2002 resolved, *inter alia*, PLDT's Omnibus Motion for Disqualification with Clarification and/or Reconsideration, insofar as PLDT's motion to have the trial court reconsider the October 31, 2001 Order. In the Order dated April 10, 2002, the RTC directed PLDT to comply with the terms of the Compromise Agreement, particularly the above-stated paragraph 3 thereof, as well as paragraph 11, which provided that "[n]either party shall use or threaten to use its gateway or any other facilities to subvert the purposes of [the Compromise Agreement]."³² Consequently, the RTC decreed that: "[a]s a consequence of [its] ruling, defendant PLDT is ordered to restore the free flow of telecommunication calls and data from the Philippines to Hong Kong passing through the REACH-ETPI circuits."³³

Thereafter, the dispositive portion of the Order dated April 10, 2002 was clarified in the RTC Orders dated June 7, 2002³⁴ and July 5, 2002³⁵ to read:

"As a consequence of this ruling, defendant PLDT is ordered to restore the free flow of telecommunication calls and [data] **from Hong Kong to the Philippines** passing through the REACH-ETPI circuits."³⁶
(Emphasis ours.)

In the assailed Amended Decision dated November 19, 2003, the Court of Appeals affirmed *in toto* the Orders of the RTC dated October 31, 2001 and April 10, 2002.

Therefore, when PLDT questioned *via* the instant petition the Amended Decision dated November 19, 2003, PLDT essentially asked the Court to determine whether the RTC could validly issue the said Orders, which directed PLDT to unblock and/or restore the telecommunication calls and data from the Philippines to Hong Kong passing through the REACH-ETPI circuits.

In the instant petition, however, PLDT informed the Court that the Compromise Agreement, by its own terms, already expired on November 28, 2003. Furthermore, PLDT insisted in its Memorandum that:

The Compromise Agreement, by its own terms, was effective only until 28 November 2003. The RTC-Makati Decision pertinently states:

"12. Upon (a) approval of the respective Boards of ETPI and PLDT, and (b) approval of this Honorable Court, **this Agreement shall take effect and shall continue in effect until November 28, 2003, provided that a written notice of termination is given by one party to the other**

³² Id. at 1166.

³³ *Rollo* (Vol. I), p. 176.

³⁴ Id. at 745-748.

³⁵ Id. at 790-791.

³⁶ Id. at 791.

not later than November 28, 2001. In the absence of such written notice, this Agreement shall continue in effect beyond November 28, 2003 but may [be] terminated thereafter by either party by giving to the other a prior two[-]year notice of termination. x x x."

The conditions for the termination of the Compromise Agreement were complied with in that: (a) both PLDT and ETPI are now coursing traffic through their respective networks; (b) foreign telecommunications companies such as Hong Kong REACH, Singtel and Chung Hua TelCom, were advised about the expiration of the Compromise Agreement; and (c) the parties are negotiating and/or have already concluded their respective agreements.

It is a fact that **there is now nothing to unblock** because circuits have already been deactivated and migrated pursuant to the existing interconnection agreements between PLDT and ETPI.

As a result of the expiration of the Compromise Agreement, there is nothing for the RTC-Makati to enforce and/or act upon. x x x.³⁷

Far from controverting the above submissions of PLDT, ETPI sustained the same and insisted on the mootness of PLDT's petition.

Verily, in *Gancho-on v. Secretary of Labor and Employment*,³⁸ the Court emphatically stated that:

It is a rule of universal application, almost, that courts of justice constituted to pass upon substantial rights will not consider questions in which no actual interests are involved; they decline jurisdiction of moot cases. And where the issue has become moot and academic, there is no justiciable controversy, so that a declaration thereon would be of no practical use or value. There is no actual substantial relief to which petitioners would be entitled and which would be negated by the dismissal of the petition. (Citations omitted.)

Applying the above pronouncement, there was no justiciable controversy anymore in the instant petition in view of the expiration of the Compromise Agreement sought to be enforced. There was no longer any purpose in determining whether the Court of Appeals erred in affirming the RTC Orders dated October 31, 2001 and April 10, 2002 since any declaration thereon would be of no practical use or value. By the very admission of PLDT, it can no longer be compelled to undo its act of blocking the telecommunication calls and data from the Philippines to Hong Kong passing through the REACH-ETPI circuits since, effectively, there were no more circuits to speak of.

Clearly, any decision of this Court on the present petition, whether it be an affirmance or a reversal of the Amended Decision of the Court of

³⁷ *Rollo* (Vol. II), pp. 1433-1434.
³⁸ 337 Phil. 654, 658 (1997).

Appeals, would be equivalent in effect to an affirmance or an invalidation of the challenged Orders of the RTC. But as can be gleaned from the above discussion, and as succinctly put by PLDT in its Memorandum, there is nothing more for the RTC to enforce and/or act upon. As such, any discussion on the matter would be a mere surplusage.

Although the moot and academic principle admits of certain exceptions,³⁹ none of them are applicable in the instant case.


In light of the foregoing, the other issues invoked by the parties need no longer be discussed.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED** for being moot and academic. No costs.

SO ORDERED.


TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

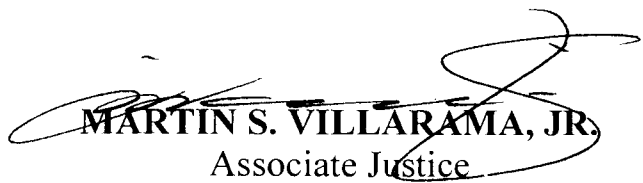
³⁹

In *David v. Macapagal-Arroyo* (522 Phil. 705, 754 [2006]), the Court declared that:

The “moot and academic” principle is not a magical formula that can automatically dissuade the courts in resolving a case. Courts will decide cases, otherwise moot and academic, if: *first*, there is a grave violation of the Constitution; *second*, the exceptional character of the situation and the paramount public interest is involved; *third*, when constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and *fourth*, the case is capable of repetition yet evading review. (Citations omitted.)



LUCAS P. BERSAMIN
Associate Justice



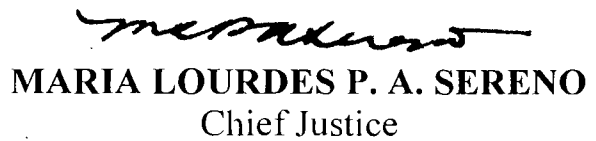
MARTIN S. VILLARAMA, JR.
Associate Justice



BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice