



**INDEPENDENT
CONSUMER &
COMPETITION
COMMISSION**

PNG'S COMPETITION AND
CONSUMER WATCHDOG



**17TH PAPUA NEW GUINEA RESOURCES &
ENERGY
INVESTMENT CONFERENCE**

“PNG Resources and Energy: Promoting Sustainable Investment”

**FACILITATING MARKET
EFFICIENCY TO PROMOTE
SUSTAINABLE INVESTMENT**

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AND COMPETITION
COMMISSION (ICCC)***

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OUTLINE OF OUR PRESENTATION

- A. WHO ARE WE?
- B. OUR ROLES AND RESPONSIBILITY.
- C. WE FACILITATE MARKET EFFICIENCIES AND PROMOTE INVESTMENT THROUGH:
 - C1. MERGERS AND ACQUISITIONS (M&A); AND
 - C2. INDUSTRY REGULATION AND REGULATION OF STATE OWNED ENTERPRISES (SOEs)
- D. CONCLUSION.

A. WHO ARE WE

- THE ICCC WAS ESTABLISHED IN 2002 THROUGH THE LATE MEKERE'S REFORM TO BE THE PRINCIPAL ECONOMIC REGULATOR.
- IT REPEALED AND REPLACED
 - PRICE CONTROL ACT 1972; AND
 - THE CONSUMER AFFAIRS COUNCIL ACT 1978.
- THE ICCC ACT 2002 WAS PASSED IN PARLIAMENT.

B. OUR ROLES

OUR KEY ROLE IS TO:

- ENHANCE THE WELFARE OF OUR PEOPLE THROUGH THE PROMOTION OF COMPETITION AND FAIR TRADE;
- PROMOTING ECONOMIC EFFICIENCY IN INDUSTRIES AND INVESTMENT CONDUCTS; AND
- PROTECT CONSUMERS' INTEREST IN RELATION TO PRICES AND QUALITY OF GOODS AND SERVICES.

C1. HOW DO WE FACILITATE MARKET EFFICIENCY TO PROMOTE SUSTAINABLE INVESTMENT

WE FACILITATE IT THROUGH OUR ROLE IN THE:

A. MERGERS AND ACQUISITIONS (**M&A**)
PROVISIONS OF THE ICCA ACT (S81&82); AND

B. INDUSTRY REGULATION AND REGULATION
OF STATE OWNED ENTITIES (S32)

C1. MERGERS AND ACQUISITIONS (M&A)

- ALL MERGERS AND ACQUISITIONS MUST GO THROUGH THE ICCC AS REQUIRED UNDER SEC. 81 & 82 ICCC ACT

“IF”

- THEY MEET THE FOLLOWING MANDATORY NOTIFICATION THRESHOLDS
 - TRANSACTION VALUE EXCEEDS THE VALUE OF K50 MILLION; OR
 - PROPOSED ACQUISITION WOULD RESULT IN A MARKET SHARE INCREASE OF 50% OR MORE

C1. CONTINUE...

- APPLY TO THE ICCC, IF YOU MEET ANY OF THE THRESHOLDS, FOR A;
 - CLEARANCE – A *COMPETITION TEST ASSESMENT; OR*
 - AUTHORISATION – A *COMPETITION AND PUBLIC BENEFIT TEST ASSESMENT*
- FAILIURE TO COMPLY WILL RESULT IN A PENALTY OF
 - K750,000.00 (~AUS\$ 31,000.00)

C1. M&A APPROVALS TO DATE FOR ACORE

ICCC protects the Markets

- Oil Search & Santos Merger (2021)
- Trafigura's acquisition of control of Puma Energy PNG as part of global control (2021)
- Geogas Pacific Acquisition of Origin Energy PNG (2023)
- KPHL Acquisition of interest in PNG LNG from Santos (2023)
- JX Nippon Acquisition of stake in Papua LNG from TotalEnergies (2023)
- Newmont Acquisition of Newcrest (2023)

C1. M&A APPROVALS FOR OTHER MARKETS

ICCC protects the Markets

- Kina Acquisition of ANZ PNG's Retail and Commercial Businesses (2019)
- Pacific Energy Aviation (PNG) Limited Acquisition of PNG Ground Services Limited from PNG Air Limited (2017)
- MRDC Acquisition of Additional Shares in PNG Air (2023)
- Telikom Acquisition of shares in Datec (PNG) Ltd (2014)
- KCH transfer of 100% shares in Bemobile to Telikom (2017);
- KCH - PNG Dataco Merger with Telikom PNG Limited (2018)
- Telstra Acquisition of Digicel PNG (2021)
- Water PNG Merger with Eda Ranu (2019);
- IPBC Proposed Acquisition of MOtukea Wharf from Curtain Brothers (2014);
- Dye & Durham Acquisition of PNG Registries (2022);
- QBE Insurance PNG Acquires Mitsui (2012);
- MVIL Acquires Pacific Reinsurance (2020)

C1. M&A DECLINED ON COMPETITION REASONS

ICCC protects the Markets

1. Kina Proposed Acquisition of Westpac PNG (Authorization Application - 2021).
2. Link PNG Proposed Acquisition of Shares in PNG Air (Authorization Application - 2021).

