PHILIPPINE COMPETITION COMMISSION
Ensuring businesses compete and consumers benefit

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IN THE MATTER OF THE PROPOSED JOINT VENTURE BETWEEN ACE ENDEVOR, INC. AND IB VOGT (SINGAPORE) LTE. PTD., AND THE ACQUISITION BY HYPERION RENEWABLE HOLDINGS, INC. OF APOLAKI TWO INC.
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MAO Case No. M-2023-018

COMMISSION DECISION NO. 19-M-018/2023

This refers to the proposed joint venture between ACE Endevor, Inc. (ACEE) and ib vogt (Singapore) Pte, Ltd. (IBV SG) (hereinafter shall be collectively referred to as Parties), and the acquisition by Hyperion Renewable Holdings, Inc. (Hyperion) of Apolaki Two Inc. (APO2). This Transaction is submitted to the Philippine Competition Commission (the Commission) for review.[1]

Upon careful review of the existing regulatory framework and market conditions, various submissions and representations of the Parties to the Commission, application of the PCA and its Implementing Rules and Regulations and related issuances, 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

ACEE is a domestic corporation primarily operating as a management services company in the renewable energy sector. [redacted] It is a subsidiary of ACEN Corporation (ACEN), the energy platform of Ayala Corporation. Ayala Corporation's Ultimate Parent Entity (UPE) is Mermac, Inc. (Mermac), a conglomerate with interests in various industries in the Philippines.

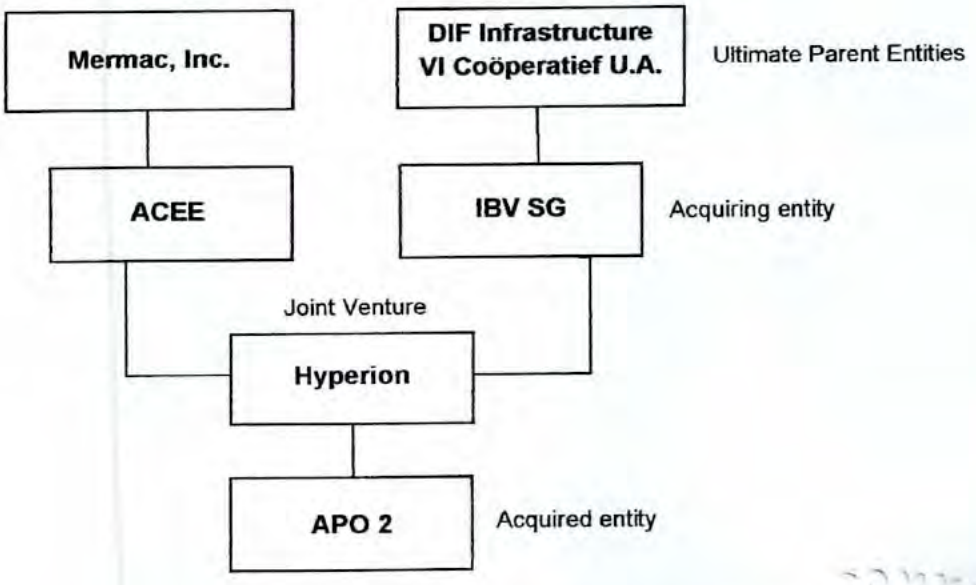
[1] The Philippine Competition Commission conducts review of mergers and acquisitions, including joint ventures, pursuant to Sections 16 and 17 of Republic Act No. 10667, otherwise known as the Philippine Competition Act (PCA), and Section 1, Rule 4 of the Implementing Rules and Regulations of the PCA.

IBV SG serves as an investment company, and provides engineering, design and consultancy, and clean energy management services for the operations in Asia of ib vogt GmbH, a German based energy company. IBV SG's UPE is DIF Infrastructure VI Coöperatief U.A., a Dutch based investment company with primary investments in infrastructure.

ACEE and IBV SG entered into an Investment Agreement conferring joint control between the Parties over Hyperion. Post-Transaction, ACEE and IBV SG shall own 60% and 40% of Hyperion, respectively.

