



Republic of the Philippines
Supreme Court
Baguio City

SECOND DIVISION

GMA NETWORK, INC. and G.R. No. 205986
CITYNET NETWORK
MARKETING AND Present:
PRODUCTIONS, INC.,
Petitioners,

-versus-

LEONEN, J., Chairperson,
LAZARO-JAVIER,
LOPEZ, M.,
LOPEZ, J., and
KHO, JR., JJ.

ABC DEVELOPMENT
CORPORATION (ABC), MEDIA
PRIMA BERHAD, and MPB
PRIMEDIA, INC.,
Respondents.

Promulgated:
JAN 11 2023

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DECISION

LEONEN, J.:

Adhering to the doctrine of primary jurisdiction, courts usually defer jurisdiction to administrative agencies on cases concerning matters that demand their special competence.¹

This Court resolves the Petition for Review on *Certiorari*² assailing the

¹ See *Industrial Enterprises v. Court of Appeals*, 263 Phil. 352, 358 (1990) [Per J. Melencio-Herrera, Second Division].

² *Rollo*, pp. 3-52.

Decision³ and Resolution⁴ of the Court of Appeals, which affirmed the Regional Trial Court's Joint Order⁵ dismissing the Amended Complaint filed by GMA Network, Inc. (GMA) and its wholly owned subsidiary, Citynet Network Marketing and Productions, Inc. (Citynet),⁶ where they had sought to nullify an agreement for, among others, allegedly violating the constitutional limitation on mass media ownership and management.

In 2004, Citynet entered into a Co-Production/Blocktime Agreement⁷ with Zoe Broadcasting Network, Inc. (Zoe Broadcasting), where Citynet would be providing shows to be broadcast on ZOE Channel 11.⁸ They eventually reformatted the channel and launched QTV-11. Later, Citynet assigned all its rights under the agreement to GMA, which then undertook the "programming, launching and airing of shows and news broadcasts of QTV-11."⁹

When QTV-11 was launched in November 2005, it allegedly obtained encouraging patronage and satisfactory share in public viewership. In its first two months, it ranked third in Mega Manila, followed by Studio 23 in fourth place and ABC Development Corporation (ABC-5) in fifth.¹⁰

The controversy arose in 2008 when Merrill Lynch of Singapore,¹¹ as well as newspapers Philippine Daily Inquirer and The Manila Times, reported that ABC-5 sold through a Blocktime Agreement all its airtime to MPB Primedia, Inc. (Primedia), except news and Christian programming.¹² The acquisition was reportedly part of the investment strategy of Media Prima Berhad, a Malaysian corporation, to establish a company in the Philippines of which it would be 70% owner.¹³

On December 3, 2008, GMA, Citynet, and Zoe Broadcasting filed before the Regional Trial Court of Quezon City a Complaint¹⁴ against defendants ABC-5, Primedia, and Media Prima Berhad,¹⁵ seeking to nullify the Blocktime Agreement with damages for unfair competition.¹⁶

³ Id. at 54–73. The October 16, 2012 Decision in CA-G.R. SP No. 112995 was penned by Associate Justice Danton Q. Bueser and concurred in by Associate Justices Amelita G. Tolentino and Ramon R. Garcia of the Fourth Division, Court of Appeals, Manila.

⁴ Id. at 75–76. The February 21, 2013 Resolution in CA-G.R. SP No. 112995 was penned by Justice Danton Q. Bueser and concurred in by Associate Justices Amelita G. Tolentino and Ramon R. Garcia of the Fourth Division, Court of Appeals, Manila.

⁵ Id. at 546–557. The December 15, 2009 Joint Order in Civil Case No. Q-08-63880 was rendered by Presiding Judge Luisito G. Cortez of the Regional Trial Court, Branch 84, Quezon City.

⁶ Id. at 79.

⁷ Id. at 107–118.

⁸ Id. at 79.

⁹ Id. at 80.

¹⁰ Id. at 81.

¹¹ Id. at 82.

¹² Id. at 85.

¹³ Id. at 82.

¹⁴ Id. at 77–106.

¹⁵ Id. at 55.

¹⁶ Id. at 77. Docketed as Civil Case Q-08-63880.

The plaintiffs alleged that even if Primedia's Articles of Incorporation stated that it was Filipino-owned, it was nonetheless Media Prima Berhad's subsidiary,¹⁷ purposely established to purchase and manage a chunk of ABC-5's airtime content and sales.¹⁸ It would eventually convey all its rights in the Blocktime Agreement to the MPB Strategic Media Fund, an equity fund set up for ASEAN media investments of Media Prima Berhad.¹⁹

The plaintiffs claimed that the Blocktime Agreement should be declared void²⁰ under Article 1409 of the Civil Code, not only for violating the limitation in ownership and management of mass media under Article XVI, Section 11(1) of the Constitution,²¹ but also the Anti-Dummy Law.²²

At the time of the Complaint's filing, the program grid of ABC-5's TV-5 allegedly showed that 93.75% of its airtime was controlled by Primedia.²³ Surveys also revealed that its television ratings immediately soared, ascending to the third spot from May to October 2008, displacing Studio 23.²⁴ The plaintiffs said that Primedia's control and management "undermine[d] the nationalized broadcast media and result[ed] in unfair competition" among local broadcasting networks.²⁵

On January 6, 2009, GMA, Citynet, and Zoe Broadcasting filed an Erratum to correct typographical errors²⁶ on paragraph 19 of their Complaint to be amended as follows:

19. As a result, ABC-5's TV5 rapidly claimed to the top in terms of television ratings:

[1]9.1 As above stated and as ABC-5 disclosed in its website, attached hereto as Annex "I", Primedia will produce and source most of the entertainment programs of TV-5 notwithstanding that Primedia's paid-up capital is only P350,150.[00] which amount is grossly inadequate to fund all of ABC-5's TV-5 entertainment programs[.]²⁷

¹⁷ Id. at 84.

¹⁸ Id. at 85.

¹⁹ Id.

²⁰ Id. at 87.

²¹ Id. at 85.

²² Id. at 86.

²³ Id. at 88.

²⁴ Id.

²⁵ Id. at 93.

²⁶ Id. at 55. However, in the Omnibus Order dated April 2, 2009 (*rollo*, p. 1307), the Erratum was filed on January 16, 2009.

²⁷ Id. at 1307.

The paragraph sought to be amended in the original Complaint (*rollo*, p. 88) provided:

19. As a result, ABC-5's TV-5 rapidly climbed to the top in terms of television ratings notwithstanding that its paid-up capital is only P350,150.00 which amount is grossly inadequate to fund all its programs. ABC-5 or TV-5 disclosed in its website, a copy of which is attached hereto as Annex "I", that Primedia will produce and source most of the entertainment programs of TV-5[.]

ABC-5 later filed an Omnibus Motion, seeking the denial or striking of the Erratum off the records. Alternatively, it prayed that the running of the period for the defendants' filing of a responsive pleading to the original Complaint be suspended and that the plaintiffs be directed to serve upon them a verified amended Complaint reflecting the changes.²⁸

On January 14, 2009, GMA, Citynet, and Zoe Broadcasting filed their Comment to the Omnibus Motion²⁹ and a Motion for Production³⁰ compelling the defendants to produce the Blocktime Agreement, including its annexes.³¹

Media Prima Berhad filed a Special Appearance by way of a Motion to Dismiss,³² seeking the Complaint's dismissal for lack of jurisdiction over its person³³ grounded on improper service of summons.³⁴ Primedia similarly filed a Motion to Dismiss (Under a Special Appearance).³⁵

On March 6, 2009, the Regional Trial Court ordered the submission of the Omnibus Motion and Motion for Production for resolution.³⁶

On April 2, 2009, the Regional Trial Court issued an Omnibus Order³⁷ directing GMA, Citynet, and Zoe Broadcasting to file an amended Complaint as the correction sought was not merely clerical but substantial.³⁸ It also denied their Motion for Production:

WHEREFORE, in the light of the aforementioned considerations, the Court resolves as follows:

1. ORDERS plaintiff GMA, et[] al., to file an Amended Complaint, within 20 days from receipt hereof, and thereafter, let another summons be issued against all the defendants with Amended Complaint.
2. DENIES the Motion for Production of Document for failure to attach proof of its materiality and none privilege character.

