

COMPETITION ENFORCEMENT OFFICE
OF THE PHILIPPINE COMPETITION
COMMISSION,

Complainant,

- versus -

URBAN DECA HOMES MANILA
CONDOMINIUM CORPORATION AND
8990 HOLDINGS, INC.,

Respondents.

X-----X

PCC Case No. E-2019-001

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

COMMISSION DECISION NO. 01-E-001/2019

INTRODUCTION

1. This case stemmed from the *Statement of Objections* (“SO”)¹ filed by the Competition Enforcement Office (“Enforcement Office”) against the Respondents UDH Manila Condominium Corporation (“UDH Manila Condo Corp”) and 8990 Holdings, Inc. (“8990 Holdings”) and together with the Enforcement Office and UDH Manila Condo Corp, the “Parties”) for entering into a contractual arrangement that resulted in a situation wherein the internet services in nine (9) of their condominium projects were provided only by Fiber to Deca Homes (“FTDH”), in violation of Section 15 of the Philippine Competition Act (“PCA”).
2. Pursuant to the rules on Settlement under Article VIII, Rule IV of the 2017 Rules of Procedure of the Philippine Competition Commission (“Rules of Procedure”), the Enforcement Office and the Respondents engaged in discussions to explore possible settlement.² Subsequently, the Respondents jointly filed with the Enforcement Office an Amended Joint Motion for Settlement (“Amended Joint Motion”),³ where the Respondents admitted the said violation, undertook to pay a fine, and proposed commitments for the Commission’s consideration.
3. The issue before the Commission is whether the commitments, conditions, and terms set out in the Amended Joint Motion are sufficient to address the harms arising from the abuse of dominant position committed by the Respondents.

STATEMENT OF FACTS

4. Complainant Enforcement Office is the Commission’s investigative and prosecutorial arm.

¹ CEO’s Statement of Objections dated 27 March 2019 [SO].

² Joint Motion for Settlement dated 30 May 2019.

³ Amended Joint Motion for Settlement dated 22 July 2019 [Amended Joint Motion].



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5. Respondent 8990 Holdings is a publicly listed domestic company engaged in developing low-cost mass housing in the Philippines.⁴ 8990 Holdings offers several housing units/models including single-storey detached houses with lofts, single-storey attached row-houses, 2-storey townhouses, and medium-rise building condominiums.⁵
 - 5.1. 8990 Holdings owns several subsidiaries including 8990 Housing Development Corporation (“8990 HDC”). Euson Realty and Development Corporation (“Euson Realty”) and Tondo Holdings Corporation (“Tondo Holdings”) are indirect subsidiaries of 8990 Holdings through 8990 HDC.⁶ Euson Realty and Tondo Holdings are the developers of Urban Deca Homes Manila (“UDH Manila”), a condominium project located along Vitas St., Tondo, Manila.⁷
6. Respondent UDH Manila Condo Corp is a duly incorporated domestic corporation organized to own or hold title to the land and common areas in UDH Manila.⁸ Aside from maintaining and administering the common areas of UDH Manila, UDH Manila Condo Corp is also responsible for enforcing the *Master Deed with Declaration of Restrictions* (“Master Deed”), and promulgating House Rules and such other rules as may be necessary, among others.⁹
 - 6.1. Notably, the incorporators and trustees of the UDH Manila Condo Corp are also the current or former employees of 8990 Holdings or its subsidiaries.
7. On 27 March 2019, the Enforcement Office filed with the Commission an SO concerning the anticompetitive conduct being committed by the Respondents in UDH Manila. According to the SO, UDH Manila Condo Corp abused its dominant position in the provision of property management services by preventing internet service providers (“ISPs”) other than FTDH from providing fixed-line internet services to the residents of UDH Manila.¹⁰ As a result of such abuse of dominant position, tenants and residents of UDH Manila have been prejudiced as they were deprived of choices or alternatives to FTDH’s fixed-line internet services with which they have complaints regarding its quality and prices.¹¹
8. With respect to the involvement of Respondent 8990 Holdings, the Enforcement Office took cognizance of Respondent 8990 Holdings’ financial interest through its subsidiaries, Euson Realty and Tondo Holdings, in the Memorandum of Agreement entered into by the latter with Itech-RaR Solutions, Inc. for the provision of fixed-line internet services in UDH Manila.¹²
9. In this regard, the Enforcement Office prayed that the Commission find the Respondents UDH Manila Condo Corp and 8990 Holdings solidarily liable for violation of Section 15(i) of the PCA, order them to cease and desist from further committing abuse of their dominance, and to pay the appropriate fine under the PCA and the Rules of Procedure.¹³

