IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE (COMMERCIAL 5) ACCRA, HELD ON THURSDAY 9 JANUARY 2020 BEFORE JUSTICE GEORGE BUADI J.

CONSOLIDATED SUIT

SUIT NO. AC 49/2007

GHANA TELECOM CO. LIMITED } .... PLAINTIFF

Versus

INTERNET GHANA CO. LIMITED } .... DEFENDANT

AND

SUIT NO. RPC/48/2012

INTERNET GHANA CO. LIMITED } .... PLAINTIFF

Versus

GHANA TELECOM CO. LIMITED } .... DEFENDANT

JUDGMENT

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HIGH COURT
COMMERCIAL DIVISION, L.C. ACCRA

1.0 Background

1.1 Technology presently controls the world, dictating the pace and space of means and mode of delivery of all kinds of services, including telecommunication (telecom) services. In Ghana, barely two decades ago, provision of multimedia internet services to homes, offices and educational institutions was largely by the use of and reliance on Asymmetric Digital Subscriber Line (ADSL) technology; one that relies mainly on existing Ghana Telecom (GT) subscriber telephone copper line infrastructure for simultaneous delivery of telephone and internet services.

With the advent and predominant reliance presently of wireless technology based largely on and facilitated by extensive network of fixed antennae on telecom base stations that relay information and data through radio-frequency radiation, ADSL technology[1] had virtually been dust binned.

1.2 This suit arises from, indeed steeped within the era of ADSL technology, which I reiterate was structurally operational on the use of and reliance on existing subscriber telephone copper lines as effective means for simultaneous delivery of telephone and internet services in homes, offices and educational institutions in Ghana. The parties in the suit were at all material time at the fore-front in their respective operations in the industry, dictating the pace and space in the provision of telecom and internet services in Ghana.

1.3 This is a consolidated suit. It calls for the construction of contractual, indeed collaborative business agreements the parties executed. GT's claim simply is for recovery of monies, or payment of services it had rendered under the agreement. Internet Ghana's (IG) claim is that GT had breached the collaborative agreement, indeed rendered the agreement to be an unfair, suffocating and competitive one. GT was first to issue writ against IG: that was on 23 January 2007. Defendant IG counterclaimed in that suit. Nonetheless, five years later, i.e. 21 December 2012, whilst GT's suit against IG was pending and yet to be determined, IG filed a fresh suit against GT based clearly on the same collaborative agreement. The two suits trudged along in separate or different courts until upon application and by the hand and order of Her Ladyship, the Chief Justice both were transferred to be tried at the Commercial Court. Later the court deemed it fit to consolidate the suits to be tried together.

2.0 Parties' statements of case.

2.1 *Ghana Telecom v. Internet Ghana* (No. AC 49/2007).

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[1] As efficient medium for delivery of telephone and multimedia internet services by or through the use of and reliance on existing telephone copper line infrastructure.

By a writ of summons that was accompanied by a 21-paragraph statement of claim, GT's suit, simply is for recovery of an amount of "¢9,168,249,654"[2] that it claims to be outstanding to be paid by IG in respect of services that it have provided IG under a contractual agreement the parties executed in 2002. The action simply is for recovery of unpaid debts.

In a 41-paragraph statement of defence and a counterclaim, defendant IG denies the claim. IG recounts how the alleged debt arose, raising issues of breach of the collaborative agreement, unfair trade, and anti-competition practices by GT as the cause of its failure to pay for services by GT. According to IG, not only did GT breached the agreement by entering the retail internet service market, but also that GT poached or re-routed its (IG) subscribers, which resulted in operational and financial challenges that led to income losses that culminated in the acclaimed debt. IG's counterclaim relates to alleged breach of the agreement, general damages for the breach, as well as special damages in the sum of $895,061.52. GT denied the counterclaim.

2.2 *Internet Ghana v. Ghana Telecom (RPC/481/2012)*

As I have hinted just above, whilst GT's suit for which IG had filed a counterclaim was yet to be determined, IG commenced a fresh action against GT by a writ, largely for declaratory reliefs: that, GT is in breach of the parties' collaborative contractual agreement when GT entered the retail internet service using ADSL technology; that, GT's entry and conduct in the retail internet service market is anti-competitive and unfair to IG; that, GT's conduct in the retail internet service market is anti-competitive, unfair trade practice and also abuse of GT's dominant position in the industry; that, GT's conduct in refusing or denying IG access to IG's equipment, which are in GT's custody amounts to illegal seizure and detention of the equipment; that, IG has adversely been affected by GT's anti-competitive conduct, unfair trade practices, abuse of dominant position and unethical conduct in the retail internet service market in Ghana.

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[2] Certainly in the old currency, the value of which translates presently to GH¢916,824.96

The writ was accompanied by a hefty 63-paragraph statement of claim. The cause of action, in my view is largely the same as in GT's suit, indeed a follow up of IG's counterclaim to GT's suit. IG's suit, largely was for declaratory reliefs

Based equally on a hefty 56-paragraph statement of defense and counterclaim, GT denies IG's claims, and also makes claim for GH¢2,035,930.45 against IG, being amount it claims IG owes GT for services GT had provided to IG from 2008, which IG has not paid.[3] GT also prays the court to find and to declare as defamatory the two letters that IG wrote to the National Communications Authority (NCA) the statutory regulator, and the Norwegian Ambassador in Ghana, and in consequence award damages against IG.

3.0 Issues set down for trial in the two suits

3.1 These are the issues the court set down for trial in GT's suit against IG:

1. Whether or not IG was indebted to GT ..... of $1,007,499.00 or its cedi equivalent as at 31/12/06 for services provided to it.
2. Whether or not GT is in breach of any of the terms of the Agreement between itself and IG.
3. Whether or not GT was debarred from providing internet services to the public.
4. Whether or not GT's provision of internet services to the public is a defence to the repayment of debt arising out of a Contract
5. Whether or not GT's provision of services [that are] being provided by its contracting parties amounts to unfair trade practices ....
6. Whether or not GT is entitled to its claim.
7. Whether or not IG is entitled to its counterclaim
8. Whether or not GT's conduct in its dealings with IG and its clients amounted to unfair trade and anti-competitive practice.
9. Whether or not GT's instant action is premature for non-compliance with conditions precedent in the agreement between the parties.

[3] Plaintiff IG filed Reply to GT's statement of defense and counterclaim.

10 Whether or not the parties reached an agreement on indebtedness of IG and discount was offered to IG to resolve all issues between the parties.

3.2 With respect to IG's suit against GT, the court set down the following issues for trial:

1 Whether or not at all times material to this suit [GT] was a dominant player in the communication industry in Ghana.

2 Whether or not [GT] is a wholesaler of facilities to internet service providers.

3 Whether or not [GT] agreed to provide [IG] with access to facilities and services necessary for [IG's] DSL operations.

4 Whether or not [GT's] conduct in introducing "Broadband 4U" and the termination of its agreement with [IG] was anticompetitive and calculated to frustrate [IG's] business.

5 Whether or not [GT] entered the retail internet business well after the nationwide deployment of the DSL technology by [IG].

6 Whether or not [GT's] entry and conduct in the retail internet market was anti-competitive and abuse of its dominant position and involved unfair trade practice.

7 Whether or not [GT's] conduct in the retail internet market frustrated [IG's] business and rendered [IG's] internet totally uncompetitive in the retail internet market.

8 Whether or not [IG] spent a total of $2,428,000.00 on the purchase and installation of the necessary equipment for the DSL services.

9 Whether or not [GT's] conduct made it impossible for [IG] to meet bills sent to it by [GT].

10 Whether or not [GT] disrupted service to [IG] and tampered with [IG's] equipment.

11 Whether or not [GT] effectively seized [IG's] equipment and denied [IG's] officers' access to the equipment.

12 Whether or not [IG's] indebtedness to banks .... of $1,230,948.22 was as a result of the conduct of [GT].

13 Whether or not the collapse of [IG's] DSL business was caused by [GT's] anti-competitive and unfair trade practice as well as abuse of its dominant position.

14 Whether or not [IG] suffered damages as a result of the conduct of [GT] in the retail internet market.

15 Whether or not [GT] is liable to compensate [IG] for its losses.

16 Whether or not [GT] is entitled to GH¢2,035,930.45 being amount due from [IG] for telecommunications services provided by [GT].

17 Whether or not [IG] engaged in acts of unfair competition, when [IG] made false and unjustifiable allegations against defendant in letters written by [IG] to National Communications Authority and the Norwegian Ambassador to Ghana.

18 Whether or not [IG] is entitled to its claim.

19 Whether or not [GT] is entitled to its counterclaim.

3.3 Though the list of the issues is long and many, varied, and elaborate, they indisputably emanate from the same transactional agreement. See *Exhibit A, & Document 2*. On grounds solely of judicial economy, I did not see the need or prudence in IG's fresh suit against GT. This is because whatever facts or matters that IG deemed to have arisen from GT's suit, or fresh or new matters outside the suit that IG deemed to arisen after GT suit, IG could have sought the court's leave to have those new or fresh maters incorporated into the GT's suit by way of amending their statement of defense, indeed the counterclaim.

3.4 Request for leave to amend their pleadings in the GT's suit at all times could not have been impossible, or impermissible, as the suit had not then travelled far. Besides, the cause of action and reliefs that IG seeks arises from, and in fact founded on the same collaborative agreement, which I reiterate IG had raised a counterclaim. All the same, in accordance with the law and practice on consolidated suits, I shall maintain the separate identity and character of the two suits, and to deliver separate judgments on each based on what I perceive as fair

and just in the circumstances. *Agboado & Ors v. Fianko & Anor* [1995-96] 1 GLR 278 CA.