Approved with Conditions

1. Geogas Pacific Acquires Shares in Origin Energy PNG (Authorization Application - 2023).

C1. POTENTIAL MERGERS AND ACQUISITIONS

WHAT YOU NEED TO KNOW

&

WHAT YOU NEED TO DO

SHOULD YOU WISH TO MERGE YOUR BUSINESS

OR

ACQUIRE ANOTHER BUSINESS OR SHARES

IN ANY MARKETS

C1. REQUIREMENT OF THE ICCC ACT ON M&A

Section 69 of ICCC Act prohibits M&As that substantially lessen competition in the market in PNG.

Exemption from Section 69 could be obtained from the ICCC under two types of M&A Adjudication review processes:

- **Clearance** – *Competition Test*; and
- **Authorization** – *Competition & Public Benefit Test*.

Clearance and Authorization are M&A Adjudication processes under Section 81 and 82 of the ICCC Act respectively.

Section 81 of the ICCC Act requires the acquirer of a proposed merger or acquisition that meets either of the two (2) mandatory notification thresholds to apply for Clearance from the ICCC. The ICCC in its adjudication in the clearance process can direct the applicant to apply for Authorization under Section 82.

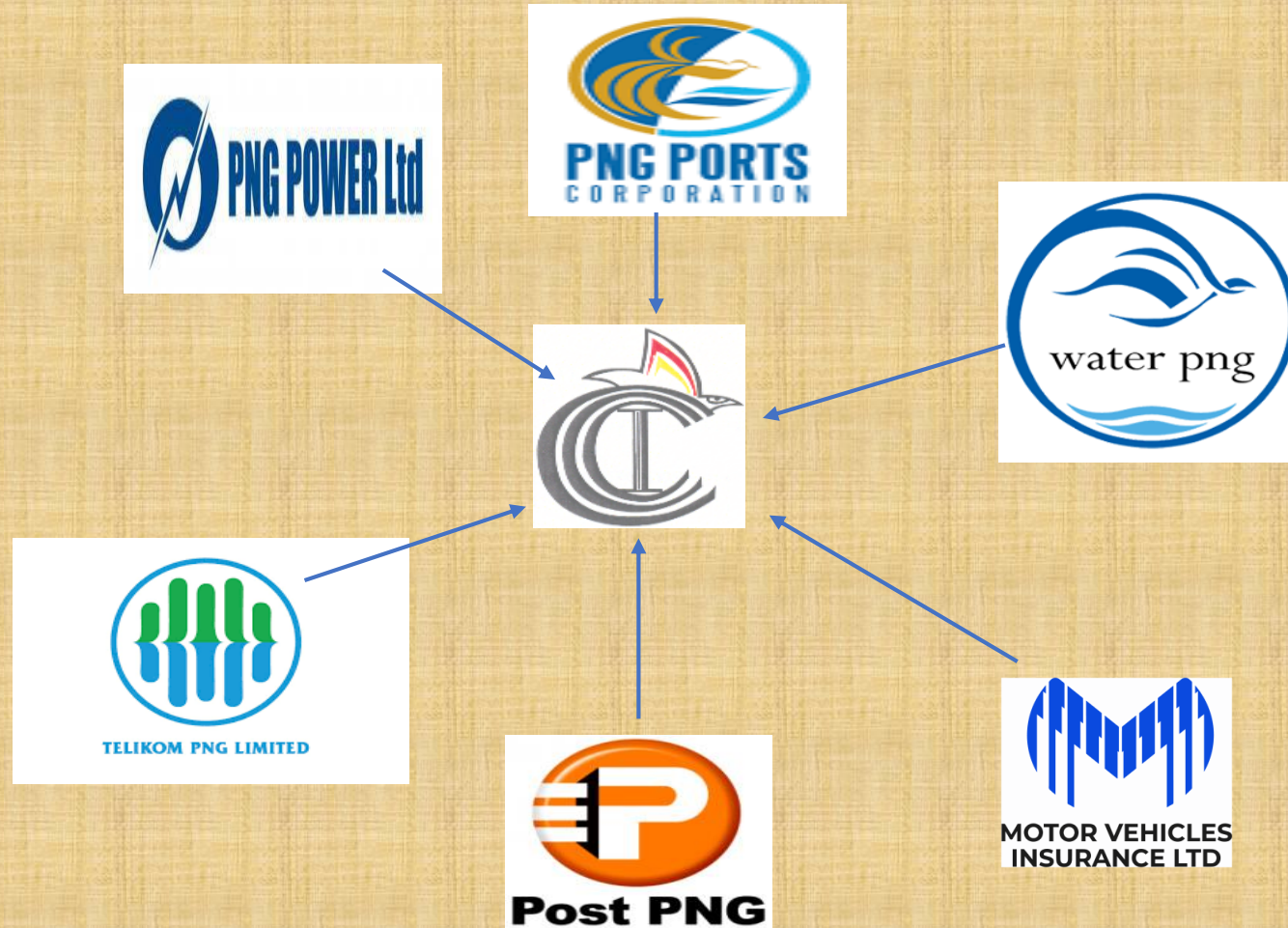
The two (2) notifications thresholds are:

