PHILIPPINE COMPETITION COMMISSION
Ensuring businesses compete and consumers benefit

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**IN THE MATTER OF THE PROPOSED ACQUISITION BY PHIL-TOWER CONSORTIUM INC. OF ASSETS OF GLOBE TELECOM, INC.**
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**MAO Case No. M-2022-002**

# COMMISSION DECISION NO. 01-M-002/2023

This is a review of the proposed acquisition by Phil-Tower Consortium Inc. ("PTCI") of assets of Globe Telecom, Inc. ("Globe", and together with PTCI, the "Parties"), pursuant to Sections 16 and 17 of Republic Act No. 10667 and Section 1, Rule 4 of the Rules and Regulations to Implement the Provisions of Republic Act No. 10667.

Upon review of the findings and recommendation of the Mergers and Acquisitions Office and the Parties' submissions, the Commission finds that the acquisition by PTCI of assets of Globe (the "Transaction") will not likely result in substantial lessening of competition for reasons discussed below.

## 1. The Transaction Involves an Acquisition of Goods in the Ordinary Course of Business; Sale Lease Back

In the Transaction, PTCI will only acquire ownership of Globe's tower assets, which are indispensable input for the establishment and operation of Passive Telecommunications Tower Infrastructures ("PTTI"). In turn, the tower assets will be leased back to Globe for an agreed period. The Transaction is commonly referred to as a "sale and leaseback" or SLB.

Consequently, the Transaction is deemed a mere acquisition of goods in the ordinary course of business.

## 2. No Acquisition of Control of All or Substantially All Assets

Post-transaction, PTCI, as the Acquiring Entity, would not hold all or substantially all the assets of Globe or any of its operating units as a result of the Transaction.

To date, Globe has [redacted][1] existing towers nationwide. [redacted] towers are in the Visayas and Mindanao regions and only [redacted] of these towers are subject of the

[1] Data or information has been redacted pursuant to Section 34 of the Philippine Competition Act which provides: **Section 34 – *Confidentiality of Information.*** – Confidential business information submitted by entities, relevant to any inquiry or investigation being conducted pursuant to this Act as well as any

Transaction. Post-transaction, Globe will retain ownership of [redacted] towers nationwide or [redacted] towers in the Visayas and Mindanao regions.

**3. The Transaction is Unlikely to Result in Competition Concerns Despite Possible Horizontal and Vertical Relationship Between the Parties**

Department of Information and Communications Technology ("DICT") Department Order No. 8, series of 2020 ("DC No. 8, 2020") distinguishes Independent Tower Companies ("ITC")[2] and Mobile Network Operators ("MNO").[3]

Correspondingly, PTCI is an ITC that is limited to owning, establishing, maintaining, and operating Shared PTTIs. As defined, PTCI can neither engage nor can be authorized to engage in the business of a telecommunications entity.

Globe, on the other hand, exercises broader privileges. As an MNO, Globe is engaged in the business of telecommunications. It is authorized to operate in one or more telecommunication categories provided in its legislative franchise and Certificate of Public Convenience and Necessity. In fact, Globe provides digital wireless communication services, as well as domestic and international long distance communication services or carrier services, among others.

Notably, the definition of MNOs provide that such entities have *"xxx the ability to own, lease or operate all the active and passive elements of the telecommunications network xxx."*[4] In addition to providing telecommunications services, the Commission observes that Globe owns Legacy PTTIs and has an operating unit handling its tower infrastructure, though it caters only to Globe's internal needs.

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deliberation in relation thereto, shall not, in any manner, be directly or indirectly disclosed, published, transferred, copied, or disseminated. Likewise, the Commission shall, to the extent possible, subject such information to the confidentiality rule provided under this section when it issues notices, bulletins, rulings and other documents: *Provided,* That the confidentiality rule shall not apply if the notifying entity consents to the disclosure, or the document or information is mandatorily required to be disclosed by law or by a valid order of a court of competent jurisdiction or of a government or regulatory agency, including an exchange. The identity of the persons who provide information to the Commission under condition of anonymity, shall remain confidential, unless such confidentiality is expressly waived by these persons. xxx

[2] Sec. 3(m) – ITC or Independent Tower Company refers to a private entity duly organized and existing under the laws of the Philippines, registered with the DICT as an ITC, and engaged in the business of establishing or operating one or more Shared PTTIs, that is neither a private sector MNO nor a "Related Party" thereto, as defined by the rules and regulations issued by the SEC.