4.0 Finding primary facts

4.1 Decisions of trial courts stand solid, and endure if the judge correctly finds the primary facts in issue and correctly resolves them in accordance with the applicable law. *Quaye* v *Mariamu* [1962] GLR 93, SC at page 95. See also *Domfeh v. Adu* [1984-86] 1 GLR 653. On grounds that both suits are founded on the same collaborative agreement from which spring the causes of action in both suits, I shall proceed to find and state primary facts that are common to both: facts that implicate no controversy; indeed, facts that have been admitted on the pleadings, or that which I deduce to have been admitted at the trial particularly during cross examination. In fact, the law requires no proof or further proof of such facts at the trial. *Fori v Ayirebi & Ors* [1966] GLR 627; *Bank of West Africa Ltd v Ackun* [1963] 1 GLR 176, SC; *Kusi & Kusi v Bonsu* [2010] SCGLR 60.

4.2 The parties are duly registered local companies in the telecom service industry in Ghana. GT is the registered name; it is also known by its brand name Vodafone. Both parties are licensed and regulated under statute by the NCA. I find with ease that the parties on 12 November 2002 executed a collaborative contractual agreement marked Exhibit A or Document 2. Under the agreement, "[GT] was to support [IG] with certain services in [IG's] provision of multimedia internet services to the public".[4] The contractual relationship of the parties had been governed sufficiently by correspondence. In fact, by the orders of the court, the parties filed and exchanged most of these documents, including further others each considered fit to rely on as proof of its case during the trial.

4.3 Evidently, the 2002 agreement (Exhibit A/Doc 2) has its roots from based proposals that IG submitted to GT for collaborative deployment of retail internet

4 The said services are Co-location services; E1 services; Operator Access; and Leased Lines Services.

services by or through ADSL technology. Indeed, Exhibit A/Doc 2 incorporates the proposal, which points to equipment investments by IG for the deployment of services envisaged under the agreement.

4.4 I find as a fact that the ADSL technology works on a Digital Subscriber Line Access Multiplex (DSLAM). It is a single quality line with two different signals – internet line, and voice or phone network to the end user. In fact, the DSLAM in various co-location sites incubates the two signals unto one single cable filtered and later by ADSL modem separates and restores the single line into two lines – data and voice at the termination point. In furtherance of the agreement, IG purchased the DSLAM equipment for all colocation sites of GT spread in all strategic areas or regions in Ghana.

4.5 I find that Ghana's link to world data and internet and telecom flow is largely by SAT-3/WASC[5], a submarine communications' cable that links Portugal and Spain to South Africa with connections to Ghana and other West African countries along the sea route. It was built by a consortium of European operators and African countries including Ghana holding share interests for voice and data deployment. Ghana's share was initially owned and controlled by the state-owned telecom agency, Ghana Telecom. Control over SAT3 at all material time enabled GT to invariably control international voice and data market, though conceivably, there were other satellite operators that brought or facilitated access to data or voice communication in Ghana.

4.6 GT agreed under the agreement to provide IG with services of Co-location, Operator Access, Leased Lines and E1 services, etc. By Co-location, GT allowed or housed IG's equipment at sites or premises of GT for deployment of the retail internet service to IG's subscribers. By Operator Access, GT allowed IG access and use of GT's existing copper telephone lines for the deployment of the retail internet services to IG subscribers. Indeed, GT was at all material time the only

5 South Atlantic 3/West Africa Submarine Cable

entity that owned fixed copper line infrastructure, which IG per the agreement relied on to meet the internet needs of its subscribers. To enable IG operator access to GT's facilities for DSL services, GT charged IG an equivalent $40 for installation to each IG subscriber, and also $8.00 per client as monthly charge for telephone and internet services rendered by or through GT's existing fixed copper telephone lines.

4.7 I find that, to facilitate connection of voice and data and internet services to IG's subscribers, IG must provide GT's technicians periodically with list of details of IG's subscribers. Besides, it is GT that connects IG's internet subscribers on GT's main distribution frame (MDF). I find as fact therefore that at every point in time, not only did GT know the list of IG subscribers of retail internet services, but also has full capacity access to the details and particulars of these subscribers. I find as uncontested fact that within the tenure of the agreement, particularly the 2004 agreement, GT entered the retail internet market by its brand product BB4U. In fact, by deploying BB4U, GT used and relied on the ADSL technology[6] to serve and meet the retail internet needs of its now retail subscribers.

4.8 Declaratory suits call for interpretation of documents including contracts. Suits for declaratory remedies in fact call upon the court to determine and to resolve rights of parties the document.[7] Indeed, suits that call for declaratory reliefs arise due to contradictory and contrasting irreconcilable positions of interpretations and meanings the parties ascribe to terms or provisions in the document. In effect, declaratory suits constitute the foundation of a cause of action in a suit or future suits. The reliefs that IG seeks in my view constitute the foundation, indeed the controlling determinant of the consolidated suit, as the outcome of determination of IG's suit in whichever way may affect the outcome - grant or dismissal - of reliefs in either suit in terms of the law. It would have been ideal therefore to deal first with

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6 The medium by which GT serves IG to enable IG provide retail internet service to its clients.

7 *Remedies*, Inns of Court School of Law, 1996 p4

the IG's suit. All the same, I would deal first with the GT's suit against IG in Suit No. AC/49/2007.

5.0 *Ghana Telecom v. Internet Ghana - Suit No. AC 49/2007*

5.1 GT opened its case on 19 April 2010[8] by or through Aaron Ashie Dzanie as PW1 by oral evidence[9]. GT called in evidence Charles Kwame Gyamfi as PW2.[10] Defendant IG defended the suit by or through its chief executive officer, Leslie Tamakloe.[11] Defendant IG called Eric Osiakwan[12] as witness in support of its case. He testified that the need to form the Ghana Internet Service Providers Association (GISPA) that include IG was to protect its members against anti-competitive practices in the industry then dominated by GT. In support of his claim of GT's anti-competitive practices in the industry that gravely affects members of GISPA, he tendered Exhibit 18, a letter the witness authored in his capacity as secretary. The letter was addressed to the sector minister of Communication, and the NCA.

5.2 I reiterate here that the agreement Exhibit A, enjoined GT to provide services of 'local lease lines', internet links', operator full access, telephone, and co-location. In consideration of these services, IG was to make corresponding payments to GT. Defendant IG does not deny having been recipient of these services. There is ample evidence though of litany of complaints and disputes with respect to charges and payments.

5.3 I need to state at the outset that 'Issue 9' is moot, having been resolved by the court differently constituted. I shall combine and resolve 'Issue 1' and 'Issue 10' together. I shall then combine and resolve 'Issues 2, 3, 4, 5, and 8 together with as well as the declaratory reliefs in IG's suit. I deem them to be related and therefore ideal and economical to discuss and resolve them together.

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8 That is 19 April 2010, before the Fast Track Court presided over by Senyo Dzamefe, J (as he then was)
9 Accounts Manager, responsible for internet Service Providers (PW1)
10 Head of the Credit Control Department. That was on 23 June 2010.
11 That was on 6 July 2010
12 ICT Consultant and secretary to the GISPA

5.4 I shall first address 'Issue 1', and 'Issue 10'. They are "whether or not IG was indebted to GT ..... of $1,007,499.00 or its cedi equivalent as at 31/12/06 for services provided to it", and "whether or not the parties reached an agreement on indebtedness of IG and discount was offered to IG to resolve all issues between the parties". I reiterate here that Exhibit A/Doc is the contractual collaborative agreement. I find that since 2002, as evident in their correspondence, there had been disputation between the parties on bills, invoices and thus amount payable as charges, bills for services to IG's subscribers. GT's claim mainly is that IG had reneged on its obligation under the agreement to pay for the services.

5.5 Defendant IG does not appear to be disputing the fact that it is yet to fully pay for services GT had provided to it under the agreement. What I find in evidence as IG's case simply is that GT cannot support claim of the actual amount of IG's indebtedness with documents, indeed invoices/bills at any material time. I find that IG has over the period disputed its indebtedness to GT including the amount on the writ. Indeed, IG contention had been that, first, the bills presented for payment by GT has not been backed by relevant supporting particulars, and second, that the debt arose from GT's attitude to the agreement, particularly unfair trade and anti-competitive practices, including and in fact culminating in GT's launch and introduction of a similar retail internet product, BB4U unto the retail internet service market. In effect became a competitor, not a collaborator under the agreement, Exhibit A. I find IG's case to be as summed up thus:

> ... frustrations of its operation by [GT] did not allow smooth operation to warrant total payment and further the outstanding sum [payable to GT] was in dispute, as [GT] was not up to date on its records of transactions between the parties.[13]

5.6 According to GT, indeed evident by Exhibit B, as at the end of 2004, IG's indebtedness for services that GT had provided to IG were: $33,621.40 for co-location; ¢462,974,445.00 for leased lines; $37,533 for Intelsat. I find on Exhibit B

[13] See para 6, statement of defense of IG.

that the exact amount for operator access was absent. GT's Exhibit B states that "the amount [for operator access] involved is being compiled, although we are still waiting for the final subscriber list from [IG]". IG appears not disagreeable to its indebtedness to GT on Exhibit B as at the end of 2004. Not only did IG by its response per Exhibit C dated 1 March 2005 admit receipt of Exhibit B, but that it also acknowledged its indebtedness of $33,621.40 for co-location services, and in fact requested for payments by installments. IG's Exhibit C stated nothing as regards its indebtedness on other services co-location. By Exhibit C, IG contended however that non-payment on the co-location service in 2004 was because:

> GT had suspended generation of invoices for the service and that all efforts to pay on account for using the service were rejected because [GT] accounts payments department needed invoices to prepare receipts for payments made.[14]

5.7 When IG failed, or perhaps was unable to fully pay off the amount it had acknowledged for 2004, GT in a letter Exhibit D dated 4 November 2015 wrote and reminded IG of its indebtedness for services it had rendered to IG, this time around, including bills for operator access, which as I said was hitherto absent in Exhibit B. The total outstanding debt of IG as at 4 November 2005 was USD$207,983.00 then equivalent to ¢284 million. By Exhibit F, annexed with Chart 5 dated 22 Feb. 2006, IG in apparent response to GT's Exhibits D and E, acknowledged its indebtedness as at the close of 2005 as USD$288,273.77.[15] The amount comprised $20,551 as bills for Operator access; $141,083 for leased lines; $53,975 for co-location, and $72,664 for Internet services.

