

JGL Eye

By JOSEPH G. LARIOS

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Written by
Sunday, 23 June 2013 19:57 -

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C HICAGO (*FAXX/jGLi*) – Anybody who ventures into the unknown must adopt the old but tried and tested scientific method of trial-and-error.

The beauty of trial-and-error is that it does not try to discover the reason why it works. Nor does it attempt to find out all the solutions nor the best solution. And little or no knowledge of the subject is needed to find the solution. And when only one solution can exist, then, any solution found is the only solution and so it becomes the best solution.

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When the Philippine Commission on Elections (Comelec) enlisted the services of Smartmatic International, “a corporation organized and existing under the laws of Barbados,” during the 2010 Presidential Elections, the Comelec was embarking into the dark because it was the first time that the Filipino voters was doing away with the manual balloting and participating in e-voting (electronic voting).

Because the Comelec was not sure if the Precinct Count Optical Scanner (PCOS) voting was going to work as advertised, it should not have committed itself to a long-term contract with Smartmatic until after it was tried and found to be working without a hitch.

While the Comelec was still weighing its options if the PCOS voting system of Smartmatic was worth another try, it readily agreed to use the same machines in the 2011 ARMM and later the 2013 mid-term elections, Comelec agreed to a “perpetual” contract with Smartmatic.

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Before the Comelec knew it, when the Comelec required Smartmatic to upgrade PCOS, the problem exploded in the very eyes of the Comelec because Smartmatic could not deliver the upgrades it wanted from Smartmatic.

It turned out Smartmatic has a silent but uncooperative partner, a third-party, if you may, the Dominion International, also based in Barbados, who refused and still refuses to dance to the music of Smartmatic. Smartmatic even had to drag Dominion into the dance floor of the Court of Chancery of the State of Delaware, their court venue of choice, to compel Dominion to comply with the Comelec upgrade.

Last May 1, Court Chancery Vice Chancellor Donald Parsons virtually declared a draw in the case brought by Smartmatic against Dominion, saying, “ I deny Smartmatic’s motion for partial summary judgment and Dominion’s implicit cross motion for summary judgment because both Smartmatic and Dominion have presented reasonable, albeit mutually exclusive, interpretations of “in the United States” as that term is used in the License Agreement.”

MOTIVATED BY GREED

Both motivated by greed, Dominion refused to honor its agreement with Smartmatic in 2009 after Dominion learned that Smartmatic extended its mouth-watering multi-billion-peso deal with the Comelec even before the terms of the first contract were met and passed the discriminating taste, scrutiny and verification of the critics.

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Before it committed Dominion to a “perpetual” subcontract with the Comelec, Smartmatic should have first secured the “perpetual” assistance of Dominion, which has the intellectual property to upgrade PCOS and other high-end and up-to-date automated election technology, like Imagecast PCOS, Democracy Suite Election EMS and Democracy Suite Image Cast PCOS management system, which allows the blind and overseas voters to vote via email.

Walang maipagmamalaki ang Smartmatic dahil hawak siya sa bayag ng Dominion! (Dominion holds the balls of Smartmatic in this deal!)

Comelec should be equally blamed for this costly Smartmatic-Dominion intramural for not asking third-party sub-contractor, Dominion, if it was willing to deliver its part in the contract before signing its deal with Smartmatic. But Smartmatic is not going to let Comelec have access to Dominion for fear that Comelec may divulge to Dominion the amount of money Smartmatic is collecting from Comelec.

Naturally, Dominion suddenly turned cold to Smartmatic entreaties because Dominion’s sub-contract with Smartmatic was only a one-time deal -- 2012 Presidential Elections -- and not a “perpetual contract.”

SMARTMATIC BROKE “NON-COMPETE” DEAL

When Smartmatic turned to the Chancery Court of Delaware to compel Dominion to provide Comelec with the software upgrade, Dominion used Smartmatic’s effort to offer Dominion’s voting technology to Puerto Rico State Elections Commission as encroachment of its territory. Dominion insists Puerto Rico is part of the United States.

Under the “non-compete” agreement between Dominion and Smartmatic, Smartmatic is restricted “to develop, market or sell” Dominion's PCOS voting system outside the U.S. and Canada.

Because Puerto Rico is deemed by Dominion as part of the United States, Dominion insists that Smartmatic broke their non-compete agreement when Smartmatic submitted a bid in Puerto Rico to offer the voting technology of Dominion.

In other words, Smartmatic will not be able to upgrade the software in its contract with the Comelec. This means the Comelec cannot make any more additional payment to Smartmatic, which, in turn, will not be able to pay Dominion as a third-party contractor.

Smartmatic, however, said that Dominion would not be able to get the

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Puerto Rico deal because Dominion is not in a position to deliver a “performance bond” and does not have the financial capital needed to mount such massive project. Smartmatic accused Dominion of tampering by enlisting the services of a hardware manufacturer, which has exclusive contract with Smartmatic.

As a result, Smartmatic alleged Puerto Rico would not be enlisting the services of Dominion anymore as Puerto Rico is reverting to the manual balloting. Dominion, however, insisted that Dominion Canada bagged the Puerto Rico contract.

COMELEC SHOULD SEND INVESTIGATOR TO MONGOLIA, BRAZIL & VENEZUELA

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Aside from the Philippines and Puerto Rico, Smartmatic was also eyeing Mongolia as its client.

But because Mongolia learned that Smartmatic could not deliver the software upgrade that only Dominion could, Mongolia had now cut a deal with Dominion.

If I were the Comelec, I will send its investigators to Mongolia, which will hold its presidential elections on June 26, 2013, using Dominion’s New ImageCast. This will provide voter registration, poll taking, and ballot paper that will be counted electronically. Mongolians and blind people can now vote. Mongolians who work and live abroad would personally go to their embassies and consulates and register via fax, email, or phone to vote in

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the upcoming elections.

The Comelec may also send investigators to Brazil, which conducted a Biometric Voting System, which identifies voters by their fingerprints to reduce fraud, and Verification of the System. This system “demonstrated security and inviolability” of the system that in 2008 survey had 97 percent of voters approving the Electronic Ballot box. In 2010, Brazil’s e-voting company provider, Premier Election Solutions was purchased by Dominion Voting Systems.

The Comelec may also check out the conduct of last April’s Venezuelan presidential elections, which used Smartmatic’s PCOS, if the latter’s contract merits an extension. (lariosa_jos@sbcglobal.net)

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