Hyperion is a joint venture holding company established for the sole purpose of acquiring APO2, a Special Purpose Vehicle (SPV) [redacted] APO2's UPE is Liwanag Solar HoldCo. Inc. (Liwanag), which is engaged in the project development of solar facilities and an associate firm of IBV SG.

Figure 1. Post-transaction Corporate Structure.



The Relevant Markets

In the review of a merger or acquisition, the Commission examines all the relevant markets[2] that may be potentially affected by the transaction to determine whether significant harm to competition is likely to occur in any of them.[3]

Three relevant markets were identified in the present Transaction, to wit:

1. Generation and sale of electricity from renewable energy (RE) sources through Non-Feed-In-Tarriff (Non-FIT) / Green Energy Auction Program (GEAP) power generation facilities nationwide;
2. Sale of RE to retail electricity suppliers (RES) nationwide; and
3. Bank loan financing for the development and construction of renewable power generation facilities nationwide.

Generation and Sale of Electricity from RE Sources through Non-FIT/GEAP Power Generation Facilities Nationwide

In identifying the relevant product market of generation and sale of electricity from RE sources through Non-FIT/GEAP power generation facilities, the horizontal overlap in the businesses of the Parties was considered. APO2 serves as an SPV [redacted] Liwanag, its UPE, has [redacted] other SPVs for RE development and power generation activities. Similarly, Mermac, ACEE's UPE, has subsidiaries involved in RE and power generation.

The relevant product market was not expanded to include conventional energy given its non-substitutability with RE from the viewpoint of both suppliers and consumers. RE and conventional power generation are subject to different policies and regulatory incentives. RE is also largely associated with environmental benefits by consumers. Some consumers favor RE because of its sustainability while others favor the affordability and reliability of conventional resources.

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[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] Section 2.5, PCC Merger Review Guidelines.

On the supply side, inputs and facilities utilized in generating RE and conventional energy differ. Conventional power generation facilities make use of inputs from fossil fuels that are finite and deplete easily depending on the rate of energy consumption. These facilities are capable of continuous and long operations that make them suitable for sustaining base load demand.[4] However, these facilities cannot easily stop or restart its plants once it starts producing electricity.[5]

Meanwhile, RE power generation facilities use elements, such as solar, wind, geothermal, and other infinite sources.[6] Unlike conventional power generation facilities, RE facilities utilize special equipment and can easily shut down and restart multiple times a day. RE facilities' power output depends on the speed of wind and amount of light energy, making it capable for supplying peak load demand.

Moreover, developing RE power plants is different from developing conventional power plants.[7] Suppliers that plan to transition from conventional energy to RE in generating electricity require more energy storage, backup generation, strategies on electricity distribution, and long-distance transmission infrastructures. The difference in input used by facilities in generating renewable and conventional energy makes it more difficult for energy generators to switch from producing energy using one energy source to another using the same facility.[8]

Notably, FIT, and currently, the GEAP program, are carved out from the relevant market as they are awarded winning RE companies' contracts that stipulate 20 years of guaranteed payments.[9] FIT-eligible power generation facilities are not subject to market prices during the 20-year period and have practically ceased to compete with other power generation facilities.[10]

Given the availability of the nationwide power grid with the Luzon and Visayas grids being interconnected through the High Voltage Direct Current Leyte-Luzon Connector since 2010 and the Mindanao-Visayas Interconnection Project grid estimated to be in its full capacity by third quarter of 2023,[11] the geographic market considered is nationwide.

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[4] Abdul Beig, SM Muyeen, Electric Renewable Energy Systems, 2016, *available at*: https://www.sciencedirect.com/topics/engineering/conventional-energy (last accessed on 04 October 2023).
[5] *Id.*
[6] Muhammad Kamran, Chapter 9 Energy storage in smart grids, *available at*: https://www.sciencedirect.com/science/article/abs/pii/B9780323995603000016 (last accessed on 04 October 2023).
[7] MAO's Interview with Notifying Parties.
[8] Renewable Energy, *available at:* https://climate.mit.edu/explainers/renewable-energy (last accessed on 04 October 2023).
[9] Section 4, ERC Resolution No. 16, Series of 2010.
[10] *Id.*
[11] National Grid Corporation of the Philippines, NGCP energizes Mindanao-Visayas Interconnection, *available at*: https://www.ngcp.ph/article?cid=16636 (last accessed on 04 October 2023).