5.8 By its letter Exhibit G dated 27 February 2006, GT took notice of IG's Exhibit F that acknowledged USD$288.273.77 as its debt as at December 2005, and in fact requested IG to make 50% down payment within five days. By Exhibit G, GT

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14 See Exhibit C, paragraph 4

15 Being the summary of what IG per its managing director acknowledged as its indebtedness to GT for operator access, leased lines, co-location, and internet services.

made demand for the sum of $370,881[16] as IG's indebtedness over the period. On 7 March 2006, IG wrote to GT (Exhibit H) not only to acknowledge receipt of GT's Exhibit G. Apparently in response, IG by Exhibit H recalled its letter Exhibit F and reiterated its operational and financial challenges. According to IG, the challenges were caused largely by GT's breach of the agreement by its introduction and launch of BB4U into the retail internet market for which IG has had to make a complaint to the NCA, which it claims are yet to be resolved. Indeed, by Exhibit H, IG expressed its inability to heed to GT's demand of 50% down payment within five days, requesting GT to write off portions of the debt. IG sent copies of Exhibit H to the then Minister of Communications. With IG's inability to make payment, GT's caused its lawyers to write Exhibit J to make demand on IG for $370,881.00.[17]

5.9 Per endorsement on GT's writ, and also at the trial GT's claim seems to suggest that IG's debt had jumped from $370,881 as of May 2006 to $729,956 by December 2006. The writ was filed on January 2007. Being so, at trial the law shall certainly demand explanation how the acclaimed debt of $370,881 in May 2006 jumped to $729,956.00 in December 2006. The witness supports this claim with Exhibit K, but the claim cannot be correct on the face of Exhibit K, as the sum 729,956.00 was rather denominated in the local currency that translates into $664,259.05. Besides, Exhibit K acknowledges IG's part payment of $93,392.62, which by that ought to have reduced IG's alleged indebtedness as at 31 December 2006 to $570,866.43, not $729,956.00 as claimed by GT per its witness at the trial. The amount outstanding ($570,866.43) as IG indebtedness according to evidence on record translates into ¢5,194,884,513[18], not the ¢9,168,249,654 that GT seeks on the face of the writ as " ... as amount outstanding in respect of services provided by [GT] to [IG]" for the period as at 31 December 2006".

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16 Equivalence of ¢3,375,017,100 old cedis
17 That was on 23 May 2006
18 Going by the exchange rate of $1 to ¢9,100 prevailing at the material time.

6.0 GT's claim for an amount of ¢9,168,249,654, I find to be contrary to the evidence on record, particularly Exhibit K, which on its face puts IG's indebtedness to GT as at 31 Dec 2006 as $570,866.43, which translates to ¢5,194,884,513.[19] It cannot therefore be correct on the face of GT's writ that IG is indebted to GT of $1,007,499.00 as at 31 December 2006. I take notice that learned counsel for IG unsuccessfully objected to the admissibility of Exhibit K describing it as self-serving Exhibit K is the summary of indebtedness of IG as at 31 Dec 2006. Curiously, Exhibit K was signed on 21 April 2010, the day it was tendered in court. Exhibit K was possibly generated and signed on 21 April 2010 to be tendered in court that same day 21 April 2010.

6.1 PW1 agreed with counsel for IG that GT did not send a copy of Exhibit K, i.e. acclaimed IG's indebtedness to IG. I find Exhibit K to be a product of a single story, in fact a monologue that did not seek or take into account IG's version to the claims. I hold that Exhibit K cannot for the above reasons reflect the acclaimed IG's total indebtedness to GT. In fact, Exhibit K makes reference and takes cognizance of the consensual sum $288,278.73 that IG acknowledged in its 22 February 2006 letter to GT, marked Exhibit F. I repeat here that by the evidence on record, it cannot be correct as per the writ that IG is indebted to GT of the sum of $1,007,499.00 as at 31 December 2006. Neither do I find IG indebted to GT an amount of $570.866.43 as contained on Exhibit K for reasons I have just stated above. In fact, there is no proven evidence at trial to support the claim.

6.2 I need to say here, perhaps reiterate the crux of defendant IG defense: that is, GT had not been up to date with list of subscribers GT had connected on GT's MDF for and on behalf of IG. The subscriber list and corresponding bills or invoices in my view are very crucial here, as under the agreement GT charges IG equivalent $40 for operator access and $8 as monthly bills per IG subscriber. The significance of connected subscriber list and corresponding bills and/or invoices is that it forms the basis of easy computation and mutual acceptance of bills by the parties at any

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19 Going by the exchange rate of $1 to ¢9,100 prevailing at the material time.

given time. It stands to reason therefore that IG's indebtedness to GT must directly correlate with the number of lines that GT had connected on its MDF for IG's subscribers. I find that the absence of list of IG's clients that GT claims to have connected on its MDF for DSL services had been the source of controversy between the parties. There shall always be, as in my view evidence or proof of the acclaimed connected subscriber list must accompany bills and invoices for claims for payments for services. It would have made easy mutual computation and acceptance at any time of any claim of indebtedness.

6.3 I find IG to be contending that GT had been sending them bills for non-existing IG subscribers, indeed clients that GT had poached or rerouted unto its BB4U platform. My view on this is that GT having made the claim for recovery of money, which is being denied as to its quantum, the law imposes on plaintiff GT to provide explanatory evidence to sufficiently back up the claim for that quantum of money. I find that GT could not, in fact did not provide the requisite evidence how it came by the amount it claims on the writ as owing to it by IG.

6.4 Cross examination forms an integral part of the common law judicial process. Indeed, the veracity or otherwise of a party's claim is largely determined by the capacity of the evidence on the claim to survive the crucible of cross examination. I make a finding that GT's witnesses in both suits have been largely evasive and not directly responsive to questions by counsel for IG. In fact PW1's evasive and non-denial of claims by IG's counsel at cross examination[20] on the issue leads me to accept IG's claim that it was supposed to pay GT an amount of $122,000 and that it paid $93,392.62 based on acknowledgement of indebtedness as in Exhibit F and also the final outcome flowing from the consent decision at the Court of Appeal.

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20 See page 10 of proceedings of 23 June 2010.

6.5 I reiterate that GT's acclaimed IG's indebtedness must flow directly from the production of a list of IG's subscribers that GT had connected to its MDF, and that it shall be very difficult and indeed contested any amount that is unaccompanied by such a list. I say this, because, pursuant to the November 2002 agreement, on 10 January 2003, evident by Document 3, GT dispatched an "Internal Memo" to all its regional heads nationwide informing the heads the need for GT technicians to work closely with IG technicians for deployment of the DSL technology. Besides, the 'memo' sought to demand from the regional heads monthly compilation and presentation of reports that could assist GT to compute reliable bills or invoices for presentation to IG. The 'memo' stated:

> Please ensure that monthly reports detailing the particulars and number of telephone lines used for the provision of this service are submitted to the office of the Senior General Manager/Marketing and Regional Operations by the close of the first week of every month. See Document 3.

6.6 It is not evident on record that the regional heads complied with the above directive. Per evidence on record, none of the two GT's witnesses could provide details or answers to the total number of IG subscribers that GT had at any material time connected and thus purportedly billing IG for operator access that form the basis of the suit. I find as fact that, in fact repeat that for a connect internet service by ADSL using GT's fixed copper lines, GT charges IG equivalent of $40, and a monthly fee of $8.00. Uncertainty as to how GT compiled and ascertained IG's subscribers' bills and thus IG's indebtedness to GT under the agreement had been an unending raging controversy between the parties. I hold that there is evident lack of certainty and consensus of minds as to the number of IG's subscribers that GT claims to have connected to its MDF under the agreement. As a result, there is, indeed, there shall always be that cloud of uncertainty as to the actual amount values of bills for IG's subscribers.

6.7 Truly, it was evident at trial that none of GT's witnesses could tell the court the number of IG's subscribers at any point in time, though GT was billing IG for these subscribers. These are some relevant pieces of evidence on the issue when GT's PW1 was under cross examination:

> Qn. Did you send bills to [IG]?
> Ans. Yes my Lord, we did send bills to [IG]
> Qn. Have you tendered them in this court?
> Ans. No my Lord
> Qn. In 2004, how many subscribers did you bill the 8 dollars per subscriber? How many did you bill [IG] for?
> Ans. I cannot remember right now My Lord
> Qn. In 2005, how many subscribers did you bill the 8 dollars per line for?
> Ans. My Lord, I can't readily remember now
> Qn. In 2006, how many subscribers did you bill for?
> Ans. My Lord, I can go back to the bills and provide these evidence but as I stand here I do not have those details now
>
> ....
>
> Qn. In 2003, by close of the year, how many ADSL subscribers did [IG] have
> Ans. My Lord I do not know
> Qn. [IG] had at one point in time reached 700 subscribers, that is correct
> Ans. Yes my Lord, I cannot confirm to that
> Qn. And I am putting it to you that by June 2004 as a result of your anti-competitive practices [IG] subscribers fell to 300
> Ans. My Lord I cannot confirm to that.

