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IN THE MATTER OF THE PROPOSED JOINT VENTURE BETWEEN MEGAWIDE CONSTRUCTION CORPORATION AND EVOLUTION DATA CENTRES PTE. LTD.
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MAO Case No. M-2023-007

COMMISSION DECISION NO. 9-M-007/2023

This refers to the proposed joint venture between Megawide Construction Corporation (Megawide) and Evolution Data Centres Pte. Ltd. (Evolution) (hereinafter shall be collectively referred to as "Parties") through their investment in their respective subsidiaries, Evolution Data Centres Philippines, Inc. and Mega-Evolution Land, Inc. (the "Transaction") submitted to the Philippine Competition Commission ("PCC" or the "Commission") for review.[1]

Upon careful review of the existing market conditions, various submissions, representations of the Parties to the Commission, the application of the PCA and its Implementing Rules and Regulations, related issuances, and based on the findings and recommendation of the Mergers and Acquisitions Office (MAO), the Commission finds that the Transaction will not likely result in substantial prevention, restriction, or lessening of competition in the relevant markets for the reasons discussed below.

The Parties and the Transaction

Megawide is a domestic construction company incorporated in July 2004 and listed in the Philippine Stock Exchange. It is engaged in engineering, procurement, construction, airport operations, merchandising, and landport infrastructure.[2] Its Ultimate Parent Entity[3] (UPE) is Citicore Holdings Investment, Inc. (Citicore), a holding company with investments in construction, real estate, power, and energy businesses.

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1 The Philippine Competition Commission conducts review of mergers and acquisitions, including joint ventures, pursuant to Sections 16 and 17 of Republic Act No. 10667, otherwise known as the Philippine Competition Act (PCA), and Section 1, Rule 4 of the Implementing Rules and Regulations of the PCA.

2 Megawide Construction Corporation, Company Information, *available at* https://edge.pse.com.ph/companyInformation/form.do?cmpy_id=627 (last accessed 23 March 2023).

3 Philippine Competition Act, Implementing Rules and Regulations, Rule 3. *Definition of Terms*. – "Ultimate parent entity" is the juridical entity that, directly or indirectly, controls a party to the transaction, and is not controlled by any other entity.

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Megawide is in the process of incorporating Mega-Evolution Land, Inc. (LandCo), which will be one of the joint venture vehicles for this Transaction.

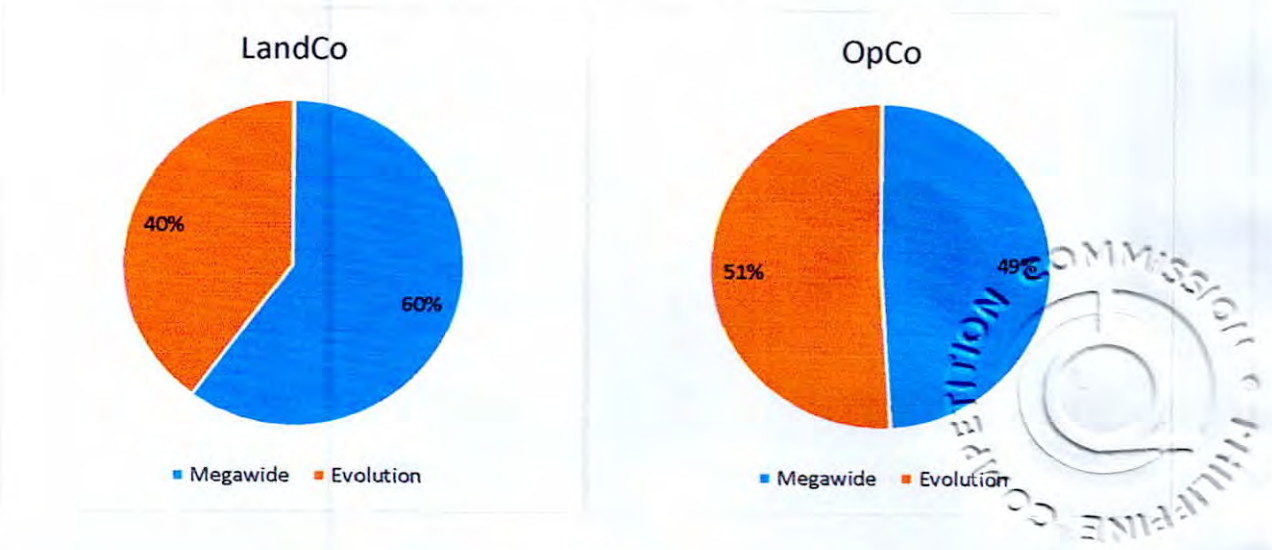
Evolution is a Singapore-incorporated company engaged in management consultancy services and commercial and industrial real estate management. Its UPE, Warburg Pincus (Bermuda) Private Equity GP Limited (Warburg Pincus), is a general partnership organized under the laws of Bermuda. Warburg Pincus manages private capital to invest in various portfolios.