- *The transaction value exceeds the value of K50 million; or*
- *The proposed acquisition would result in a market share increase of 50% or more.*

C1. CLEARANCE & AUTHORISATION ASSESSMENT PROCESS ON M&A

- ICCC's M&A assessment processes are:
 - Fully transparent
 - Wider public consultation
 - Strict statutory deadline
 - Prudent and effective
 - Is not a barrier to investment
 - Provides certainty to investment
- ICCC's processes allow for strategic investment decisions for the benefit of all stakeholders.
- The M&A processes also act as a safety net to prevent investments that will be detrimental to PNG markets.
- Huge Investments by multi-national companies into PNG via M&A will always be assessed by the ICCC given the mandatory notification thresholds are crossed.
- **Decisions by ICCC are independent**

C2. INDUSTRY REGULATION & REGULATION OF STATE OWNED ENTERPRISES



C2. INDUSTRY REGULATION & REGULATION OF STATE OWNED ENTERPRISES

AN INCENTIVE BASED REGULATION IS ADOPTED THROUGH A REGULATORY CONTRACT, (IS AKIN TO A PRICE ORDER)

- BINDING BETWEEN THE REGULATED ENTITY AND THE ICC
- SETS OUT MAXIMUM REVENUE/PRICE PATH & MINIMUM SERVICE STANDARD REQUIREMENTS. CAPEX & OPEX REQUIREMENTS.
- THEY HAVE A REGULATORY PERIOD OF 5 YEARS AND IS REVIEWED UPON EXPIRY.

Key Features:

- GUARANTEED REVENUE/PRICE PATH GIVING THE SOE THE INCENTIVE TO BE EFFICIENT BY REDUCING COSTS AND INCREASE REVENUE.
- PRICE PATH DETERMINED ARE BASED ON PRUDENT AND EFFICIENT COST IN DELIVERING SERVICES.
- PROVIDES REGULATORY AND INVESTMENT CONFIDENCE AND CERTAINTY.

C2. INDUSTRY REGULATION & REGULATION OF STATE OWNED ENTERPRISES

TELECOMMUNICATIONS INDUSTRY

- ISSUED THE FOLLOWING LICENSES
 - TELIKOM PNG, BEMOBILE, DALTRON – ISP, DATEC – ISP AND BSP – ISP, ETC

- INTRODUCED COMPETITION INTO THE MOBILE TELEPHONY MARKET IN 2006 WITH THE ENTRY OF DIGICEL PNG LIMITED.

- FUNCTION TRANSFERRED TO PANGTEL/NICTA

C2. INDUSTRY REGULATION & REGULATION OF STATE OWNED ENTERPRISES

ELECTRICITY INDUSTRY

- LICENSES ISSUED
 - PNG POWER LIMITED
 - PNG FOREST PRODUCTS LIMITED
 - OK TEDI LIMITED
 - LIHIR GOLD LIMITED
 - EXXON MOBILE LIMITED
 - PASCO DAEWOO POWER LIMITED
 - NEW BRITAIN PALM OIL LIMITED
 - MARKHAM V. BIOMAS LIMITED
 - NIUPOWER LIMITED
 - DIRIO GAS & POWER COMPANY
- DEREGULATED – GENERATION
- RETAIL AND DISTRIBUTION NEXT
- POWER PURCHASE REF. PRICES SET
 - POM GRID - K0.38
 - RAMU GRID – K.54
 - GAZELLE GRID – PPL YET TO MAKE SUBMISSION.
- THIRD PARTY ACCES CODE AND GRID CODE DEVELOPED
- FUNCTION TRANSFERRED TO NEA

C2. INDUSTRY REGULATION & REGULATION OF STATE OWNED ENTERPRISES

MVIL & PNG PORTS LIMITED

Regulation of Essential Port Services: Berthage, Wharfage, Berth Reservation and Stevedoring Access.

Key Achievements:

- REVENUE GURANTEED BASED ON PLANNED INVESTMENTS OVER THE YEARS.
- STRICT REGULATORY COMPLIANT
- PENALTIES ARE APPLIED FOR NONCOMPLIANT
- STRICT TARIFF SETTING METHODOLOGIES
- HENCE, CONTINOUS POSITIVE PERFORMANCE OVER THE YEARS.

D. CONCLUSION

- A. Regulatory framework or Government policies and guidelines should not act as barriers to Investment.
- B. Competition law and regulatory tools are invoked mainly to take care of firm behavior and market failures to encourage economic growth.
- C. Governments often intervene when markets fail but in the absence of a clearly defined competition policy and regulatory mechanisms, the intervention can be arbitrary and serve vested interests rather than the poor. Hence, the importance of ICCC in the PNG economy
- D. ICCC's role as a regulatory and competition watchdog is to make the market conducive for potential investors.