6.8 Indeed, without going any further to recount similar evidence of the witness under cross examination on the issue, I can calmly find that the witness did not deny IG counsel's claim or suggestion that GT's billing of $8 per IG subscriber in 2004 did not reflect the fact that in 2004, IG had only 300 subscribers, not the hitherto 700 subscribers. Neither did any of the two witnesses expressly deny IG's counsel's claim that GT's billing for 2005 and 2006 did not reflect the number of

IG's subscribers that GT had actually connected on GT's MDF over every period of time.

6.9 The law is settled that if a claim of a party is denied, the party who made the claim assumes the duty to provide proof of the claim. The plaintiff GT is thus mandated by law to sufficiently establish proof of acclaimed IG's indebtedness by adducing clear, concise and satisfactory evidence particularly how the acclaimed debt was ascertained or computed. *Majolagbe v Larbi* [1959] GLR 190; *Klutse v Nelson* [1965] GLR 537, SC; *Zabrama v Segbedzi* [1991] 2 GLR 221, CA. Where proof of the claim of a party is absent, or even unsatisfactory, the law mandates the court to make the party fail or lose that claim. *Abakam Effiana Family & Ors v. Mbibado Effiana Family & Ors* [1959] GLR 362, CA. I hold that GT's claim for the amount stated on the writ of summons lacked the requisite evidential support.

7.0 Conversely however, the law does not require proof of a claim that had been admitted, acknowledged, or not expressly denied at trial. I have earlier above stated that despite IG's recitation of litany of complaints against GT over GT's demand for payment of bills for services, in its letter to GT marked as Exhibit F, IG acknowledged its indebtedness to GT of an amount of $288,278,73. On this same issue, GT's PW1 told the court that pursuant to court order, IG made payment of amount of $93,392.62.[21] Besides, ostensibly on the back of the consent decision of the Court of Appeal dated 24 October 2007[22], PW1, reliant on GT's Exhibit L claims that IG was supposed to pay GT an amount of $122,000.00, and that IG paid $93,392.62 out of the sum $122,000.

7.1 All the same, the amount $570,392.62 does not reflect what GT claims on the writ of summons; indeed inconsistent with ¢9,168,249,654 as endorsed on the writ; neither the amount of $1,007,499.00 that the court set down as the amount in issue for consideration. Beside the lack of evidential support, I also find evident

21 See page 7 of proceedings of 23 June 2010.
22 See Exhibit M

inconsistency of the amount claim as debt in the evidence by GT on record with the amount stated on the writ within the same material time that the debt was alleged to have accrued. I hold that GT must suffer for this inconsistency.

7.2 I did not find evidence by IG in proof to have fully paid off what it had per Exhibit F acknowledged as its indebtedness to GT despite complaints it raised in the letter. Having acknowledged the debt, I shall hold IG bound to fully honour the amount outstanding to be paid on sum - $288,278.73 or its old cedi equivalent as at the close of 2005.[23] I need to add however that pursuant to the consent decision of the Court of Appeal on the issue (Exhibit M) and GT's witnesses claim on the face of Exhibit L that IG were supposed to pay GT an amount of $122,000.00, and that IG paid $93,392.62 out of the sum - $122,000.00, I shall order IG to pay the outstanding balance thereon to GT. That is, the difference between $122,000 and $93,392.62. GT's action largely must fail.

8.0 The evidence, and the law applicable

8.1 Issues 2, 3, 4, 5, and 8

As I have earlier stated, in resolving 'Issues 2, 3, 4, 5, and 8' in GT's suit against IG, I deem it prudent to open up and to discuss together issues the court set down in IG's declaratory suit against GT. I consider the issues to be common that demands application of the same law. IG called three witnesses in support of the claims. They are Leslie Tamakloe, the Chief Executive Officer. He filed a witness statement on 22 February 2016 and attached a bundle of documents in proof of claims, marked as Document 1 to Document 42.

8.2 IG had to subpoena the two other witnesses. The first, Divine Deladem Kojo Kpetigo, presently self-employed had earlier in 1988 worked with GT for 23 years as fulltime engineer. The other, Alfred Gasie on its part had worked with IG, indeed as the deputy chief executive officer prior to his departure from IG in December 2010. The witness claims to be part of officers who put together the values

[23] That is ¢262,333.64

attached to the claim for special damages. He joined NCA from IG in September 2011 where he presently works. GT's evidence in support of their case both as defendant and counterclaimant to IG's suit was given by the main and in fact sole witness Ebenezer Siebu.[24] The witness filed witness statement, and attached two exhibits – *GT1, and GT2.*

8.3 I reiterate the fact that the parties on 12 November 2002 executed a collaborative contractual agreement, Exhibit A/Doc 2. By the agreement, GT was to support IG with Co-location services; E1 services; Operator Access; and Leased Lines Services in "[IG's] provision of multimedia internet services to the public". I find on record that GT was a provider of internet services not only to IG but also to other internet service providers. I find evident on record that GT at all material time was not in the business of providing direct retail internet services by or through ADSL technology that rely and use GT's fixed telephone copper line technology.

8.4 By the agreement, GT was providing co-location services to IG. In fact, PW1 agreed that GT was "housing [IG] equipment" within GT's premises. In furtherance of the agreement, and by the operation of ADSL technology, IG had to provide GT with the list of all its (IG) customers/subscribers that IG wants GT to connect on GT's MDF. I find that at every point in time, GT had access to the list of subscribers of IG for the purposes of connection on GT's MDF. PW1 emphasized on this issue in these words:

> We have the list of clients; [IG] give[s] us the list of clients [IG] will want [GT] to connect for them on the main distribution frame so that is how we do it. The essence of this is that [GT] are the owners of those lines. [GT] had the name, the telephone number and so it was necessary for [GT] to know the exact point on the main distribution frame and so when the request comes then [GT] can trace it and connect that service.

24 Head of Network, responsible for network design, architecture and strategy expansion

8.5 On the issue of knowledge of subscribers list, and as to which party connects IG's subscribers on GT's MDF, I find it strange PW2's denial of IG's claim that it is GT's technicians who connect IG's ADSL subscribers to GT's lines or the MDF. I find the denial strange, in fact insincere and inconsistent with PW1's clear statement of admission of the fact, which I deem too obvious for PW2 to deny. It is basic fact that IG had no access to GT's MDF despite fact of co-location services that permitted IG equipment to be housed within the premises of GT. Indeed, GT would not permit IG's technicians any physical access to its (GT) MDF.

8.6 I find that proposals and discussions thereon that culminated in execution of the collaborative agreement in 2002 for retail internet service by or through ADSL technology was developed by IG and emanated from IG. That is, it was IGs brainchild. The mandate of the parties' under the collaborative agreement and thus extent of services envisaged thereunder are contained in article 1 of the agreement - Exhibit A, and Document 2, extending to Article 2 and Article 3 make provision for the respective rights and obligations of parties – IG and GT. Article 8 provides for the tenure, or period of validity of the agreement, whilst article 12 provides for 'Termination and Arbitration'. I find therefore that claims of breach of agreement or whether an act or omission of either party ostensibly pursuant to the agreement could be justified must come from the construction the court put not only the letter of the agreement, particularly the aforesaid articles but also the spirit underlying the agreement.

8.7 Among other obligations of IG under the agreement is to "promptly honour all payments due GT" in consideration of which IG was to enjoy "uninterrupted and qualitative [s]ervice from [GT's] network". *See article 2(5); and article 3(2).* Services that GT provided in 2002 rolled over into 2003. IG continued to benefit from those services but did not appear to have fully paid for the services for 2003. I say this because in barely nine months into the agreement, on 19 August 2003, GT wrote to IG on IG's outstanding payments to GT including interest on delayed payments. *See Doc 8.*

8.8 Indeed, perceiving that "IG has failed to stay current with its obligations to GT over a long time" and that IG has shown no capability or willingness to honour its obligations, GT served notice to IG, indeed ordered IG "to stop any and every further installation of equipment and customer up-take under the DSL agreement" "until all debts to GT have been settled in a timely and orderly manner". Document 8 did not state on its face any amount that GT claims as IG's default of payment for services. In fact, in that letter, GT acknowledged the parties disagreement on IG's indebtedness. True to its word, GT stopped providing services for IG's expansion of DSL service to meet its nationwide aspirations ostensibly on grounds of alleged default of payment for services.

8.9 It is not evident that IG made express response to GT's Document 8 though it is evident that it did receive the letter. Nonetheless, this is what IG's PW1 said under cross examination on GT's counsel's claim that IG did not respond to Document 8:

> Yes, indeed that is what the document says. However, it needs to be noted that after the signing of the contract and business relation proceeded, [IG] had at all material times honoured its obligations, often pay on account in light of the fact that [GT] could not produce invoices for services rendered and even when we are issued with receipt for payment, [GT] is unable to reconcile those payments against the invoices resulting in [GT] always holding an exorbitant outstanding position against [IG]. Indeed, our witness statement and the documents therein attached illustrate several of the incidences in which this irreconcilable position was stated. Therefore in Document 8, this was again another example of [IG's] debt position erroneously being used as a basis to deny IG services.

9.0 According to IG, it failed to respond directly to Document 8 and deemed it fit to rather raise a complaint to the Minister of Communication and NCA, because it perceived the document as a premeditated attempt by GT to frustrate its business in the internet market. Indeed, I find that IG's complaint resulted in the formation of a mediation committee whose efforts culminated in the parties'

execution of the 2004 agreement In the context of totality of evidence on record, I shall not regard IG's non-responsiveness expressly to the letter as presumptive of IG's tacit admission of the contents of the document, which after all, I reiterate did not make any demand for any amount as IG's indebtedness; neither did it state the amount of IG's alleged indebtedness to GT.