⁴ Company Profile of 8990 Holdings, Inc available in Bloomberg LP website, *accessible via* <https://www.bloomberg.com/profile/company/HOUSE:PM>.

⁵ *Id.*

⁶ 8990 Holdings, Inc. and Subsidiaries Notes to Consolidated Financial Statements December 31, 2017 and 2016.

⁷ *Master Deed with Declaration of Restrictions of Urban Deca Homes Manila* dated 14 March 2018; and *Memorandum of Agreement* dated 19 December 2016.

⁸ Articles of Incorporation of UDH Manila Condo Corp.

⁹ *Master Deed with Declaration of Restrictions of Urban Deca Homes Manila* dated 14 March 2018.

¹⁰ SO, pars. 43-45.

¹¹ *Id.*, pars. 47-48.

¹² *Id.*, par. 53.

¹³ SO, page 21.

ASSESSMENT OF AMENDED JOINT MOTION FOR SETTLEMENT

10. The Rules of Procedure provide for a settlement procedure wherein parties are allowed to propose settlement which, if found reasonable and proper by the Commission, may result, among others, in a reduction of fine or modification of charges. The settlement procedure is resorted to in order to address the alleged anticompetitive conduct at the soonest possible time, and to achieve other procedural efficiencies.¹⁴
11. The Amended Joint Motion filed by the Parties included provisions on, among others, statement of conduct and admission, cessation of conduct, administrative penalty, monitoring and reportorial requirements, and non-compliance.
12. Respondents admitted¹⁵ their anticompetitive conduct arising from the contractual arrangement which resulted in a situation wherein the internet service provider was limited only to FTDH.¹⁶
13. In addition to UDH Manila, which is the subject of the SO, the proposed settlement includes the following eight (8) condominium projects of 8990 Holdings where FTDH is both operational and earning revenues from subscriptions: (1) UDH Tipolo in Main Street, Mandaue City, Cebu; (2) UDH Tisa 1 and 2 in Tabay Lawom, Tisa, Labangon, Cebu City; (3) UDH Campville at Km 23 East Service Road, Brgy. Cupang, Muntinlupa City; (4) UDH Hampton in La Joya Street corner Buhay na Tubig Street, Imus, Cavite; (5) UDH Hernan Cortes in Hernan Cortes Street, Brgy. Kasambagan, Mandaue City, Cebu; (6) Deca Homes Pavia in Felix Gorriceta Avenue, Brgy. Pandac & Jibao-an, Pavia, Iloilo City; (7)

¹⁴ 2017 Rules of Procedure of the Philippine Competition Commission [Rules of Procedure], Sec. 4.42.

¹⁵ Amended Joint Motion, Sec. I, par. 1.

¹⁶ In a long line of cases decided by the European Commission, such conduct is considered abuse of dominance:

In *Sealink/B&I – Holyhead* (5 CMLR 255),

“[a] company in a dominant position may not discriminate in favour of its own activities in a related market (Case C—260/89, *Elliniki Radiophonia*, para. 37—38). The owner... which uses its power in one market in order to strengthen its position in another related market, in particular, by granting its competitor access to that related market on less favourable terms than those of its own services, infringes Article [102] when a competitive disadvantage is imposed upon its competitor without objective justification.”