²⁸ Id. at 1308 & 55.

²⁹ Id. at 55–56.

³⁰ Id. at 145–150.

³¹ Id. at 56. On February 12, 2009, ABC-5 filed an Opposition to the Motion for Production (*rollo*, pp. 228–240) to which plaintiffs filed a Reply dated February 23, 2009 (*rollo*, pp. 241–255).

³² Id. at 151–159.

³³ Id. at 56.

³⁴ Id. at 153. On January 29, 2009, the plaintiffs filed an Opposition to Media Prima Berhad's Motion to Dismiss (*rollo*, pp. 192–206). Media Prima Berhad filed a Reply/Rejoinder to the Opposition on February 25, 2009 (*rollo*, pp. 256–270). On March 4, 2009, plaintiffs filed a Rejoinder (*rollo*, pp. 313–326).

³⁵ Id. at 160–188.

³⁶ Id. at 56.

³⁷ Id. at 1307–1314. The Omnibus Order was rendered by Presiding Judge Luisito G. Cortez of the Regional Trial Court, Branch 84, Quezon City.

³⁸ Id. at 1313.

SO ORDERED.³⁹

The Securities and Exchange Commission also filed a Manifestation,⁴⁰ stating that it had received the summons against Media Prima Berhad and the directive to serve it.⁴¹ Nonetheless, it said that since Media Prima Berhad was not a foreign corporation or partnership doing business in the Philippines, summons and other legal processes should instead be directed to its officers and board of directors.⁴² In any case, in a May 8, 2009 Notice,⁴³ the Department of Foreign Affairs later informed the plaintiffs that on March 31, 2009, summons was personally served on Media Prima Berhad.⁴⁴

Meanwhile, GMA, Citynet, and Zoe Broadcasting filed a Motion for Reconsideration⁴⁵ as to the denial of their Motion for Production.⁴⁶ They later filed an Amended Complaint as directed in the Omnibus Order.⁴⁷

ABC-5 filed an Opposition⁴⁸ to the Motion for Reconsideration. It also filed an Omnibus Motion to Dismiss and to Strike⁴⁹ against the Amended Complaint on the following grounds:

- a. That plaintiffs failed to exhaust the administrative remedies available to them before the National Telecommunications Commission, which at the time the Amended Complaint was filed had already received a complaint from plaintiff GMA concerning the agreement between MPB Primedia, Inc. and ABC;
- b. That each plaintiff failed to affirm in the certification of non-forum shopping that it has not commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency, despite the fact that plaintiffs filed a letter-complaint with the NTC challenging the validity of the Blocktime Agreement between MPB Primedia and ABC;
- c. That the Amended Complaint is a collateral attack upon the corporate franchise of MPB Primedia, which could only be done through a petition for *quo warranto* to be instituted by and in the name of the Republic of the Philippines acting through the Solicitor General; and
- d. That since plaintiffs judicially admitted that they are not in possession of the Blocktime Agreement, then they could not possibly know the stipulations therein as to make the entire agreement null and void.⁵⁰

³⁹ Id. at 1314.

⁴⁰ Id. at 359–361.

⁴¹ Id. at 359.

⁴² Id. at 360.

⁴³ Id. at 397–400.

⁴⁴ Id. at 57. The Court of Appeals erred on stating the date of the Notice.

⁴⁵ Id. at 340–358.

⁴⁶ Id. at 56.

⁴⁷ Id. at 366–396.

⁴⁸ Id. at 401–428.

⁴⁹ Id. at 429–456.

⁵⁰ Id. at 549.

In their Comment/Opposition,⁵¹ the plaintiffs countered:

- a. That the doctrine of exhaustion of administrative remedies does not apply because the National Telecommunications Commission (NTC) has neither jurisdiction nor competence to rule on a complaint for declaration of nullity of the Blocktime Agreement;
- b. That plaintiff GMA did not forum shop and it is not even necessary for plaintiffs to state in the certification against forum shopping the letter-request to the NTC which has already been withdrawn prior to the filing of this case;
- c. That plaintiffs' complaint is not an action for *quo warranto* but a civil action to declare void *ab initio* the Blocktime Agreement with damages[.]⁵²

On September 23, 2009, the Regional Trial Court issued an Order submitting all pending incidents for resolution.⁵³

On December 15, 2009, the Regional Trial Court issued a Joint Order⁵⁴ dismissing the Amended Complaint.⁵⁵ It first noted that the National Telecommunications Commission's quasi-judicial power only covers questions of facts, and since determining whether the Blocktime Agreement violated the constitutional restriction on the ownership and management of mass media would involve pure questions of law, it was an exception to the rule on exhaustion of administrative remedies. Nonetheless, it held that the Commission had the authority to probe into the technical aspect of the implementation of the Blocktime Agreement owing to its administrative and regulatory functions:

[T]he Court is of the humble opinion and so holds that NTC in the exercise of its Administrative and Regulatory functions has the power to look into the technical aspect as to the implementation and application of the Block Airtime Agreement, as to the factual existence as to whether or not such act constitute violation of ABC's Franchise by its Agreement with MPB Primedia, Inc./Media Prima Berhad, if indeed there is violation. NTC can even require ABC to submit all documents and papers required of them within the parameters of their Regulatory powers i.e. "Promulgate such rules and regulations, as public safety and interest may require, to encourage a larger and more effective use of communications, radio and television broadcasting facilities, and to maintain effective competition among private entities in these activities whenever the Commission finds it reasonably feasible[.]"⁵⁶

⁵¹ Id. at 457–476.

⁵² Id. ABC-5 also filed a Reply to the Comment/Opposition (*rollo*, pp. 489–522).

⁵³ Id. at 57 & 544.

⁵⁴ Id. at 546–557.

⁵⁵ Id. at 556.

⁵⁶ Id. at 553.

The trial court also found that GMA, Citynet, and Zoe Broadcasting violated the rule on certification against forum shopping when they failed to state that they had not “commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency[.]”⁵⁷ It noted how the affiant for GMA failed to disclose that a letter-complaint had been filed with the National Telecommunications Commission, albeit withdrawn. Hence, it ruled that their Certification was false, which constituted indirect contempt and merited the case’s dismissal.⁵⁸

The trial court also held that the issue on foreign ownership of mass media and the Anti-Dummy Law related to the exercise of ABC-5’s legislative franchise, which should be resolved in *quo warranto* proceedings:

Republic Act No. 7831 otherwise known as An Act Granting ABC Development Corporation, Under Business Name ‘Associated Broadcasting Company,’ a Franchise to Construct, Install, Operate and Maintain Radio and Television Broadcasting Stations in the Philippines, makes it unlawful for defendant ABC to lease, transfer, . . . nor assign its franchise or the rights and privileges acquired thereunder to any person, firm, company, corporation or entity not otherwise enfranchised for broadcasting services without the prior approval of Congress. . . .

....

Clearly, while the instant action is a “civil action to declare void *ab initio* the Blocktime Agreement” the Court notes that the real issue should instead be whether or not defendant ABC violated its legislative franchise in allowing defendant Primedia to be a conduit or device of the Media Prima Berhad in controlling and managing the program content, airtime and commercial spot sales ABC-5 under the . . . Blocktime Agreement.

....

Thus, based on the aforementioned discussion, the Court is of the humble opinion and so holds that Plaintiffs[’] Claim for Civil Damages and Declaration of nullity of the Block Time Agreement is pre-mature as there is a need for the State to seek for action under the *quo warranto* proceedings to determine whether or not Defendants have indeed violated its Franchise. To rule otherwise, in this case, the Court is in jeopardy of elevating the status of the Plaintiffs to an agency of the State, which prerogative to institute action rests with the Office of the Solicitor General. Besides, their claim as private complainant and as witness of the state can be properly ventilated. Another point as observed by the Court is the fact that what if the State finds no such violation of ABC’s franchise and the Blocktime Agreement is valid. This technical evaluation must be coursed th[r]ough the proper agency of the government with its primary tasks or functions [sic] to evaluate the same as provided for in . . . ABC-5’s Franchise.⁵⁹

The trial court found that the Amended Complaint was founded merely

⁵⁷ Id. at 554.

⁵⁸ Id.