9.1 I take note that there was change in management of GT from the hands and control of Ghanaians to Telenor Management Partners (TMP) of Norway who upon assumption claimed that the new policy strategy of GT includes operation of DSL. No such policy was shown to the court. Assuming there was, I believe GT had not forgotten that it had operative agreement on operation of DSL services with IG. The fact of the matter evident on record is that the parties' collaborative relationship took a nose dive when TMP assumed management of GT. In fact, on 16 February 2004, GT, acting per its new chief executive officer Oystein Bjorge, purportedly acting in accordance with article 12 of the agreement Exhibit A/Doc 2 wrote to IG to terminate the 2002 agreement on grounds of breach. See Doc 9.

9.2 I make a finding that article 12 of the 2002 agreement indeed provides that either party may terminate the agreement upon prior 30 days' notice in writing to the other party who fails to remedy the breach within reasonable time upon notice. GT's Doc 9 did not specify the nature of the alleged breach, but I perceive it is for default in payment for services that GT had rendered to IG. Indeed, IG was not up to date on its payment obligation to GT but the default as I have found earlier above was not without reason. I reiterate that the parties, as amply evident on record have since the agreement failed to agree on the quantum of IG's indebtedness – bills professedly on subscribers of IG that GT had connected to GT's MDF. I reiterate that the raging dispute has been due to GT's inability to provide and satisfy IG of the exact number of IG's DSL subscribers that GT claims to have connected on GT's MDF at every point in time.

9.3 Reliant on facts that I have earlier found above in my discussion of the issue whether IG owes GT, I cannot hold IG to have defaulted in its payment obligations to GT every material time when IG or even GT itself is not certain of the quantum of indebtedness. I do not find reasons for nonpayment by IG for bills illegitimate or not unjustifiable. Besides, when GT purportedly terminated the 2002 agreement, GT did not state in the letter how much IG was indebted to GT. It is presumably due to this fact of disagreement or uncertainty of the quantum of the debt. I need to state nonetheless that GT's termination of the agreement must be hinged on preconditions that the agreement provides, and that until one of such conditions had been satisfied, a party cannot seek to terminate the agreement. In other words, if a party has not been found to have breached a term in an agreement, the other party cannot seek to terminate the agreement on ground of the nonexistent breach.

9.4 In my view, GT was hasty in terminating the 2002 agreement, as it failed to satisfy the court that first IG was indeed indebted to GT. GT failed due clearly first to uncertainty as to the number of IG's subscribers it had been billing; second, that the actual amount claimed as IGs is uncertain, indeed being disputed by IG at all material time due to the absence or inability of GT to provide IG with list of its (IG) subscribers; third that, IG cannot pay what it deems not obliged to under the agreement.

9.5 The underlying reason or motivation for GT's act of terminating the 2002 agreement is not far-fetched. I find it redolent on record. Indeed, termination of the 2002 agreement paved the way for GT to call for and to enter into a new agreement with IG in June 2004 (Document 12). Operator Access was the overriding concern under the 2004 agreement that sought to manage how GT would provide services that would still permit IG continuing with its DSL services to its clients. I find that IG was hasty in terminating the 2002 agreement, as there was no justification considering IG's reason for failure to fulfil its obligation under the agreement

9.6 Besides, the evidence of Divine Deladem Kojo Kpetigo is very insightful on GT's motivation in terminating the 2002 agreement. The witness Kpetigo was in fact part of the top management of GT at all material time. His evidence was that GT clearly under its new management TMP brought a consultant Kofi Worlanyo who drew GT's plan for the DSL roll out to the public for the deployment of retail internet service by or through what GT christened BB4U under a constituted team of GT technicians including those trained by IG. GT does not deny but justify its entry into the retail internet market by its BB4U product on grounds that none of the agreements bars it from providing the service to the public.

9.7 I find that GT's BB4U by its structural and operational functionality uses and relies on ADSL, and that it is no different from the DSL that IG was rolling out under either of the agreements 2002 and 2004. I find that none of the agreements make any express provision for GT to roll out internet services per DSL to the public by or through its BB4U. Invariably, GT was at the material time enjoined under the 2004 agreement to deploy its DSL services to IG. GT's contention in both suits had been that there is no express term in the agreement that forbids it from providing similar retail internet services to the market by or through its BB4U.

9.8 I reiterate that under both agreements GT was wholesaling its internet services to ISPs, that include IG, and that GT was not retailing internet services to the public. In fact, with respect to provision of internet services by the use of DSL technology at the material time of both agreements, IG was the only ISP in Ghana that provided retail internet service to the public by or through DSL technology. In relation to both suits, disputes over bills/invoices, and ultimate indebtedness of IG for services by GT by DSL started barely a year into the 2002 agreement. *See Doc 8*. The dispute is deeply rooted first in GT's inability to justify bills with documents for debt that IG claims that IG owes. Secondly, the friction arose from GT's entry into the retail internet market by its BB4U, which IG claims posed operational and financial challenges to pay GT for services GT claims to have rendered to IG on the DSL service.

9.9 I need to confront myself now with the combined issues in the GT's suit - whether any of the agreements the parties executed debarred GT from providing internet services to the public by or through BB4U, and therefore whether GT's breached the agreement when it entered the market by or through the BB4U. The Black's Law Dictionary 7th edition defines breach of contract as the "violation of contractual obligation either by failing to perform one's own promise or by interfering with another party's performance" (emphasis added).

10.0 On the face of both agreements, I find that none of them expressly prevent or debar GT from entering into the internet retail market. I need to add hurriedly however that none of the agreements also expressly permit GT to enter the retail internet market with its BB4U that used and relied on the same DSL technology to provide the same retail internet service that it was enjoined under either of the agreements to provide IG with internet services to enable IG provide retail internet services to its clients. GT had not denied entry into the retail internet market by its brand BB4U.

10.1 Once again, I find the evidence of Kpetigo on the matter of GT's BB4U that used the same DSL technology intriguing. The witness testified that, by BB4U, GT and IG were now competing for subscribers. The witness said:

> It was a battle, [GT] has to strategize in the market place, the first strategy was to install free of charge to customers to try for three months",..... "it extended to over a year of the free service. Second strategy, GT would take over customers that were brought in by IG".

10.2 As to how GT took over IG's customers, the witness stated:

> We called them and tell them we have free service for three months. Some of them we know the location by the number, so we just go and connect for the free service. Thirdly, we frustrate the installation of [IG]. Lastly, when there is a fault on their lines it takes forever, and that if [IG] is pricing say X, will price theirs at half X. We

accused them of owing us so much and to make it palatable we disconnected them from operation for discussion. [IG] depended on [GT] for survival, so if you cut the umbilical cord between the two of them, [IG] cannot operate. IG will also argue that the bills given to them are not the right bills.

10.3 By entering the retail internet market by or through BB4U, my view is that GT was no more a collaborator within the terms of either agreement, but had rather become a competitor with IG and other internet service providers in the provision of retail internet services. It is on record evident by Exhibit 18 that GISPA, the umbrella body of retail internet service providers complained about GT's entry into the retail internet market by or through its brand BB4U.

10.4 It is settled law that facts recited in a written document are conclusively presumed to be true and thus effective and binding as between the parties to the document. See *s.25, Evidence Act, 1975 (NRCD 323)*. With this in mind, the courts have consistently held that the intentions of parties to a contractual document must be gleaned from the document itself. *Tetteh Akufo v Valco* [2003-2004]2 SCGLR 1158; *Boateng v Valco* [1984-1986] 1 GLR 773; *PS Inv. Cedecom* [2012] 1 SCGLR 611. The law in effect takes a restrictive view to the admissibility and the value thereof any *parol or extrinsic evidence* offered with intention to contradict, vary or derogate any term in the document. *Duodu-Sakyiama v TDC* [2017] GMJ Pt 104 1 (Holding 8) 30 per Appau JSC. *See also Donkor v. Maye Kom Na Mehwe Onyame Assoc* [2007-2008] SCGLR 179.

10.5 I need to state however that in construing contractual documents, the courts do not conscript themselves strictly to terms or words expressly provided in the document where doing so shall inevitably produce injustice that none of the parties ever intended in the agreement. For the sake of avoiding such injustice that may flow from strict construction of abiding terms of a contract, the courts in appropriate context and circumstances do admit and rely on secondary or other permissible sources statutorily recognized as *parole or extrinsic evidence* to complement the

expressed intentions of the parties, in the absence of which the object and intent as expressed in the document could be thrown overboard or end up in unintended absurdity or avoidable injustice that none of the parties ever intended or foresaw during considerations leading to the execution of the agreement.

10.5 The courts therefore do not approve, indeed this court shall not approve any conduct or act of any of the parties though not expressly captured in the agreement but which effectively renders the agreement or any term thereof inoperable or ineffective on sandy fault lines that the agreement does not expressly forbids or permits it. The question is, would IG, or even GT have entered into the agreement if GT were at the material time providing retail internet services that relies on the ADSL technology? The answer certainly shall be in the negative.

10.6 My view is that the intent of the parties and the justice thereof as regards construction of the agreement would not support the idea, indeed submission of learned counsel for GT that no term in the agreement forbids GT from entering the retail internet market, and that GT did not, and had not breached any of the agreements. Whilst any of the agreements particularly the 2006 was extant or operative, I hold that it shall be wholly unfair and unjust to IG, indeed contrary to the spirit of the agreement for GT to enter the retail internet market to provide the same retail internet service by or through ADSL technology, the very service GT was enjoined under the agreements to collaborate with IG to provide IG with DSL services that in effect enable IG provide the direct retail internet services to its subscribers. By the act, GT became a competitor and not a collaborator within the intendments of the agreements, indeed unfair competitor as I will later find time to explain. I find GT to be in constructive breach of the agreements, Docs 2 and 12.

