



Republic of the Philippines
Supreme Court
 Manila

SECOND DIVISION

GMA NETWORK, INC.,
 Petitioner,

G.R. No. 181789

Present:

- versus -

CARPIO, *J.*, Chairperson,
 BRION,
 DEL CASTILLO,
 MENDOZA, and
 LEONEN,* *JJ.*

**NATIONAL TELECOMMUNICATIONS
 COMMISSION, CENTRAL CATV, INC.,
 PHILIPPINE HOME CABLE
 HOLDINGS, INC., AND PILIPINO
 CABLE CORPORATION,**
 Respondents.

Promulgated:

03 FEB 2016

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DECISION

BRION, J.:

Before the Court is a petition for review on *certiorari*¹ filed by petitioner GMA Network, Inc. (*petitioner*) seeking the reversal of the decision² of the Court of Appeals (*CA*) dated October 10, 2007, and its resolution³ dated February 18, 2008, in CA-G.R. SP No. 92543. The *CA* held that the respondent National Telecommunications Commission (*NTC*) did not gravely abuse its discretion in denying the petitioner's motion for the issuance of a cease and desist order (*CDO*) and the motion for reconsideration that followed.

* On Leave.

¹ *Rollo*, pp. 30-49.

² Penned by Associate Justice Marlene Gonzales-Sison; concurred in by Associate Justices Juan Q. Enriquez, Jr. and Vicente S.E. Veloso, *id.* at 87-97.

³ *Id.* at 99-100.

The Antecedents

On April 23, 2003, the petitioner filed a complaint before the NTC against respondents Central CATV, Inc. (*Skycable*), Philippine Home Cable Holdings, Inc. (*Home Cable*), and Pilipino Cable Corporation (*PCC*).⁴ The petitioner alleged that the respondents had entered into several transactions that created prohibited monopolies and combinations of trade in commercial mass media.⁵ These transactions allegedly violated the Constitution, Executive Order No. 205 dated June 30, 1987,⁶ and its implementing rules and regulations.⁷

According to the petitioner, Lopez, Inc. and its affiliate, ABS-CBN Broadcasting Corporation and its officers, own the majority stocks of Sky Vision Corporation (*Sky Vision*). Sky Vision wholly owns Skycable, which operates cable TV in Metro Manila.⁸

Sky Vision and Telemondial Holdings, Inc. (*THI*) established PCC, which operates cable TV in the provinces. Sky Vision and THI entered into several transactions, resulting in Sky Vision's ownership of PCC.⁹ Consequently, Sky Vision holds indirect equity interests in the cable companies owned by Skycable and PCC.¹⁰

On the other hand, *Home Cable* is a wholly owned subsidiary of Unilink Communications Corporation (*Unilink*). Home Cable is authorized to operate cable TV in Metro Manila, which authority was expanded to Cavite, Cebu, Tarlac, and Batangas.¹¹

On July 18, 2001, Lopez, Inc. and its affiliates, Benpres Holdings Corporation and ABS-CBN Broadcasting Corporation (*Benpres Group*), executed a **Master Consolidation Agreement (MCA)** with PLDT and Mediaquest Holdings, Inc. (*PLDT Group*) to consolidate their respective ownerships, rights, and interests in **Sky Vision** and **Unilink** under a holding company, Beyond Cable Holdings, Inc.¹²

The petitioner prayed for the following reliefs in its complaint:

(1) declaring unlawful, and therefore null and void: (a) the mergers, consolidation, and common control of the respondents Skycable and Home Cable under Beyond Cable; (b) the mergers and consolidation of the cable companies under respondents PCC; (c) the acquisition of the assets, permits and controlling shares of stock of the cable companies by the respondents Sky Cable, Home Cable and PCC; and (d) the "functional convergence" of

⁴ *Id.* at 88.

⁵ *Id.* at 501.

⁶ Entitled, *Regulating the Operation of Cable Antenna Television (CATV) Systems in the Philippines, and for Other Purposes.*

⁷ *Rollo*, pp. 335-337.

⁸ *Id.* at 331.

⁹ *Id.* at 332-333.

¹⁰ *Id.* at 333.

¹¹ *Id.* at 333-334.