⁵⁹ Id. at 554–556.

on the report of Merrill Lynch, news articles, and press releases of Media Prima Berhad on its website, which were all hearsay. The plaintiffs, it pointed out, have not yet seen the contract they sought to declare void, thus:

It is the finding of this Court that Plaintiffs are not privy to the forging of the Blocktime Agreement, GMA 7 has no *locus standi* to question or privy over the same, as the right to do so rest[s] [with] the State as to whether or not it violated the Constitution and the Franchise given by Congress under the afore quoted terms and conditions as provided therefor or whether or not there is unfair competition resulting to damage of the Plaintiffs, this Court is of the humble opinion and so holds that Plaintiffs must first exhaust the administrative remedies with the NTC which has the power to promulgate rules and regulations . . . and to maintain healthy competition among private entities, as provided for by Section 15, par. g of Executive Order (E.O.) No. 546.⁶⁰

For these, the trial court deemed moot the other issues raised.⁶¹ The dispositive portion of the Joint Order reads:

WHEREFORE, in the light of the foregoing considerations, the Amended Complaint is hereby DISMISSED without prejudice and with finality.

SO ORDERED.⁶²

Seeing that a motion for reconsideration would be useless,⁶³ GMA and Citynet filed a Petition for *Certiorari*⁶⁴ before the Court of Appeals, assailing the trial court's Omnibus Order denying the Motion for Production and the Joint Order dismissing the Amended Complaint.⁶⁵

In an October 16, 2012 Decision,⁶⁶ the Court of Appeals affirmed the dismissal of the Amended Complaint.⁶⁷ It agreed with the trial court that the plaintiffs violated the doctrine on exhaustion of administrative remedies for failing to seek initial recourse with the National Telecommunications Commission, which had primary jurisdiction over the matter.⁶⁸

It then said that before a finding on whether the Blocktime Agreement

⁶⁰ Id. at 556.

⁶¹ Id.

⁶² Id. Media Prima Berhad filed a Motion for Partial Reconsideration praying for the issuance of an Order stating that the lower court has no jurisdiction over its person. Primedia similarly filed a Partial Motion for Reconsideration (*rollo*, p. 58).

⁶³ Id. at 566. Their cited exceptions for not filing a motion for reconsideration are: "(a) there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the petitioners; (b) the Assailed Orders are a patent nullity; and (c) the question of jurisdiction was squarely raised, submitted to, met and decided by the lower court[.]" (Citations omitted)

⁶⁴ Id. at 558–629.

⁶⁵ Id. at 54 & 561–562.

⁶⁶ Id. at 54–73.

⁶⁷ Id. at 73.

⁶⁸ Id. at 60.



violated the Constitution, the issue of unfair competition needed to be resolved first.⁶⁹ That issue, it explained, fell within the Commission's authority "to maintain effective and healthy competition among private entities involved in the media industry" under Section 15(g) of Executive Order No. 546.⁷⁰ Hence, GMA and Citynet should have sought prior recourse to the Commission before suing in court.⁷¹

While there are exceptions to the rule on exhaustion of administrative remedies, the Court of Appeals found none in GMA and Citynet's case. It found that the Amended Complaint did not raise purely legal questions,⁷² but "call[ed] for the assessment and evaluation of the whole evidence[.]"⁷³ It pointed out that complying with the rule would allow the Commission to hear the case, entailing lesser expenses and speedier disposition of the controversy, and preventing a premature case in court.⁷⁴

The Court of Appeals also affirmed the trial court's dismissal of the Amended Complaint for failing to comply with the requirements of a certification against forum shopping.⁷⁵ The dispositive portion of the Decision reads:

WHEREFORE, in view of the foregoing premises, the Joint Order dated December 15, 2009 is hereby AFFIRMED.

SO ORDERED.⁷⁶

In a February 21, 2013 Resolution,⁷⁷ the Court of Appeals denied GMA and Citynet's Motion for Reconsideration. This prompted them to file a Petition for Review on *Certiorari*⁷⁸ before this Court against respondents ABC-5, Primedia, and Media Prima Berhad.

Petitioners claim that despite recognizing the primordial issue of whether the Blocktime Agreement was legal, the Court of Appeals erroneously ruled that the National Telecommunications Commission must first resolve the matter of unfair competition.⁷⁹ To them, the Court of Appeals could not simply detach the issues to transfer the jurisdiction of the case from the regular courts to the Commission.⁸⁰

⁶⁹ Id. at 67.

⁷⁰ Id.

⁷¹ Id.

⁷² Id. at 68.

⁷³ Id. at 69.

⁷⁴ Id. at 70.

⁷⁵ Id. at 70-71.

⁷⁶ Id. at 73.

⁷⁷ Id. at 75-76.

⁷⁸ Id. at 3-52.

⁷⁹ Id. at 30.

⁸⁰ Id. at 31.

Petitioners also claim that exhausting administrative remedies would be futile.⁸¹ The issue they raised, the validity of the Blocktime Agreement, is allegedly incapable of pecuniary estimation and thus falls under the Regional Trial Court's general jurisdiction under Section 19(1) and (6) of the Judiciary Reorganization Act, as amended.⁸² Petitioners say that the Commission's special knowledge is not demanded in resolving whether the Constitution or the Anti-Dummy Law was violated, the latter relating to the jurisdiction of courts over crimes.⁸³

Petitioners stress that an administrative agency's power is based on the law creating it, which jurisdiction should be strictly construed.⁸⁴ Allegedly, nothing in Executive Order No. 546 supports the Commission's primary jurisdiction as the Court of Appeals declared.⁸⁵ They add that the penultimate clause in Section 15(g) of Executive Order No. 546, which speaks of the Commission's rule-making power to maintain effective competition among private entities, cannot be deemed to include the judicial competence to rule on a civil action for unfair competition.⁸⁶ They also raise that their case is exempted from the doctrine of exhaustion of administrative remedies⁸⁷ because aside from having no other plain and adequate recourse,⁸⁸ the case allegedly involves strong public interest and purely legal questions.⁸⁹

Petitioners also point out that they never questioned respondent ABC-5's ownership as the controversy lies in the Blocktime Agreement, whose execution respondents did not deny. They point out that even respondent ABC-5 failed to refute the following declarations on its website and other news articles, which amply provide the Blocktime Agreement's objectives:

Respondent ABC does not also deny those statements posted at its website and in news articles cited by petitioners that respondent ABC "has entered into a major blocktime agreement with MPB Primedia, Inc., a Philippine corporation backed by Media Prima Berhad of Malaysia as part of a long-term strategy to make the network more competitive" and that "under the agreement, Primedia will provide content and manage the sale of airtime of ABC" and assist ABC in undertaking "repositioning and launch exercise, as well as transmission quality upgrade" and that Primedia "has invested a significant amount of money to rebrand the network from ABC to TV-5". These statements sufficiently define and reveal the objective of the Blocktime Agreement, the intent of the parties, and what, in general, are the provisions and terms stipulated by private respondents therein. They confirm the illicit business arrangement they put in place to circumvent the law - particularly the restriction on the management of mass media under Section 11, Article XVI of the 1987 Constitution and the Anti-Dummy

⁸¹ Id. at 28.

⁸² Id. at 26-27.

⁸³ Id. at 28.

⁸⁴ Id. at 29-30.

⁸⁵ Id. at 29.

⁸⁶ Id. at 34-35.

⁸⁷ Id. at 36.

⁸⁸ Id. at 35.

⁸⁹ Id. at 36.