In *Case 311/84 CBEM v CLT and IPB* [1985] ECR 3261

the Court of Justice held that an abuse of dominant position is committed “where, without any objective necessity, an undertaking holding a dominant position on a particular market reserves to itself or to an undertaking belonging to the same group an ancillary activity which might be carried out by another undertaking as part of its activities on a neighbouring but separate market, with the possibility of eliminating all competition from such undertaking.”

In *Microsoft Corp. v. Commission*,

the Court upheld the European Commission’s findings that Microsoft was engaged in abuse of dominant position by limiting technical development to the prejudice of consumers. Microsoft was found to have been engaged in refusal to deal, in the form of refusing to provide workgroup server software rivals with full interoperability information to connect with Windows and with Microsoft’s workgroup server software. [Ezrachi, Ariel. *EU Competition Law: An Analytical Guide to the Leading Cases*, 5th Ed. (2016), p. 289 citing *Microsoft v. Commission* (Case T-201/04; General Court, [2007] ECR II-3601, [2007] 5 CMLR 11).]

In *RTE & ITP v. Commission*,

the Court affirmed the European Commission’s findings which held that by their conduct of refusing to provide a weekly listing of programmes, the television companies reserved to themselves the secondary market of weekly television guides. [*Id.* at p. 283 citing *RTE & ITP v Commission* (Joined Cases C-241/91P and 242/91P; Court of Justice, [1995] ECR I-743, [1995] 4 CMLR 718).

UDH Marilao at 150 MacArthur Highway, Marilao, Bulacan; and (8) UDH EDSA located at Sierra Madre Street, Brgy. Highway Hills, Mandaluyong City (collectively, the "Nine Condominium Projects").¹⁷

14. Since Respondents have conceded their abuse of their dominant position, the only issue left for the Commission to resolve is whether or not the commitments, conditions, and terms set out in the Amended Joint Motion are sufficient to remedy the harms arising from the Respondents' abuse of dominant position, consistent with the declared policy of protecting consumer welfare. Thus, the Commission determines whether the proposed measures will: (1) cease the anticompetitive conduct and prevent its recurrence; (2) restore competition, and (3) effect deterrence.¹⁸
15. The Commission finds the following commitments, terms, and conditions to be sufficient to address the harms arising from the Respondents' admitted conduct of abuse of dominant position in the Nine Condominium Projects:
 - i. The Respondents have ceased the Subject Conduct and to the extent that it has not, that it will immediately cease the same.¹⁹
 - ii. Within fifteen (15) days from approval of the Joint Motion, the Respondents shall post notices ("Bulletin"), in conspicuous places, in each of the Nine Condominium Projects stating that FTDH is not the exclusive fixed-line internet service provider ("ISP"), and that residents and tenants are free to avail of the services of other ISPs.²⁰
 - iii. Within fifteen (15) days from approval of the Joint Motion, the Respondents shall also post a Bulletin in all the other existing condominium and real estate projects of Respondent 8990 Holdings stating that there is no exclusive fixed-line ISP for any of Respondents' projects, and that residents and tenants are free to avail of the services of any ISP.²¹
 - iv. Within three (3) months from approval of the Joint Motion, the Respondents shall invite Converge ICT Solutions, Inc., Sky Cable Corporation, and other ISPs and telecommunication companies to offer or market their services in the Nine Condominium Projects, and to use the existing internet service facilities therein, or to install their internet service facilities, under such fair, reasonable and non-discriminatory terms as may be mutually agreed by them.²²
 - v. The Respondents shall allow residents, tenants, or customers of FTDH who are in a lock-in period to opt-out of their subscription contracts at no cost and without penalty in any form, and undertakes not to discriminate against such residents, tenants or customers that shifted to other ISPs.²³
 - vi. Within thirty (30) days from approval of the Joint Motion, the Respondents shall send individual notices to each subscriber or customer of FTDH which shall contain: (1) a statement that FTDH is not the exclusive fixed-line ISP, and that residents, tenants or customers are, at any time, free to apply for and accept the services offered by other ISPs; (2) that the residents and tenants may, personally or through their authorized representatives, at any time, opt-out of their existing subscription contracts with FTDH at no cost and without any penalty in any form, upon written request to the appropriate branch or office of FTDH, subject to the

¹⁷ Amended Joint Motion, par. 3.1.