Sale of RE to RES Nationwide

The sale of RE to RES was included as one of the relevant product markets for analysis because of the potential vertical relationship between the Parties, where Hyperion could supply electricity to the various RES entities under the Mermac Group. The definition of this market was limited to RES considering its distinction from distribution utilities (DU).

The differences in market structures and applicable economic principles restrict DUs and RES from supplying electricity to the same customer segment.[12] DUs are granted a franchise to operate within a specific geographic area or service territory,[13] giving them significant market power over their franchised area. In contrast, RES sell directly to contestable customers regardless of the service territory. RES also have the capacity to offer a variety of their energy mix to cater to the different preferences and priorities of their end-users.

The geographic market is nationwide in scope. Prior to the interconnection of the Mindanao grid with the Luzon-Visayas Grid, the Retail Competition and Open Access (RCOA) scheme was confined to the islands of Luzon and Visayas. However, the Department of Energy (DOE) is targeting 26 December 2023 as the commencement date of implementing RCOA, Retail Aggregation, and GEOP in Mindanao. This integration will result in the nationwide market for the Competitive Retail Electricity Market (CREM).[14]

Bank Loan Financing for the Development and Construction of Renewable Power Generation Facilities Nationwide

Power generation companies rely on commercial bank loans to finance power plant projects. For this reason, the vertical relationship that may arise between the Bank of the Philippine Islands (BPI) (a subsidiary of Mermac through Ayala Corporation) as upstream supplier of commercial bank loans and Hyperion as a downstream customer

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[12] Sections 4 to 5, Article I, and Sections. 1 and 5, Article II, Revised Rules for the Issuance of Licenses to Retail Electricity Supplier (RES) (2011).
[13] Section 4 (q), Electric Power Industry Reform Act (EPIRA).
[14] Section 1 of DOE Unnumbered Department Circular, "Declaring the Commercial Operations Date of Retail Competition and Open Access, Retail Aggregation and Green Energy Option Program in Mindanao" *available at:* https://www.doe.gov.ph/sites/default/files/pdf/announcements/Department%20Circular%20on%20the%20Implementation%20of%20RCOA-GEOP%20in%20Mindanao-DRAFT-24Apr2023_2.pdf (last accessed on 04 October 2023).

requiring commercial bank loan services to fund its project development activities, was considered.

In defining this relevant product market, commercial bank loan was distinguished from other financial services offered by banks, given their distinct characteristics and the difference in the financial purposes they serve. Commercial loans from banks and loans from non-bank financial institutions (NBFIs) were also found to be non-substitutable considering the difference between these institutions. NBFIs are financial institutions that do not have a full banking license and cannot accept deposits from the public.[15] They can only provide alternative financial services mostly to unbanked customers, or to micro, small and medium enterprises.[16] Since most power generation companies are known firms with good credit lines and higher capacity to pay, they avail of bank loans, through debt financing, for the development and construction of their facilities.[17] Commercial loans offered by banks and NBFIs, do not belong in the same market.

As to the geographic market, loans can finance any project nationwide and do not have any restrictions as to location, making the scope nationwide.

Competition Assessment

After a careful assessment, the Commission finds that the Transaction will not result in any significant change in the structure of the identified relevant markets. Further, the Parties will not have the ability nor the incentive to engage in input and customer foreclosure post-Transaction.

No loss of competition in the generation and sale of electricity from RE sources through non-FIT/GEAP generation facilities nationwide

Possible unilateral effects may arise given the horizontal overlaps between Hyperion and Mermac's power generation facilities in the market for generation and sale of electricity from RE sources through non-FIT/GEAP generation facilities. However, such unilateral effects in this market are highly unlikely. The energy industry is subject to extensive regulation by the Energy Regulatory Commission (ERC). Rates

