

**IN THE MATTER OF THE PROPOSED
JOINT VENTURE BETWEEN CAVITEX
HOLDINGS, INC. AND HOUSE OF
INVESTMENTS, INC. TO FORM THE
SANGLEY POINT INTERNATIONAL
AIRPORT DEVELOPMENT CONSORTIUM
IN RELATION TO THE JOINT VENTURE
AGREEMENT WITH THE PROVINCIAL
GOVERNMENT OF CAVITE TO BUILD
AND OPERATE THE SANGLEY POINT
INTERNATIONAL AIRPORT**

MAO Case No. M-2023-009

X-----X

COMMISSION DECISION NO. 012-M-009/2023

This refers to the proposed joint venture between the Provincial Government of Cavite (PGC) and the consortium created by Cavitex Holdings, Inc. (Cavitex Holdings) and House of Investments, Inc. (HOI) (the "Consortium") (PGC and the Consortium are hereinafter collectively referred to as the "Parties") to form the Sangley Point International Airport Development Consortium (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 substantial prevention, restriction, or lessening of competition in the relevant market for the reasons discussed below.

The Parties

PGC is a local government unit which oversees the component cities and municipalities in the entire Province of Cavite. It primarily generates revenues from the performance of governmental and proprietary functions.²

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 Proprietary revenues include business income from leasing machinery/equipment, hospital and laboratory fees, and sale of agricultural products.



Cavitetex Holdings, formerly Coastal Road Corporation, is a domestic holding company established primarily to purchase, subscribe, acquire, use, transfer, mortgage, or dispose real and personal properties. It was responsible for the development, design, and construction of the Manila-Cavite Expressway, which rehabilitated and expanded the Coastal Road.

HOI was incorporated in 1959 as the first investment bank in the Philippines. Its Ultimate Parent Entity (UPE) is Pan Malayan Management and Investments Corporation. HOI has evolved into an investment holding and management company with a diversified portfolio. It later became one of the major flagship corporations of the Yuchengco Group of Companies. Though HOI's ownership of the majority stake in EEI Corporation, construction is one of HOI's core business segments.

EEI Corporation is a construction company that provides a broad range of construction and engineering services, and has expertise in the construction of infrastructure, buildings, and facilities. It has a Quadruple-A rating as a General Engineering Contractor, the highest rating for contractors issued by the Philippine Contractors Accreditation Board.

The Consortium executed and submitted a Consortium Collaboration Agreement dated 14 September 2022 to the PGC, wherein Cavitetex Holdings and HOI are equity members, with Macro Asia Corporation, Samsung C&T Corporation, Munich International GmbH, and the Philippine branch of Ove Arup & Partners Hongkong Limited as nominated contractors.

The Transaction

The Transaction involves a Public-Private Partnership Project that will be implemented through a Joint Venture Development Agreement ("JVDA") between the Parties for the purpose of developing, owning, operating, managing, and maintaining the Sangley Point International Airport ("SPIA"). The SPIA Project involves the construction of a new international airport in Sangley Point, Cavite City, to decongest the Ninoy Aquino International Airport.³

³ The SPIA Project involves an unsolicited proposal submitted by the Consortium to the PCG. After review, the PCG accepted the Consortium's proposal on 28 December 2021, and then issued a Notice of Award in favor of the Consortium on 14 September 2023.

Figure 1. Consortium Ownership Structure Post-Transaction

[CONFIDENTIAL]⁴

The JVDA will be implemented in two stages. The first stage is the project preparation stage wherein the scope, definition, design, economic and technical feasibility, financial viability, and bankability are determined, and a final decision is made if the project will proceed to the next stage. The second stage is the implementation stage which involves the construction of the SPIA Project.

The Relevant Market⁵

With regard to the relationship of the Parties, the Commission finds no horizontal overlaps between the joint venture partners, or between the members of the Consortium. Cavitex Holdings and HOI are not engaged in any business that compete with each other; while the PGC is a local government unit that has no overlaps with the business activities of Cavitex Holdings and HOI. Furthermore, none of the Consortium equity members have existing operations in the financing, planning, development, and construction of airport infrastructure. The parties to the JVDA are likewise not currently engaged in any pre-existing buyer-seller or vertical relationships.

