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IN THE MATTER OF THE PROPOSED ACQUISITION BY ALVEO LAND CORPORATION OF SHARES IN PORTICO LAND CORPORATION

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MAO Case No. M-2023-022

COMMISSION DECISION NO. 22-M-022/2023

This refers to the proposed acquisition by Alveo Corporation (Alveo) of all the shares of MC Oranbo Investment, Inc. (MC Oranbo) in Portico Land Corporation (Portico) (hereinafter shall be collectively referred to as Parties). The Parties submit this acquisition (Transaction) to the Philippine Competition Commission (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 Philippine Competition Act (PCA), its Implementing Rules and Regulations, related issuances and regulatory framework, and 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

Alveo, a wholly-owned subsidiary of Ayala Land, Inc., is engaged in the development and sale of upscale residential and commercial projects. Its Ultimate Parent Entity (UPE) is Mermac, Inc. (Mermac), a private holding company in the Philippines for the shares of stock of Ayala Corporation. Mermac exercises its real estate interests through Ayala Land.[2]

MC Oranbo is a domestic holding company of Mitsubishi Corporation (Mitsubishi). Mitsubishi, a Japanese firm, has interests in natural gas, industrial materials, petroleum and chemicals, mineral resources, industrial infrastructure, automotive

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 Rule and Regulations of the PCA.

2 Alveo Land, Appendix "8.8-B" of Notification Form, 2022 Audited Financial Statements of Mermac.

and mobility, food industry, consumer industry, power solutions, and urban development. In the Philippines, Mitsubishi has corporate investments in International Elevator and Equipment, Inc. (IEEI) and Lawson Philippines (Lawson). IEEI is a domestic corporation engaged in the manufacturing, buying and selling, leasing, servicing and repairing, and provision of equipment of elevators and escalators.[3] Meanwhile, Lawson is a domestic corporation engaged in the purchasing, importing, selling, and distributing of all kinds of basic consumer goods, groceries, commodities, wares, merchandise, and other items which may become articles of commerce on wholesale and retail basis.[4]

Portico is an incorporated joint venture, 60% of which is owned by Alveo and 40% is held by MC Oranbo. It was established for the purpose of developing residential projects in Pasig City. As a joint venture, the Parties share the same UPEs – Mermac and Mitsubishi.

The shares to be acquired by Alveo from MC Oranbo constitute the remaining 40% of the total outstanding stock of Portico. Post-Transaction, Portico will become a wholly-owned subsidiary of Alveo.

The Relevant Market

In the review of a merger or acquisition, the Commission examines all the relevant markets[5] that may be potentially affected by the Transaction to determine whether significant harm to competition is likely to occur in any of them.[6] In identifying the relevant market, the Commission looked into the lines of operations and businesses of the Parties.

Mermac is involved in various types of commercial property leasing. Its real estate businesses, including Alveo, usually lease out retail spaces in the ground floors of its condominium projects for food and service stores.[7] Mermac entities also house Lawson, the convenience store brand of Mitsubishi; while IEEI provides elevators and other building equipment to various projects of Mermac.

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3 Mitsubishi, Appendix "8.8(J)" of Notification Form, 2022 Audited Financial Statements of International Elevator 1.

4 *Id.*

5 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.

6 Sec. 2.5, PCC Merger Review Guidelines.

7 MAO's Interview with the Notifying Parties.

Based on the Parties' operations, there is an overlap in the sale of residential units, and vertical relationships exist in the markets for the lease of retail space and provision of elevators and other engineering solutions.

Sale of Upscale High-Rise Residential Units in Metro Manila

In determining the product market, the Commission assessed whether low-rise and high-rise construction in property development should be considered distinct product markets.

Low-rise construction includes structures, such as subdivision projects, housing communities, and infrastructure projects.[8] In contrast, high-rise construction consists of construction projects that are built vertically, such as apartment buildings, skyscrapers, and commercial buildings.[9]

High-rise construction differs from low-rise construction due to demand and supply-side considerations. From the demand-side, low-rise and high-rise residential projects are not substitutable due to ownership restrictions,[10] differences in mortgage terms,[11] maintenance fees, and responsibilities of the owner over the property.[12] From the supply-side perspective, these construction projects differ primarily due to land characteristics, construction requirements, and licensing requirements.

Further, the Commission assessed the substitutability of different pricing tiers in high-rise property development projects, such as condominiums. Pricing tiers could be categorized as affordable, mid-income, upscale, or high-end. Based on market investigation, each pricing tier also constitutes a separate product market (i.e., upscale developments are not substitutable with high-end and mid-income).

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8 Valle, Giovannu, "Horizontal vs. Vertical Construction: 4 Key Differences," 07 January 2021, BuilderSpace: Gateway to the Building Industry, https://www.builderspace.com/horizontal-vs-vertica-construction-4-key-differences (last accessed 14 December 2023).

