

**COMPETITION ENFORCEMENT OFFICE OF THE PHILIPPINE COMPETITION
COMMISSION vs. URBAN DECA HOMES MANILA CONDOMINIUM CORPORATION AND
8990 HOLDINGS, INC.**

(PCC Case No. E-2019-001)

I. INTRODUCTION

1. Rule III, Article VIII of the 2017 Rules of Procedure of the Philippine Competition Commission (“Rules of Procedure”) provides for the settlement of cases which may result, among others, in a reduction of fines or modification of charges taking into account several factors namely, (1) stage of the proceedings at which the motion for settlement is filed; (2) number of Respondents moving for settlement; (3) number, nature, and gravity of alleged violations; (4) likelihood of addressing the alleged anti-competitive conduct at the soonest possible time; and (5) other procedural efficiencies and resource savings that can be achieved by a settlement.¹
2. Respondents in a pending case may contact the Competition Enforcement Office (“Enforcement Office”) for purposes of discussing settlement terms and conditions acceptable to the Enforcement Office.
3. Should the Enforcement Office find the proposed settlement filed by respondents to be proper and reasonable, the Enforcement Office and the respondents shall file a joint motion with the Commission, which shall include the terms of the settlement and the consequences for non-compliance therewith.²
4. The Commission, prior to rendering a decision on a joint motion for settlement, may conduct a *market test* through which interested third parties may submit their observations on the proposed terms and conditions of the settlement.
5. The Commission has full discretion to approve a joint motion for settlement. The settlement must contain, among others, such terms and conditions that the Commission finds appropriate or necessary for the effective enforcement of the Philippine Competition Act (“PCA”), its implementing rules, or other competition laws.³ An order approving a settlement shall be final and immediately executory.⁴

II. SUMMARY OF THE CASE

6. On 27 March 2019, the Enforcement Office filed with the Commission a *Statement of Objections* (“SO”) concerning, among others, conduct by Respondent Urban Deca Homes Manila Condominium Corporation (“Condominium Corporation”) and Respondent 8990 Holdings, Inc. (“8990 Holdings”, and together with the Condominium Corporation, the “Respondents”), which were allegedly in violation of Section 15(i) of the PCA.

¹ Section 4.42, Rules of Procedure.

² Section 4.43, Rules of Procedure.

³ Section 4.45, Rules of Procedure.

⁴ Section 4.47, Rules of Procedure.

7. According to the SO, the Condominium Corporation abused its dominant position in the provision of property management services by preventing internet service providers (“ISPs”) other than *Fiber to Deca Homes* (“FTDH”) from providing fixed-line internet service to residents of Urban Deca Homes Manila (“UDH Manila”).
8. On 30 May 2019, the Enforcement Office and the Respondents filed a Joint Motion for Settlement setting out the commitments, terms, and conditions to address the alleged conduct subject of the SO.
9. In addition to UDH Manila, Tondo, which is the subject matter of the SO, the proposed settlement included 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) 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”).
10. On 26 June 2019, the Commission called a clarificatory conference on the Joint Motion for Settlement.
11. On 22 July 2019, the Enforcement Office and the Respondents filed an Amended Joint Motion for Settlement.

III. THE MAIN CONTENT OF THE PROPOSED SETTLEMENT

12. The Enforcement Office and the Respondents moved for the resolution of the present case upon the approval of the following commitments, terms and conditions:
 1. The Respondents shall admit that they have entered into a contractual arrangement that resulted in a situation wherein the internet service was limited only to Fiber to Deca Homes (“FTDH”) in the Nine Condominium Projects in contravention of Section 15(i) of the PCA (the “Subject Conduct”).
 2. The Respondents warrant that the Subject Conduct has already ceased, or to the extent not ceased, that it will cease within one (1) month from the approval of the Joint Motion.
 3. The Respondents shall post notices (“Bulletin”) within fifteen (15) days from approval of the Joint Motion, 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 apply for and accept the services offered by other ISPs. The Bulletin shall be no smaller than 11.7-inch by 16.5-inch (A3), with white background. The font shall not be smaller than 24.