Law.⁹⁰ (Emphasis supplied, citations omitted)

Petitioners also insist that they complied with the rule on certification against forum shopping, as the letter-complaint with the Commission was withdrawn before filing the original Complaint before the trial court.⁹¹ Thus, petitioners not only pray that their Amended Complaint be reinstated, but also that respondents be directed to produce the Blocktime Agreement.⁹²

In its Comment,⁹³ respondent ABC-5, citing *GMA Network, Inc. v. ABS-CBN Broadcasting Corporation*,⁹⁴ maintains that under Section 15(g) of Executive Order No. 546, the National Telecommunications Commission has jurisdiction over the issue of unfair competition.⁹⁵ Allegedly, the Commission's jurisdiction is comprehensive enough to ascertain questions on the legality of the Blocktime Agreement and to implement remedies to correct infirmities,⁹⁶ pursuant to *Batangas CATV, Inc. v. Court of Appeals*,⁹⁷ which provides for the areas where the Commission reigns supreme.⁹⁸

Respondent ABC-5 also states that the summary dismissal of the Amended Complaint was warranted for petitioners' deliberate violation of the Rules of Court when they pursued their action despite petitioner GMA having previously filed a letter-complaint before the Commission.⁹⁹ It adds that by so filing, petitioner GMA acknowledged the Commission's regulatory authority,¹⁰⁰ making it improper for petitioners to commence this case without allowing the previously filed letter-complaint to run its course.¹⁰¹

Respondent ABC-5 also maintains that this case does not fall under any of the exceptions to the rule on exhaustion of administrative remedies. It says that petitioners' Complaint is not only confined to purely legal questions but also generates factual issues.¹⁰² It also points out how petitioners have not even seen the Blocktime Agreement they seek to declare void, and thus, cannot say for sure how its contents violate the law.¹⁰³

Respondent ABC-5 maintains that the Amended Complaint was "a sham pleading" without legal or factual basis.¹⁰⁴ It assails petitioners' reliance

⁹⁰ Id. at 39–40.

⁹¹ Id. at 40–41.

⁹² Id. at 42.

⁹³ Id. at 852–919.

⁹⁴ 507 Phil. 714 (2005) [Per J. Ynares-Santiago, First Division].

⁹⁵ *Rollo*, p. 875.

⁹⁶ Id. at 879.

⁹⁷ 482 Phil. 544 (2004) [Per J. Sandoval-Gutierrez, *En Banc*].

⁹⁸ *Rollo*, p. 880.

⁹⁹ Id. at 881.

¹⁰⁰ Id. at 882.

¹⁰¹ Id.

¹⁰² Id. at 883–884.

¹⁰³ Id. at 886.

¹⁰⁴ Id. at 913.

on newspaper and internet articles as basis for assailing the Blocktime Agreement, as these are inadmissible, per *Villanueva v. Balaguer*.¹⁰⁵ It notes that in view of petitioners' cause of action, the scrutiny of the language of the Blocktime Agreement becomes indispensable:

4.31 As it stands, however, petitioners have gone to court without any valid and sound notion of what the agreement between ABC and Primedia actually states, letting their entire case rest upon (i) the mere, unconfirmed, and unauthenticated written opinions which two reporters, an analyst for Mer[r]ill Lynch, and unnamed writers of alleged press releases have about what effect the said agreement has, and (ii) inferences illicitly drawn by them from ABC's having declined to comment on the truthfulness or accuracy of those opinions. Obviously, those matters together cannot be received or acted upon as sufficient basis for bringing suit assailing a written contract as prohibited by law without doing violence to the principle that "[t]he legal effect of a contract is to be determined from the whole read together."¹⁰⁶ (Citation omitted)

Respondent ABC-5 contends that petitioner GMA not only committed forum shopping, but also failed to state in their Certification that they have not commenced any action involving the same issues in other forums.¹⁰⁷ It claims that the letter-complaint's withdrawal does not excuse petitioners' deliberate failure to make such a declaration,¹⁰⁸ as there exists a distinction between forum shopping as a ground for dismissal and failure to submit the proper certification.¹⁰⁹ Besides, it says that the withdrawal does not insulate its Complaint from dismissal without a showing that the Commission acted on the withdrawal.¹¹⁰

The Amended Complaint was also properly dismissed, says respondent ABC-5, for collaterally attacking its exercise of its legislative franchise.¹¹¹ It points out that in alleging that the Blocktime Agreement conveyed or transferred the control and management of its content and airtime sales to respondent Primedia, petitioners are alluding that it violated the prohibition from conveying its rights to any entity not enfranchised for that purpose without prior legislative approval.¹¹²

Respondent ABC-5 adds that the Amended Complaint also collaterally attacks "Primedia's due incorporation and right to exercise its corporate powers[.]"¹¹³ It points out that petitioners, in arguing that the Blocktime Agreement is void for violating constitutional and statutory prohibitions on foreign ownership, must prove that Primedia is not wholly owned by

¹⁰⁵ Id. at 886 citing 608 Phil. 463 (2009) [Per J. Ynares-Santiago, Third Division].

¹⁰⁶ Id. at 891.

¹⁰⁷ Id. at 892.

¹⁰⁸ Id. at 895.

¹⁰⁹ Id. at 896.

¹¹⁰ Id. at 898.

¹¹¹ Id. at 906.

¹¹² Id. at 906-907.

¹¹³ Id. at 909.

Filipinos, but a mere subsidiary of Media Prima Berhad.¹¹⁴

Respondent Primedia,¹¹⁵ for its part, attacks petitioners' supposed attempt to present their allegations as "facts" despite them being sourced from unverified news reports, which are plain hearsay.¹¹⁶ Hinging on Section 15(g) and (h) of Executive Order No. 546 and *Batangas CATV*, it also insists on the Commission's primary jurisdiction over petitioners' Complaint.¹¹⁷ Like respondent ABC-5, it cites *GMA Network* to reinforce the Commission's authority over cases relating to unlawful business practice and unfair competition.¹¹⁸ It adds that even petitioner GMA acknowledged the Commission's primary jurisdiction when it initially filed a Complaint before it. As such, petitioners may not change its position just to validate its premature resort to the trial court.¹¹⁹

Respondent Primedia also claims that the Court of Appeals correctly upheld the Amended Complaint's dismissal for petitioners' failure to exhaust administrative remedies.¹²⁰ It faults petitioners for prematurely withdrawing their initial letter-complaint filed before the Commission instead of waiting for its resolution and filing another action in the trial court.¹²¹

Furthermore, respondent Primedia contends that petitioners cannot dispense with the rule on exhaustion of administrative remedies.¹²² Had trial pursued, it points out, petitioners would be compelled to present evidence to establish their claims, proving that the Complaint also raises factual issues. It also supports the Court of Appeals' take on the issue of unfair competition taking precedence over the determination of the Blocktime Agreement's constitutionality,¹²³ as well as petitioners' supposed violation of the rule on certification against forum shopping.¹²⁴

Respondent Primedia also faults petitioners for failing to verify their pleadings.¹²⁵ It claims that contrary to Rule 7, Section 4 of the Rules of Court, petitioners' affiants said that their allegations are correct "to" instead "of" their personal knowledge, which meant that it was sourced from another.¹²⁶ It adds that petitioners' improper verification was intentional as it would be impossible for them to verify their claims without seeing the Blocktime Agreement.¹²⁷ It also points out that Atty. Ma. Luz Delfin could not verify the

¹¹⁴ Id. at 910.

¹¹⁵ Id. at 1054–1086.

¹¹⁶ Id. at 1054–1055.

¹¹⁷ Id. at 1056–1059.

¹¹⁸ Id. at 1059.

¹¹⁹ Id. at 1062.

¹²⁰ Id.

¹²¹ Id. at 1065.

¹²² Id. at 1066.

¹²³ Id. at 1067–1068.

¹²⁴ Id. at 1069.

¹²⁵ Id. at 1073.

¹²⁶ Id. at 1074.

¹²⁷ Id. at 1074–1076.

veracity of the allegations in their Petition since she merely took over Atty. Dick B. Perez, who had been verifying the pleadings for petitioner GMA prior to their action in this Court.¹²⁸

Respondent Primedia further maintains that the proper remedy of petitioners should have been a *quo warranto* suit, which must be filed by the Republic and not by any private party.¹²⁹ It explains that since petitioners allege that the Blocktime Agreement as an unauthorized exercise of the power granted to operate a mass media enterprise, likewise violating the Anti-Dummy Law, a *quo warranto* suit would be proper.¹³⁰ As this action was reserved to the State, it being the grantor of the franchise, petitioners allegedly have no legal capacity to institute this action.¹³¹

Furthermore, respondent Primedia notes that where a private citizen assails the unlawful exercise of a franchise, they should refer the matter to the Solicitor General to file an action on their behalf, and not to do so on their own.¹³² For failing to do so, petitioners allegedly failed to comply with the requirements of Rule 16, Section 1(j), warranting the case's dismissal.¹³³

As to respondent Media Prima Berhad,¹³⁴ it stresses that nothing in petitioners' Complaint shows that it had transacted business in the Philippines as to place it within the trial court's jurisdiction.¹³⁵ It also points out that petitioners merely rehashed the allegations in their pleadings before the trial court, which are purportedly based on unverified hearsay reports.¹³⁶

Like respondent Primedia, respondent Media Prima Berhad faults petitioners for deliberately failing to properly verify their allegations and repeatedly violating the rule on certification against forum shopping.¹³⁷ It explains that petitioners were only constrained to admit the prior action before the Commission when respondent ABC-5 pointed it out in its pleading, and since they cannot deny this, they tried downplaying the infraction on the excuse that their letter-complaint was withdrawn.¹³⁸

Respondent Media Prima Berhad also supports the Commission's primary jurisdiction over petitioners' Complaint owing to its authority "to supervise and inspect the operation of telecommunications facilities, and to maintain effective competition among private entities in the larger and more

¹²⁸ Id. at 1076–1077.

