Plot to lift Charter's restrictions revived

By RIGOBERTO D. TIGLAO on December 23, 2016 Opinion on Page One

RIGOBERTO D. TIGLAO

THE plot by the once powerful Liberal Party in the last administration to remove the 40 percent limit on foreign capital in public utilities prescribed by the Constitution, has been so quickly revived under the new Duterte government. Little apparently has changed in the malleability of our Congress and politicians in the face of very rich foreign and local corporations.

Under Aquino, the speaker of the House of Representatives himself, Feliciano Belmonte, led this unsuccessful move in the House of Representatives. Belmonte's family in 2015 sold its controlling shares in the Philippine Star newspaper for a reported P4 billion—an unexpectedly extremely high price, industry sources claimed—to an entity ultimately controlled by the Indonesian tycoon, Anthoni Salim, whose firms also control the Philippine Long Distance Telephone Co. (PLDT).

As I had exposed in past columns, and based on unimpeachable data, foreign firms own 76 percentof PLDT, 73 percent (mainly by Singapore Telecoms, or Singtel) of Globe Telecom, and 43 percent of Meralco, the power-distribution monopoly in the national capital region. The Indonesian magnate Salim is the controlling stockholder of PLDT and Meralco, and has more than 40 percent of the country's biggest public utility-based infrastructure conglomerate, the Metro Pacific Investments Corp. (MPIC).

This is despite the Constitution’s clear 40 percent threshold on foreign equity in such public utilities. What restrictions are they talking about?

The move to lift the 40 percent limits in the Constitution has a hidden agenda: To legitimize Salim’s, Singtel’s, and foreign investors’ breach of the 40 percent constitutional limits on foreign capital of public utility firms, and to entrench them as the foreign duopoly dominating our telecom sector for as long as they wish.

The argument that lifting the restrictions will attract foreign investors is utter nonsense. Despite the constitutional restrictions, foreigners in fact dominate these public utilities. These industries have monopoly features that will block, as proven in most other countries, new entrants or reduce them to very minor players.

Even the giant San Miguel Corp., after several years of working to be the third player in telecoms with the Australian Telstra as its partner, had to give up, and instead sold its telecom assets, which includes its prized franchise over the 700-megahertz spectrum, for P69 billion to the PLDT-Globe duopoly. In a statement, San Miguel explained that it decided to sell its assets because the legal and commercial risks in the investment were far too large to take on alone.

Lock-in period

Just one example, how can a new player offering fast fiber-optics-based internet service manage to compete if PLDT right now is requiring that customers availing of the new PLDT Home Fibr have a lock-in period of two-and-a-half years? Even ordinary post-paid cellphone subscriptions have two-year lock-in periods.

Most countries in the world, in fact, impose such restrictions on these sectors—whether by law or by bureaucratic hurdles. Developed countries lifted their legal restrictions on foreign investments in their public utility sectors, only after their own locallyowned companies had already grown so large that foreign capital is largely unable to compete with them, as in the US, Japan and South Korea.

It is argued that such restrictions are better imposed through laws, and not through the Constitution.

But we are a weak state: If foreigners could violate even the Constitution, the basic law of the land, so can they either skirt laws and even block any move from Congress to pass laws inimical to them. The framers of the 1987 Constitution had the wisdom to see that our Congress and regulatory bodies would be so weak and malleable, that it was better to enshrine our nationalist ideals in the Constitution itself.

One argument for the lifting of the constitutional restrictions is that this would open up local companies to competitors, so that the PLDT and Globe duopoly would be dismantled. This is a very naive expectation, brought on by ignorance of the nature and history of public utilities.

Due to the huge capital investments required and because of the unique nature of the telecom business, such as its ability to lock in subscribers to its services, the industry is such that the first companies that entered have become a monopoly or a duopoly that bars new entrants, or limits them to a minority share of the market.

This in fact has already happened in our telecom industry, with a dozen telcos getting franchises to operate as cellphone firms when the Ramos administration liberalized the industry. All of them were absorbed by PLDT and Globe—-boosted by the huge finances foreign capital could tap at a moment's notice, and apparently by their closeness to the incumbent political power.

The Delgado family and its partner German telco DeTeAsia thought they could make Islacom the third player in the industry, but bit the dust in 2000, with Globe buying it at fire-sale prices. Other well-financed elite groups such as the Lopezes with Australia's Telstra as its partner,and the Ortigas and Puyat-Reyeses with Bell Telecom tried to challenge the duopoly but eventually ended up in bankruptcy.

Richest tycoons

John Gokongwei, one of the richest tycoons in the country, had been obsessed with becoming a major player in the industry since 1999, when he set up Sun Cellular (Digital Telecommunications). He positioned the newly formed subsidiary as an alternative to the expensive mobile phone services provided by Globe and PLDT, aiming to capture the low end of the market. The duopoly, however, retaliated and offered similar rates through its special "promos."

After nearly a decade trying to carve out his own market in the cellphone sector, Gokongwei gave up and sold Sun Cellular to PLDT in 2011. The huge price, P74 billion ($2 billion, although much of it was paid in PLDT shares), is the biggest corporate takeover in the country's history, indicating how big Sun was. Yet it buckled under the weight of the duopoly in the mobile phone industry. San Miguel Corp. was the last company to realize that the PLDT-Globe duopoly was really a monopoly that even a big firm like itself didn't have a chance to compete against the two in this particular industry.

Would there be any Filipino or even a foreign firm willing to invest $2 billion, to start from scratch and challenge PLDT and Globe, which together already have 111 million subscribers, bigger than the country's 102 million population?

Such strength of the Philippine telecom duopoly is not unique: It is the same pattern in the telecom industry everywhere else in the world.

A study of the structure of the telecommunications industry in both 24 OECD countries and 24 emerging markets all over the globe showed that the "general pattern in emerging markets, as in developed ones, is that the first two operators capture a very large share of the market—65 percent or more (often more than 80 percent)."
"Splitting the residual segment among two, three, or more operators does not always

provide a sustainable base for increased competition on a full-fledged basis," the study concluded.

Thus, if the constitutional restrictions on foreign ownership in telecoms are lifted, Salim and Singtel's control of PLDT and Globe will only be legitimized. This strategic public utility exploiting our natural, national resource will, forever as it were, be beyond the Filipinos' control for as long as these foreigners make profits from their firms, and will remain in the hands of an Indonesian magnate, a Japanese telco giant, and a Singaporean company.

In nearly all Asian countries, their nationals and state firms control the domestic telecom and power industries, with foreign players, in a few cases, having only minority stakes. These include China, the so-called Asian tigers (Hong Kong, Singapore, South Korea and Taiwan), which have achieved developed-country status, as well as Malaysia and Indonesia.

Shouldn't this fact alone alert us that something is terribly wrong with our country, that we do things the more advanced economies in the region avoid doing because they aren't smart moves—that is, letting foreigners take control of strategic public utilities?

But there is in fact a national consensus to reserve control of our public utilities to nationals, and this is enshrined in our Constitution. This national policy, however, has been subverted by powerful foreign powers that have even put regulatory bodies in their service. These have succeeded in hiding their control of the telecom industry.

(This column is an abridged version of Chapter 12 of my book Colossal Deception: How Foreigners Control Our Telecoms Sector – A Case Study of Corruption, Cronyism, and Regulatory Capture in the Philippines.)