¹² *Id.* at 334-335.

the Bayantel and the Skycable/PCC cable companies, for being contrary to law; **and consequently, ordering the respondents to cease and desist permanently from implementing such mergers, consolidation, common control and functional convergence;** and

(2) Ordering respondents and their component cable companies to maintain the quality of complainant GMA's signal, free from signal distortion and/or degradation, in their respective systems under pain of cancellation or revocation of their licenses or permits to operate should they continue to fail to do so;¹³ (emphasis supplied)

On September 22, 2003, the petitioner filed with the NTC a **motion for the issuance of a cease and desist order** based on Section 20(g) of the Public Service Law. The petitioner asked the NTC to order the respondents to cease and desist from continuing the implementation of their operational merger and from implementing any further merger or consolidation of respondents' ownership, property, privileges, and right or any part thereof **without the approval of the NTC.**¹⁴

On November 11, 2003, the petitioner filed a *Manifestation (Re: Motion for Issuance of Cease and Desist Order)*, citing news articles allegedly confirming that further steps had been undertaken toward the consolidation.¹⁵ The petitioner also filed several motions for the urgent resolution of its motion for the issuance of a cease and desist order.¹⁶

The NTC's Ruling

The NTC denied the petitioner's motion for the issuance of a cease and desist order.¹⁷ The NTC ruled that the resolution of this motion would necessarily resolve the main case without the parties' presentation of evidence.¹⁸

The NTC also denied the petitioner's motion for reconsideration, prompting the petitioner to file a petition for *certiorari* before the CA, imputing grave abuse of discretion on the NTC.¹⁹

The CA's Ruling

The CA dismissed the petition and found no grave abuse of discretion on the part of the NTC.²⁰

The CA ruled that the NTC has the discretionary power to issue a cease and desist order and, therefore, cannot be compelled to do so.²¹

¹³ *Id.* at 88-89.

¹⁴ *Id.* at 576.

¹⁵ *Id.* at 589-590.

¹⁶ *Id.* at 597-623.

¹⁷ NTC Order dated November 8, 2004, *id.* at 624-625.

¹⁸ *Ibid.*

¹⁹ NTC Order dated October 13, 2005, *id.* at 635.

²⁰ CA Decision dated October 10, 2007, *supra* note 2.

²¹ *Id.* at 92-93.

The CA further held that the petitioner's complaint and motion both included a prayer for the issuance of a cease and desist order. The resolution of this prayer necessitates the parties' presentation of evidence.²²

The CA did not rule on the constitutional and legal issues of the respondents' alleged mergers, acquisitions, consolidation, and corporate combinations. According to the CA, the NTC is the proper body that can act on the petitioner's factual allegations of market control and manipulation because the NTC has the presumed understanding of the market and commercial conditions of the broadcasting industry.²³

The CA denied the petitioner's motion for reconsideration,²⁴ prompting the petitioner to file the present petition.

The Petitioner's Position

The petitioner argues that the CA erred in finding no grave abuse of discretion on the part of the NTC when it denied the motion for the issuance of a cease and desist order.

According to the petitioner, the NTC abandoned its duty to issue a cease and desist order despite the petitioner's overwhelming and unrefuted evidence that Skycable, PCC, and Home Cable had already consolidated their operations under the MCA **without the prior approval of the NTC and the Congress.**²⁵

The petitioner concludes that the **NTC should have issued the cease and desist order** to prevent the implementation of the alleged consolidation. The order would stop the continuing violation of the Constitution, the laws,²⁶ Home Cable's certificate of authority, and established jurisprudence.²⁷ The cease and desist order would also prevent the main case from becoming moot and academic.²⁸

The Private Respondents' Position

Skycable and PCC

Skycable and PCC argued as follows:

²² *Id.* at 93.

²³ *Id.* at 54, 65, 68, and 96.

²⁴ CA Resolution dated February 18, 2008, *supra* note 3.

²⁵ *Rollo*, pp. 54, 65, and 68.

²⁶ The petitioner cites the following laws that the petitioner allegedly violated: Article 16 Section 11(1) of the Constitution; Section 20(g) of the Public Service Law; Section 4 of Act No. 3247 entitled An Act to Prohibit Monopolies and Combinations in Restraint of Trade; Article 186 of the Revised Penal Code; Section 10 of RA 7969; and Home Cable's Certificate of Authority which specifically requires prior congressional approval before a merger with any corporation.

²⁷ *Rollo*, pp. 55-62.

²⁸ *Id.* at 50-51, 54, 64-65, and 69.