[15] Bangko Sentral ng Pilipinas (2020). "Manual of Regulations for Banks," *available at*: https://morb.bsp.gov.ph/702-issuance-and-operations-of-electronic-money/. (last accessed on 04 October 2023).
[16] Nonbanking Financial Institution, The World Bank, *available at:* https://www.worldbank.org/en/publication/gfdr/gfdr-2016/background/nonbank-financial-institution#/> (last accessed on 04 October 2023).
[17] MAO's Interview with Notifying Parties.

established in Power Supply Agreements (PSAs) between power generation companies and DUs go through a competitive selection process.[18] They are closely monitored to safeguard end-users from any potential abuse of market dominance by both power generators and DUs. Moreover, the Electric Power Industry Reform Act (EPIRA) has safeguard mechanisms embedded in the law.

In its assessment, the Commission takes notice of the committed power generation facilities set to be completed by 2025, as projected by DOE.[19] These new facilities would add competitive pressure to prevent any unilateral exercise of market power by the relevant entities even though the Transaction would lead to an increase in the market share of Mermac entities from [redacted]

The additional installed generation capacity of [redacted] will increase Mermac's market share to [redacted] making it the [redacted] in the relevant market. However, existing regulatory controls faced by these firms along with larger competitors will continue to pose competitive constraints to the Parties.

No input or customer foreclosure in the nationwide sale of RE to RES

In the sale of RE to RES nationwide, the Parties do not possess the needed high market shares in the relevant market to enable them to foreclose the competitors of Mermac. From the table below it can be observed that post-Transaction Mermac is faced with a substantial number of competitors, [redacted]

Table 1. Non-FIT RE Power Generation Firms in the Nationwide Grid in 2025.[20]

Pre-Transaction				Post-Transaction			
Rank	Entity	Non-FIT RE Market Share (MW)	Non-FIT RE Market Share in %	Rank	Entity	Non-FIT RE Market Share (MW)	Non-FIT RE Market Share in %
1	PSALM	[redacted]		1	PSALM	[redacted]	
2	Aboitiz			2	Aboitiz		
3	FirstGen			3	**MERMAC**		
4	Meralco			4	FirstGen		

[18] Section 23, R.A. No. 9136; Section 4, DOE Department Circular (DC) No. 2018-02-0003, as amended by DC No. 2021-10-0030.
[19] DOE, List of Existing Power Plants, *available at:* https://www.doe.gov.ph/listexisting-power-plants (last accessed on 04 October 2023).
[20] The Installed Generation Capacity (IGC) was used as the basis for computing market shares. The IGC is the nameplate capacity or full-load continuous gross capacity of a unit under specified conditions, as calculated from the electric generator nameplate based on the rated power factor (DOE). The data available in the DOE website (https://www.doe.gov.ph/listexisting-power-plants).

5	**MERMAC**	[redacted]	5	Meralco	[redacted]
6	San Miguel Corporation		6	San Miguel Corporation	
7	Millenium		7	Millenium	
8	SPNEC		8	SPNEC	
	Others			Others	
TOTAL		**100%**			**100%**

Should Mermac attempt to employ input foreclosure strategies, other RES can source power from other Non-FIT/GEAP RE producers in the relevant market. PSAs have two (2) to ten (10) year durations, and the contracted price cannot be arbitrarily changed making partial input foreclosure nearly impossible.[21]

It is also unlikely for the Parties to engage in customer foreclosure because the Parties' RES operations do not constitute a significant customer base for the upstream market of power generation, having a market share of only [redacted]

Table 2. Retail Electricity Supply Market Shares with Retail Supply Contract Based on the Number of Contestable Customers and Contracted Capacity.[22]

Rank	RES	No. of Contestable Customers	Capacity Allocation per RES (MW)	Market share in %
1	Aboitiz Group	[redacted]		
2	Meralco Group			
3	San Miguel Group			
4	**Mermac/Ayala Group**			
	Direct Power Services, Inc.			
	AC Energy and Infrastructure Corporation			
	ACEN Corporation			
	Others			
TOTAL		[redacted]		100%

There would be no substantial effect on competition should the RES from the Mermac Group choose to source all its RE requirements solely from Hyperion. There are 47 other licensed RES that have RE requirements and the competitors of Hyperion have the option to offer their capacity or power generated to them.[23]

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[21] MAO's Interview with Notifying Parties.