4. 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 Respondent’s projects, and that residents and tenants are free to apply for and accept the services of any ISP. The Bulletin shall be no smaller than 11.7-inch by 16.5-inch (A3), with white background. The font shall not be smaller than 24.
5. 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 enter the market in the Nine Condominium Projects, to offer or market their services, and to use existing cables, poles, ducts, conduits, risers and all other facilities, component, equipment and device necessary to provide services (collectively “internet service facilities”), or to install the internet service facilities under such fair, reasonable and non-discriminatory terms as may be mutually agreed by them.⁵
6. 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 shall not discriminate against such residents, tenants or customers that shifted to other ISPs.
 - 6.1. In order to ensure compliance with the undertaking, the Respondents shall, in addition to posting a Bulletin under paragraphs 3 and 4, ensure receipt by each subscriber or customer of FTDH, within thirty (30) days from approval of the Joint Motion, individual notices (“Notice”) that shall contain the following: (1) a statement that FTD H 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 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.

⁵ The Respondents have already invited Globe Telecom, Inc., PLDT, Inc. to offer their services in Respondents’ condominium Projects.

7. Within thirty (30) days from approval of the Joint Motion, the Respondents shall publish a public apology in two (2) newspapers of national circulation. For this purpose, the size of the public apology will be at least ½ page and will be published twice on different dates in each of the two (2) newspapers of national circulation.
8. 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 statements below:

For the Manuals and/or House Rules of Respondent 8990 Holdings

“8990 Holdings shall not, directly or indirectly, cause the limitation of internet service to any single provider in this Condominium Project.”

For the Manuals and/or House Rules of Respondent Condominium Corporation

“The Board of Trustees of the Condominium Corporation shall not cause the limitation of internet service to any single provider unless with the consent of a majority of the owners excluding the Declarant in the Master Deed with Declaration of Restrictions and 8990 Holdings.”

9. 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.
10. As part of the settlement and pursuant to Section 29(a) of the PCA and in accordance with Sections 6.1, 6.2, 6.3 and 6.4, Article I, Rule VI of the 2017 Rules of the PCC, the Respondents are liable to pay an

administrative fine in respect of its contravention of Section 15(i) of the PCA during the infringement period.⁶

- 10.1. In this regard, the Basic Fine will be based on an assessed gravity of thirty percent (30%) of the Relevant Turnover of the Respondents.
 - 10.2. Complainant Enforcement Office and the Respondents pray that in assessing the Final Fine, the lack of aggravating circumstances, and the following mitigating circumstances be considered: (1) Respondents have voluntarily desisted from continuing the conduct complained of in the Nine Condominium Projects; (2) Respondents have voluntarily sent letters to other ISPs inviting them to offer services in Respondent 8990 Holdings' condominium projects; and (3) Respondents have volunteered to make a public apology in two newspapers of general circulation. In this regard, the Complainant Enforcement Office recommends that in computing the Final Fine imposed on Respondent Condominium Corporation for which Respondent 8990 Holdings is solidarily liable for, the Basic Fine be reduced by twenty-five percent (25%).
 - 10.3. This penalty shall be paid within thirty (30) days from the approval of the Joint Motion.
11. Every three (3) months for the period of one (1) year from the approval of the Joint Motion, and at such other times as the PCC may request, within the same one (1) year period, Respondents shall submit to the Honorable Commission a report, under oath, for the Nine Condominium Projects which shall contain information regarding its compliance with the commitments, terms, and conditions of the Joint Motion, including 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.
 12. For the period of one (1) year after the approval of the Joint Motion, Respondents shall allow the PCC:
 - 12.1. To interview, without restraint or interference, either formally or informally, 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

⁶ "Infringement period" refers to the time, in years, that the Subject Conduct is implemented in the Nine Condominium Projects, provided, that a fraction of a year shall be considered as one (1) year.

- 12.2. To inspect and copy, upon reasonable notice, records describing in detail any action or activities covered by the Joint Motion, including complaint(s) received from any person relating to Respondents' failure or refusal to comply with the Joint Motion;
13. 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.
14. Any violations by the Respondents of the commitments, terms, and conditions in the 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.
15. 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 the Joint Motion.
16. 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.
17. The commitments, terms, and conditions shall be binding to any and all successors-in-interest of the Respondents.

IV. PUBLIC COMMENTS

13. Interested third parties may submit their non-confidential comments or observations on the Joint Motion for Settlement via email to adjudication@phcc.gov.ph with subject title "Comments on PCC Case No. E-2019-001," or via mail to the Philippine Competition Commission located at 25th Floor Tower 1, Vertis North Corporate Center, North Avenue, Quezon City 1105. Please ensure that the comments will be received by the Adjudication Division within fifteen (15) days from the date of this publication, or until 20 August 2019.
14. Comments should preferably be supported with factual or legal basis, and include possible solution to the issues identified.