¹²⁹ Id. at 1077.

¹³⁰ Id. at 1081.

¹³¹ Id. at 1082.

¹³² Id. at 1183.

¹³³ Id. at 1184–1185.

¹³⁴ Id. at 968–1010.

¹³⁵ Id. at 971.

¹³⁶ Id. at 972.

¹³⁷ Id. at 974.

¹³⁸ Id. at 976–977.

effective use of communications, radio and television broadcasting facilities[.]” as fortified in *Batangas CATV*.¹³⁹ GMA allegedly admits such authority¹⁴⁰ by filing an initial complaint before the Commission, and its premature withdrawal was prejudicial to its cause for failing to exhaust administrative remedies.¹⁴¹

Finally, even if the trial court has jurisdiction over petitioners’ action, respondent Media Prima Berhad maintains that the Amended Complaint remains dismissible because it is a *quo warranto* proceeding filed without authority and conformity with the requirements under the Rules. It notes that petitioners assail the exercise of respondent ABC-5’s franchise and respondent Primedia’s incorporation,¹⁴² issues raised in an action that they have no legal capacity to commence¹⁴³ as these matters “are public wrongs and not a matter of private grievance.”¹⁴⁴ Moreover, in failing to relate their action to the Solicitor General, “petitioners failed to comply with the conditions precedent[] that would have allowed them to participate in an action for *quo warranto*[.]”¹⁴⁵ and renders their action dismissible.¹⁴⁶

In their Consolidated Reply,¹⁴⁷ petitioners reiterate the arguments in their Petition and maintain that the determination of whether the Blocktime Agreement violates the constitutional limitation on mass media ownership and management is incapable of pecuniary estimation, falling within the regional trial court’s exclusive original jurisdiction.¹⁴⁸ Petitioners also assail respondents’ reliance on *Batangas CATV*, claiming that their Complaint “does not involve the examination and assessment of the legal, technical and financial qualifications of applicant operators nor the regulation of ownership and operation.”¹⁴⁹

Petitioners also deny violating the rule on certification against forum shopping. At the core of forum shopping “is the filing by a party against whom an adverse judgment has been rendered in one forum, seeking another and possibly favorable opinion in another suit other than by appeal or civil action for *certiorari*.”¹⁵⁰ But in their case, they say, the letter-complaint with the Commission was withdrawn before the filing of their action in court.¹⁵¹

Petitioners add that their Amended Complaint does not attack

¹³⁹ Id. at 987.

¹⁴⁰ Id. at 990.

¹⁴¹ Id.

¹⁴² Id. at 997–998.

¹⁴³ Id. at 1001.

¹⁴⁴ Id. at 1002.

¹⁴⁵ Id. at 1004.

¹⁴⁶ Id. at 1008.

¹⁴⁷ Id. at 1089–1113.

¹⁴⁸ Id. at 1093.

¹⁴⁹ Id. at 1094.

¹⁵⁰ Id. at 1097.

¹⁵¹ Id. at 1098.

respondent ABC-5's franchise¹⁵² or respondent Primedia's incorporation, but only assails the Blocktime Agreement¹⁵³ for violating the Constitution and the Anti-Dummy Law.¹⁵⁴ Thus, they insist that their action is not a *quo warranto* suit but a civil action to declare void the Blocktime Agreement.¹⁵⁵

Despite not being privy to it, petitioners argue that they can still question the Blocktime Agreement's validity since they are directly affected by its execution due to unfair competition. They are real parties-in-interest as they are deprived of the fair opportunity to engage in the broadcast industry from which they and other broadcasting companies earn financially to maintain their operations. While local networks conducted business lawfully and fairly, petitioners claim, respondent ABC-5 "engaged in unfair competition by combining with, and relinquishing control and management to a foreign entity and its subsidiary or dummy in exchange for significant media investments, programs/shows, and technical improvements."¹⁵⁶

Petitioners add that they need not have a copy of the Blocktime Agreement before filing their Complaint since it is a matter of evidence during trial. They add that the modes of discovery under the Rules are also available to produce the Blocktime Agreement for the resolution of relevant issues.¹⁵⁷

Finally, petitioners counter that summons was validly served on respondent Media Prima Berhad, and the trial court had acquired jurisdiction over it.¹⁵⁸

Per this Court's directive,¹⁵⁹ the parties submitted their Memoranda. Petitioners repeat the arguments in their pleadings filed before this Court,¹⁶⁰ insisting that the Regional Trial Court, not the Commission, has jurisdiction over their Complaint.¹⁶¹ Meanwhile, respondents restate most of the arguments presented in their Comments.¹⁶²

For this Court's resolution is whether the Court of Appeals erred in affirming the dismissal of petitioners' Amended Complaint. Subsumed in the resolution of this issue are the following:

first, whether the issue of unfair competition must be resolved ahead of

¹⁵² Id.

¹⁵³ Id. at 1099.

¹⁵⁴ Id. at 1100.

¹⁵⁵ Id. at 1101.

¹⁵⁶ Id. at 1103.

¹⁵⁷ Id.

¹⁵⁸ Id.

¹⁵⁹ Id. at 1117-119.

¹⁶⁰ Id. at 1175-1222.

¹⁶¹ Id. at 1194-1198.

¹⁶² Id. at 1316-1387, for respondent ABC-5; 1131-1173, for respondent Primedia; and 1236-1306, for respondent Media Prima Berhad.

the issue of constitutionality of the Blocktime Agreement;

second, whether the regular courts have jurisdiction over the subject matter of the case;

third, whether petitioners GMA Network, Inc. and Citynet Network Marketing and Productions, Inc. complied with the requirements of a certification against forum shopping in filing its Amended Complaint before the Regional Trial Court; and

finally, whether petitioner's action is a *quo warranto* suit.

We deny the Petition.

I

Subject matter jurisdiction, which refers to a court or tribunal's authority to resolve cases of general class or type on specific subject matters, is conferred by law.¹⁶³ Its determination rests on the nature of the action and reliefs prayed for in the allegations of the complaint. Hence, whether the claimant truly has a right to the relief sought is irrelevant.¹⁶⁴

In their Amended Complaint, petitioners sought to nullify the Blocktime Agreement between respondents ABC-5 and Primedia for allegedly contravening the constitutional limitation on mass media ownership and management, as well as the Anti-Dummy Law:

As to FIRST CAUSE OF ACTION

9. On March 25, 2008, Merrill[l] Lynch of Singapore reported that ABC-5 has sold to MPB Primedia, Inc. all of its airtime except for news and Christian programming;

....

10. Based on the same report, the acquisition of ABC-5's airtime forms part of the investment strategy of the Malaysian corporation, Media Prima Berhad ("MPB"), to establish a company in the Philippines which will be owned by MPB at seventy percent (70%). This Philippine company was identified in the report as "Primedia";

- 10.1 Primedia was incorporated on February 21, 2008 as "MPB Primedia, Inc." to engage in the primary business purpose of developing programming content for television and radio as well

¹⁶³ *Amoguis v. Ballado*, 839 Phil. 1 (2018) [Per J. Leonen, Third Division].

¹⁶⁴ *Id.*

as providing consultancy services for the marketing, development and sales of said television and radio programs;

10.2 Article 5 of its Articles of Incorporation reveals that Primedia was incorporated by the partners or members of Feria Feria La O Tantoco Law offices who also appear therein as shareholders and/or directors of Primedia;

....