First, the petitioner delved into the merits of the case instead of establishing the alleged grave of abuse of discretion of the NTC. The petitioner is asking the Court not only to make factual findings but to preempt the decision of the NTC without the benefit of a trial.²⁹

Second, no merger has taken place under the MCA because Beyond Cable has not actually taken over the operations of Sky Cable, PCC, and Home Cable.³⁰

Third, the petitioner has not shown any right that may have been violated. Section 20(g) of Commonwealth Act No. 146 or the Public Service Act expressly allows the negotiation or completion of merger and consolidation prior to the NTC's approval.³¹

Fourth, Skycable did not violate its congressional franchise since Skycable did not relinquish its franchise and had maintained its separate and distinct legal personality.³²

Fifth, competition still exists in the cable industry in the areas covered by the Skycable and PCC operations.³³

Home Cable

Home Cable echoed the arguments of PCC and Sky Cable.³⁴

Home Cable also argued that the petition is dismissible as it lacks the following mandatory procedural requirements: (a) signature page bearing the signature of the petitioner's duly authorized counsel; (b) verification signed by the petitioner's duly authorized representative; (c) certificate of non-forum shopping; and (d) the petitioner's written authorization in favor of the person signing the verification and certification of non-forum shopping.³⁵

The Court's Ruling

The main issue in the present petition involves the NTC's denial of the motion for the issuance of a cease and desist order. The present case does not involve the petitioner's main complaint before the NTC.

Preliminarily, we deny the procedural arguments of Home Cable. We note that the petitioner had attached in its petition the signature page of its counsel,³⁶ the verification and certification of non-forum shopping signed by

²⁹ *Id.* at 1582, 1589-1591.

³⁰ *Id.* at 1592-1593.

³¹ *Id.* at 1595-1596 and 1601-1602.

³² *Id.* at 1596-1597.

³³ *Id.* at 1597-1600.

³⁴ *Id.* at 1624-1631.

³⁵ *Id.* at 1622-1624.

³⁶ *Id.* at 79-80.

Dick B. Perez,³⁷ and the Secretary's Certificate authorizing Dick B. Perez to file the petition.³⁸

As to the main issue in the present case, we rule that the CA committed grave abuse of discretion for its use of the wrong considerations in denying the petitioner's motion for the issuance of a cease and desist order **on the ground** that its resolution would resolve the main case without trial. We nevertheless join the CA's conclusion of denial based on the nature of the petitioner's motion as a provisional remedy.

Section 3, Part VI of the NTC Rules of Procedure and Practices grants the NTC the power to issue **provisional reliefs** upon the filing of a complaint or at any subsequent stage. For this reason, the NTC has the authority to determine the propriety of the issuance of a cease and desist order, which is a provisional relief.³⁹

Provisional reliefs or remedies are writs and processes that are available during the pendency of the action.⁴⁰ A litigant may avail of provisional remedies to preserve and protect certain rights and interests pending the issuance of the final judgment in the case.⁴¹ These remedies are provisional because they are **temporary measures** availed of during the pendency of the action; they are **ancillary** because they are mere incidents in and are dependent on the result of the main action.⁴²

The ancillary nature of provisional remedies means that they are adjunct to the main suit.⁴³ Consequently, it is not uncommon that the issues in the main action are closely intertwined, if not identical, to the allegations and counter-allegations of the opposing parties in support of their contrary positions concerning the propriety or impropriety of the provisional relief.⁴⁴

The distinguishing factor between the resolution of the provisional remedy and the main case lies in the temporary character of the ruling on the provisional relief, thus, the term "provisional."⁴⁵ **The resolution of the provisional remedy, however, should be confined to the necessary issues attendant to its resolution without delving into the merits of the main case.**⁴⁶

In other words, although a resolution of a motion for the issuance of a provisional relief necessarily involves issues intertwined with the main action, **this reality is not a legal obstacle** to the authorized agency's

³⁷ *Id.* at 81-82.

³⁸ *Id.* at 83-84.

³⁹ In *Associated Communications and Wireless Services, LTD., et al. v. Dumlao, et al.* [440 Phil. 787, 804-806 (2002)], the Court recognized the power of the NTC to issue a cease and desist order upon compliance with the due process requirements.

⁴⁰ V. Francisco, *The Revised Rules of Court in the Philippines: Provisional Remedies*, p. 1 (1985).

⁴¹ *Ibid.*

⁴² *Calderon v. Roxas, et al.*, G.R. No. 185595, January 9, 2013, 688 SCRA 330, 340.

⁴³ *Philippine National Bank v. Court of Appeals*, 353 Phil. 473, 479 (1998).

