



**INDEPENDENT  
CONSUMER &  
COMPETITION  
COMMISSION**

PNG'S COMPETITION AND  
CONSUMER WATCHDOG





# 2024 PAPUA NEW GUINEA INVESTMENT CONFERENCE

**“BUSINESS MERGERS &  
ACQUISITION RULES IN PNG”**

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COMMISSIONER & CEO**

**INDEPENDENT CONSUMER &  
COMPETITION COMMISSION  
(ICCC)**

**6 - 11<sup>TH</sup> DECEMBER, 2024**

# OUTLINE OF OUR PRESENTATION

- A. WHO ARE WE?
- B. OUR ROLES AND RESPONSIBILITIES.
- C. WE FACILITATE MARKET EFFICIENCIES AND PROMOTE INVESTMENT THROUGH:
  - C1. MERGERS AND ACQUISITIONS (M&A), AMONGST OUR OTHER REGULATORY FUNCTIONS.
- D. CONCLUSION.



## A. WHO ARE WE

- THE INDEPENDENT CONSUMER AND COMPETITION COMMISSION (“**ICCC**”) IS PAPUA NEW GUINEA’S COMPETITION AND CONSUMER REGULATOR.
- IT WAS ESTABLISHED IN 2002 REPLACING THE CONSUMER AFFAIRS COUNCIL.

## B. OUR MANDATE

OUR KEY ROLE IS TO:

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

# C. PROMOTING COMPETITION AND CREATING MARKET EFFICIENCIES FOR BUSINESSES

THE ICCA FACILITATES MARKET EFFICIENCIES BY PROMOTING  
INVESTMENT OPPORTUNITIES

IN PNG

THROUGH OUR ROLE

UNDER THE MERGERS AND ACQUISITIONS (M&As) PROVISIONS OF  
THE ICCA ACT (S81 & S82)

## D. BACKGROUND ON MERGERS & ACQUISITIONS IN PNG

- SINCE 2002, THE ICCC HAS BEEN RESPONSIBLE FOR ADMINISTERING AND ENFORCING PNG'S COMPETITION AND CONSUMER LAWS UNDER THE ICCC ACT.
- AMONGST OTHER PROVISIONS, SECTION 69, SPECIFICALLY PROHIBITS MERGERS & ACQUISITIONS THAT SUBSTANTIALLY LESSEN COMPETITION IN A MARKET.
- UNDER THAT REGIME, IT WAS VOLUNTRARY FOR BUSINESSES TO APPLY FOR MERGERS & ACQUISITIONS TO THE ICCC.
- UNDER THAT REGIME, NONCOMPLIANCE WERE A BIG ISSUE, THEREFORE, THE ICCC ACT NEEDED TO BE AMENDED.

## E. CHANGING THE MERGER CONTROL REGIME

- AN AMENDMENT BILL WAS PASSED IN 2018, THAT CHANGED THE VOLUNTARY PRE-MERGER NOTIFICATION REGIME TO A MANDATORY PRE-MERGER NOTIFICATION REGIME BY HAVING THE FOLLOWING THRESHOLDS:

1. THE TRANSACTION VALUE OF THE PROPOSED ACQUISITION OR MERGER EXCEEDS THE VALUE OF **K50 MILLION**;

*OR*

2. THE PROPOSED ACQUISITION OR MERGER THAT IS LIKELY TO RESULT IN A MARKET SHARE OF **50% OR MORE**.



## F. MERGERS AND ACQUISITIONS (M&A)

### ***THEREFORE,***

- ALL MERGERS AND ACQUISITIONS IN PNG MUST GO THROUGH THE ICCC AS REQUIRED UNDER **SECTION 81 & 82** OF THE ICCC ACT

### ***“IF”***

- THE MANDATORY NOTIFICATION THRESHOLDS ARE MET

## G. CHANGE OF LAW INTENTIONS

THAT WAS DONE MAINLY DUE TO:

- ANTICOMPETITIVE MERGERS OR ACQUISITIONS THAT PROCEEDED WITHOUT PRIOR APPROVAL OF THE ICCC;
- HIGH NON-COMPLIANCE BY COMPANIES IN RELATION TO THEIR OBLIGATION TO APPLY FOR CLEARANCE OR AUTHORISATION FOR POTENTIAL ANTICOMPETITIVE BUSINESS ACQUISITIONS OR MERGERS; AND
- IT TOOK THE ICCC LONGER TO INVESTIGATE SOME OF THESE CONSUMATED ACQUISITIONS OR MERGERS AS THE PARTIES WERE UNWILLING TO PROVIDE NECESSARY INFORMATION OR DATA.