9 Zickefoose, Brian, "What is Horizontal vs. Vertical Construction?" 28 February 2020, Valiant Group: Choose Greatness over Comfort, https://www.valiantgrouplink.com/about/blog/horizontal-vs-vertical-construction/ (last accessed 10 December 2023).

10 MAO's Interview with the Department of Human Settlements and Urban Development.

11 Mully, David. "What's Different About Getting a Condo Mortgage?" *available at*: https://www.mortgageloan.com/whats-different-about-getting-condo-mortgage-9895#:~:text=Condominium%20mortgage%20requirements%20are%20more,with%20a%20standard%20home%20loan (last accessed on 12 December 2023).

12 https://www.condocontrol.com/condo-association-guide/condo-and-homeowners-association/#maintenance (last accessed 15 December 2023).

This is due to differences in clientele, amenities, and facilities offered by the Parties and other residential developers.[13]

The geographic market is defined as Metro Manila. Based on buyer considerations when purchasing residential condominium units, buyers typically consider options across Metro Manila, rather than limiting their options to a particular city.[14] Moreover, pricing trends for high-rise residential developments within Metro Manila are similar, regardless of location.[15]

Lease of Retail Space in Metro Manila

In determining whether retail space leasing constitutes a distinct product market, the Commission evaluated its differences from office space and mall leasing from both demand- and supply-side perspectives.

From the demand-side, retail space is distinct from commercial office spaces due to differences in customers, rental rates, and contract terms.[16] In addition, lessors also employ distinct strategies in developing and marketing commercial office spaces. For instance, retail spaces are designed to attract customers and are generally accessible to the public. For office spaces, on the other hand, accessibility to foot traffic is not as important.[17]

A narrower market separating retail from mall leasing was also considered. However, due to similarities in strategies to attract foot traffic, business models, and target customers, the Commission determined that the market for retail space leasing includes mall leasing.[18]

The geographic market was limited to Metro Manila because of its distinguished high retail business presence, low vacancy rates, and high retail space demand.

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13 Residential Real Estate Prices Increase in Q2 2023, *available at:* https://www.bsp.gov.ph/SitePages/MediaAndResearch/MediaDisp.aspx?ItemId=6890 (last accessed 9 December 2023).

14 MAO's Interview with Competitors.

15 Philippine property prices jump in Q4 (Business world), 31 March 2023, *available at:* https://www.bworldonline.com/top-stories/2023/03/31/514340/philippine-property-prices-jump-in-q4/ (last accessed 12 December 2023).

16 AEI, "Factors Affecting Commercial Property Values," *available at:* https://aeiconsultants.com/factors-affecting-commercial -property-values/ (last accessed on 8 December 2023).

17 De Lisle, James R., PhD, "Fundamentals of Real Estate: A Behavioral Approach," *available at:* https://jrdelisle.com/jrd_text/ (last accessed on 9 December 2023).

18 MAO's Interview with Competitors.

Provision of Elevators and Other Engineering Solutions Nationwide

The product market was limited to the provision of elevators and other engineering solutions by elevator companies. In determining the product market, the Commission considered the possibility of construction companies providing the same product and services. Market investigation reveals that construction companies and elevator companies fall into different licensing classifications by the Philippines Contractors Accreditation Board (PCAB).[19] Moreover, elevator companies require different expertise and specialization as compared to general construction companies.

The relevant geographic market is nationwide in scope because IEEI and their competitors provide their services across the country without incurring significant costs.[20]

Competition Assessment

After a careful assessment, the Commission finds that the Transaction will not result in a loss of competition for upscale high-rise residential units in Metro Manila. Further, it is also unlikely for the Parties to engage in input or customer foreclosure in the market for lease of retail space in Metro Manila and in the market for the provision of elevators and other engineering solutions nationwide.

No Loss of Competition in the Sale of Upscale High-Rise Residential Units in Metro Manila

Mermac would not have the ability to exercise market power post-Transaction because there will be no change in the market structure and existing competitive constraints.

Pre-Transaction, Mermac already holds controlling interest in Portico through Alveo [redacted] The market shares of Portico is in fact reported under Mermac. Thus, the Transaction will not cause any change in the dynamics of competition in the market.

The market shares of Mermac and the number of players in upscale vertical residential units shown in the table below will remain the same:

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[19] PCAB License verification, *available at:* https://pcabgovph.com/verify/ (last accessed on 10 December 2023).

[20] Notifying Party's submissions to the MAO.