The Commission notes that the JVDA may result in a potential vertical relationship through HOI's majority stake in EEI Corporation, which may provide construction and related services for the construction and development of the SPIA.

⁴ Data or information has been redacted pursuant to Section 34 of the PCA which provides, "Confidential business information submitted by entities, relevant to any inquiry or investigation being conducted pursuant to this Act as well as any deliberation in relation thereto, shall not, in any manner, be directly or indirectly disclosed, published, transferred, copied, or disseminated. Likewise, the Commission shall, to the extent possible, subject such information to the confidentiality rule provided under this section when it issues notices, bulletins, rulings and other documents: Provided, That the confidentiality rule shall not apply if the notifying entity consents to the disclosure, or the document or information is mandatorily required to be disclosed by law or by a valid order of a court of competent jurisdiction or of a government or regulatory agency, including an exchange. The identity of the persons who provide information to the Commission under condition of anonymity, shall remain confidential, unless such confidentiality is expressly waived by these persons. Any violation of this provision shall be imposed a fine of not less than one million pesos (P1,000,000.00) but not more than five million pesos (P5,000,000.00)."

⁵ Philippine Competition Act, Section 4(k). *Definition of Terms.* – Relevant market refers to the 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.

The relevant product market was defined as the provision of construction services for infrastructure development in general, taking into account demand-side and supply-side substitutability in the construction of airport and any other types of infrastructure.

It is evident that entities involved in the business of airport construction can also be engaged to build other infrastructure. Quadruple A license holders that are qualified to construct airports are also capable of undertaking other types of infrastructure projects, evincing supply-side substitutability.

The Commission finds the relevant geographic market to be nationwide. Quadruple A contractors are not limited to any particular locality and are involved in different projects across the country.

Competition Assessment

While there are no horizontal overlaps and no actual vertical relationship between the Parties, the Commission found it necessary to look into an identified potential vertical relationship. Given HOI's ownership of the majority stake in EEI Corporation, there is a need to determine whether the Transaction will increase the ability and incentive of the Parties to engage in input or customer foreclosure.

No Ability to Engage in Input Foreclosure

Input foreclosure is the ability and incentive of the firms to foreclose downstream firms by increasing prices, decreasing the quantity, or diverting its provision of an important input entirely to its own downstream related firms.⁶

There are two types of foreclosure – total foreclosure and partial foreclosure. Total foreclosure occurs when the upstream firm completely stops supplying downstream competitors with inputs, whereas partial foreclosure occurs when the upstream firm supplies downstream competitors at higher prices or with less quantities.⁷

After careful assessment, the Commission finds that it is unlikely for the Parties to engage in either total or partial input foreclosure. EEI Corporation does not have enough market power among the Quadruple A license holders to engage in input foreclosure. While EEI Corporation holds the biggest market share among key contractors at 21.70% in terms of value of projects, it still does not hold a dominant position⁸ in the construction market.

⁶ Section 7.18, PCC Non-Horizontal Merger Review Guidelines.

⁷ Section 7.18, PCC Non-Horizontal Merger Review Guidelines.

⁸ Section 27, PCA. "There shall be a rebuttable presumption of market dominant position if the market share of an entity in the relevant market is at least fifty percent (50%) unless a new market share threshold is determined by the Commission for that particular sector."

Assuming the Parties have the incentive to engage in input foreclosure, they do not have a sufficient market share to impose restrictions to the business of its suppliers. The Commission takes notice of the significant competitive constraints emanating from other market players such as Megawide Construction Corp., and Makati Development Corporation.

Table 1. Market Shares of Key Contractors Based on Value of Projects (as of 2022)⁹

Company	Market Share
[CONFIDENTIAL] ¹⁰	

Other competitors, along with other Quadruple A license holders, limit EEI Corporation's ability to foreclose access to construction services. Any attempt by the Parties to engage in total input foreclosure will only lead other infrastructure projects developers to avail services from its competitors. EEI Corporation's market share, as seen above, is insufficient to exercise market power with the existence of all the other Quadruple A license holders.