## H. APPLICATION - THE PROCESS

- THE CURRENT PROCESS REQUIRES THE ACQUIRER TO SUBMIT A NOTICE SEEKING CLEARANCE FOR THE ACQUISITION OR MERGER TO THE ICCC IF ONE OF THE THRESHOLDS IS MET.
- THEN, THE ICCC HAS THE POWER TO:
  - CLEAR THE ACQUISITION OR MERGER;
  - DECLINE TO CLEAR THE ACQUISITION OR MERGER; OR
  - DIRECT THE ACQUIRER TO GIVE THE ICCC A NOTICE SEEKING AUTHORISATION FOR THE ACQUISITION/MERGER IF THE ICCC REASONABLY BELIEVES THE PROPOSED ACQUISITION/MERGER REQUIRES IT.



# I. SUBMIT YOUR APPLICATION

- IF YOU MEET ANY OF THE MANDATORY NOTIFICATION THRESHOLDS;

***THEN,***

APPLY TO THE ICCCC FOR A: *(APPLICATION FORMS CAN BE DOWNLOADED FROM OUR WEBSITE OR CAN BE OBTAINED FROM OUR OFFICE);*

- **CLEARANCE**

*OR*

- **AUTHORISATION**

- FAILURE TO COMPLY WITH THIS REQUIREMENT WILL RESULT IN A PENALTY OF;

**K750,000.00**

# J. ASSESMENT PROCESS

- ICCC's M&A ASSESMENT PROCESSES ARE:
  - FULLY TRANSPARENT
  - WIDER PUBLIC CONSULTATION
  - STRICT STATUTORY DEADLINES
  - IS NOT A BARRIER TO INVESTMENT
  - PROVIDES CERTAINTY TO INVESTMENT

## K. ASSESMENT PROCESS

- ICCC's PROCESSES ALLOWS 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 *IF* THE MANDATORY NOTIFICATION THRESHOLDS ARE CROSSED.
- **DECISIONS BY THE ICCC ARE INDEPENDENT**



# L. MAJOR MERGERS & ACQUISITIONS APPROVALS IN THE RESOURCES SECTOR

- Oil Search & Santos Merger (2021)
- Newmont Acquisition of Newcrest (2023)
- 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)
- MRDC acquisition of interest in Pasca A Project from Twinza Oil Limited (2024)
- Petronas Energy acquisition of an interest in PDL 576 from TotalEnergies EP (2024)
- Investment in the Central Lime Project by Mayur Resources (2024)

## M. OTHER M&A APPROVALS TO DATE

- 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)
- 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)

## N. MERGERS & ACQUISITIONS DECLINED

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).



## O. CONCLUSION

- A. REGULATORY FRAMEWORKS OR GOVERNMENT POLICIES & GUIDELINES SHOULD NOT ACT AS A BARRIER TO INVESTMENT.
- B. COMPETITION LAW AND REGULATORY TOOLS ARE INVOKED MAINLY TO TAKE CARE OF FIRM BEHAVIOR AND MARKET FAILURES TO ENCOURAGE EFFICIENCY AND 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 THE ICCC IN PNG ECONOMY.
- D. THE ICCC'S ROLE AS THE COMPETITION WATCHDOG IS TO ENSURE THE MARKET IS CONDUCIVE FOR POTENTIAL INVESTORS.

WE ENSURE OUR MARKETS ARE PROTECTED  
AND  
ALLOW THE PLAYERS/OPERATORS  
IN THE MARKET/INDUSTRY  
TO  
COMPETE FAIRLY AND FREELY.

COME AND SEE US

IF YOU

PLAN TO MERGE, ACQUIRE, OR SELL  
YOUR BUSINESS, BUSINESSES, OR SHARE/S.



**THANK YOU**

**MERRY CHRISTMAS**

**AND**

**HAPPY NEW YEAR**