10.7 I find that the absence of, or lack of evidence or the knowledge of actual number of IG's subscribers' list with GT, and the basis for the $8.00 monthly bills per client that often resulted in non-submissions, delayed or late submission of invoices by GT for payment by IG had been a raging issue between the parties.

PW1, who is the Accounts Manager of GT as I have recounted earlier could not provide answers as to the number of IG's subscribers that GT had billed $8 over the period 2004, and 2005. He who asserts a claim must provide the proof is a basic principle in the law of evidence. None of the two witnesses GT called in proof of its case could answer, in fact deny IG's counsel's claims and suggestions that IG subscriber's list of 700 had dropped to about 300 in June 2004. According to counsel, the drop of IG clientele list was as a result of GT's introduction of BB4U, though GT was continually billing IG of $8 monthly for each subscriber.[25]

10.8 It is evident on record that complaints by IG of GT's entry into the retail internet service by BB4U and claims of unfair trade practices including delays in connection, in fact hoarding and poaching or re-routing of IG's subscribers by GT as contained in Exhibit F and other correspondence of poor and delayed services had been unending source of dispute between the parties since 2003. *See Exhibits 2, 3, 4, 5, 6, 7, 8, 9, and 11*. In fact, Exhibit 11 is a litany of complaints by IG; this time around, addressed to the regulator of the industry NCA. GT's response of IG's complaints to the NCA in my view does not deny wholly of IG's complaints. In fact, GT admitted introducing BB4U into the retail internet market space. The fact also is that upon IG's complaint, NCA on 15 September 2004 directed GT "for the structural separation of Onetouch and [BB4U] from Ghana Telecom". *See Exh 12*. There is no evidence on record that suggests that GT complied with this directive.

10.9 I need to add that claims of unfair trade practices including delays in connection, in fact hoarding and poaching or re-routing of IG's subscribers by GT as contained in Exhibit F and other correspondence of poor and delayed services did not cease after GT's termination of the 2002 agreement and subsequent execution of the 2004 agreement when GT commenced its suit against IG. The evidence was that these impugned acts of GT did not cease but continued until around 2010 or 2011 thereabout when GT once again terminated the 2004

[25] See page 4 of 20 May 2010 proceedings

agreement. In his testimony, Kpetigo confirmed these acts. I hold that the acts constituted unfair trade practices.

11.0 It is evident on record that by the very nature of the collaborative agreement GT knows, or must know the number of IG's clients and their details. Besides, GT gave directive to its regional heads to report monthly reports on the matter. In fact, I have stated earlier above in this judgment that PW1 admitted that GT's technicians know the full list of IG's subscribers. This, according to the witness, is to enable GT deploy the link or cable for the DSL service. In effect, by GT's entry into the retail internet market by deployment of BB4U using the same ADSL technology, it is easier and indeed most probable, considering IG's complaints, for GT to have poached, or re-routed IG's clients by means first of GT's direct contact with list of IG's subscribers. Besides, I find the evidence of Kpetigo most controlling that forecloses any other conclusion on the issues under consideration.

11.1 I have found that none of the witnesses GT called in its suit, particularly PW1 made any express denial under cross examination of most of IG's counsel's claims and suggestions that constitute the framework of IG's defense and counterclaim, as well as IG's substantive suit against GT. Indeed, according to counsel, from September 2004 when GT entered the retail internet market by or through BB4U to the entire period of 2005, GT did not charge its BB4U subscribers of retail internet service. Kpetigo confirmed this fact. Besides, there is evidence that IG made a demand on GT for reversal of these poached clients, demanding that GT discontinue billing the said clients in the name of IG. *See Exhibits 14, 15, and 16.* As a result of these complaints, which I find mostly unaddressed by GT, there is legitimacy to find as I have earlier done clear uncertainty as to how much at any point in time IG was indebted to GT.

11.2 Once again, apart from the crucial evidence of Kpetigo, I find that under cross examination, GT's PW1 did not specifically deny claims by counsel for IG that GT's engineers were deliberately tempering with IG's customer list;

deliberately manipulated repair time, creating problems with the service delivery. In fact, according to IG, whilst repair time for IG's subscribers were over two weeks, those for GT's customers were within 24 hours and seven days maximum. In fact counsel for IG accused GT of having instigated IG's operational and technical challenges by hoarding, poaching or re-routing IG's clients, contending that those acts constituted unfair trade practices that made it difficult for IG to meeting its financial obligations under the agreement. I find ample evidence on record in support of all these claims. Indeed, the evidence of Kpetigo is controlling.

11.3 Testifying as a party in the suit at the evidence in chief, the law does not demand GT to provide evidence on the matter of IG's claims of unfair trade, anti-competitive, hoarding and poaching. However, under cross examination, I was expecting, indeed the law demands GT to expressly deny these claims if it does not admit them as true, or does not want the court to find them as having been admitted these claims The law does not only expect GT to expressly deny these claims if it does not admit them, but also for GT to provide explanations satisfactory to the court that such claims are improbable, untrue, far-fetched or unreasonable under the circumstances. I found none.

11.4 In fact, strict, express and unambiguous denials by GT, a party in the suit of these claims by IG at cross examination would have thrown proof of the matter still in issue, and thus to put the burden of proof still on IG to provide proof of the claims – hoarding, poaching, re-routing, unfair trade practices, anti-competition, and other technical and operational challenges. None of GT's witnesses expressly made denials of any of these claims; neither did any of the witnesses proffer explanation perhaps to cast doubt of the truthfulness, and thus improbability of the claims or any. That would have enjoined me to put those claims as still in issue and to demand strict proofs from IG who made these claims. All the same, I maintain that the evidence of Kpetigo was uncontroverted, and that it wields strong influence in my mind as controlling or the decider of IG's claims.

11.5 I shall make just brief references to the witnesses' evidence at their cross examination. Redolent on record of GT's witnesses evidence at cross examination are responses like 'I am not aware', 'I am not sure of that', 'it is technical', 'I do not know'. By such responses, the witnesses, PW1 in particular appeared to me to have lost sight that he was testifying as a party but not as a mere witness in the suit. PW2 was no better, in fact in my estimation worse, particularly so when he denied an obvious fact or evidence that PW1 gave that GT has access to thr subscriber list of IG, and that it was GT that solely connected IG's subscribers on GT's MDF. By not denying specifically these claims of counsel for IG at the cross examination leads or compels me to assume that GT had *sub silento* admitted the claims, and by that negating demand for strict proofs as ordinarily required by law.

11.6 GT called no other witness beside these two unimpressive witnesses possibly to provide further or better explanatory evidence in cross examination that expressly denied and challenged these aforesaid claims. I find the need to state all these relating to the evidence of GT's witnesses because the presiding judge[26] took notice of their evidence under cross examination concerning these claims[27] by counsel for IG. The judge remarked:

> Mr Gyewu, you put this man into the box. He is from the accounts department and these issues are technical and he cannot speak to them.

11.7 GT's counsel response was that GT's case simply was for recovery of money, and not technical and operational matters. The judge's retort to counsel's response was that "something led to that". Indeed something led to the inability or incapacity of IG to meet its financial obligations to GT under the agreement. In fact, per correspondence on record, I find claims of IG addressed to GT that the latter's (GT) entry into the retail internet market by or through BB4U had gravely affected and interfered with IG's ability to honor its financial obligations to GT.

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26 Dzamefe, J (as he then was)
27 Poaching, hoarding, delays in repairs, free trials BB4U internet service, unfair trade practices and anti-competition

11.8 In his written address, learned counsel for GT contended that these technical and operational claims and challenges - poaching, hoarding, delays in repairs, free trials BB4U internet service, unfair trade practices and anti-competition - were all bare allegations that are not supported by proof. Respectfully, I do not share this view. My short response is that, first, the record is littered with complaints of such claims. Second, the capstone evidence of Mr. Kpetigo is enough proof of the claims. Third, the law requires proof of evidence that has been denied on oath. On the face of constant non-denials by GT's witnesses of these claims, I find no legitimate need for any evidence or further evidence by IG to establish proof on the matter even if IG were to have provided no proof on the claims. *Fori v Ayirebi & Ors* [1966] GLR 627 SC. I hold that, in this suit, there is ample evidence in support of IG's claims of hoarding, poaching, re-routing delays in repair time and offer of free services to GT's BB4U subscribers. I need to repeat and to emphasize here that the court relies on evidence on oath, not parties' statements of case in assessing the veracity of parties' claims.

11.9 On the face of evidence on record, I hold, perhaps repeating myself that by entering the internet retail market whilst the agreements, particularly the 2004 agreement was extant, GT was in constructive breach of the agreement. Indeed, when GT entered the retail internet market by its BB4U in clear contumacious breach of the agreement, IG could have protected itself by seeking to rescind the contract on grounds of the breach and to refuse to honour its part of financial obligation under the agreement. But having on the face of Exhibit F acknowledged its indebtedness, and by the consent decision of the Court of Appeal, I hold defendant IG to make good the amount outstanding on the sum $122,000 after payment of $93,392.62. Plaintiff GT's suit largely fails

12.0 IG's declaratory claims

In assessing IG's declaratory reliefs, I deem it fit to make the following findings of fact apparent on record in this suit. I may be possibly be repeating facts that I have already found earlier above but it is for good reason. It is evident that GT at all

material time was the only entity in Ghana that had fixed telephone copper lines that could be used to deploy DSL technology. Besides, being a shareholder of SAT 3, the Government of Ghana, then at all material time owning fully and later majority shares in GT, GT was the only entity in Ghana mandated at that time by the Government or later NCA to provide leased lines to ISP including IG.

12.1 I find as a fact that ISP's in the country including GISPA of which IG is a member depended and relied on absolutely on GT for the provision of telecom and internet services to enable them provide retail internet service to their subscribers. GT was thus a wholesaler to ISPs including IG who solely per the DSL technology provided retail internet services to the public. Both in its relationship with IG, as well as its comparative standing within the industry, I find with ease that at all material time GT was and had been a dominant player in the telecom industry.