One of the wholly-owned subsidiaries of Evolution is Evolution Data Centres Philippines, Inc. (OpCo), a domestic corporation which was incorporated to engage in the business of acquiring, developing, building, and/or operating data center facilities in the Philippines. It is operational but not yet revenue-generating. Its current assets consist of deposits paid for a land lease and capitalized project development costs.

To form a joint venture for the purpose of developing, constructing, and operating data center facilities, the Parties executed and submitted a Shareholders' Agreement dated 28 February 2023. The joint venture involves their subsidiaries, LandCo and OpCo.

Post-Transaction, Megawide and Evolution will jointly own LandCo and OpCo. Megawide shall own 60% of the shares in LandCo, while Evolution shall own the remaining 40%. As for OpCo, Evolution shall control 51% of its shares, while Megawide shall control the remaining 49%.

Figure 1. Ownership of LandCo and OpCo Post-Transaction.



LandCo shall be responsible for acquiring land assets and leasing them out to OpCo. LandCo shall also provide support for utilities to OpCo. Meanwhile, OpCo shall be responsible for financing the construction and operation of the joint venture and managing its day-to-day operations.

The Relevant Markets

In identifying candidate relevant markets,[4] the Commission looked into the overlapping lines of business and vertical relationships between the notifying groups, as well as the existing policy of the sector regulators.

In this case, there are no horizontal overlaps among the lines of operations and businesses of the Parties in the Philippines. No entity within Citicore's Notifying Group is engaged in data center market or related services. Warburg Pincus's Notifying Group, on the other hand, does not directly or indirectly control any entity in the Philippines.

However, there are potential vertical relationships between the Parties in the following relevant markets: (1) provision of construction services in the nationwide market, and (2) retail electricity supply in the Luzon and Visayas areas.

Construction Services in the Nationwide Market

A potential vertical relationship between the Parties arises from the possibility of Citicore providing construction services to OpCo for its data center. In the absence of a distinct market for construction services specific to building data centers, the relevant product market was defined as the provision of general construction services.

Based on the information gathered by MAO, there is no substantial difference in the construction of data centers with other industrial buildings, except for the data centers'

[4] Philippine Competition Act, Section 4(k). *Definition of Terms*. – Relevant market refers to the market in which a particular good or service is sold and which is a combination of the relevant product market and the relevant geographic market, defined as follows:
(1) A relevant product market comprises all those goods and/or services which are regarded as interchangeable or substitutable by the consumer or the customer, by reason of the goods and/or services' characteristics, their prices, and their intended use; and
(2) The relevant geographic market comprises the area in which the entity concerned is involved in the supply and demand of goods and services, in which the conditions of competition are sufficiently homogenous and which can be distinguished from neighboring areas because the conditions of competition are different in those areas.

air-conditioning and generator requirements. Contractors capable of designing and building data centers may also perform general construction projects and vice versa.[5]

It was also observed that construction materials and regulatory permits required for constructing a data center are identical to those needed for the construction of generic industrial buildings. The general procurement process for the construction of data center facilities and generic industrial buildings is the same.[6]

The geographic market is nationwide. Contractors with the necessary permits can undertake construction projects anywhere in the Philippines, without regional or local restrictions.[7]

Retail Electricity Supply in the Luzon and Visayas Areas

The operation of a hyperscale data center is power intensive, [redacted] Megawide could be an input provider through Citicore Energy Solutions, Inc.'s (CitiEnergy)[8] retail electricity supply and that gives rise to a potential vertical relationship.

In electricity distribution, contestable customers are distinguished from captive customers. Contestable customers have the freedom to choose the amount and requirements needed to supply its electricity needs through their power supply agreement with its chosen Retail Electricity Supplier (RES), while captive customers have no choice but to source their electricity from Distribution Utilities (DU) or electric cooperatives. Due to the fundamental differences between contestable and captive markets and the absence of demand-side and supply-side substitutability between the two, the identified product market was limited to retail electricity supply to contestable customers.