¹⁸ OECD Policy Roundtables: Remedies and Sanctions in Abuse of Dominance Case (2006), DAF/COMP(2006)19.

¹⁹ Amended Joint Motion, Section II, par. 2.

²⁰ *Id.*, Sec II, par. 3.1.

²¹ *Id.*

²² *Id.*, Sec II, par. 3.2.

²³ Amended Joint Motion, Sec II, par. 3.3.

return, if applicable, of the modem, cable, line, wire or any other related equipment that connects each resident, tenant or customer to the fixed-line internet service offered by FTDH.²⁴

- vii. Within thirty (30) days from approval of the Joint Motion, the Respondents shall publish a public apology in two (2) newspapers of national circulation.²⁵
- viii. Within one (1) year from the approval of the Joint Motion, the Respondents shall adopt and distribute Manuals and/or House Rules to buyers of condominium units of the Nine Condominium Projects that shall include the following statements: (1) "8990 Holdings shall not, directly or indirectly, cause the limitation of internet service to any single provider in this Condominium Project;" and (2) "The Board of Trustees of the Condominium Corporation shall not cause the limitation of internet service to any single provider."²⁶
- ix. Within one (1) year from approval of the Joint Motion, the Respondents shall submit documents, such as board resolutions, evidencing that Respondent 8990 Holdings has adopted a competition law compliance program which includes the following: (1) it shall be company policy to distribute informational materials regarding the Philippine competition law to the Chief Executive Officer (CEO), Deputy CEO, Chief Operating Officer, Chief Finance Officer, General Managers, Area Managers and Branch Managers (collectively, the "Officers"), who must cascade the information to their staff; (2) all new employees will undergo training on Philippine competition law as part of their onboarding or company orientation; and (3) the Officers will undergo training on Philippine competition law and they shall do so once every three (3) years.²⁷
- x. The liability for any fines or penalties imposed under the Joint Motion shall be solidary in accordance with Sections 6.17 and 6.18, Article I, Rule VI of the 2017 Rules of the PCC.²⁸
- xi. The commitments, terms, and conditions shall be binding to any and all successors-in-interest of the Respondents.²⁹
- xii. Every three (3) months for the period of one (1) year from the approval of this Joint Motion, and at such other times as the PCC may request, within the same one (1) year period, Respondents shall submit a report, under oath, on the Nine Condominium Projects which shall contain specified information regarding its compliance with the commitments, terms, and conditions of the Joint Motion.³⁰
- xiii. For the period of one (1) year after the approval of the Joint Motion, Respondents shall allow the PCC:
 - a) To interview, under oath if deemed necessary, the officers, employees, property managers or agents of Respondents, or any related entity regarding the matters subject of the Joint Motion; and
 - b) To inspect and copy, upon reasonable notice, records describing in detail any action or activities covered by the Joint Motion.³¹

²⁴ *Id.*

²⁵ *Id.*, par. 3.4.

²⁶ *Id.*, Sec. II, par. 3.5.

²⁷ *Id.*, par. 3.6.

²⁸ Amended Joint Motion, Sec VI, par. 15.

²⁹ *Id.*, Sec. VII, par. 16.

³⁰ Amended Joint Motion, Sec. IV, par. 9; This includes information regarding any known attempts by tenants to obtain the service of other ISPs and the status of the same, as well as attempts by ISPs to enter the market and to advertise in the Nine Condominium Projects and the status of the same.