⁴⁴ *Hutchison Ports Phil. Ltd. v. Subic Bay Metropolitan Authority, et al.*, 393 Phil. 843, 859 (2000).

⁴⁵ *Buyco v. Baraquia*, 623 Phil. 596, 600-601 (2009).

⁴⁶ *Hutchison Ports Phil. Ltd. v. Subic Bay Metropolitan Authority, et al.*, *supra* note 44, at 859.

resolution of a prayer for a provisional relief on a temporary basis pending the resolution of the main case.

In fact, Section 3, Part VI of the NTC Rules of Procedure and Practices provides that the NTC may grant the provisional relief, on its own initiative or upon a party's motion, **based on the pleading and the attached affidavits and supporting documents, without prejudice to a final decision after completion of the hearing.**

In these lights, we reverse the CA's findings and rule that the NTC gravely abused its discretion in denying the motion for the issuance of a cease and desist order based **only** on the ground that it would necessarily resolve the main action.

Be that as it may, we cannot grant the petitioner's prayer asking the Court to issue the cease and desist order. The petitioner failed to comply with the requirements for its issuance.

In *Garcia v. Mojica*,⁴⁷ the Court ruled that a cease and desist order is similar in nature to a *status quo* order rather than a temporary restraining order or a preliminary injunction since a *status quo* order does not direct the doing or undoing of acts, unlike in the case of prohibitory or mandatory injunctive relief.⁴⁸

According to *Garcia*, a *status quo* order, as the very term connotes, is merely intended to maintain the last, actual, peaceable, and uncontested state of things which preceded the controversy.⁴⁹ This order is resorted to when the projected proceedings in the case made the conservation of the *status quo* desirable or essential, but either the affected party **did not pray for such relief or the allegations in the party's pleading did not sufficiently make out a case for a temporary restraining order.**⁵⁰

There were cases, however, when the Court treated a *status quo* order as a writ of **preliminary injunction**. In *Prado, et al. v. Veridiano II, et al.*,⁵¹ the Court ruled that the *status quo* order in that case was in fact a writ of preliminary injunction, which enjoined the defendants from continuing not only *the public bidding in that case but also subsequent bidding until the trial court had resolved the issues.*⁵² The Court applied the requirements for the issuance of a writ of preliminary injunction in determining the propriety for the issuance of a *status quo* order.⁵³

In the present case, the petitioner prayed that the NTC order the respondents to **cease and desist from continuing the implementation of their operational merger and from implementing any further merger or**

⁴⁷ 372 Phil. 892-893 (1999).

⁴⁸ *Id.* at 900.

⁴⁹ *Ibid.*, citing F. Regalado, Remedial Law Compendium, Vol. I, p. 651 (1997).

⁵⁰ *Ibid.*

⁵¹ G.R. No. 98118, December 6, 1991, 204 SCRA 654, 670.

⁵² *Id.* at 670-671.

⁵³ *Ibid.*

consolidation of respondents' ownership, property, privileges, and rights or any part thereof without the approval of the NTC.⁵⁴

The above allegations confirm that the petitioner's prayer for the issuance of a cease and desist order is actually a prayer for the issuance of a preliminary injunction. Thus, the petitioner's entitlement to the issuance of a cease and desist order depends on its compliance with the requisites for the issuance of a preliminary injunction.

To be entitled to the injunctive writ, the petitioner must show that (1) there exists a clear and unmistakable right to be protected; (2) this right is directly threatened by an act sought to be enjoined; (3) the invasion of the right is material and substantial; and (4) there is an urgent and paramount necessity for the writ to prevent serious and irreparable damage.⁵⁵

The petitioner failed to comply with the above requirements.

The petitioner failed to prove the **first** requirement, specifically, that *it has a clear and unmistakable right to be protected.*

An injunction will not issue to protect a right not in *esse* or a right that is merely **contingent** and **may never arise** since, to be protected by injunction, the alleged right must be clearly founded on or granted by law or is enforceable as a matter of law.⁵⁶

A writ of preliminary injunction may be issued ***only upon clear showing of an actual existing right*** to be protected during the pendency of the principal action. When the complainant's right or title is doubtful or disputed, it does not have a clear legal right and, therefore, the issuance of injunctive relief is improper.⁵⁷

Resolving the propriety of the issuance of a cease and desist order based on the petitioner's factual allegations and legal basis, we find that the petitioner failed to clearly establish its right to be protected under Section 20(g) of the Public Service Act. The petitioner alleged that the respondents have consolidated their operations without the requisite approval from the NTC.

