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IN THE MATTER OF THE PROPOSED JOINT VENTURE BETWEEN ABOITIZ INFRACAPITAL, INC. AND EDGECONNEX PHILIPPINES HOLDING, INC.

MAO Case No. M-2023-003

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COMMISSION DECISION NO. 05-M-003/2023

This refers to the proposed joint venture between Aboitiz InfraCapital, Inc. (AIC) and EdgeConneX Philippines Holding, Inc. (ECX) (hereinafter collectively referred to as the "Parties") for the development of hyperscale data centers across the Philippines, with ECX AIC Philippines, Inc. (EAP) and AIC ECX Philippines Land Holding, Inc. (AEPLH) as the resulting entities (the "Transaction") submitted to the Philippine Competition Commission (the "Commission") for review.[1]

Upon careful review of the submissions of the Parties to the Commission and the findings and recommendation of the Mergers and Acquisitions Office (MAO), the Commission finds that the Transaction will not likely result in a substantial lessening, restriction, or prevention of competition for the reasons discussed below.

The Parties and the Transaction

AIC is a domestic company engaged in the development of economic estates, water, digital infrastructure, and transport and mobility projects. Its ultimate parent entity (UPE), Aboitiz & Co., Inc. (ACO), is a private holding company with investments in subsidiaries and associates that are in the business of power generation and distribution, real estate development, construction, food manufacturing, industrial production, and infrastructure.

ECX is a newly-incorporated domestic holding company establishing the Philippine presence of its parent entity, EQT Fund Management S.à.r.l. (EQT), - incorporated under the laws of Luxembourg. Through its investment activities, it aims to provide a full range of sustainable data center solutions, and related data center services worldwide, for a diverse portfolio of industries.

Post-Transaction, the Parties shall exercise joint control over the two resulting entities, EAP and AEPLH. EAP will develop a hyperscale data center platform to capitalize on

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[1] The Philippine Competition Commission conducts reviews 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.

the rising data usage among end-users in the Philippines, while AEPLH will acquire and hold land on behalf of, and lease such land to, EAP. ECX and AIC shall hold 60% and 40% voting shares in EAP, respectively. In AEPLH, AIC shall hold 60% of voting shares, while ECX shall hold 40%.

The Relevant Markets[2]

The Commission finds no horizontal overlap between the Parties. The primary business of ECX's parent entity, EQT, is the provision of sustainable data center solutions to a diverse portfolio of industries. In addition, neither AIC nor any other entity under its UPE is engaged in the data center market or related services.

While there is no horizontal overlap between the Parties, the MAO considered the vertical relationship of the Parties in identifying the following relevant markets for the assessment of this Transaction: (1) retail electric supply in the Luzon and Visayas area; (2) the acquisition or lease of land located in Special Economic Zones (SEZs) in the Greater Manila Area; and (3) the provision of construction services nationwide.

Retail Electric Supply in the Luzon and Visayas Areas

Given that the operations of a hyperscale data center are power intensive, EAP intends to apply as a contestable customer[3] for their electricity needs. Notably, the ACO notifying group has five entities providing retail electric supply in the Luzon and Visayas area, namely: (1) Aboitiz Energy Solutions, Inc.; (2) Adventenergy Inc.; (3) AP Renewables Inc.; (4) Therma Luzon Inc.; and (5) Prism Energy, Inc. This creates a potential vertical relationship between the Parties.

The geographic market was limited to Luzon and Visayas since the proposed hyperscale data centers will be in Luzon and the entities affiliated to ACO providing retail electricity supply cater to Luzon and Visayas areas. Moreover, the absence of

[2] 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.

[3] A Contestable Market is one where end-users may choose from the existing pool of licensed retail electricity supplier to provide for their electricity (*See* Section 4(h), R.A. 9136), as opposed to a Captive Market where customers do not have a choice in their supplier of electricity and are bound to source electricity from the distribution utility or electric cooperative that is franchised to provide electricity in the area. *See* Sections 4(c) and 22, R.A. 9136.

interconnectivity between Visayas and Mindanao grids poses limitations on ACO's present operations in Mindanao.[4]

Acquisition or Lease of Land in Industrial Parks in SEZs

ACO's Lima Land, Inc. operates an industrial park in Batangas. Lima Land, Inc. houses 111 locators,[5] along with other ACO affiliates, namely: (1) LIMA Enerzone Corporation, (2) Aboitiz Power Retail Electricity Services, (3) LIMA Water Corporation, and (4) Aboitiz Construction, Inc. Since EAP and AEPLH plan to establish their hyperscale data center in industrial parks in SEZs in the Greater Manila Area, this gives rise to a potential vertical relationship between the resulting entities.