³¹ Amended Joint Motion, Sec. IV, par. 10; The conduct of interview by the PCC shall be allowed, without restraint or interference, and may be undertaken either formally or informally. The PCC's authority to inspect and copy

- xiv. The President / Chief Executive Officer of Respondents 8990 Holdings and Condominium Corporation shall prepare the final report at the end of the one (1) year period and shall certify under oath that Respondents have complied with their commitments in the Joint Motion.³²
16. The Commission finds the foregoing commitments in order and approves the same. Their commitments to cease conduct, allow current FTDH customers to opt out of the lock-in period, and invite and allow other ISPs to offer and provide services sufficiently address the harm to the condominium's tenants and residents who were deprived of choices or alternatives to FTDH's fixed-line internet services.³³ Furthermore, these have the effect of restoring competition.
17. The Commission likewise finds that the monitoring requirements³⁴ of the Amended Joint Motion, including the submission of compliance reports and final report, and the conduct of inspections, sufficiently impose a continuing obligation on the Respondents to make good their commitment to perpetually cease from the same anticompetitive conduct.
18. Moreover, the Commission recognizes the value of a compliance program which includes education of their relevant officials, staff, and personnel to ensure that they do not engage in abusive practices.³⁵
19. With respect to the objective of effecting deterrence from similar anticompetitive conduct, the Commission finds that the issuance of a public apology and payment of fine serve as a deterrent that will discourage other entities, which enjoy a dominant position in their respective markets, from committing the same violation and exercise, instead, a higher degree of prudence in their commercial affairs in order to avoid similar violations.
20. It should be emphasized that an entity's dominance in a market is not *per se* anticompetitive. However, Section 15 of the PCA prohibits abuse of such dominance that would substantially prevent, restrict, or lessen competition.
- 20.1. An entity is in a *dominant position* in the market if it is in a position of economic strength which makes it capable of controlling the relevant market independently from any or a combination of the following: competitors, customers, suppliers, or consumers.³⁶
- 20.2. Dominance that constitutes a violation of competition laws, as explained by the Court of Justice in *United Brands vs. Commission*,³⁷ is one that "relates to a position of economic strength enjoyed by an undertaking [entity] which enables it to prevent effective competition being maintained on the relevant market by affording it the power to behave to an appreciable extent independently of its competitors, customers and ultimately of its consumers."³⁸

shall include complaint(s) received from any person relating to Respondents' failure or refusal to comply with this Joint Motion.

³² Amended Joint Motion, Sec. IV, par. 11.

³³ *Id.*, Section II, par. 2.

³⁴ *Id.*, Sec. IV, pars. 9-11.

³⁵ *Id.*, par. 3.6.

³⁶ Philippine Competition Act [PCA], Section 4(g).

³⁷ Case 27/76 EU:C:1978:22 [*United Brands vs. Commission*]

³⁸ *United Brands vs. Commission*, par. 65.