The Commission was also made aware that Samsung C&T, a South Korean construction and engineering company, has been nominated as the primary contractor for the construction of the SPIA, rather than EEI Corporation.

No Ability to Engage in Customer Foreclosure

The ability to engage in customer foreclosure is assessed by determining whether a transaction increases the ability and incentive of the merged firm to foreclose upstream competitors by restricting access to a significant customer base.¹¹

SPIA is only one among seven awarded airport projects needing construction services.¹² It is not large enough, considering the broader market for construction services in general to deny other construction firms access to a significant customer base.

⁹ GlobalData's Sector Research on Construction in the Philippines Key Trends and Opportunities to 2026.

¹⁰ *Id.*, at 4.

¹¹ Section 7.20, PCC Non-Horizontal Merger Review Guidelines.

¹² Based on the PPP Center's List of Awarded Airport Projects as of April 2023.



In the Matter of the Proposed Joint Venture Between Cavitex Holdings, Inc. and House of Investments, Inc. To Form The Sangley Point International Airport Development Consortium In Relation to the Joint Venture Agreement with the Provincial Government of Cavite to Build and Operate the Sangley Point International Airport
Commission Decision No. 12-M-009-2023 dated 30 May 2023

The Philippines has been seeing an increase in the number of private and public development projects that require the services of Quadruple A construction companies. Assuming the merged firm engages in customer foreclosure, the other construction firms can provide their services to other infrastructure projects, including airport construction. The Parties clearly do not have the capacity nor incentive to engage in customer foreclosure.

After careful review of the existing market conditions, various submissions and representations of the Parties, application of the PCA, its Implementing Rules and Regulations, and related issuances, the Commission finds that the Transaction is not likely to result in substantial prevention, restriction, or lessening of competition.

Moreover, the Commission notes that due to the limited scope of the SPIA and the respective roles of the Parties, it appears that the joint venture will not lead to changes in the structure nor dynamics of the relevant market.

ACCORDINGLY, the Commission resolves to **CLEAR** the Transaction between the the Provincial Government of Cavite and the consortium created by Cavitex Holdings, Inc. and House of Investments, Inc.

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 PGC, Cavitex Holdings, and HOI.

30 May 2023.


MICHAEL G. AGUINALDO
Chairperson


MARAH VICTORIA S. QUEROL
Commissioner


MICHAEL B. PELOTON
Commissioner


LOLIBETH RAMIT-MEDRANO
Commissioner

FERDINAND M. NEGRE
Commissioner
(on leave)

*In the Matter of the Proposed Joint Venture Between Cavitex Holdings, Inc.
and House of Investments, Inc. To Form The Sangley Point International
Airport Development Consortium In Relation to the Joint Venture Agreement
with the Provincial Government of Cavite to Build and Operate the Sangley Point International Airport
Commission Decision No. 12-M-009-2023 dated 30 May 2023*

Copies Furnished:

Cavitex Holdings, Inc.
2F Corporate Business Center
151 Paseo de Roxas
Makati City
[REDACTED]

Aquende Anilag Que & Associates
Counsel for Cavitex Holdings, Inc.
Suite 2302, 23/F Corporate Center
139 Valero St., Salcedo Village
Makati City
[REDACTED]

House of Investments, Inc.
9/F, Grepalife Building
221 Sen Gil Puyat Avenue, Makati City
[REDACTED]

**Angara Abello Cruz Regala Concepcion Law
Offices**
Counsel for House of Investments, Inc.
22/F, ACCRALAW Tower
2nd Avenue corner 30th Street, Crescent Park
West, Bonifacio Global City, Taguig
[REDACTED]

Provincial Government of Cavite
Provincial Capitol Building
Trece Martires City, Cavite
c/o
Renato A. Abutan
Provincial Administrator/PPP-SC Chairman
[REDACTED]

Mergers and Acquisitions Office
25th Floor, Vertis North Corporate Center 1
North Avenue, Quezon City
mergers@phcc.gov.ph