Section 20(g) of the Public Service Act provides as follows:

Acts requiring the approval of the Commission. - Subject to established limitations and exceptions and saving provisions to the contrary, it shall be unlawful for any public service or for the owner, lessee or operator thereof, without the approval and authorization of the Commission previously had:

⁵⁴ *Rollo*, p. 579.

⁵⁵ *Australian Professional Realty, Inc. v. Municipality of Padre Garcia, Batangas Province*, G.R. No. 183367, March 14, 2012, 668 SCRA 253, 261.

⁵⁶ *Heirs of Melencio Yu, et al. v. CA, et al.*, G.R. No. 182371, September 4, 2013, 705 SCRA 84, 95-96.

⁵⁷ *The Incorporators of Mindanao Institute Inc., et al. v. UCCP, et al.*, G.R. No. 171765, March 21, 2012, 668 SCRA 637, 649.

x x x x

(g) To sell, alienate, mortgage, encumber or lease its property, franchises, certificates, privileges, or rights or any part thereof; or **merge or consolidate its property, franchises privileges or rights, or any part thereof, with those of any other public service.** The **approval herein required shall be given, after notice to the public and hearing the persons interested at a public hearing,** if it be shown that there are just and reasonable grounds for making the mortgaged or encumbrance, for liabilities of more than one year maturity, or the sale, alienation, lease, merger, or consolidation to be approved, and that the same are not detrimental to the public interest, and in case of a sale, the date on which the same is to be consummated shall be fixed in the order of approval: **Provided, however, that nothing herein contained shall be construed to prevent the transaction from being negotiated or completed before its approval** or to prevent the sale, alienation, or lease by any public service of any of its property in the ordinary course of its business. (emphasis supplied)

Clearly, the above provision expressly permits the **negotiation or completion** of transactions involving merger or consolidation of property, franchises, privileges or rights **even prior** to the required NTC approval.

Applying Section 20(g) of the Public Service Act to the present case, the respondents' negotiation and even completion of transactions constituting the alleged consolidation of property, franchises, privileges, or rights – **by themselves** – are permitted and do not violate the provision. What the provision prohibits is the implementation or consummation of the transaction without the NTC's approval.

The petitioner submitted newspaper articles as proof of the alleged implementation of the consolidation. The petitioner's reliance on these newspaper articles is misplaced.

The Manila Bulletin article merely reported the Debt Restructuring Agreement signed by the creditors of Sky Vision, Skycable, and Home Cable.⁵⁸ The report even described the consolidation as merely a proposed consolidation, to wit: "*x x x With the signing of the MOA, the creditors of the three entities are granting their consents to the proposed consolidation of ownership of the PLDT group and Benpres Group in these entities.*"⁵⁹

The Philippine Daily Inquirer articles⁶⁰ showed that the completion of the consolidation was still expected, negating the consummation or implementation of the transaction.

At any rate, we emphasize that Section 20(g) of the Public Service Act **does not** preclude the negotiation and completion of the transactions for merger or consolidation prior to the NTC approval.

⁵⁸ *Rollo*, p. 594.

⁵⁹ *Ibid.*

⁶⁰ *Id.* at 596 and 608.

Since Section 20(g) of the Public Service Act – the petitioner’s basis for the issuance of the cease and desist order – allows the negotiation and completion of transactions of mergers and consolidation, the complained acts of the respondents (based solely on newspaper reports) cannot be a source of the petitioner’s entitlement to a cease and desist order. To be precise, the evidence before us does not show that a merger or consolidation has taken place beyond the negotiation or completion stage and should be barred for lack of NTC approval. There is not even a showing that a request for approval has been made, which request requires notice to the public and public hearings before it can be approved. Under these evidentiary facts, the motion for a cease and desist order **is clearly still premature.**

Since the petitioner did not clearly establish a right sought to be protected, we need not discuss the other requirements for the issuance of an injunctive writ.

WHEREFORE, we **GRANT** the petition and **REVERSE** and **SET ASIDE** the decision of the Court of Appeals dated October 10, 2007, and its resolution dated February 18, 2008. However, we **DENY** the petitioner’s prayer for the issuance of a cease and desist order.

SO ORDERED.


ARTURO D. BRION
Associate Justice

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson


MARIANO C. DEL CASTILLO
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice

(On Leave)
MARVIC M.V.F. LEONEN
Associate Justice

ATTESTATION

I attest 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.



ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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