- 20.3. Indeed, a market dominant entity bears a “special responsibility, irrespective of the causes of that position, not to allow its conduct to impair genuine undistorted competition” in the relevant market.³⁹
21. In cases of violations by the Respondents of any of the commitments in the Amended Joint Motion, the following terms of the Amended Joint Motion shall apply:
- xv. Any violations by the Respondents of the commitments, terms, and conditions in this Joint Motion, including failure to submit the required monitoring reports in a timely manner and delay in the performance of or any deviation from the commitments, terms, and conditions stated herein, shall, upon due notice and opportunity to be heard, constitute an infringement and shall be subject to the appropriate penalty under Section 29 of the PCA and Rule VI of the 2017 Rules of the PCC. In addition, a similar amount of penalty shall accrue for each day of non-compliance until the party fully complies.⁴⁰
 - xvi. Any agreement, contract, undertaking, understanding or any other arrangement intended or designed to circumvent the application of the commitments, terms, and conditions in the Joint Motion shall constitute a violation thereof, and shall be subject to the penalty of 20% of the Final Fine under this Joint Motion.⁴¹
22. With respect to the Respondents’ solidary liability to pay the administrative fine,⁴² the Enforcement Office recommended the reduction of the Basic Fine⁴³ by Twenty-Five percent (25%) on the basis of the following alleged mitigating circumstances: (1) the Respondents have voluntarily desisted from continuing the conduct complained of in the Nine Condominium Projects; (2) the Respondents have voluntarily sent letters to other ISPs inviting them to offer services in Respondent 8990 Holdings’ condominium projects; and (3) the Respondents have volunteered to make a public apology in two newspapers of general circulation.⁴⁴
23. After careful consideration, the Commission concurs with the Enforcement Office in its observation that the Respondents’ foregoing voluntary acts and cooperation constitute mitigating circumstances pursuant to Section 6.4 of the Rules of Procedure.
24. Accordingly, the Commission finds the settlement offer in the form of administrative fine, with a reduction by twenty-five (25%) which Respondents solidarily undertake to pay in the amount of Twenty-Seven Million One Hundred Thirteen Thousand Three Hundred Ninety-Two & 70/100 Pesos (Php 27,113,392.70), to be reasonable.

WHEREFORE, finding the Amended Joint Motion for Settlement to be in order, the Commission hereby **APPROVES** the same with modifications. The Commission’s approval of the Amended Joint Motion shall constitute a full and final settlement of the adjudicative proceedings relating to PCC Case No. E-2019-001, subject to the monitoring of the Respondents’ compliance with the commitments set forth in the Amended Joint Motion.⁴⁵

³⁹ Case AT.39759 – ARA Foreclosure dated 20 September 2016 *citing* the Judgment of the Court of Justice of 9 November 1983, *Michelin v Commission* C-322/81 ECLI:EU:C:1983:313, para. 57; and judgment of the Court of Justice of 27 March 2012, *Post Danmark*, C-209/10, ECLI:EU:C:2012:172, para. 23; and judgment of the Court of Justice of 6 October 2015, *Post Danmark II*, C-23/14, ECLI:EU:C:2015:651, para. 71.

⁴⁰ Amended Joint Motion, Sec. VI, par. 13.

⁴¹ *Id.*, Sec. VI, par. 14.

⁴² Sec VI, par. 15 of the Amended Joint Motion clearly states that the liability of the Respondents for any fines or penalties imposed under the Joint Motion shall be solidary in accordance with Sections 6.17 and 6.18, Article I, Rule VI of the 2017 Rules of the PCC.

⁴³ The Basic Fine was computed based on an assessed gravity of 30% of the of the Relevant Turnover of the Respondents.

⁴⁴ Amended Joint Motion, Sec III, par. 6.

⁴⁵ *Id.*, Sec V, par. 12.

However, this shall not preclude any investigation or prosecution of violations not covered by the subject conduct or committed by Respondents after the date of the filing of the Amended Joint Motion.⁴⁶

Respondents UDH Manila Condominium Corporation and 8990 Holdings, Inc. are hereby directed to:

1. **CEASE and DESIST** from its admitted conduct of abuse of dominant position immediately;
2. **PAY**, in satisfaction of their solidary liability, the administrative fine of Twenty-Seven Million One Hundred Thirteen Thousand Three Hundred Ninety-Two & 70/100 Pesos (Php 27,113,392.70), within thirty (30) days from this Decision;
3. **COMPLY** with the approved terms and conditions of the Amended Joint Motion for Settlement as set forth in this Decision; and
4. **COMPLY** with the monitoring requirements of the Amended Joint Motion for Settlement as set forth in this Decision.

Any breach of the terms and conditions stated herein will subject the Respondents to fines and such other measures as the Commission may deem necessary.

SO ORDERED.

30 September 2019.

⁴⁶ *Id.*


ARSENIO M. BALISACAN
Chairman


JOHANNES BENJAMIN R. BERNABE
Commissioner


AMABELLE C. ASUNCION
Commissioner


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