For purposes of the assessment, the relevant market was narrowed down to industrial parks in SEZs considering the non-substitutability of industrial land with other types of land, and non-substitutability of SEZs with non-SEZ land due to the difference in (1) regulatory agencies involved; (2) facilities offered; and (3) the intended hyperscale data center locations of the Parties in the Greater Manila Area.

Provision of Construction Services Nationwide

AIC, through Aboitiz Construction, Inc., could provide construction services to EAP for its data centers. The provision of construction services nationwide is, therefore, considered a relevant market in this case.

Competition Assessment

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

The Commission finds that there is little likelihood of input foreclosure in the retail electric supply in the Luzon and Visayas areas. There are twenty-eight (28) authorized local retail electricity suppliers (RES) in Luzon and Visayas, nine (9) of which are in the Greater Manila Area. The presence of these local RES provides sufficient competitive constraints in the market. ACO Group's total sellable capacity is significantly above the electricity supply requirements of the [redacted] hyperscale data

[4] The Mindanao-Visayas Interconnection Project is set to finish by June 2023, *available at* <https://www.bworldonline.com/economy/2023/03/13/510348/mindanao-visayas-grid-connection-seen-completed-by-june/> (last accessed on 13 April 2023).
[5] Businesses or companies that has set up operations within the SEZ.

centers of EAP. It appears that ACO Group does not have an incentive to exclusively offer all its sellable capacity to the hyperscale data centers of EAP.

Customer foreclosure is also unlikely considering that there are at least 1,918 contestable customers in the market. Supposing the resulting entities only purchase from RES connected to or affiliated with ACO, other customers exist for other RES, thereby only minimally affecting the current market. Even among data centers, customer foreclosure is highly unlikely since data centers require more than one (1) RES to ensure continuous operations due to their substantial energy requirements.

In the Acquisition or Lease of Land in Industrial Parks in SEZs, input foreclosure is also highly unlikely. While Lima Land, Inc. is the top player in the market for the acquisition or lease of land located in SEZs in the Greater Manila Area, it does not appear to have the incentive to engage in input foreclosure. Lima Land, Inc.'s, LIMA Estate, encompasses 700 hectares of land in Malvar, Batangas, while the proposed hyperscale data centers would only occupy about one hectare. It would be substantially unprofitable for Lima Land, Inc. to restrict the sale or lease of their property to AEPLH alone. Additionally, there are forty-six (46) other property developers operating in the Greater Manila Area that could provide sufficient competitive constraints.

Likewise, the Parties do not have the incentive to engage in customer foreclosure considering that situating all [redacted] data centers inside LIMA Estate would not be strategic operation wise. For instance, if natural disasters such as floods or earthquakes strike, the distance between each company data center would ensure that not all of the company's data inside the servers would be wiped out in a single calamity. In fact, EAP is also looking into land acquisition opportunities in other areas.

In the provision of construction services nationwide, both AIC and EAP's market shares and, consequently, their market power, are marginally low enough to successfully implement any input or customer foreclosure strategy. AIC has a minimal market share and faces competition from numerous other construction companies. In the event of input foreclosure, EAP's potential competitors seeking construction services can easily turn to several nationwide competitors. In the same vein, EAP's market power downstream is negligible. Upstream competitors may simply provide services to several other customers.

It is also worth pointing out that the Transaction is expected to increase competition in the data center market by introducing a new participant which will build carrier-neutral facilities. This could limit the ability of existing players linked with established telecommunication companies to entrench their market position with anticompetitive effects.

After careful review of the market conditions, various submissions and representations of the Parties, and application of the PCA, its Implementing Rules and Regulations, related issuances and relevant regulatory framework, the Commission finds that the

Transaction is not likely to result in substantial prevention, restriction, or lessening of competition.

ACCORDINGLY, the Commission resolves to **CLEAR** the proposed joint venture between Aboitiz InfraCapital, Inc. and EdgeConneX Philippines Holding, Inc. for the development of hyperscale data centers across the Philippines, with ECX AIC Philippines, Inc. and AIC ECX Philippines Land Holding, Inc. as the resulting entities.

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 AIC and ECX.

SO ORDERED.

13 April 2023.

[redacted]

MICHAEL G. AGUINALDO
Chairperson

[redacted]

MARAH VICTORIA S. QUEROL
Commissioner

[redacted]

MICHAEL B. PELOTON
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