10.5 Although its Articles of Incorporation states that Primedia is Filipino-owned, Primedia is in truth a subsidiary of MPB;

10.6 The Verification/Reservation Request of Primedia on file with the Securities and Exchange Commission (SEC) indicates that the acronym "MPB" in its corporate name "MPB Primedia, Inc." stands for "Media Prima Berhad" which is the same name of the Malaysian company;

....

10.7 This was later confirmed when MPB stated in its own website that MPB "has set up a subsidiary, MPB Primedia, Inc. ('Primedia') that will soon enter into a blocktime agreement with the ABC5 network, one of the television networks in the Philippines."

....

11. Primedia was specifically formed to buy a block of airtime from ABC-5 and to provide and/or manage its content and airtime sales. Primedia will then transfer all its rights in the agreement with ABC-5 to MPB Strategic Media Fund (the "Fund"), an equity fund set up by MPB for its ASEAN media investments;

12. Subsequently, the Manila Times and Inquirer reported that ABC-5 has entered into a long-term blocktime agreement with MPB Primedia, Inc. ("Primedia") sometime in March 2008;

....

13. *The said blocktime agreement contravenes Section 11 (1), Article XVI of the 1987 Philippine Constitution which restricts ownership and management of mass media to Filipino citizens or corporations. By Constitutional mandate, mass media, which includes television and radio broadcast, is a completely nationalized business activity. Thus:*

Section 11. (1) *The ownership and management of mass media shall be limited to citizens of the Philippines, or to corporations, cooperatives or associations, wholly-owned and managed by such citizens.*

The Congress shall regulate or prohibit monopolies in commercial mass media when the public interest so requires. No combinations in restraint of trade or unfair competition therein shall be allowed.

14. *The Anti-Dummy law (Commonwealth Act No. 108, as amended)*

punishes the evasion of nationalization laws (through dummies) and prohibits aliens from intervening in the management, operation, administration or control of any nationalized activity;

14.1. Section 2-A of the Anti-Dummy Law prohibits and punishes any person, corporation or entity which, having in its name or under its control, a right, franchise, privilege, property or business, the exercise of enjoyment of which is expressly reserved to the citizens of the Philippines: (a) permits or allows the use, exploitation or enjoyment of such right, property or business by a person or corporation without possessing the requisites prescribed by the Constitution and laws, or (b) leases or in any other way transfer or conveys said right, franchise, privilege, property or business to a person or corporation not otherwise qualified under the Constitution or the laws, or (c) in any other manner, permits or allows such persons or corporations to acquire, use, exploit or enjoy a right, franchise, privilege, property or business, the exercise and enjoyment of which is reserved to Filipino citizens of the Philippines, to intervene in the management, operation, administration or control thereof, whether as an officer, employees or laborer therein, with or without remuneration except as technical personnel.

15. *This transfer of control and management in a mass media entity constitutes intervention by a foreign company and/or its dummy in the management and/or operation of a 100% nationalized business activity which runs afoul [of] Section 11(1) of the Constitution and the Anti-Dummy law;*

16. It being contrary to the Constitution and the Anti-Dummy law, the blocktime agreement entered into between ABC-5 and Primedia which effectively conveyed or transferred to the latter the *control and management* of ABC-5's TV-5 programming content and airtime sales is *void*. Article 1409 of the Civil Code provides:

ART. 1409. The following are inexistent and void from the beginning:

(1) Those whose cause, object, or purpose i[s] contrary to law, morals, g[oo]d customs, public order or public policy;

....

(7) Those expressly prohibited by law or declared void by law.

These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived.¹⁶⁵ (Emphasis supplied)

Petitioners claim that the Blocktime Agreement transferred the control and management between respondents: from ABC-5 to Primedia and Media Prima Berhad. This, they say, not only weakened the nationalized broadcast media, but also caused unfair competition among local broadcasting networks:

¹⁶⁵ *Rollo*, pp. 371–376.

AS to SECOND CAUSE OF ACTION

17. As above stated, under the blocktime agreement, Primedia will provide content and manage the sale of airtime of ABC-5's TV-5, as well as assist to ensure the success of TV-5's repositioning and launching exercise and transmission quality upgrade;
18. TV-5's present program grid shows that Primedia controls about 93.75% of TV-5's airtime, as well as the content in its programming and sale to its commercial spots;
19. As a result, ABC-5's TV-5 rapidly climbed to the top in terms of television ratings;
 - 19.1. As abovestated and as ABC-5 disclosed in its website, . . . Primedia will produce and source the entertainment programs of TV-5 notwithstanding that Primedia's paid-up capital is only P350,150.00 which amount is grossly inadequate to fund ABC-5's TV-5 entertainment programs;
20. Recent surveys from May 2008 to October 2008 show that TV-5 has dislodged Studio 23 for the No. 4 slot and ascended to No. 3 in television ratings. This is shown in the Overall Channel Ratings Survey for the period from AGB Nielsen Media Resources, Inc.[] Indeed, ABC-5's TV-5 gained rank in television ratings in such an implausibly short period of time;

. . . .
21. *The aforesaid control and management by Primedia of TV-5's airtime, program content and sale of its commercial spots undermines the nationalized broadcast media and results in unfair competition against the plaintiffs and other local broadcasting networks;*
22. *ABC-5 combined and confederated with MPB and Primedia to evade the restriction on mass media ownership and management through the device of the aforesaid long-term blocktime agreement whereby MPB and its subsidiary Primedia control and manage the airtime, programming, and sale of TV-5's airtime;*
23. *The illegal methods employed by defendants ABC-5, MPB and Primedia deprived and continue to deprive the plaintiffs as well as other networks similarly situated of the fair chance to engage in the broadcast industry from which they generate their financial resources to sustain their operations. While plaintiff and other local networks have conducted and continue their businesses within the realm of law and norms of fair business practice, ABC-5 perpetrated or engaged in unlawful and unfair competition by combining with, and relinquishing control and management to a foreign entity and its subsidiary or dummy in exchange for significant media investments, programs/shows, and technical improvements;*

Article 28 of the Civil Code provides:

Art. 28. Unfair competition in agricultural, commercial or industrial enterprises or in labor through the use of force, intimidation, deceit, machination or any other unjust,

oppressive or highhanded method shall give rise to a right of action by the person who thereby suffers damage.¹⁶⁶
(Emphasis supplied)

In view of the allegations on unfair competition and illicit business practice against respondents, petitioners sought payment of damages:

AS to THIRD [CAUSE] OF ACTION

24. As a result of the aforesaid unfair competition and unlawful business practices perpetrated by defendants ABC-5, MPB and Primedia, plaintiffs have lost and continue to lose revenues and business opportunities in their operations for which they should be compensated by defendants ABC-5, MPB and Primedia, jointly and severally, in the amounts of at least P1,000,000.00 for ZBNI, P2,000,000.00 for Citynet and P3,000,000.00 for GMA-7, by way of actual or compensatory damages;
25. To protect their rights and interest and seek redress, plaintiffs were compelled to engage the services of counsel at agreed attorney's fees of P1,500,000.00 for which defendants ABC-5, MPB, and Primedia are liable, jointly and severally;
26. Plaintiffs likewise incurred and stand to incur litigation expenses in the amount of P1,000,000.00 for which defendants ABC-5, MPB, and Primedia are liable, jointly and severally;
27. By way of example, for public good and to serve a lesson to defendants for having acted in bad faith, malice, wanton disregard of truth, defendants ABC-5, MPB, and Primedia are liable, jointly and severally, to the plaintiffs in the amounts of P1,000,000.00, P1,000,000.00, and P500,000.00, respectively, by way of exemplary damages[.]¹⁶⁷

Ultimately, petitioners pray for the following reliefs in their Amended Complaint:

PRAYER

PREMISES CONSIDERED, it is respectfully prayed that judgment be rendered:

1. declaring the Blocktime Agreement entered into between ABC Development Corporation (ABC-5) and Media Prima Berhad/MPB Primedia, Inc. as NULL and VOID;
2. ordering defendants ABC Development Corporation (ABC-5), Media Prima Berhad and MPB Primedia, Inc., jointly and severally,
 - a. to pay plaintiffs GMA-7, Citynet and ZBNI the amounts of

¹⁶⁶ Id. at 377-383.