[3] Sec. 3(s) – MNO or Mobile Network Operator refers to a duly-registered entity authorized to operate in one or more of the telecommunications categories in accordance with the Legislative Franchise and CPCN that grants it the privilege of engaging in the business of being a telecommunications entity that provides wireless telecommunications services, with or without value-added service, to the public, with the ability to own, lease or operate all the active and passive elements of the telecommunications network, such as radio spectrum allocations, wireless networks, backhaul infrastructure, marketing and repair organization, billing and customer care, and provisioning computer systems, among others, subject to the provisions of applicable laws, rules and regulations, and other relevant issuances. The term includes Telecommunications Companies (TelCos), Wireless Service Providers (WSPs), Wireless Carrier Service Providers (WCSPs), Cellular Companies (CellCos), Cellular Service Providers (CSPs), Mobile Network Carriers (MNCs), and other similar commercial entities.

[4] *Id.*

In this regard, the Commission does not preclude the possibility that horizontal overlap/s between the parties may occur in the future and has taken such possibility, though remote, into consideration.

As to vertical relationships, the Transaction does not present any risk of either input or customer foreclosure. Globe's divestment of towers, in fact, opens up the use of these towers to other market players, consistent with the DICT's policy on sharing of PTTI. Increased sharing of passive infrastructure in the market will ultimately improve connectivity, to the benefit of end-consumers.

In this case, the upstream supplier, PTCI, will be opening up the supply of towers to other MNOs and customers through its purchase of the tower assets. Globe, the downstream unit, remains free to purchase from PTCI's rivals should it need to lease more towers.

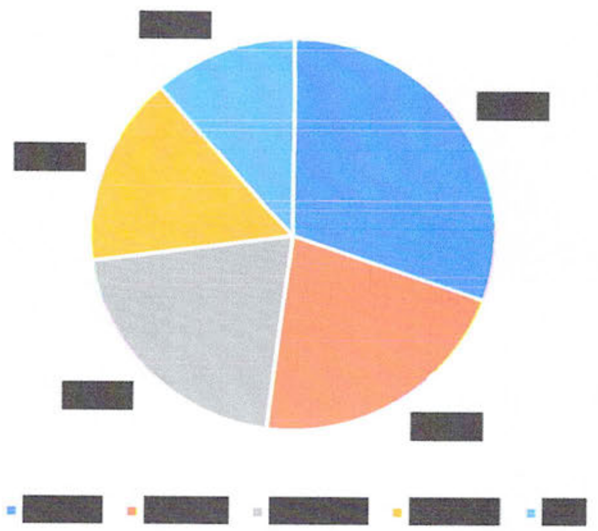
The Commission finds no reason to conclude that the transaction will result in competition concerns.

**4. No Risk of Substantial Increase in Market Share**

As of 15 August 2022, nineteen (19) entities, including PTCI, have registered with the DICT as ITCs. [redacted] To date, Frontier has a total of [redacted] SLB and built towers that comprise [redacted] of the market for leased towers nationwide.

[redacted] EDOTCO Group SDN BHD/ISON Edotco Towers, Inc. ("EDOTCO"), which purchased in April 2022 approximately [redacted] towers in the Visayas and Mindanao regions from PLDT, Inc. subsidiaries Smart Communications, Inc. and Digitel Mobile Philippines, Inc. EDOTCO currently owns a total of [redacted] SLB and built towers or [redacted] of the market for leased towers nationwide.

Fig. 1 Market Share of Leased Towers Post-Transaction



With the Transaction, PTCI will only gain 1,350 towers and increase its total tower assets to [redacted]. The increase in tower assets is equivalent to [redacted] of the market for leased towers nationwide and places PTCI only in [redacted] place.

| Total Tower Assets Post-Transaction | |
|---|---|
| Frontier | [redacted] |
| EDOTCO | [redacted] |
| PTCI | [redacted] |

Table 1

Consequently, there is no risk of PTCI increasing its market share in the candidate relevant market.

**ACCORDINGLY**, the Commission resolves to take no further action with respect to the proposed Transaction between PTCI and Globe.

This Decision is rendered solely based on the facts disclosed and circumstances of the proposed Transaction and documents submitted by PTCI and Globe.

5 January 2023.

**JOHANNES BENJAMIN R. BERNABE**
Officer-in-Charge, Office of the Chairperson

[redacted]

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