The geographic market is limited to Luzon and Visayas. CitiEnergy supplies electricity in Luzon and Visayas, with both grids interconnected since 2010. Moreover, the proposed area where the data center will be constructed is in [redacted] The absence of interconnectivity between the Visayas and Mindanao grids poses limitations on CitiEnergy's operations in Mindanao.

5 MAO's Interview with Notifying Parties.
6 MAO's Interview with Notifying Parties.
7 MAO's Interview with Competitors.
8 Citicore Energy Solutions, Inc. is part of the Citicore Notifying Group.

Competition Assessment

After a careful assessment, the Commission finds that the Transaction will not result in any significant change in the structure of the relevant markets considering that no horizontal overlap exists between the Parties. With respect to the vertical relationships, it also appears that the Parties will not have the ability nor incentive to engage in input and customer foreclosure, post-Transaction.

No Ability and Incentive to Engage in Input Foreclosure

In the relevant market for construction services nationwide, input foreclosure can take place as either (i) total, where a firm diverts inputs exclusively to its subsidiaries; or (ii) partial, where a firm sells inputs to competitors at higher prices or lower quality.

The Commission finds that there is neither ability nor incentive for the Parties to engage in either total or partial input foreclosure. While Citicore is among the leading contractors in the Philippines, there are sufficient competitive constraints from competitors nationwide. Though unlikely, should Citicore decide to divert inputs exclusively to OpCo, potential competitors of OpCo that require construction services can easily avail of the services of other construction companies.

There appears to be no incentive for Citicore to engage in total input foreclosure. The construction requirements of OpCo are negligible compared to the total revenue that Citicore generates from its other customers. Total input foreclosure will require Citicore to provide services only to OpCo, which may result in a substantial loss of revenue.

It is also unlikely for Citicore to increase its input costs or reduce the quality of its services to OpCo's competitors as it may potentially lead to a loss of future business opportunities.

For retail electricity supply in Luzon and Visayas, input foreclosure may manifest in strategies that restrict access or increase the cost of electricity to competitors of OpCo. Input foreclosure is highly unlikely given CitiEnergy's market position.[9]

Input foreclosure strategy would also be unprofitable for CitiEnergy. Refusing to sell its excess capacity to other customers would lead to revenue losses. In any case, should

[9] Based on the Energy Regulatory Commission's Monthly Statistical Data (as of December 2022), CitiEnergy's Capacity Allocation is 40.45 Megawatts which only represent 0.97% of the retail electricity supply market in Luzon and Visayas.
Competitive Retail Electricity Market, Monthly Statistical Data, *available at* https://www.buyyourelectricity.com.ph/pdf/CREM%20REPORT%20FOR%20DECEMBER%202022.pdf (last accessed 23 May 2023).

CitiEnergy engage in input foreclosure, potential competitors of OpCo can easily choose among the other bigger RES.

No Ability and Incentive to Engage in Customer Foreclosure

Customer foreclosure in construction services occurs when a firm prevents its competitors from accessing a significant customer base. Given the wide range of customers from various industries that the construction market serves, it appears that the Parties do not have the ability to engage in customer foreclosure. There exist numerous potential customers, from real estate to infrastructure developers, that competitors of Citicore could tap.

In retail electricity supply, customer foreclosure may take place if a firm prevents other electricity suppliers from accessing contestable customers. The Parties do not have the ability nor the incentive to engage in customer foreclosure considering that there are at least 1,918 contestable customers in the retail electricity supply market.[10] Should the joint venture exclusively source its retail electricity supply from CitiEnergy, retail electricity suppliers could still compete for other contestable customers. Further, data centers demand significant energy, and most data center operators need more than one RES to meet their power requirements.[11]

After careful review of the existing market conditions, various submissions and representations of the Parties, the application of the PCA, its Implementing Rules and Regulations, and related issuances and relevant regulatory frameworks, the Commission finds that the Transaction is not likely to result in substantial prevention, restriction, or lessening of competition. Rather, the Transaction is expected to increase competition in the data center market through the entry of a new participant.

ACCORDINGLY, the Commission resolves to **CLEAR** the joint venture between Megawide Construction Corporation and Evolution Data Centres Pte. Ltd.

This Decision is rendered solely based on the facts disclosed, circumstances of the Proposed Transaction known to the Commission during the review period, and documents submitted by Megawide and Evolution.

SO ORDERED.

17 May 2023.

[10] *Id.*
[11] MAO's Interview with Competitors.

[redacted]

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Chairperson

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