¹⁶⁷ Id. at 383-384.

P3,000,000.00, P2,000,000.00 and P1,000,000.00, respectively, as actual and compensatory damages;

- b. to pay plaintiffs GMA, Citynet and ZBNI, the amount of P1,500,000.00 as and by way of attorney[']s fees;
 - c. to pay plaintiffs GMA, Citynet and ZBNI, the amount of P1,000,000.00 as litigation expenses;
 - d. to pay plaintiffs GMA, Citynet and ZBNI the amount of P1,000,000.00, P1,000,000.00 and P500,000.00, respectively, as exemplary damages.
3. ordering defendants ABC Development Corporation (ABC-5), Media Prima Berhad and MPB Primedia, Inc., jointly and severally, to pay the costs of suit.

Plaintiffs pray for such other relief as may be just and equitable under the premises.¹⁶⁸

Petitioners raised three causes of action in their Amended Complaint.

First, petitioners contend that although respondent Primedia's Articles of Incorporation provides that it is Filipino-owned, there are indications that it is but a subsidiary of respondent Media Prima Berhad.¹⁶⁹ Allegedly, this "transfer of control and management in a mass media entity constitutes intervention by a foreign company and/or its dummy in the management and/or operation of a 100% nationalized business activity which runs afoul [of] Section 11(1) of the Constitution and the Anti-Dummy law[.]"¹⁷⁰ As such, they say that the Blocktime Agreement should be declared void.¹⁷¹

Second, petitioners claim that not only did the transfer of control and management of respondent Primedia over respondent ABC-5's airtime, program content, and commercial spots sales undermine the nationalized broadcast media, but it also caused unfair competition among the local broadcasting industries.¹⁷² Petitioners claim that to their detriment and other networks similarly situated, respondent "ABC-5 perpetrated or engaged in unlawful and unfair competition by *combining with, and relinquishing control and management* to a foreign entity and its subsidiary or dummy in exchange for significant media investments, programs/shows, and technical improvements[.]"¹⁷³ Resultantly, respondent ABC-5's TV-5 swiftly climbed to the top in terms of television ratings.¹⁷⁴

¹⁶⁸ Id. at 384-385.

¹⁶⁹ Id. at 372-373.

¹⁷⁰ Id. at 376.

¹⁷¹ Id.

¹⁷² Id. at 382.

¹⁷³ Id. at 383. (Emphasis supplied)

¹⁷⁴ Id. at 377-378.

Third, due to the unfair competition and illicit business practice imputed against respondents, petitioners ask for damages as they have allegedly “lost and continue to lose revenues and business opportunities in their operations for which they should be compensated[.]”¹⁷⁵

Contrary to the Court of Appeals’ ruling,¹⁷⁶ it is evident from the causes of action in the Amended Complaint that the matter of unfair competition is not inherent in ascertaining the issue on constitutionality. Therefore, it need not be mandatorily resolved ahead of such allegation.

Nonetheless, for the complete resolution of this case, this Court finds the filing of the action before the trial court premature due to the existence of predicate factual issues demanding the National Telecommunications Commission’s competence, owing to the doctrine of primary jurisdiction.

The doctrine of primary jurisdiction must be distinguished from the doctrine of exhaustion of administrative remedies:

Under the *doctrine of exhaustion of administrative remedies*, a party must first avail of all administrative processes available before seeking the courts’ intervention. The administrative officer concerned must be given every opportunity to decide on the matter within his or her jurisdiction. Failing to exhaust administrative remedies affects the party’s cause of action as these remedies refer to a precedent condition which must be complied with prior to filing a case in court.

However, failure to observe the doctrine of exhaustion of administrative remedies does not affect the court’s jurisdiction. Thus, the doctrine may be waived as in *Soto v. Jareno*:

Failure to observe the doctrine of exhaustion of administrative remedies does not affect the jurisdiction of the court. We have repeatedly stressed this in a long line of decisions. The only effect of non-compliance with this rule is that it will deprive the complainant of a cause of action, which is a ground for a motion to dismiss. If not invoked at the proper time, this ground is deemed waived and the court can then take cognizance of the case and try it.

Meanwhile, under the *doctrine of primary administrative jurisdiction*, if an administrative tribunal has jurisdiction over a controversy, courts should not resolve the issue even if it may be within its proper jurisdiction. **This is especially true when the question involves its sound discretion requiring special knowledge, experience, and services to determine technical and intricate matters of fact.**

In *Republic v. Lacap*:

¹⁷⁵ Id. at 383.

¹⁷⁶ Id. at 67.

Corollary to the doctrine of exhaustion of administrative remedies is the doctrine of primary jurisdiction; that is, courts cannot or will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to the resolution of that question by the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact.

*Thus, the doctrine of primary administrative jurisdiction refers to the competence of a court to take cognizance of a case at first instance. Unlike the doctrine of exhaustion of administrative remedies, it cannot be waived.*¹⁷⁷ (Emphasis supplied, citations omitted)

Pertinent in this case is the doctrine of primary jurisdiction, where “courts cannot and will not determine a controversy involving a question which is within the jurisdiction of an administrative tribunal having been so placed within its special competence under a regulatory scheme.”¹⁷⁸ As such, courts “may suspend the judicial process pending referral of such issues to the administrative body for its view or, if the parties would not be unfairly disadvantaged, *dismiss the case without prejudice.*”¹⁷⁹

Executive Order No. 546¹⁸⁰ provides for the following functions of the National Telecommunications Commission:

- a. *Issue Certificate of Public Convenience for the operation of communications utilities and services, radio communications systems, wire or wireless telephone or telegraph systems, radio and television broadcasting system and other similar public utilities;*
- b. *Establish, prescribe and regulate areas of operation of particular operators of public service communications; and determine and prescribe charges or rates pertinent to the operation of such public utility facilities and services except in cases where charges or rates are established by international bodies or associations of which the Philippines is a participating member or by bodies recognized by the Philippine Government as the proper arbiter of such charges or rates;*
- c. *Grant permits for the use of radio frequencies for wireless telephone and telegraph systems and radio communication systems including amateur radio stations and radio and television broadcasting systems;*
- d. *Sub-allocate series of frequencies of bands allocated by the International Telecommunications Union to the specific services;*

¹⁷⁷ *Republic v. Gallo*, 823 Phil. 1090, 1121–1122 (2018) [Per J. Leonen, Third Division].

¹⁷⁸ *Saavedra, Jr. v. Department of Justice*, 297 Phil. 495, 501–502 (1993) [Per J. Bellosillo, First Division]. (Citation omitted)

¹⁷⁹ *Euro-Med Laboratories, Phil. Inc. v. Province of Batangas*, 527 Phil. 623, 627 (2006) [Per Corona, Second Division]. (Emphasis supplied, citations omitted)

¹⁸⁰ Creating a Ministry of Public Works and Ministry of Transportation and Communications (1979), as amended.

- e. *Establish and prescribe rules, regulations, standards, specifications in all cases related to the issued Certificate of Public Convenience and administer and enforce the same;*
- f. Coordinate and cooperate with government agencies and other entities concerned with any aspect involving communications with a view to continuously improve the communications service in the country;
- g. *Promulgate such rules and regulations, as public safety and interest may require, to encourage a larger and more effective use of communications, radio and television broadcasting facilities, and to maintain effective competition among private entities in these activities whenever the Commission finds it reasonably feasible;*
- h. Supervise and inspect the operation of radio stations and telecommunications facilities;
- i. Undertake the examination and licensing of radio operators;
- j. Undertake, whenever necessary, the registration of radio transmitters and transceivers; and
- k. Perform such other functions as may be prescribed by law. (Emphasis supplied)

The National Telecommunications Commission has the “exclusive jurisdiction to supervise, regulate and control telecommunications and broadcast services/facilities in the Philippines.”¹⁸¹ It also regulates television companies’ ownership due “to its broader regulatory power of ensuring and promoting a ‘larger and more effective use of communications, radio and television broadcasting facilities’ in order that the public interest may well be served.”¹⁸² It is also mandated to “maintain effective competition among private entities engaged in the *operation* of public service communications.”¹⁸³

Here, the issue of whether to nullify the Blocktime Agreement between respondents ABC-5 and Primedia for its supposed constitutional and statutory violations is intertwined with the issue of whether it had indeed, as petitioners allege, transferred control and management of ABC-5 to Primedia,¹⁸⁴ which is a factual question within the Commission’s sphere of concern.