Table 1. Competitor Market Shares for Upscale Vertical Residential Units in Metro Manila (as of 2023)[21]

Competitor	Market Shares (%)
Megaworld Corporation	[redacted]
SM Development Corporation	
Eton Properties	
Mermac	
Filinvest Land, Inc.	
DMCI Homes	
Ortigas Land	
Rockwell Land	
Century Properties Group	
Robinsons Land Corporation	

No Ability and Incentive to Engage in Input or Customer Foreclosure in the (i) Lease of Retail Space in Metro Manila and (ii) Provision of Elevators and Other Engineering Solutions Nationwide

In analyzing the effects of the Parties' existing vertical relationships, the Commission looked at the ability and incentive of the Parties to engage in input or customer foreclosure in the markets for the lease of retail space in Metro Manila and in the provision of elevators and other engineering solutions nationwide.[22] At the onset, any possible effect of their vertical relationship could be dispelled because of the nature of the Transaction: a divestiture. Mitsubishi, by divesting its interest in Portico, would in effect be severing its corporate relationship with Mermac.

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[21] Notifying Parties' submissions to the MAO and websites of various property developers.

[22] Input foreclosure is the ability and incentive of the parties to foreclose downstream firms by increasing prices, decreasing the quantity, or diverting its provision of an important input entirely to its own downstream related parties. There are two types of input foreclosure, total and partial:

(a) Total foreclosure occurs when the upstream firm completely stops supplying downstream competitors with inputs.

(b) Partial foreclosure occurs when the upstream firm supplies downstream competitors at higher prices or with less quantities.

On the other hand, customer foreclosure is the ability and incentive of the merged firm or its downstream subsidiaries to foreclose upstream competitors by restricting access to a significant customer base.

(i) Lease of Retail Space in Metro Manila

Given the Parties' relationship, Mermac could potentially engage in input foreclosure by supplying retail space exclusively for Lawson or by raising retail leasing fees of Lawson's competitors.

However, despite Mermac's market shares in the lease of retail space, there is no incentive for Mermac to engage in input foreclosure strategies, as the presence of competing property and mall developers within Metro Manila exerts sufficient competitive constraint in the market. Table 2 shows the market shares of the players in the lease of retail space in Metro Manila:

Table 2. Competitor Market Shares for Retail Space Leasing in Metro Manila (as of 2023)[23]

Competitor	Market Shares (%)
SM Prime Holdings	[redacted]
Ayala Land	
Robinsons Land	
Ortigas Land	
Megaworld	
Filinvest Land, Inc.	
ACI Inc.	
Shang Properties Inc.	
Manuela Corporation	
Puregold Price Club Inc.	
Others	
Total	**100.00**

Should Mermac try to engage in input foreclosure, competing developers with retail spaces can readily absorb the foreclosed tenants.

It is also unlikely for the Parties to engage in customer foreclosure due to Lawson's minimal market share of around [redacted] in the market for convenience stores.[24] It will also be counterintuitive for Lawson to restrict itself to Mermac-owned retail spaces as this will limit their prospects for business expansion.

[23] MAO's Interview with the Notifying Parties.
[24] Notifying Party's submissions to the MAO.

(ii) Provision of Elevators and Other Engineering Solutions Nationwide

Similarly, there is no ability and incentive for the Parties to engage in input or customer foreclosure in the market for the provision of elevators and other engineering solutions nationwide.

Notwithstanding IEEI's position as the leading market player, with [redacted] market shares as shown in Table 3 below, it has no incentive to engage in input foreclosure. There are other elevator companies that can easily provide services to the foreclosed customers. Should IEEI refuse to provide services to Mermac's competitors, IEEI could potentially lose significant profits derived from contracts with other customers. To note, the average revenue earned [redacted] is only around [redacted] of its annual gross revenue.

Table 3. Competitor Market Shares for Elevator and Engineering Solutions Nationwide (as of 2022)[25]

Competitor	Market Shares (%)
IEEI	[redacted]
Hyundai	[redacted]
Schindler	[redacted]
Jone	[redacted]
Hitachi	[redacted]
Otis	[redacted]
Others	[redacted]
Total	**100.00**

In the same vein, Mermac will have little to no incentive to limit its choice for the provision of elevator and engineering solutions exclusively to IEEI. There are other competing firms that could offer more favorable terms as to pricing, layout, and other contractual conditions. Contracting with multiple service providers for different development projects is also seen as more efficient to spread the risk of production delays and other technical problems.

After a 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 framework, the Commission finds that the Transaction is not likely to result in substantial prevention, restriction, or lessening of competition.

[25] *Id.* at 24.

ACCORDINGLY, the Commission resolves to **CLEAR** the acquisition by Alveo Corporation of all the shares of MC Oranbo Investment, Inc. in Portico Land Corporation.

This Decision is rendered solely based on the facts disclosed, circumstances of the proposed Transaction, and documents submitted by Mermac, Inc. and MC Oranbo Investment, Inc.

SO ORDERED.

20 December 2023.

[redacted]

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Chairperson

[redacted]

MARAH VICTORIA S. QUEROL
Commissioner

(On leave)
MICHAEL B. PELOTON
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