

FIRST DIVISION

[G.R. No. 163037, February 06, 2013]

**PHILIPPINE LONG DISTANCE TELEPHONE COMPANY,
PETITIONER, VS. EASTERN TELECOMMUNICATIONS
PHILIPPINES, INC., RESPONDENT.**

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 Decision^[2] dated November 19, 2003 and the Resolution^[3] 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 Decision^[4] dated December 26, 2002; while in the assailed Resolution, the appellate court denied the Motion for Reconsideration^[5] filed by petitioner Philippine Long Distance Telephone Company (PLDT) on the Amended Decision.

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

On February 9, 1990, Judge Zeus Abrogar of the Regional Trial Court (RTC) of Makati City, Branch 150, rendered a Decision^[6] 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
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January 1, 1987 – To date of this Agreement	58%	42%
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 incompleting 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 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.

x x x x

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.

x x x x

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.

x x x x

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 courting 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