12.2 I find particularly at the cross examination of IG's witnesses by learned counsel for GT that some of IG's claims, indeed counterclaim to GT suit as well as the corresponding evidence in support of the claims had been repeated in IG's substantive claim against GT. The response of the witness was that, at the time IG commenced the suit against GT, GT had still not ceased committing the acts that form the basis of the action, and that having made the claim, IG had to provide evidence even if the same evidence appear to have been provided in the earlier GT's suit. I find the response of the witness apt, in that there was still existing cause of action for the claims, I repeat the remark I made earlier that it would have been judicious use of process if IG had sought leave to amend its defense and counterclaim and to have incorporated the acclaimed cause of action that forms the basis of the fresh suit against GT.

12.3 Despite circumstances of GT's origin and its antecedents as a wholly owned state entity as well as the concomitant smooth covering GT enjoyed over the years from the Government of Ghana, undoubtedly GT as in the case of all other telecom companies in Ghana operate under the laws of Ghana, as well as set of rules and

guidelines enshrined in licenses issued by the NCA aimed at regulating the industry to promote fair play among industry players. The licenses prohibit actions and conduct of unfair trade practices, anticompetitive conduct, the abuse of dominant role, and also monopolistic tendencies in the market place. These rules also proscribe the setting down of predatory prices amongst others. Indeed, these regulatory practices and guidelines are set and enforced by the NCA in compliance with Government of Ghana's covenant obligations under international law. Neither the NCA, nor the courts in particular would permit a business policy, strategy, program, vision and mission of a corporate body to override the rules and regulations of the NCA.

12.4 I recall once again the uncontroverted evidence of Kpetigo in support of IG's claims against GT of hoarding, poaching, re-routing delays in repair time, offer of free services to GT's BB4U subscribers and matters relating to unfair trade practices. Are these acts I have found and adjudged to have been committed by GT against IG illegal and unlawful? An act is not unlawful or illegal until a statute prohibits it. What does the law on the matter say to these acts by GT? I have looked at the law then applicable to the matter - *National Communications Act, 1996 (Act 524)*. Though the law - Act 524 - has been repealed and substituted by the *National Communications Act, 2008 (769)*, section 32 saved and continued in force licenses that were granted under Act 524. Indeed, it is a fact that GT produced its license obtained and granted by the NCA in 16 Dec 1996, marked in evidence as Exhibit GT1. The functions of the NCA among others is "to ensure fair competition amongst licencees, operators of communications networks and service providers of public communications". *See s.3(e), Act 769*. The law also enjoins industry players to respect and abide by principles of non-discrimination and fair competition.[28]

[28] See Regulations of Legislative Instruments (LI) passed thereunder – Reg. 1(b) and (c) of LI 1719; Electronic Communications Regulations, 2011 (LI 1991) Reg. 1(b) & (c).

12.5 Article 10 of GT's License - *Exhibit GT1* - that NCA issued sets rules for fair competition. The rules prohibit monopolistic practices, abuse of dominant position, setting of cross-subsidy prices, as well as non-discriminatory treatment. Besides, section 5(c) of Act 769 makes provision for the protection of interests of consumers or users of communications networks or communications services and in particular to the interests of consumers' choice, quality of service and value for money.[29] The law provides:

> An operator who owns or controls a network or other essential facility upon which other competing operators depend for the efficient provision of their services, or who has a dominant position in a geographic market specified in its license, shall not resort to conduct or practices that unfairly disadvantage rival operator or that are calculated to keep out competition such as:
>
> a Limiting access to a network or interconnection;
> b Providing substandard access;
> c Permitting access only under onerous terms;
> d Subsidizing competitive services by revenues obtained from non-competitive services
> e Linking the provision of a monopolized service to the purchase of other services;
> g Unilaterally, linking commercial disputes with interconnection issues to cause undue harm and injury to end-users. (emphasis added)

12.6 The parties are subject to the laws of Ghana. I reiterate my finding and to hold that GTs acts against IG under the agreement for DSL services as narrated by Mr. Kpetigo offend the laws of Ghana, indeed the governing rules in the very license NCA had issued to GT to govern GT's operations. I have earlier stated that business policies, strategies and visions do not and cannot be allowed to override guidelines, indeed standards of conduct prescribed by the law for fair competition

[29] Regulation 4 of the *National Communications Regulations, 2003 LI 1719* is very instructive.

GT does not appear to be ignorant of oblivious of its responsibilities and obligations to IG under the 2004 agreement, indeed the license governing its operations. I find that the impugned acts of GT as narrated by Mr Kpetigo were intentional and deliberate, calculated in my view to muzzle and squeeze IG out of the DSL retail internet service market to pave way for easier passage and acceptance of its BB4U that I reiterate used and relied on the same DSL technology contrary to the spirit of behind the agreement, and thus GT's obligations to IG under 2004 agreement and also GT's operating license – *Exhibit GT1*.

12.7 GT sought refuge under paragraph 6.2.4 of its Business Plan, Exhibit GT2 that seems to legitimize the act of "competing with [its] own customers" admitting though that it "constitutes ... delicate balance". The business plan, indeed the operating business strategy that TMP put in place immediately upon assumption of management of GT cannot be allowed to override the clear provisions of the law. GT's conduct as narrated by Kpetigo, who was at the material time was a senior management official of GT in my view is not only offensive but destructive to the business operations and survival of IG; indeed intentionally calculated to drive away IG from the market.

12.8 Submissions that competition in the telecom industry is a global feature, with much respect to learned counsel of GT, is too elementary. In fact, I find the response of IG's witness Leslie Tamakloe to the claim at cross examination apt, which I deem pertinent to capture here even if I have stated it somewhere earlier:

> Yes. However, it needs to be noted that GT operates under a set of rules and guidelines enshrined in its license by [NCA]. These rules enshrined in its license included clauses that prohibited certain actions that mitigated against proper competitive conduct, that is anticompetitive conduct, the abuse of its dominant role or preventing itself from becoming a monopoly in the conduct of its services in the market place. These rules prevent them to set predatory prices in the market place amongst others. Further, it needs to be noted that Ghana Telecom and the Republic of Ghana as members of the International Telecommunication Union

(ITU) further brings them under the covenant of the ITU, its practices, rules and guidelines or operations which are standard universally and globally.

I hold that IG shall be entitled to protection under the relevant provisions of the Protection of Unfair Competition Act, 2000 (Act 589), particularly sections 6, 7, and 8 of the law.

12.9 Article 4 of the 2002 agreement commits IG at its own cost to "procure or acquire equipment and facilities that may be required for the provision of the services. Besides, article 1 of the 2002 agreement makes Appendix A[30] an integral part of the agreement. Appendix A provides among others that "InternetGHANA would invest in the provision of the [DSL] at all [GT] Exchanges areas Nationwide in a time frame of 2 years". Indeed, in furtherance of the agreement, IG acquired and installed requisite equipment including DSLAM "at the various MDFs nationwide" See Doc 3. The first DSLAM was installed in the co-location room at the Accra-North Exchange, and in all the 8 Exchanges in Accra and Tema, and also in Kumasi, Takoradi and Cape Coast.

13.0 However, barely a year into 2002 agreement, GT stopped providing IG services for expansion of DSL services to meet nationwide obligations. *See Doc 8*. Indeed, GT on 16 February 2004 terminated the agreement. *See Doc 9*. By 2010 GT had disconnected all IGs equipment from their (GT) systems and in fact barred IG from entering GT's co-location rooms. Neither did GT allow IG to retrieve their equipment. As at 2011, according to Kpetigo when he was leaving the employ of GT, IG's equipment were still being detained by GT at various locations of GT on grounds of the acclaimed indebtedness of IG to GT.

13.1 Defendant IG's counterclaim

Defendant IG's counterclaim against GT is for:

30 Containing the executive summary of the Proposal for the Collaboration

i. The sum of $895,061.52 being special damage suffered by the Defendant as a result of the anti-competition and unfair trade practices of the Plaintiff.
ii. General damages for losses incurred by the Defendant as a result of the unfair trade and anti-competition conduct of the Plaintiff.
iii. General damages for breach of contract.

13.2 In assessing IG's counterclaim, I need to start by indicating that I have found GT in constructive breach of the 2002 collaborative agreement when it terminated the 2002 agreement in haste when there was no established breach by IG of the agreement, and second, when in breach of the 2004 agreement GT entered the retail internet market with its brand BB4U and effectively became a competitor against IG rather than a collaborator for deployment of DSL services in breach of the 2004 agreement, and third, resulting from the entry into the DSL market in competition with IG, GT used and adopted anti-competition and unfair trade practices like hoarding, poaching and others, and in consequence thereof succeeded in pushing IG not only from the market but to its oblivion. The law is settled that where breach of agreement is established, award of damages lies.

