

BEFORE THE PUBLIC UTILITIES COMMISSION

In the matter of the Public Utilities Commission Act 1990 (No. 26 of 1990)

- and -

In the matter of the Promissory Notes executed by the Guyana Telephone and Telegraph Company Limited (GT&T) in favour of the Atlantic Tele-Network Inc. (ATN)

- and -

The failure of GT&T to furnish information requested by the Public Utilities Commission (PUC).

PAMADATH J. MENON. A.A.	-	CHAIRMAN
HUGH GEORGE	-	MEMBER
JOHN WILLEMS. A.A.	-	MEMBER
ERROL HANOMAN	-	MEMBER
A.M.B. SANKIES	-	MEMBER

REPRESENTATION -

The Guvana Telephone & Telegraph Company Limited	-	Mr Joseph Sanders, Attorney-at-Law
The Guvana Consumers' Association	-	Miss Lily Ferdinand, Attorney-at-Law
The Guvana Consumers' Advisory Bureau	-	Miss Eileen Cox, Vice-Chairman.

D E C I S I O N

On 15th January, 1997, this Commission held a public hearing in regard to the following matters -

- (i) Promissory Notes issued by the Guvana Telephone and Telegraph Company Limited (GT&T) between November, 1991, and September, 1996, in contravention of section 47(1) of the Public Utilities Commission Act 1990 (No. 26 of 1990).
- (ii) Failure of GT&T to furnish information requested for, particularly regarding bank accounts and bank transactions, in contravention of the Public Utilities Commission Act 1990 (No. 26 of 1990).

2. The above are two of the matters that arose from the report of the Financial Analyst of this Commission dated 29th November, 1996, marked as Exhibit C-1.

3. Between November, 1991, and September, 1996, GT&T has executed sixty-six Promissory Notes in favour of the Atlantic Tele-Network, Inc. (ATN), which holds eighty per cent of the shares in GT&T. The other twenty per cent of the shares in GT&T are held by the Government of Guyana. Generally, there is one Promissory Note executed by GT&T in favour of ATN every month, but in some months two or more Promissory Notes have been executed. These Promissory Notes are marked as Exhibits C-2 to C-67.

4. In the first thirty-eight of the Promissory Notes the amount payable is expressed in Guyana dollars. In the subsequent notes the amount payable is expressed in United States dollars. The amounts payable under all the above Promissory Notes are expressed to be payable at the Head Office of ATN in St Croix, U.S. Virgin Islands. All the Promissory Notes, other than Notes 40, 41 and 42, contain a recital -

"Any contentious matters arising out of this Note shall be subject to the laws of Guyana and the jurisdiction of the Courts of Guyana".

Promissory Notes 40, 41 and 42 state that contentious matters arising out of them shall be subject to the laws of the United States Virgin Islands.

5. Promissory Note No. 40 contains a recital that it is executed in replacement of Promissory Notes Nos. six to thirty-nine previously outstanding. According to Exhibit C-1 report of the Financial Analyst of this Commission the first four Promissory Notes were repaid on 11th June, 1992, and the fifth Promissory Note was repaid on 23rd December, 1992.

6. Promissory Notes Nos. 40, 41 and 42 are payable before the expiry of one year. The other sixty-three Promissory Notes are payable before the expiry of two years. The aggregate of the principal amounts due under Promissory Notes 40 to 66 is U.S.\$20,805,949.04.

7. Section 47(1) of the Public Utilities Commission Act 1990 (No. 26 of 1990) (PUC Act) states -

"No public utility shall issue any stocks, shares or debentures or other evidence of indebtedness, payable after more than one year from the date thereof, unless it has first obtained the approval of the Commission for the proposed issue".

The expression "other evidence of indebtedness" would, in our view, include Promissory Notes. Therefore, the Promissory Notes executed by GT&T in favour of ATN, which are payable before the expiry of two years are covered by section 47 of the PUC Act and required the approval of this Commission before their execution.

