

**BUILDING UP THE PHILIPPINES:
DISCUSSION SERIES ON PHILIPPINE INFRASTRUCTURE DEVELOPMENT**

**Roundtable Discussion 3
June 20, 2007
Room 404, Ateneo Professional Schools
Rockwell, Makati City**

SUMMARY OF PROCEEDINGS

Background:

The third RTD, on the **National Broadband Network (NBN)**, was held last June 20 at the Ateneo Professional Schools, Rockwell Center.

The RTD centered on the controversy over the awarding of the NBN contract to an unknown Chinese player, ZTE, in total disregard of previously submitted proposals by Amsterdam Holdings Inc. and Arescom.

Atty. Lorenzo G. Formoso III, Assistant Secretary of TELOF, DOTC gave a presentation on that focused on the background of the project, current government NBN-specific needs of government, and on the final choice of the project partner. Atty. Formoso, incidentally, is also an Ex-Oficio Commissioner on Information Infrastructure, CICT.





The interesting mix of participants included, among others, former Cabinet Secretaries Ernest Leung (Finance), Josefina Lichauco (DOTC), former BOI Commissioner Lito Taruc, Peter Wallace, George Sy (PCCI), John Avila (USAID), and media practitioners Jarius Bondoc and Emily Tordesillas.

Issues Raised:

1. The apparent lack of transparency in the processes that led to the choice of project partner. Other entities that submitted proposals should also be given this same opportunity.
 - a. Asec. Formoso said the processes had been transparent
 - b. Former secretary Leung pointed out the apparent lack of information on the matter of other government agencies that also had a stake in the project. He recalled that in the previous administrations, all matters related to transactions entered into / signed by the head of state (documents / treaties / contracts) were ironed out beforehand, and each agency that had anything to do with the transaction was duly informed and knowledgeable.
 - c. Mr. Decera of the CPBO said that since there was no public disclosure on this contract, then there should be a push for the amendment for the freedom of information. The government should at least show the public a draft copy of the missing contract which had become the basis for its decision.

2. Loss of the original contract that was signed by GMA in China
 - a. The ceremonial contracts (sovereign copies) signed by GMA and the ZTE representative, and which had been turned over to the DTI representative based in China, had been stolen. The matter had been reported to the NBI, which already did an investigation of the case.
 - b. According to Asec. Formoso, the loss of the contract was kept “under wraps” because of national security implications. He said he was authorized to disclose the theft. He described the loss as a “national shame”.
 - c. The loss of a contract of such dimensions was described by Secretary Lichauco as “scandalous”. The first order of the day, she said, was to make its theft known to the public. On the possible reconstitution of the

- lost contract, she hinted that there must be a lot of things that needed to be erased from the missing document.
- d. Secretary Leung said the loss of the contract reflect a “great irresponsibility” on the part of government.
 - e. Mr. Bondoc said the loss of the original documents now cast a cloud of doubt over the reconstituted contract. Asec. Formoso gave the assurance that the reconstituted document is the same as the original, and that soft copies of the original are available.
3. The contract is not a “spur of the moment” decision, as alleged by government.
 - a. Secretary Lichauco enumerated the different executive orders that eventually paved the way for this transaction. (please refer to photocopy of Mrs. Lichauco’s article in the Philippine Star, “*The Battle of the EOs*”.)
 - b. Secretary Lichauco noted the secrecy that had transpired behind this decision, and added that the transaction must have been very important for GMA to rush to China for it, even with her husband confined in the hospital.
 4. The nature of the transaction was seen as contentious.
 - a. The Asec said this was a government-to-government transaction, and not a BOT deal.
 - b. Mrs. Lichauco observed that this was a very expensive contract, as it was a tied loan that carried an interest rate of three percent. She added that because this was a tied loan, it will require the use of Chinese technology, as this is a tied loan.
 - c. Mr. Decera of the CPBO noted that the NBN project cost almost as much as the amount contained in the PIATCO case. He recommended that what had transpired be viewed as a “learning experience”, specifically since NEDA is in the process of revising the BOT Law.
 - d. Atty. Lorenz Tanada noted that the contract gave ZTE access to frequencies that are a precious national resource, and which should not be shared with other entities.
 - e. Secretary Lichauco added that the ZTE proposal cannot be treated as an unsolicited proposal. Asec Formoso said it was an executive agreement. Secretary Lichauco reminded the body that executive agreements can still be overturned by the Supreme Court.
 5. Redundancy, or why does government need to spend on a system that already exists.
 - a. Both Mr. Taruc and Mr. Wallace questioned why government has to spend a huge amount of money to duplicate initiatives that the private sector is already doing. Government can utilize systems that are already in place at much less cost.
 - b. Mr. George SY of the PCCI said that the business sector is willing to help government set up the NBN, especially on the technical side of the business, and at a much lower cost. He questioned why government would have to spend such a huge amount, instead of taking into consideration the systems that are already in place. He added that the level of debt of the current administration already exceeds debt levels of all previous administrations, combined.

- c. The CPBO representative observed that since the NBN contract had already been signed, the offer by the PCCI to help government set up its own NBN system at a much lower cost can no longer be entertained. The Asec, however, said that the offer can still be put to good use.
- 6. The choice of partner (ZTE) had to be made clear by government.
 - a. Mr. Wallace said no studies have been done on the ZTE, and its reputation was not as clean as the government claimed it to be.
 - b. Atty. Santos, representing the AHI, asked why AHI was not considered, despite presenting a proposal with lower cost. She said it appeared that transactions with AHI had been deliberately delayed to favor another proponent.
 - c. The Asec said AHI did not present any basis by which its financial capacity could be evaluated. Besides, he stressed that based on submitted documents, AHI was proposing the setting up of another mobile phone outfit, which was not what the government needed.
- 7. Merits and demerits of the three proposals submitted to government

Asec Formoso discussed the three proposals in detail. He said it was only the ZTE proposal that met up to the needs of government.

 - a. He said the US Embassy was lobbying for Arescom, which uses equipment from China. Arescom is satellite-based - thus is only as good as to the time the satellite is still operational.
 - b. AHI is basically mobile network, and mobile technology was not what the government needed.
 - c. He said ZTE is a Chinese company that is using American technology
 - d. The cutting edge of ZTE is its database system – which is not present in the other servers. It also has a “mirror site” in Cebu which will act as back-up.
- 8. Impact of the NBN contract on existing broadband projects
 - a. John Avila asked if it was possible for existing government projects to interface with the NBN. The Asec said this was possible.
 - b. Mr. Avila asked if donors for similar projects have to wait for the ZTE project to be fully operational before they continue present partnerships with government. The Asec said that instead of making the donors wait, perhaps they can be asked to re-channel their resources to other interventions for the time being.
- 9. Was the NEDA-ICC involved in the transaction
 - a. This question was raised by Dr. Recide, who noted the current trend in government to bypass NEDA-ICC from the processing and approval of BOT projects. The Asec. gave the assurance that the project went through the NEDA-ICC processes. Secretary Leung, however, disagreed with the Asec on this, based on informal talks with his acquaintances in the NEDA Board have told him.
- 10. Validity of the NBN contract
 - a. Aside from the comments raised on the apparent lack of transparency in the processes that led to the closing of the deal, and to the loss of the signed originals, Mr. Bondoc also raised the point that the contract)

between GMA and ZTE) was signed within the election period, in violation of the election code procedures disallowing the entering by government into contracts and/or trade agreements within the election period.