13.3 Having set up a counterclaim on the same facts, defendant IG assumes the burden of producing evidence to establish the claim both as a defensive duty and also as a counterclaimant. See *In Re Ashalley Botwe Lands* [2003-2004] SCGLR 420. The position of the law regarding claim for special damages is that, as the name suggests, they are special and must be claimed with particularity to enable defendant know, not only the amount of loss or damage alleged to be suffered but also how that amount is made up or calculated. The law and practice requires that any monetary loss suffered by the applicant up to the date of trial must be pleaded, particularized and proved or else it cannot be recovered. *Marfo v. Adusei* [1965] GLR 320, SC; *A-G v Faroe Atlantic Co. Ltd* [2003-2005] 2 GLR 580, 596

13.4 In the case of *Stroms Bruks Aktie Bolag v Hutchison* [1905] AC 515 at 525 – 526, HL (SC) Lord McNaughton stated that: "Special damages'... are such as

the law will not infer from the nature of the act. They do not follow in ordinary course. They are exceptional in their character, and, therefore, they must be claimed specially and proved strictly." (See also *Andreas Bschor GMBH & Co v B.W.C. Ltd* C.A (3rd April 2008) reported in (2008) 4 GMJ, 203)

13.5 I have gone through the testimony of Leslie Tamakloe and the other sole witness on the natter of proof of IG's counterclaim for special damages. The acclaimed losses were set out in oral evidence. Indeed, I have found at trial the evidence of loss of IG's subscribers poached or re-routed by GT, and in consequence loss of income. So is it apparent on docket, indeed uncontested by GT of IG's training of GT's technician for purposes of connection of IG's client unto GT's MDF. I reiterate that the law requires proof of not only the amount of loss or damage alleged to be suffered but also and most importantly in my view how that amount is made up or calculated. What therefore in my view remains, which I find lacking in evidence in respect of IG's counterclaim is how that value amount of te loss was made up or calculated.

13.6 The law is that where a claimant in a claim for special damages succeeds in proving both the subject matter loss and the value thereof, he is entitled to be awarded the value he claimed. Where he succeeds in proving only the subject matter loss but failed to prove its value, the claimant would be entitled to only nominal damages which should be a reasonably fair approximation of the loss of or pre-damage value of the property. *Norgbey v Asante* [1992] 1 GLR 506. My view on the docket is that the claim is without the requisite strict proof the law and practice requires. Defendant IG shall be entitled to just general damages. *Royal Dutch Airlines (KLM) v Farmex Ltd* [1989-90] 2 GLR 623, SC; *Norgbey v Asante* id.

13.7 With respect to IG's substantive suit against GT, IG contends that as a result of GT's conduct it suffered special damages, which it particularized as:

DSL Infrastructure Installation & Training - $2,428,000

Bank loan, interest and charges	-	$1,230,948.22
Income lost from clients poached by [GT]	-	$1,603,125.00[31]
Marketing	-	$154,645.00
Training	-	$111,000.00
Bandwidth	-	$400,000.00
Total	-	**$5,927,718.22**

13.8 I find some evidence with respect to aspects or classes of expenditure on equipment on the DSL infrastructure, installation and training, marketing infrastructure, training for the roll out of the DSL solution. *See para 37 of Leslie Tamkloe Witness Statement*. In fact the 2004 agreement provides for the basis for investment in these equipment, promotion and adverts particularly with Multimedia Broadcasting network (Joy FM). *See Doc 5*. Document 4 is in the form of diagram or chart on the ADSL services cost build-up. Document 7 is claim of proof of bills or invoice IG paid to Sprint, whilst *Document 6* is evidence of loan that IG took from the Cal Bank. Leslie Tamakloe provided testimony of the basis of IG's subject matter loss totaling $5,927,718.22. This was supported by Gaisie, who was once the deputy chief executive of plaintiff IG.

13.9 I need to make mention in particular of Exhibit 1 (Doc 4)[32], a subject of controversy in its admissibility. Exhibit 1 is a diagram or chat that illustrates how the ADSL technology works. It illustrates parties working relationship and nature of services. Exhibit 1 goes further to illustrate the cost build up or implicit in each aspect of the service, as well as the issue of poaching. In proof of a party's claims at trial, the law does not restrict a party to make his claims only by or through oral evidence. Evidence is permissible, thus admissible and not impermissible if a party chooses to rely and support his oral evidence by or with diagrams, graphs or charts and other mode of pictorial representation. The standard test of admissibility of any such evidence has always been that of relevance to the resolution of issues in

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31 The figure according to IG is from 1 Jan. 2008 to 31 Dec 2011

32 Tendered in IG's suit against GT

controversy, not the form by which the evidence was presented. I do not find legitimate basis for the objection to the admissibility of Exhibit 1.

14.0 I recall that proof of claims of special damages are in two parts; first, proof of the subject matter loss, and second, how the loss was computed or ascertained. The law demands strict proof. Indeed the law as I stated just above is that where the claimant succeeds in proving only the subject matter loss but failed to strictly provide proof the value, that is, how the value was ascertained, reckoned or added up, the claimant would be entitled to only nominal damages which should be a reasonably fair approximation of the loss of or pre-damage value of property. *Norgbey v Asante* [1992] 1 GLR 506, Acquah J.

14.1 I am not impressed that Mr Gaisie who claims to have prepared the value of the special claims succeeded in this course. Whilst evidence on the claim were not fully backed with certainty or mode of reckoning and/or summation, it was also largely discredited as to supporting documents as well as certainty of product of the summation at cross examination. I am not certain in my mind that IG crossed the requisite legal threshold of certainty of strict proof of the second element required to be proven.

14.2 I need to recall here that in IG's suit against GT, the latter counterclaimed for GH¢2,035,930.45 being amount IG owes to GT for telecom services that GT provided IG from January 2008. I need perhaps to reiterate here that pleadings are not evidence, and that the courts makes its decisions solely on evidence on oath. I find it quite curious that GT's sole witness in GT's counterclaim in IG's suit did not make the slightest attempt to lead any evidence in respect of GT's counterclaim for recovery of the said amount - GH¢2,035,930.45. I find as a fact that the sole witness for GT - Mr Siebu - in the IG's counterclaim failed miserably in his duty as counterclaimant, who the law requires to establish proof of its claim.

14.3 Besides, the main and sole witness was evasive and nonresponsive at cross examination. Indeed, I find that the witness Mr Siebu showed dangerous inadvertence to the basic structure of GT's claims and also to the demands of the law in proof of same. Indeed, in terms of the demands of the law, and by the main witness' attitude of non-responsive, evasiveness to the extent of manifesting ignorance of the demand of the law to GT's defense to IG's suit and proof of GT's counterclaim at cross examination. I can hold him as having in *sub silento* admitted the basic structure of IG's suit. GT's counterclaim is dismissed for lack of evidential support.

15.0 Conclusion

15.1 In conclusion, I need to emphasize that the standard of proof in actions like this, is one of preponderance of probabilities of certainty of the claims in the minds of the court. A plaintiff fails if he is unable to provide proof to cross the certainty of probability threshold. Based on analysis of evidence on docket, plaintiff GT's action fails except the amount defendant IG is deemed to have acknowledged or admitted which indeed form the basis of the consent decision of the Court Appeal, out of which I have found, indeed plaintiff GT witness admitted that IG had made some payments. The court orders defendant IG to pay the said balance.

15.2 With respect to defendant IG's counterclaim for special damages, I dismiss the claim on grounds of unsatisfactory proof of certainty of values IG ascribes to the loss. Besides evidence in support of aspects of the claim are not distinctly and chronologically established from claims in IG's claims in its substantive suit against GT; in fact largely discredited under cross examination on account of this fact among others. I need to recall however that IG's counterclaim for breach of contract had been upheld. Defendant IG is thus entitled to damages for the breach. I shall award IG general damages of GH¢2 million[33], and GH¢1 million[34] for loss of

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[33] GH¢2,000,000.00
[34] GH¢1,000 000.00

income arising from proven GT's unfavourable trade practices including the fact of hoarding, poaching, re-routing, etc.

15.3 With respect to IG's suit against GT, the court upholds the action and hereby grants the declaratory reliefs. As I have just above held, the claim for special damages fails on grounds of lack certainty of the summation of the values, in fact lack of satisfactory proof. The court shall award IG general damages of GH¢10 million.[35] Based on evidence on record, the court holds that the seizure and detention of IG's equipment on account of the alleged indebtedness the court had found as unproven is unlawful.

15.4 Defendant GT's counterclaim for recovery of amount of GH¢2,035,930.45 is hereby dismissed on grounds of absolute failure on the part of GT to provide evidence in support. GT has also made a counterclaim for declaration that IG's letters to the NCA and Norwegian Ambassador are defamatory. The evidence on record does not suggest so, in fact unproven. I find the acclaimed letters to be true representation of statement of facts at all material time as regards GT's relationship with IG, and that same cannot either be untrue or wrongful; neither can it be defamatory. I dismiss the claim.

15.5 In awarding amounts for general damages and costs, I need to state here that I paused in my judgment to give the lawyers the opportunity to address the court on the matter. Indeed, as part of the lawyers' submissions, counsel for IG indicated that IG does no longer intend to press the court to make order for defendant GT to release IG's equipment that GT had unlawfully seized and detained. According to counsel, the relief is presently needless, as the equipment are presently of no technical and economic value to IG. I shall award plaintiff IG an amount of GH¢1 million[36] as general damages for the unlawful seizure and detention of the equipment.

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[35] GH¢10,000,000.00

[36] GH¢1,000,000.00

15.6 Besides I took into consideration circumstances of the case, first that the proposal for the collaborative agreement for DSL services was the novel brainchild of defendant IG. The idea and resultant proposal, possibly was discovered and developed out of extensive research. I also took into consideration the abrasive conduct of GT during the brief effective period of the agreement and the effects of such attitude and conduct that were succinctly narrated by a material witness in the case who at all material time was a senior management member of GT, who in fact took active part in the deliberate plan to get IG out of its way for smooth and successful thrive of GT's BB4U. I make costs award of GH¢200,000.00 to GT in each of the suit against GT.[37]

(Sgd.)

George Buadi, J

High Court, Accra

Lawyers:

1. Ms. Emma Owusu Marfo (holding the brief of Kwaku Gyau Barfour) for Ghana Telecom
2. Joel Annor Afari (holding the brief of Benson Nutsupui) for Internet Ghana

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REGISTRAR
HIGH COURT
COMMERCIAL DIVISION

[37] The end of the judgment in the consolidated case - *Ghana Telecom v Internet Ghana*.