[22] ERC Competitive Retail Energy Market (CREM) Monthly Statistical Data as of March 2023, *available at:* https://www.buyyourelectricity.com.ph/pdf/CREM%20REPORT%20FOR%20MARCH%202023.pdf (last accessed on 29 August 2023).

[23] ERC CREM Report as of December 2022, *available at:* https://buyyourelectricity.com.ph/pdf/CREM%20REPORT%20FOR%20DECEMBER%202022.pdf (last accessed on 29 August 2023).

No input or customer foreclosure in bank loan financing for the development and construction of the renewable power generation facilities nationwide

While BPI ranked [redacted] in the market shares for loan products, it does not have the incentive to engage in such foreclosure. Hyperion's possible bank loan with BPI only makes up a small fraction of the total value that BPI generates from its numerous customers. Moreover, should BPI adopt an input foreclosure strategy, competitors of Hyperion may still avail themselves of loans from other banks. It is also unlikely for BPI to degrade the quality of loan products offered to competitors of Hyperion. Should BPI increase the interest rates of loans offered to competitors of Hyperion, these entities may simply avail themselves of loan products offered by other banks – leading to a loss of future business opportunities for BPI.

Customer foreclosure is also unlikely. Hyperion does not have the ability to engage in such foreclosure given that Hyperion and Mermac do not have high market shares in the market for power generation nationwide. Moreover, there are other potential power generation customers that can be served by competitors of BPI.

The Commission also recognizes that the presence of new players who are entering or existing rivals expanding into the relevant markets can impose significant competitive limitations on the actions of the Parties. While the Transaction is expected to increase Mermac Group's share in the Non-FIT/GEAP RE power generation market from [redacted] it will have no significant impact on the market shares of each player. The entry of new players and the expansion of existing firms ensure a more robust market.

Based on the 31 March 2023 list of committed power generation facilities, there will be 20 unaffiliated firms expected to enter the market by 2026.[24] Entry of new players is also expected due to the lifting of foreign ownership restriction on the exploration, development, and utilization of solar, wind, hydro, tidal, and biomass energy.[25] Large-scale geothermal power generation facilities can now be owned fully by foreign entrants. The increasing trend in the demand for RE, spurred by technological advancements in the industrial sector,[26] will also encourage more RE power generation companies to enter the Philippine market. R.A. No. 11234 or the "Energy Virtual One-Stop Shop Act" has also provided streamlined licensing for project developers for a more efficient and speedy processing of requirements.

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[24] Department of Energy, Private Sector Initiated Power Projects, *available at*: https://doe.gov.ph/private-sector-initiated-power-projects (last accessed on 04 October 2023).
[25] DOE Department Circular No. 2022-11-0034 (2022).
[26] REurasia, Growth of Renewable Energy in the Philippines, *available at:* https://reurasia.com/growth-of-renewable-energy-in-the-philippines-and-its-potential-for-the-future/# (last accessed on 04 October 2023).

After the careful review of the existing regulatory framework and market conditions, various submissions and representations of the Parties, 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.

ACCORDINGLY, the Commission resolves to **CLEAR** the joint venture between ACE Endevor, Inc. and ib vogt (Singapore) Pte, Ltd., and the acquisition by Hyperion Renewable Holdings, Inc. of Apolaki Two Inc.

This Decision is rendered solely based on the facts disclosed, circumstances of the Transaction known to the Commission during the review period, and documents submitted by ACEE, Hyperion, Liwanag Solar HoldCo. Inc., and DIF Infrastructure VI Coöperatief U.A.[27]

SO ORDERED.

05 October 2023.

[redacted]
MICHAEL G. AGUINALDO
Chairperson

[redacted]
MARAH VICTORIA S. QUEROL
Commissioner

[redacted]
MICHAEL B. PELOTON
Commissioner

[redacted]
LOLIBETH RAMIT-MEDRANO
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[27] Liwanag Solar HoldCo. Inc. and DIF Infrastructure VI Coöperatief U.A., as the respective Ultimate Parent Entities of APO2 and IBV SG, filed the notification forms.

Copies Furnished:

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