More, the imputations of illicit combinations¹⁸⁵ and business practice¹⁸⁶ against respondents rest on the competence of the Commission, which is in

¹⁸¹ *ABS-CBN Broadcasting Corporation v. Philippine Multi-Media System, Inc.*, 596 Phil. 283, 302 (2009) [Per J. Ynares-Santiago, Third Division]. (Citation omitted)

¹⁸² *GMA Network, Inc. v. ABS-CBN Broadcasting Corporation*, 507 Phil. 714, 724 (2005) [Per Ynares-Santiago, First Division].

¹⁸³ *Id.*

¹⁸⁴ *Rollo*, p. 376.

¹⁸⁵ *Id.* at 382.

¹⁸⁶ *Id.* at 383.

the “best position to judge matters relating to the broadcasting industry as it is presumed to have an unparalleled understanding of its market and commercial conditions.”¹⁸⁷ It is also the Commission “that has the information, statistics and data peculiar to the television broadcast industry.”¹⁸⁸ *Industrial Enterprises Inc. v. Court of Appeals*¹⁸⁹ is instructive:

In recent years, it has been the jurisprudential trend to apply the doctrine of primary jurisdiction in many cases involving matters that demand the special competence of administrative agencies. It may occur that the Court has jurisdiction to take cognizance of a particular case, which means that the matter involved is also judicial in character. However, if the case is such that its determination requires the expertise, specialized skills and knowledge of the proper administrative bodies because technical matters or intricate questions of facts are involved, then relief must first be obtained in an administrative proceeding before a remedy will be supplied by the courts even though the matter is within the proper jurisdiction of a court. This is the doctrine of primary jurisdiction.¹⁹⁰

Petitioners may have been correct that the Amended Complaint seeking to nullify the Blocktime Agreement with damages for unfair competition is within the Regional Trial Court’s jurisdiction, the subject matter being incapable of pecuniary estimation.¹⁹¹ Still, the Regional Trial Court correctly gave way to the National Telecommunications Commission to ascertain underlying factual issues demanding its specialized knowledge. As such, this Court affirms the dismissal of petitioners’ Amended Complaint for failing to state a cause of action against respondents.

II

Besides, the certifications against forum shopping attached to petitioners’ Amended Complaint were defective.

We refer to the Verification and Certification executed by affiant Atty. Dick B. Perez for petitioner GMA, the others¹⁹² being similarly worded, except as to those matters relating to their personal designations and circumstances:

I, DICK B. PEREZ, of legal age, Filipino, married and with office address at GMA Network Center, EDSA corner Timog Avenue, Diliman, Quezon City, after having been duly sworn in accordance with the law, hereby depose and state:

¹⁸⁷ *GMA Network, Inc. v. ABS-CBN Broadcasting Corporation*, 507 Phil. 714, 725 (2005) [Per Ynares-Santiago, First Division].

¹⁸⁸ *Id.*

¹⁸⁹ 263 Phil. 352 (1990) [Per J. Melencio-Herrera, Second Division].

¹⁹⁰ *Id.* at 358.

¹⁹¹ Batas Pambansa Blg. 129 (1981), as amended by Republic Act No. 7691 (1994), sec. 19(1).

¹⁹² *See rollo*, p. 391, for Anna Teresa M. Gozon-Abrogar, and 394, for Rene Carmelo S. Gonzales.

1. I am the Vice-President of Legal Affairs of GMA Network, Inc., the petitioner [sic] in the above-entitled case;

2. Upon authority of the Board of Directors of GMA Network, Inc. as evidenced by the attached Secretary's Certificate, I have caused the preparation and filing with this Honorable Court of the herein Amended Complaint and read the allegations therein and affirm that the contents thereof are true and correct based on my personal knowledge and based on authentic records;

3. I also certify that the annexes attached to the said pleading are faithful reproductions of their originals or facsimile/electronic copies thereof;

4. I hereby certify under oath that to the best of my knowledge, no such action or claim is pending involving the same issues before this Honorable Court or any other court, tribunal or agency;

5. I hereby undertake to notify this Honorable Court within five (5) days from notice should I learn that a similar action or proceeding has been filed or is pending before this Honorable Court or any other court, tribunal or agency.¹⁹³

Rule 7, Section 5 of the then prevailing 1997 Rules on Civil Procedure provides:

SECTION 5. *Certification Against Forum Shopping.* — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) *that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein;* (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions. (Emphasis supplied)

¹⁹³ Id. at 387.

The failure to comply with the certification requirements differs from the proscription against forum shopping. This Court has explained:

The distinction between the prohibition against forum shopping and the certification requirement should by now be too elementary to be misunderstood. *To reiterate, compliance with the certification against forum shopping is separate from and independent of the avoidance of the act of forum shopping itself.* There is a difference in the treatment between failure to comply with the certification requirement and violation of the prohibition against forum shopping not only in terms of impossible sanctions but also in the manner of enforcing them. *The former constitutes sufficient cause for the dismissal without prejudice of the complaint or initiatory pleading upon motion and after hearing, while the latter is a ground for summary dismissal thereof and for direct contempt.* The rule expressly requires that a certification against forum shopping should be attached to or filed simultaneously with the complaint or other initiatory pleading regardless of whether forum shopping had in fact been committed.¹⁹⁴ (Emphasis supplied, citations omitted)

Petitioners' insistence on the withdrawal of their letter-complaint filed before the Commission¹⁹⁵ is irrelevant; it does not justify their nonconformity with the certification requirements. While the withdrawal may absolve them of being liable for forum shopping,¹⁹⁶ they still erred in failing to state in their Certification that they "ha[ve] not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of [their] knowledge, no such other action or claim is pending therein"¹⁹⁷ as required by the Rules. This, especially when they filed a previous letter-complaint before the Commission, albeit withdrawn.

Rule 7, Section 5 is explicit that failure to comply with the certification requirements cannot be remedied through a mere amendment, but may be cause for dismissal without prejudice upon motion and hearing.¹⁹⁸ Besides, petitioners should have at least disclosed the previous filing of the letter-complaint before the Commission for the court's information.

With more reason, then, does this Court affirm the dismissal of petitioners' Amended Complaint. With this, it would be unnecessary to discuss the other issues raised by the parties.

ACCORDINGLY, the Petition is DENIED. The October 16, 2012

¹⁹⁴ *Spouses Ong v. Court of Appeals*, 433 Phil. 490, 501–502 (2002) [Per J. Bellosillo, Second Division].

¹⁹⁵ *Rollo*, p. 1211.

¹⁹⁶ See *City of Taguig v. City of Makati*, 787 Phil. 367, 388 (2016) [Per J. Leonen, Second Division]. This Court, quoting *First Philippine International Bank v. Court of Appeals*, 322 Phil. 280, 313 (1996) [Per J. Panganiban, Third Division], stated: "Ultimately, what is truly important to consider in determining whether forum-shopping exists or not is the vexation caused the courts and parties-litigant by a party who asks different courts and/or administrative agencies to rule on the same or related causes and/or to grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different fora upon the same issue." (Emphasis supplied)

¹⁹⁷ RULES OF COURT (1997), Rule 7, sec. 5.

¹⁹⁸ *Id.*

Decision and February 21, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 112995 are **AFFIRMED**.

SO ORDERED.

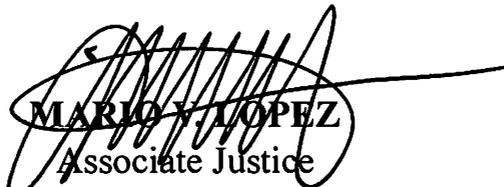


MARVIC M.V.F. LEONEN
Senior Associate Justice

WE CONCUR:



AMY C. LAZARO-JAVIER
Associate Justice



MARIO Y. LOPEZ
Associate Justice



JHOSEP Y. LOPEZ
Associate Justice



ANTONIO T. KHO, JR.
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.



MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 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.


ALEXANDER G. GESMUNDO
Chief Justice