8. GT&T's comments were sought on Exhibit C-1 report of the Financial Analyst of this Commission. In his reply dated 6th December, 1996, (Exhibit C-69) the General Manager of GT&T stated -

"The fact that the notes evidencing these borrowings were of a two year duration was a clerical error on GT&T's part since it was never the intent of the parties that the notes should have exceeded one year".

9. The following statement by Mr Joseph Sanders, Legal Counsel for GT&T, at the public hearing of this Commission on 15th January, 1997, is relevant. After referring to Exhibit C-69, letter from the General Manager of GT&T to the PUC, referred to above, Mr Sanders stated -

"Now, Mr Chairman, the letter goes on to say -

'The audited financial statements for each year which have been submitted to the Commission verifies that this is an error since you will see from those statements that all the amounts have been paid back within a year as current liabilities.'

10. Exhibit C-69 letter from the General Manager of GT&T, referred to by Mr Sanders, does not say that the amounts due under the sixty-six Promissory Notes have been paid back by GT&T to ATN. Secondly, the question that has to be considered under the PUC Act is not whether the amounts payable under the Promissory Notes have been paid within one year, but whether the amounts due under those Notes are payable after more than one year.

11. The amounts due under Promissory Notes 1 to 39 and 43 to 66 are payable after one year. They, therefore, attract the provisions of section 47 of the PUC Act and since approval of this Commission was not sought or obtained for the execution of those Promissory Notes, as required by that section, all of them are null and void, ineffective and unenforceable. Promissory Note 40 is only a consolidation and renewal of Promissory Notes 6 to 39 previously outstanding and, in view of that though Promissory Note 40 is expressed to be payable before the expiry of one year, it also is null and void, ineffective and unenforceable.

O R D E R

12. In the light of the above discussions and findings it is hereby ordered that -

- (1) No payments shall be made by GT&T to ATN in respect of Promissory Notes 6 to 40 (Exhibits C-7 to C-41) and 43 to 66 (Exhibits C-44 to C-67) executed by GT&T in favour of ATN;

- (2) Amounts paid by GT&T to ATN under Promissory Notes 1 to 5 (Exhibits C-2 to C-6) and if any payments have been made by GT&T to ATN under Promissory Notes 6 to 40 (Exhibits C-7 to C-41) and Promissory Notes 43 to 66 (Exhibits C-44 to C-67) shall be recovered by GT&T from ATN, and paid back by ATN to GT&T, within three months from the date of this Order or such further time as may be allowed by this Commission on good and sufficient cause shown, with interest at 12 per cent per annum from the date of this Order;
- (3) However, notwithstanding anything stated in Orders (1) and (2) above if GT&T proves to the satisfaction of this Commission, independent of the Promissory Notes, that the whole or part of the amounts mentioned in Promissory Notes 1 to 40 and Promissory Notes 43 to 66 represents amounts due from GT&T to ATN as a result of any transactions entered into between the two companies and that those transactions were lawfully entered into at arms length, this Commission will be willing to authorise the payment of any amounts properly due from GT&T to ATN.

13. As regards the second matter mentioned in para. 1 above, at the hearing on 15th January, 1997, Mr Sanders, Legal Counsel for GT&T, explained that it was the result of a misunderstanding. He stated -

"I can tell you now, as I said at our last hearing and I have been saying many times before this Commission, the doors are open, and so are the books. It is unfortunate if this misunderstanding occurred. But Mr Mac Caskey is welcome to be there tomorrow or any day after that."

7.

Mr Sanders, further, apologised on behalf of GT&T for what had happened. In view of the above the second matter mentioned in para. i above is closed.

Dated at Georgetown, Guyana

this ^{13th} day of March, 1997.

Pamarrath J. Menon

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PAMARRATH J. MENON, A.A.

CHAIRMAN

Hugh K. George

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HUGH GEORGE

MEMBER

~~*John Willems*~~

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~~JOHN WILLEMS, A.A.~~

MEMBER

Errol Hanoman

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ERROL HANOMAN

MEMBER

A.M.R. Sankies

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